

STATE OF VERMONT
WASHINGTON SUPERIOR COURT
COUNTY OF WASHINGTON

STATE OF VERMONT,
Plaintiff

v.

McISAAC AND BAIROS NEW
ENGLAND DISTRIBUTION LLC,
Defendant

)
)
) CIVIL DIVISION
) Docket No. 665-11-14 Wncv
)
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)
)
)
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**THIS SUMMONS IS DIRECTED TO
McISAAC AND BAIROS NEW ENGLAND DISTRIBUTION LLC**

1. **YOU ARE BEING SUED.** The plaintiff has started a lawsuit against you. The Plaintiff's Complaint against you is attached to this summons. Do not throw these papers away. They are official papers that affect your rights.

2. **YOU MUST REPLY WITHIN 20 DAYS TO PROTECT YOUR RIGHTS.** You must give or mail the Plaintiff a **written response** called an Answer within 20 days of the date on which you received this Summons. You must send a copy of your Answer to Helen Wagner located at:

Office of the Attorney General, 109 State St., Montpelier, VT 05609, helen.wagner@vermont.gov.

You must also give or mail your Answer to the Court located at:

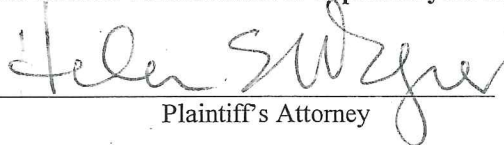
Washington Civil Division, Superior Court, 65 State St, Montpelier, VT, 05602, (802) 828-2091.

3. **YOU MUST RESPOND TO EACH CLAIM.** The Answer is your written response to the Plaintiff's Complaint. In your Answer you must state whether you agree or disagree with each paragraph of the Complaint. If you believe the Plaintiff should not be given everything asked for in the Complaint, you must say so in your Answer.

4. **YOU WILL LOSE YOUR CASE IF YOU DO NOT GIVE YOUR WRITTEN ANSWER TO THE COURT.** If you do not Answer within 20 days and file it with the Court, you will lose this case. You will not get to tell your side of the story, and the Court may decide against you and award the Plaintiff everything asked for in the complaint.

5. **YOU MUST MAKE ANY CLAIMS AGAINST THE PLAINTIFF IN YOUR REPLY.** Your Answer must state any related legal claims you have against the Plaintiff. Your claims against the Plaintiff are called Counterclaims. If you do not make your Counterclaims in writing in your Answer, you may not be able to bring them up at all. Even if you have insurance and the insurance company will defend you, you must still file any Counterclaims you may have.

6. **LEGAL ASSISTANCE.** You may wish to get legal help from a lawyer. If you cannot afford a lawyer, you should ask the court clerk for information about places where you can get free legal help. **Even if you cannot get legal help, you must still give the Court a written Answer to protect your rights or you may lose the case.**


Plaintiff's Attorney

6/1/16
Dated

Served on _____
Date

Sheriff

**STATE OF VERMONT
SUPERIOR COURT
WASHINGTON UNIT**

| | | |
|---------------------------|---|------------------|
| STATE OF VERMONT, |) | |
| |) | |
| Plaintiff |) | |
| |) | CIVIL DIVISION |
| v. |) | Docket No. _____ |
| |) | |
| McISAAC AND BAIROS NEW |) | |
| ENGLAND DISTRIBUTION LLC, |) | |
| |) | |
| Defendant |) | |

COMPLAINT

Introduction

1. Vermont's Attorney General brings this suit against Defendant McIsaac and Bairos New Distribution LLC in response to their multiple violations of Vermont's tobacco and consumer protection laws. Defendant has violated Vermont laws by selling tobacco products not legal for sale in Vermont, namely Seneca cigarettes. The Attorney General seeks injunctive relief, civil penalties, and other appropriate relief.

Parties, Jurisdiction, and Venue

2. Defendant is a domestic limited liability company incorporated in the state of Massachusetts. Its principal place of business is located at 238 Bodwell Avenue, Avon, Massachusetts.
3. Defendant is a distributor of tobacco products, including cigarettes, and holds a wholesale dealer's license from the Vermont Department of Taxes and files several different monthly reports with the State of Vermont.

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109 State Street
Montpelier, VT
05609**

4. Defendant has registered with the Vermont Secretary of State as a foreign business in order to transact business in Vermont.
5. Attorney General William H. Sorrell is charged with enforcement of Vermont's tobacco laws, 33 V.S.A. Chapter 19, Subchapter 1B, and Vermont's Consumer Protection Act, 9 V.S.A., Chapter 63.
6. This Court has personal jurisdiction over Defendant's actions, as Defendant sold tobacco products in multiple locations in Vermont and is the holder of a Vermont Department of Taxes wholesale dealer's license.
7. This Court is the proper venue for this action under 12 V.S.A. § 402(a) as Defendant sold tobacco products in multiple locations in Vermont including in Washington county.
8. This action is in the public interest.

Regulatory Framework

9. In order for a tobacco product manufacturer's cigarettes and roll-your-own tobacco ("RYO") to be legal for sale in Vermont, such manufacturer must provide an annual certification that includes information required by Vermont statute. 33 V.S.A. § 1917.
10. The Attorney General's Office publishes on its website a list, commonly known as "the Directory," of all tobacco product manufacturers and their brand families that have current and accurate annual certifications. 33 V.S.A. § 1918(a). The Directory can be found at:
<http://ago.vermont.gov/assets/files/Consumer/Tobacco/Tobacco%20Product%20Directory.htm>.

