

**STATE OF VERMONT
SUPERIOR COURT
WASHINGTON UNIT**

IN RE: Upper Limits Midwest Inc.)	CIVIL DIVISION
)	Docket No. _____
)	

ASSURANCE OF DISCONTINUANCE

Vermont Attorney General Thomas J. Donovan, Jr. (“the Attorney General”) and Upper Limits Midwest Inc. (“Respondent”), which operates www.upperlimitsinc.com, hereby agree to this Assurance of Discontinuance (“AOD”) pursuant to 9 V.S.A. § 2459.

REGULATORY FRAMEWORK

1. Vermont law provides that “[n]o person shall cause cigarettes, roll-your-own tobacco, little cigars, snuff, tobacco substitutes,¹ substances containing nicotine or otherwise intended for use with a tobacco substitute, or tobacco paraphernalia,² ordered or purchased by mail or through a computer network, telephonic network, or other electronic network, to be shipped to anyone other than a licensed wholesale dealer or retail dealer in this State.” 7 V.S.A. § 1010(b). This law, set forth in 7 V.S.A. § 1010, is known as the “Delivery Sales Ban” statute.
2. A violation of the Delivery Sales Ban is also considered an unfair or deceptive act or practice in commerce in violation of the Vermont Consumer Protection Act, Chapter 63 of Title 9 of the Vermont Statutes Annotated (the “CPA”). 7 V.S.A. § 1010(d)(5).

¹ “Tobacco substitute” refers to “products, including electronic cigarettes or other electronic or battery-powered devices, that contain or are designed to deliver nicotine or other substances into the body through the inhalation of vapor and that have not been approved by the U.S. Food and Drug Administration for tobacco cessation or other medical purposes.” 7 V.S.A. § 1001(8).

² “Tobacco paraphernalia” refers to “any device used, intended for use, or designed for use in smoking, inhaling, ingesting, or otherwise introducing tobacco products into the human body, or for preparing tobacco for smoking, inhaling, ingesting, or otherwise introducing into the human body, including devices for holding tobacco, rolling paper, wraps, cigarette rolling machines, pipes, water pipes, carburetion devices, bongos, and hookahs.” 7 V.S.A. § 1001(7).

3. The Attorney General is charged with enforcing violations of the Delivery Sales Ban, as well as violations of the CPA. Each shipment of an item listed in 7 V.S.A. § 1010(b) constitutes a separate violation of the Delivery Sales Ban and CPA. 7 V.S.A. § 1010(d).
4. Violations of the Delivery Sales Ban are subject to a civil penalty of up to \$5,000 per violation in addition to any other remedy provided by law. 7 V.S.A. § 1010(d)(2).
5. Violations of the CPA are subject to a civil penalty of up to \$10,000 for each unfair or deceptive act or practice. 9 V.S.A. § 2458(b)(1).
6. The Attorney General may also seek injunctive relief under both the Delivery Sales Ban and the CPA. 7 V.S.A. § 1010(d)(3); 9 V.S.A. § 2458(a).

BACKGROUND

7. Respondent Upper Limits Midwest Inc. is organized under the laws of Illinois, with a place of business located at 1205 South 2nd Street, Springfield, Illinois, 62704.
8. Respondent Upper Limits Midwest Inc. operates www.upperlimitsinc.com, which is an online retailer of electronic cigarettes and related products.
9. In April 2021, Respondent shipped an e-liquid ordered through its website, www.upperlimitsinc.com, to an individual consumer in Vermont.
10. Respondent admits the truth of all facts set forth in Paragraphs 7-9.
11. Respondent admits that the above conduct constitutes a violation of the Delivery Sales Ban, 7 V.S.A. § 1010(b), and a violation of the CPA, 9 V.S.A. Chapter 63.

INJUNCTIVE RELIEF

12. Respondent shall comply with the Delivery Sales Ban, 7 V.S.A. § 1010, and the Vermont Consumer Protection Act, 9 V.S.A. Chapter 63.

13. Respondent shall provide clear and conspicuous disclosures on its website, www.upperlimitsinc.com, stating that the website does not ship the items listed in 7 V.S.A. § 1010(b) to Vermont consumers unless the consumer is a licensed wholesale dealer or retail dealer in the State of Vermont. Such disclosures shall be submitted to the Attorney General for approval within five days of execution of this AOD.

14. Respondent shall immediately notify every consumer with a Vermont address that attempts, through www.upperlimitsinc.com, to purchase an item listed in 7 V.S.A. § 1010(b) that the website does not ship such items to Vermont consumers unless the consumer is a licensed wholesale dealer or retail dealer in the State of Vermont.

15. Respondent shall require all Vermont licensed wholesale dealers and retail dealers to provide a current license number prior to ordering any items listed in 7 V.S.A. § 1010(b) through its website, www.upperlimitsinc.com.

CIVIL PENALTY

16. Respondent shall pay \$750 in civil penalties to the State of Vermont within ten days of execution of this AOD. Respondent shall make payment by check to the “State of Vermont” and send payment to: Shannon Salembier, Assistant Attorney General, Office of the Attorney General, 109 State Street, Montpelier, Vermont 05609.

OTHER TERMS

17. Respondent agrees that this AOD shall be binding on it, and its successors and assigns.

18. The Attorney General hereby releases and discharges any and all claims arising under the Delivery Sales Ban, 7 V.S.A. § 1010, and the Vermont Consumer Protection Act, 9 V.S.A. Chapter 63, that it may have against Upper Limits Midwest Inc. for the conduct described in the Background section of this AOD.

19. The Superior Court of the State of Vermont, Washington Unit, shall have jurisdiction over this AOD and the parties hereto for the purpose of enabling the Attorney General to apply to this Court at any time for orders and directions as may be necessary or appropriate to enforce compliance with or to punish violations of this AOD.

20. Acceptance of this AOD by the Attorney General's Office shall not be deemed approval by the Attorney General of any practices or procedures of Respondent not required by this AOD, and Respondent shall make no representation to the contrary.

STIPULATED PENALTIES

21. If the Superior Court of the State of Vermont, Washington Unit enters an order finding Respondent to be in violation of the Delivery Sales Ban, 7 V.S.A. § 1010, then the parties agree that penalties to be assessed by the Court for each unlawful shipment shall be \$10,000.

NOTICE

22. Respondent may be located at:

Upper Limits Midwest Inc.
1205 South 2nd Street
Springfield, Illinois 62704

23. Respondent shall notify the Attorney General of any change of business name or address within 30 calendar days.

SIGNATURE

In lieu of instituting an action or proceeding against Upper Limits Midwest Inc., the Office of the Attorney General, pursuant to 9 V.S.A. § 2459, accepts this Assurance of Discontinuance. By signing below, Respondent voluntarily agrees with and submits to the terms of this Assurance of Discontinuance.

DATED at Springfield, IL, this 16th day of Sept, 2021.




Authorized agent of Upper Limits Midwest Inc.

ACCEPTED on behalf of the Attorney General:

DATED at Montpelier, Vermont this 23 day of September, 2021.

STATE OF VERMONT

THOMAS J. DONOVAN, JR.
ATTORNEY GENERAL

By: 
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