

WILLIAM H. SORRELL
ATTORNEY GENERAL

J. WALLACE MALLEY, JR.
DEPUTY ATTORNEY GENERAL

WILLIAM E. GRIFFIN
CHIEF ASST. ATTORNEY GENERAL



TEL.: (802) 828-3171
FAX: (802) 828-2154
TTY: (802) 828-3665
CIVIL RIGHTS: (802) 828-3657

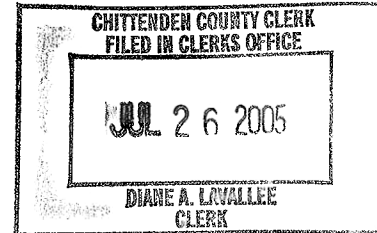
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STATE OF VERMONT
OFFICE OF THE ATTORNEY GENERAL
109 STATE STREET
MONTPELIER
05609-1001

July 26, 2005

HAND-DELIVERED

Diane A. Lavallee, Clerk
Vermont Superior Court, Chittenden County
175 Main St., P.O. Box 187
Burlington, VT 05402-0187



Re: *State of Vermont v. R.J. Reynolds Tobacco Co.*
Chittenden Superior Court Docket Nos. 744-97 CnC & S-816-98

Dear Diane:

Please find enclosed for filing in the above captioned matter the State of Vermont's *Petition for Contempt & Complaint*, along with my *Certificate of Service*, certifying service of the same on counsel for the Defendant, R.J. Reynolds Tobacco Company.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Barney L. Brannen', with a long horizontal line extending to the right.

Barney L. Brannen
Special Assistant Attorney General

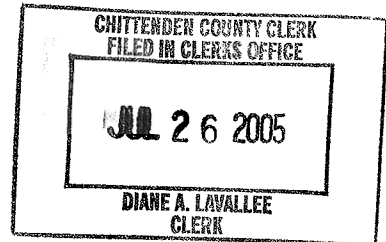
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Enclosures

STATE OF VERMONT
CHITTENDEN, SS.

SUPERIOR COURT
DOCKET NO. 744-97 CnC &
S-816-98

STATE OF VERMONT,)
)
)
 Plaintiff,)
)
)
 v.)
)
 R. J. REYNOLDS TOBACCO COMPANY,)
)
)
 Defendant.)



CERTIFICATE OF SERVICE

I hereby certify that, on this day, I served copies of the State of Vermont's *Petition for Contempt & Complaint* on counsel for the Defendant, R. J. Reynolds Tobacco Company, by placing the same in the U.S. Mail, first-class postage pre-paid, addressed to:

Thomas F. McKim, Vice President & Deputy General Counsel
R.J. Reynolds Tobacco Co.
P.O. Box 2959
Winston-Salem, NC 27102

R. Jeffrey Behm
Sheehey Furlong & Behm
30 Main Street, P.O. Box 66
Burlington, VT 05402-0066

Harry R. Ryan, III
Ryan, Smith & Carbine
98 Merchants Row, P.O. Box 310
Rutland, VT 05702-0310

Date: 26 July 2005

Barney L. Brannen
Special Assistant Attorney General
Brannen, Dunn & Stewart, PLLC
Hanover Road Professional Center
367 Route 120, Suite B-2
Lebanon, NH 03766
603.643.9200

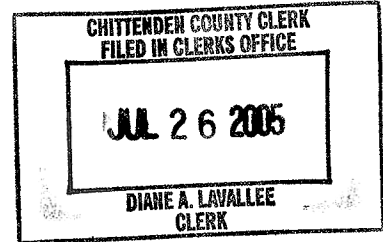
Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

STATE OF VERMONT
CHITTENDEN, SS.

SUPERIOR COURT
DOCKET NO. 744-97 CnC &
S-816-98

STATE OF VERMONT,)
)
Plaintiff,)
)
v.)
)
R. J. REYNOLDS TOBACCO COMPANY,)
)
Defendant.)

