

**STATE OF VERMONT
SUPERIOR COURT
WASHINGTON UNIT**

IN RE: TPB INTERNATIONAL, LLC) CIVIL DIVISION
) Docket No. _____
)

ASSURANCE OF DISCONTINUANCE

Vermont Attorney General Thomas J. Donovan, Jr. (“the Attorney General”) and TPB International, LLC (“Respondent”), which operates www.vaporfi.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 statute 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, bongs, and hookahs.” 7 V.S.A. § 1001(7).

3. The Attorney General is charged with enforcing violations of the Delivery Sales Ban statute, as well as violations of the CPA.
4. Violations of the Delivery Sales Ban statute 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 statute and the CPA. 7 V.S.A. § 1010(d)(3); 9 V.S.A. § 2458(a).

BACKGROUND

7. Respondent TPB International, LLC is organized under the laws of Delaware, with a place of business located at 5201 Interchange Way, Louisville, KY 40229.
8. Respondent TPB International, LLC operates www.vaporfi.com, which is an online retailer of electronic cigarettes and related products.
9. From July 2019 to March 2020, Respondent shipped electronic cigarettes, e-liquids, and other tobacco substitutes and paraphernalia ordered through its website www.vaporfi.com to individual consumers in Vermont.
10. Respondent admits the truth of all facts set forth in Paragraphs 7-9.
11. The Attorney General alleges that the above conduct violated the Delivery Sales Ban statute, 7 V.S.A. § 1010, and the CPA, 9 V.S.A. Chapter 63.

INJUNCTIVE RELIEF

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

13. Respondent shall immediately notify every consumer with a Vermont address that attempts, through www.vaporfi.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.

14. Respondent shall require all Vermont licensed wholesale dealers and retail dealers to provide a current license number prior to ordering any items listed in 10 V.S.A. § 1010(b) through www.vaporfi.com.

PAYMENTS

15. Respondent shall pay by wire \$125,000 in civil penalties to the State of Vermont within ten days of execution of this AOD.

16. Respondent has also agreed to make a charitable donation in the amount of \$25,000 to the Vermont Community Foundation, to be contributed by wire to the Opportunity Fund's "Support for Youth and Families" fund.

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 statute, 7 V.S.A. § 1010, and the Vermont Consumer Protection Act, 9 V.S.A. Chapter 63, that it may have against TPB International, LLC 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, following submissions by the parties, finding that Respondent has materially violated this Assurance of Discontinuance, then the parties agree that penalties to be assessed by the Court for each such shipment made in violation of 7 V.S.A. § 1010 and this Assurance of Discontinuance shall be \$5,000. A violation of this Assurance of Discontinuance shall not be considered material unless Respondent failed to take reasonable measures to prevent violations of the Delivery Sales Ban statute.

NOTICE

22. Respondent may be contacted through its counsel:

David M. Zinn
Williams & Connolly LLP
725 12th Street NW
Washington, DC 20005

23. Respondent shall notify the Attorney General of any change to the method of contact described above.

SIGNATURE

In lieu of instituting an action or proceeding against TPB International, LLC, 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 Miami Lakes, Florida, this 21st day of December, 2020.

DocuSigned by:
Marc Waxman
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Authorized agent of TPB International, LLC

ACCEPTED on behalf of the Attorney General:

DATED at Montpelier, Vermont this 22nd day of December, 2020.

STATE OF VERMONT

THOMAS J. DONOVAN, JR.
ATTORNEY GENERAL

By: *Shannon Salembier*

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