11. The Attorney General's Office also publishes on its website a list, commonly known as the "Legal for Sale List", of all cigarettes and RYO that have been properly certified under 33 V.S.A. § 1917 and, for cigarettes, properly certified as fire-safe pursuant to 20 V.S.A. § 2756 et seq. This list can be found at <http://ago.vermont.gov/assets/files/Consumer/Tobacco/Cigarette%20Brands%20Certified%20as%20Fire-Safe%20and%20Legal%20for%20Sale%20in%20Vermont.pdf>
12. It is illegal to affix a Vermont tax stamp to or sell or offer for sale in Vermont cigarettes or RYO not appearing on the Directory or made by a manufacturer not listed on the Directory. 33 V.S.A. § 1919.
13. A wholesale dealer is a person who either imports or causes to be imported into Vermont any tobacco products, including cigarettes. 32 V.S.A. § 7702(16).
14. Vermont tobacco statutes provide that "sale" or "sell" means any transfer, exchange or barter in any manner or by any means whatever, of any cigarettes or tobacco products. 32 V.S.A. § 7702(12).
15. Before engaging in the business of selling tobacco products into Vermont, a wholesale dealer must obtain a license from the Vermont Department of Taxes. 32 V.S.A. § 7731.
16. Payment of the tax on cigarettes in Vermont is evidenced by the affixing of tax stamps issued by the Vermont Department of Taxes to the packages containing the cigarettes. 32 V.S.A. § 7771(b).

17. Each stamp affixed and each sale or offer to sell cigarettes in violation of section 1919 constitutes a separate violation. 33 V.S.A. § 1923(a).
18. A violation of 33 V.S.A. § 1919 carries with it a civil penalty in an amount not to exceed the greater of 500 percent of the retail value of the cigarettes sold, offered for sale, or possessed for sale, or \$5,000. 33 V.S.A. § 1923 (a).
19. A violation of 33 V.S.A. § 1919 is punishable by a fine of up to \$5,000.00 or imprisonment of up to one year, or both. 33 V.S.A. § 1923.
20. The Attorney General may seek injunctive relief as well as recovery of the costs of investigation and reasonable attorney's fees. 33 V.S.A. § 1923(b).
21. A violation of 33 V.S.A. § 1919 is an unfair or deceptive trade practice in violation of Vermont's Consumer Protection Act, 9 V.S.A. Chapter 63. 33 V.S.A. § 1923(d).
22. Each violation of Vermont's Consumer Protection Act is subject to civil penalties of not more than \$10,000. 9 V.S.A. § 2458.
23. The penalties and remedies provided by 33 V.S.A. Chapter 19, Subchapter 1B are cumulative to each other and to the penalties or remedies, or both, available under all other laws of this State. 33 V.S.A. § 1923(f).
24. The Attorney General is authorized to prosecute violations of 33 V.S.A. § 1919 and violations of the Vermont Consumer Protection Act. 9 V.S.A. § 2458(b).

Facts

25. McIsaac and Bairos New England Distribution LLC is licensed as a wholesale dealer by the Vermont Department of Taxes and was licensed during all relevant periods.
26. In late February 2015, Defendant purchased cigarette tax stamps from the Vermont Department of Taxes.
27. On or about late February through early March of 2015, Defendant sent sales representatives into Vermont. Those representatives visited approximately thirty retail establishments and offered for sale Seneca brand cigarettes manufactured by Grand River Enterprises.
28. A total of approximately 263 packs of Seneca cigarettes, consisting of 23 individual packs of Seneca cigarettes and 24 cartons of Seneca cigarettes, were distributed by Defendant's sales representatives among approximately seventeen retail establishments.
29. All cartons and packs distributed and offered for sale bore a Vermont tax stamp.
30. Seneca brand cigarettes are manufactured by Grand River Enterprises Six Nations, Ltd. ("Grand River"). Grand River is not a tobacco product manufacturer listed on Vermont's Directory. Seneca cigarettes do not appear on Vermont's Directory and are not legal for sale in Vermont.

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Count One: Violations of 33 V.S.A. § 1919

31. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

32. Defendant violated 33 V.S.A. § 1919 in that Defendant sold and offered for sale and tax-stamped multiple packages and cartons of Seneca cigarettes, a brand of cigarettes that is not listed on Vermont's Directory.

Count Two: Violations of Vermont's Consumer Protection Act

33. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

34. Defendant engaged in unfair and deceptive acts and practices under the Vermont Consumer Protection Act in that Defendant sold and offered for sale and affixed tax stamps to multiple packs and cartons of Seneca Brand cigarettes on or about late February through early March of 2015 when Seneca Brand cigarettes were not legal for sale in Vermont.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff State of Vermont requests judgment in its favor and an Order providing the following relief:

- 35. A permanent injunction prohibiting Defendant, its agents, employees, and all other persons and entities, corporate or otherwise, acting in concert or participation with any of them from (1) selling or possessing for sale or offering for sale or affixing tax stamps upon cigarettes or RYO products not listed on the Directory to Vermont consumers and (2) violating Vermont's Consumer Protection Act.
- 36. Civil penalties of \$5,000 for each violation of 33 V.S.A. §1919 and \$10,000 for each violation of the Consumer Protection Act.
- 37. Investigative and litigation costs and fees to be paid to the State of Vermont.
- 38. Such other relief as the Court deems appropriate.

DATED at Montpelier, this 1st day of June, 2016.

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

By: 

Helen E. Wagner
Assistant Attorney General
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