**PETITION FOR CONTEMPT
& COMPLAINT**



INTRODUCTION

1. The State of Vermont brings this action to permanently enjoin Defendant, R. J. Reynolds Tobacco Company (“RJR”) from making false and misleading statements regarding the health consequences of using a tobacco product – “Eclipse” brand cigarettes – manufactured and distributed by RJR. RJR’s conduct violates Vermont’s Consumer Fraud Statute, 9 V.S.A. §§ 2451, *et seq.*, as well as provisions of the tobacco Master Settlement Agreement (“MSA”), § III(r), and the *Consent Decree and Final Judgment* (“*Consent Decree*”), § V(I), entered into by the State of Vermont and RJR and approved by this Court on December 14, 1998 (Docket Nos. 744-97 CnC and S-816-98). The State also seeks a finding of contempt for violation of the *Consent Decree* and imposition of monetary sanctions, civil penalties and the costs, including attorneys’ fees, of investigating and pursuing this action.

PARTIES

2. Plaintiff State of Vermont (“the State”) brings this action by and through its Attorney General William H. Sorrell, pursuant to 9 V.S.A. § 2458 and the powers vested in him by common law, as well as Section VI(A) of the *Consent Decree* and Section VII(c) of the MSA.

3. Defendant R. J. Reynolds Tobacco Company (“RJR” or “Reynolds”) is a New Jersey Corporation with its principal place of business at Winston-Salem, North Carolina. RJR

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

is a manufacturer of tobacco products and a party to the MSA. Reynolds distributes and markets its tobacco products, including "Eclipse" brand cigarettes, throughout the State of Vermont.

JURISDICTION

4. This Court has jurisdiction pursuant to 9 V.S.A. § 2458(a), the *Consent Decree*, § VI(A), and the MSA § VII (a).

BACKGROUND

5. Vermont's Consumer Fraud Act prohibits unfair or deceptive acts in commerce. 9 V.S.A. § 2453.

6. Pursuant to 9 V.S.A. § 2458, the Attorney General may seek from this Court an injunction to restrain or prevent violations of Section 2453. The Attorney General may also seek an order imposing civil penalties of up to \$10,000 for each violation found and awarding the State its costs and expenses in investigating and prosecuting the action.

7. In the *Consent Decree* and the MSA, RJR agreed that it would not make "any material misrepresentation of fact regarding the health consequences of using any tobacco product, including tobacco additives, filters, paper or other ingredients."

8. The terms of the *Consent Decree* and the MSA are enforceable by this Court.

9. On March 28, 2005, the Attorney General of Vermont, along with the Attorneys General of thirty-six (36) additional States,¹ the District of Columbia, the Commonwealth of Puerto Rico and the Northern Mariana Islands, gave RJR a written notice of the States' intention to initiate proceedings concerning RJR's violations of the MSA's prohibition on material misrepresentations of fact regarding the health consequences of using a tobacco product. On March 28, 2005, by the same written notice, the Attorney General of Vermont and the Attorneys

¹ Alaska, Arizona, Arkansas, California, Connecticut, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Michigan, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico,

General of the other States, also demanded that RJR cease and desist from making material misrepresentations of fact regarding the health consequences of using a tobacco product.

FACTS

10. Since at least April, 2000, Defendant RJR has advertised, offered for sale, sold and distributed nationally a tobacco product named "Eclipse". RJR has communicated with consumers regarding Eclipse primarily through the Internet, direct mail and newspaper and magazine advertisements, as well as by radio and television interviews of RJR personnel.

11. RJR's communications to consumers have contained the following representations, among others:

- a. "Discover the difference. A cigarette that may present less risk of cancer, bronchitis, and possibly emphysema."
- b. "A cigarette that responds to concerns about certain smoking-related illnesses. Including cancer."
- c. "A better way to smoke. The best choice for smokers who worry about their health is to quit. Eclipse is the next best choice."
- d. "Extensive scientific studies show that compared to other cigarettes:

"Eclipse may present less risk of cancer.

