VT SUPERIOR COURT
WASHINGTON UNIT
CIVIL DIVISION

2015 JAN -7 A 9:47
ORDER

VT SUPERIOR COURT
WASHINGTON UNIT
CIVIL DIVISION

2015 JAN -5 P 2:03

FILED

STATE OF VERMONT
SUPERIOR COURT
WASHINGTON UNIT

STATE OF VERMONT,	)	
	)	
Plaintiff,	)	
	)	CIVIL DIVISION
v.	)	Docket No. 665-11-14 Wncv
	)	
CHRISTOPHER P. MOREAU	)	
FIRED-UP TOBACCO, INC.	)	
	)	
Defendants.	)	

CONSENT DECREE, FINAL ORDER, AND JUDGMENT

To resolve the violations of law alleged in the Complaint filed in the above-captioned matter, the parties, the State of Vermont and Defendants Christopher P. Moreau and Fired-Up Tobacco, Inc. ("Defendants"), stipulate and agree to the following:

INTRODUCTION

The State of Vermont alleges and Defendants admit the following:

1. Between 2008 and 2014, Defendants held a wholesale dealer license from the Vermont Department of Taxes.

2. All Vermont licensed wholesale dealers must file an NPM-1 report on a monthly basis with the State which specifies what sales they have made in the preceding month of product (cigarettes or roll-your-own tobacco) from Non-Participating Manufacturers (NPMs). This report must be filed whether or not the licensed wholesale dealer has sold any NPM product.

3. Between 2008 and 2013, Defendants sold Zig-Zag RYO, an NPM product, in Vermont and failed to report the sale of such Zig-Zag on monthly NPM-1 reports.

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4. Defendants, during certain months of 2011, 2013 and 2014, failed to file NPM-1 reports in a timely manner. Defendants attempted to address the difficulty in filing NPM-1 reports electronically from mid-2013 into 2014. Defendants have not filed any NPM-1 reports for that period either electronically or in hard copy.

5. Defendants during April and May of 2014 sold Fired-Up RYO, a product that is illegal to sell in Vermont as it is not listed on Vermont's tobacco Directory.

6. Defendants did not properly preserve for six years complete and accurate records of all cigarettes and RYO manufactured, produced, purchased, transferred and sold by Defendants in a manner that ensured permanency and accessibility for inspection. Defendants assert that a storage unit break-in and subsequent flooding caused some records to be destroyed.

7. Based upon the facts above, the Attorney General alleges that the Defendants have violated 33 V.S.A. §§ 1919 and 1921 and the Consumer Protection Act, 9 V.S.A. § 2458.

REMEDIES

Defendants are enjoined and restrained as follows:

8. Defendants will not possess, sell, or offer for sale any cigarettes or RYO that are not listed on Vermont's tobacco Directory. Defendants are permanently enjoined and restrained from violating 33 V.S.A. § 1919.

9. Defendants will comply with all record retention and reporting requirements under Vermont law.

10. Defendants shall inform the Office of the Attorney General should Defendants apply for a license from the Vermont Department of Taxes as a wholesale

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dealer. Should Defendants obtain a tobacco wholesale dealers license from the Vermont Department of Taxes, Defendants shall timely file the monthly NPM-1 report and accurately report therein the sale of any NPM products.

11. Defendants shall notify the Office of the Attorney General of any change in their addresses, telephone numbers, or email addresses within the next five years.

12. Defendants shall comply strictly with all provisions of the Consumer Protection Act and the Vermont tobacco statutes whenever they are engaged in the retail or wholesale distribution of tobacco products as defined in Titles 32 of the Vermont Statutes Annotated.

13. Within thirty (30) days of signing this Consent Decree, Defendants shall pay a total of $50,000 (fifty thousand dollars) to the State of Vermont, in care of the Vermont Attorney General's Office, as civil penalties in this matter.

14. Based upon Defendants alleged inability to pay the penalty listed in paragraph 13, and upon review of the financial information to be provided to the Office of the Attorney General, Defendants are not required to pay the penalty listed in paragraph 13 at this time.

15. No later than January 1, 2015, Defendants shall submit to the Vermont Attorney General's Office (a) a sworn and accurate statement of their current assets and liabilities, (b) his personal and business tax returns for 2013, and (c) a current credit report.

16. No later than May 1 of each calendar year beginning in 2015 and ending in 2019 (covering the years 2014 through 2018), Defendants shall submit to the Vermont Attorney General's Office accurate copies of individual and any business income tax

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returns for each calendar year, along with sworn and accurate statements of then-current assets and liabilities and (c) a then-current credit report.

17. Defendants shall, within ten (10) days of a request, provide to the Attorney General any requested additional information supporting the assertions contained in the responses to paragraphs 15 and 16.