"Eclipse produces less inflammation in the respiratory system, which suggests lower risk of chronic bronchitis and possibly even emphysema."

e. “Because Eclipse primarily heats rather than burns tobacco, its smoke chemistry is fundamentally different, and the toxicity of its smoke is dramatically reduced compared to other cigarettes. For example, studies with smokers who switched to Eclipse from their usual brand show that Eclipse produced:

- 17-57% less lung inflammation (after two months in smokers of 2 packs or more/day)
- 70% lower smoking-related mutagenicity (DNA changes)”

f. “Because [Eclipse] primarily heats tobacco rather than burning it, testing shows that the smoke is very different from that of other cigarettes. The results of many of these tests have, in fact, been presented at scientific meetings or published in scientific journals.”

g. ~~“Extensive analysis of Eclipse shows that the smoke it creates~~
contains far less of many of the compounds that have been linked to the risk of cancer and associated with certain other smoking-related illnesses.”

12. Through the use of the representations described in Paragraph 11, and through the omission of material facts, Defendant represented, expressly or by implication, that:

- a. Eclipse reduces the risk of cancer compared with other cigarettes;
 - b. Eclipse reduces the risk of bronchitis compared with other cigarettes;
 - c. Eclipse reduces the risk of emphysema compared with other cigarettes;
 - d. Eclipse presents less risk of disease to smokers compared with other cigarettes;
- and

- e. Eclipse is almost as beneficial as, or is a reasonable alternative to, quitting smoking.

13. Through the representations described in Paragraphs 11 and 12, among others, Defendant represented, expressly or by implication, that at the time it made the representations, it possessed and relied upon competent and reliable scientific evidence which substantiated such representations.

14. In truth and in fact, at the time Defendant RJR made the representations described in Paragraph 11, it did not possess or rely upon competent and reliable scientific evidence to substantiate such representations.

15. In truth and in fact, at the time Defendant RJR made the representations described in Paragraph 12, it did not possess or rely upon competent and reliable scientific evidence to substantiate such representations.

16. RJR's representations regarding Eclipse were, and are, false and misleading.

17. RJR has made material misrepresentations of fact regarding the health consequences of using Eclipse, a tobacco product.

18. The United States Surgeon General and virtually all authorities on the subject of smoking and health uniformly advise that quitting smoking is the only scientifically substantiated way for smokers to decrease their risk of death or disease, including bronchitis and emphysema, caused by smoking.

19. The vast majority of smokers indicate that they want to quit smoking, and a substantial number of smokers try every year, frequently more than once, to quit.

20. Based on RJR's statements about the reduced health risks associated with smoking Eclipse, there is a substantial risk that:

- a. some smokers will switch to Eclipse, instead of quitting smoking altogether, under the mistaken belief that Eclipse effectively reduces their risk of death or disease compared with other cigarettes and/or that Eclipse is a reasonable and safe alternative to quitting smoking;
- b. some former smokers will resume smoking, under the mistaken belief that Eclipse effectively reduces their risk of death or disease compared with other cigarettes and/or that Eclipse is a reasonable and safe alternative to quitting smoking; and/or
- c. some non-smokers will begin smoking, under the mistaken belief that Eclipse effectively reduces their risk of death or disease compared with other cigarettes and/or that Eclipse is a reasonable and safe alternative to quitting smoking.

21. This action is in the public interest.

COUNT I

(Consumer Fraud - Deception)

22. The State repeats and realleges the preceding paragraphs of this Complaint.

23. Defendant RJR has engaged in a pattern or practice of deceptive acts or practices, in violation of Vermont's Consumer Fraud Act, 9 V.S.A. §§ 2451, *et seq.* by making false or misleading representations about the reduced health risks associated with smoking Eclipse.

COUNT II

(Consumer Fraud - Unfairness)

24. The State repeats and realleges the preceding paragraphs of this Complaint.

25. Defendant RJR has engaged in a pattern or practice of unfair acts or practices, in violation of Vermont's Consumer Fraud Act, 9 V.S.A. §§ 2451, *et seq.* by making

representations about “Eclipse” which create a substantial risk of harm to consumers, including existing smokers, former smokers and non-smokers.

COUNT III

(MSA)

26. The State repeats and realleges the preceding paragraphs of this Complaint.

27. Defendant RJR’s representations regarding Eclipse violate the MSA, § III(r), because they are material misrepresentations of fact regarding the health consequences of using a tobacco product.

COUNT IV

(Consent Decree)

28. The State repeats and realleges the preceding paragraphs of this Complaint.

29. Defendant RJR’s representations regarding Eclipse violate the *Consent Decree*, § V(I), because they are material misrepresentations of fact regarding the health consequences of using a tobacco product.

RELIEF REQUESTED

Wherefore, Plaintiff requests that this Court enter the following relief:

1. Declare that Defendant R. J. Reynolds Tobacco Company violated 9 V.S.A. § 2453 by making statements about “Eclipse” which have a tendency to mislead consumers about a material aspect of the product, particularly the health effects associated with smoking Eclipse, and/or by making statements about “Eclipse” which create a substantial risk of harm to consumers, including existing smokers, former smokers and non-smokers.

2. Pursuant to 9 V.S.A. § 2458, permanently enjoin Defendant R. J. Reynolds Tobacco Company, its officers, agents, servants, employees and attorneys, and those persons in active concert or participation with it who receive actual notice of the injunction, from

representing in any manner, expressly or implicitly, directly or indirectly, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of Eclipse or any other tobacco product for which it does not possess competent and reliable scientific information sufficient to support such representation, that:

- a. Such a product reduces the risk of diseases including cancer, bronchitis or emphysema compared with other cigarettes;
- b. Such a product is safer to smoke than other cigarettes;
- c. Smoking such a product is comparable with or a safe and/or reasonable alternative to quitting smoking; or
- d. Changing the smoke in such a product suggests the product is safer or causes less disease in people who smoke.

3. Declare that the Defendant R. J. Reynolds Tobacco Company has violated Section III(r) of the Master Settlement Agreement by making material misrepresentations of fact regarding the health consequences of using a tobacco product.

4. Declare that the Defendant R. J. Reynolds Tobacco Company has violated Section V(I) of the *Consent Decree* by making material misrepresentations of fact regarding the health consequences of using a tobacco product.

5. Enter an order permanently enjoining Defendant R. J. Reynolds Tobacco Company, its officers, agents, servants, employees and attorneys, and those persons in active concert or participation with it who receive actual notice of the injunction, from making claims about Eclipse or any other tobacco product that violate § V(I) of the *Consent Decree* or § III(r) of the Master Settlement Agreement.

6. Enter an Order against Defendant R. J. Reynolds Tobacco Company imposing monetary sanctions and a Civil Contempt Order for violations of the *Consent Decree* and Master Settlement Agreement.

7. Pursuant to 9 V.S.A. § 2458(b)(1), impose a civil penalty of \$10,000 for each violation of 9 V.S.A. § 2453.

8. Pursuant to 9 V.S.A. § 2458(b)(3) and *Consent Decree* § VI(D), order the Defendant R. J. Reynolds Tobacco Company to pay the State costs and expenses, including attorneys' fees, incurred by or on behalf of the State in connection with the investigation and litigation of this matter

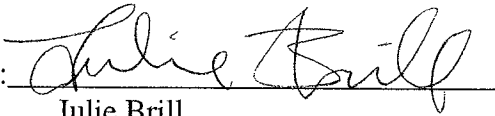
9. Order such other and further relief as the Court may deem necessary to remedy the effects of Defendant's unfair and deceptive acts or practices.

Dated: 26 July, 2005

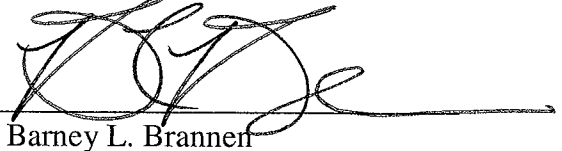
Respectfully submitted,

STATE OF VERMONT

WILLIAM H. SORRELL
Attorney General of Vermont

By: 

Julie Brill
Assistant Attorney General
Attorney General's Office
109 State Street
Montpelier, VT 05609
802.828.3658

By: 

Barney L. Brannen
Special Assistant Attorney General
Brannen, Dunn & Stewart, PLLC
Hanover Road Professional Center
367 Route 120, Suite B-2
Lebanon, NH 03766
603.643.9200

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609