18. In the event that an income tax return or statement of assets and liabilities required by paragraphs 15 and 16, above, shows that the Defendants have pre-tax income exceeding $50,000 (fifty thousand dollars), and/or net assets exceeding $80,000 (eighty thousand dollars), Defendants shall, no later than July 1 of that year, pay to the State of Vermont, in the care of the Attorney General's Office, an amount equal to 20 (twenty) percent of any pre-tax income exceeding $50,000 (fifty thousand dollars), plus an amount equal to 20 (twenty) percent of any net assets exceeding $80,000 (eighty thousand dollars), provided that once Defendants have paid a total of $50,000 (fifty thousand dollars) pursuant to this paragraph, they shall have no further liability or obligation to report under paragraph 16.

19. Within 30 (thirty) days of signing this Consent Decree, Defendants shall pay a total of $1,000 (one thousand dollars) to the Treasurer of the State of Vermont, for deposit in the tobacco litigation settlement fund established pursuant to 32 V.S.A. § 435(a). Defendants assert that this amount represents profits from the sale of all brand styles of Fired-Up RYO from 2008 through the present by Defendants.

20. Within 10 (ten) days of signing this Consent Decree, Defendants shall pay a total of $500 (five hundred dollars) to the State of Vermont, in care of the Attorney General's Office, as attorneys' fees and costs in this matter.

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21. By January 9, 2015, Defendants shall provide proof of surrender of their retail tobacco license and shall cease all sales from the place of business known as Fired-Up Tobacco, 379 South Barre Road, South Barre, Vermont.

22. Defendants shall inform the Office of the Attorney General should either seek a new Vermont retail tobacco license.

23. Defendants agree that any failure to abide by the terms of this Consent Decree shall be a violation thereof and agree that the penalties to be assessed by the Court for each act in violation of this Consent Decree shall be $10,000. Defendants shall pay all costs of any enforcement of this Consent Decree.

24. This Court has jurisdiction over the subject matter of this action and the Defendants. Jurisdiction is retained by this Court over this Final Judgment and the parties for the purpose of enabling any of the parties to apply to this Court at any time for orders and directions as may be necessary to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.

25. The Court finds Defendants to have been in violation of the Consumer Protection Act, 9 V.S.A. § 2435, and 33 V.S.A. §§ 1919 and 1921.

26. This Final Judgment shall be binding on Christopher P. Moreau and Fired-Up Tobacco, Inc. and their successors and assigns. The State of Vermont hereby releases and discharges any and all claims under Title 9 and Title 33 that it may have against Defendants based on conduct or activities arising under or in connection with this Final Judgment.

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27. Entry of this Final Judgment is in the public interest because it will ensure that Defendants comply with the requirements that only tobacco products that are legal for sale in Vermont are sold to Vermont consumers.

STIPULATION

Defendants Christopher P. Moreau and Fired-Up Tobacco, Inc. acknowledge receipt of and voluntarily agree to the terms of this Consent Decree and waive any formal service requirements of the Consent Decree, the Decree, Order, and the Final Judgment.

DATED at Barre, Vermont this 24th day of December, 2014.

Christopher P. Moreau

Christopher P. Moreau

Christopher P. Moreau Pres./Owner

Fired-Up Tobacco, Inc., by

ACCEPTED on behalf of the State of Vermont:

DATED at Montpelier, Vermont this 5th day of January, 2015.

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

By: Helen E. Wagner

Helen E. Wagner
Assistant Attorney General
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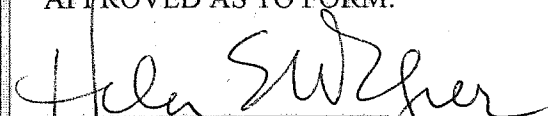
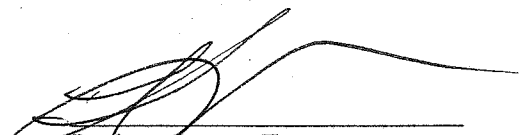
APPROVED AS TO FORM:



Helen E. Wagner
Assistant Attorney General
Vermont Attorney General's Office
109 State Street
Montpelier, VT 05609
For the State of Vermont



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TOBACCO UNIT

DECREE, ORDER, AND FINAL JUDGMENT

This Consent Decree is accepted and entered as a Decree, Order, and Final Judgment of this Court in the Matter of State of Vermont v. Christopher P. Moreau d/b/a Fired-Up Tobacco, Inc, Docket No. 665-11-14 Wncv.

SO ORDERED.

DATED at Montpelier, Vermont this 6th day of January ~~2014~~ 2015.

Mary Miles Teachout
Washington Superior Court Judge

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