



NEW YORK CITY LAW DEPARTMENT
OFFICE OF THE CORPORATION COUNSEL

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Press Release

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**NEW YORK CITY WINS INJUNCTION AGAINST UPSTATE COMPANY'S
ILLEGAL, MAIL-ORDER CIGARETTE SALES**

***JUDGE REJECTS COMPANY'S ARGUMENT THAT IT WAS NOT AWARE SO-CALLED "NATIVE BRAND"
CIGARETTES MUST BE TAXED***

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New York, N.Y. September 12, 2013 – New York City has scored a significant victory in its federal lawsuit against an upstate New York business that illegally sold non-tax-paid cigarettes. The win builds on the City's record of successfully using civil litigation to halt illegal cigarette sales, which disadvantage law-abiding businesses, undercut public health measures, and deprive the City of millions in lost tax revenue.

On September 9, 2013, Southern District of New York Federal Judge Denise Cote ordered upstate business Wolfpack Tobacco to immediately stop selling and shipping non-tax-paid cigarettes to N.Y. State residents. The Court found that Wolfpack violated the federal Prevent All Cigarette Trafficking Act (PACT Act) by failing to report its cigarette sales to City and State authorities, and by shipping them without complying with labeling, weight, and age verification requirements. Wolfpack also violated the New York State Cigarette Marketing Standards Act (CMSA) by selling unstamped (non-tax-paid) cigarettes to N.Y. State customers.

Significantly, the Judge rejected Wolfpack's argument that it did not violate the law because it purportedly did not know that so called "Native Brand" cigarettes (i.e. cigarettes that are allegedly manufactured or distributed by Native American companies) were subject to tax. The Court found that State law makes it obvious that all cigarettes sold to the public in New York State are subject to tax.

"We've seen repeatedly that the courts have little tolerance for people who sell or transport illegal cigarettes into New York City," said New York City Corporation Counsel Michael A. Cardozo. "In particular, companies should take note that two federal judges have now found that so-called 'native brand' cigarettes are clearly subject to tax."

"Time and time again, the courts have ruled in favor of the City and shut down companies who sell illegal cigarettes," said Finance Commissioner David Frankel. "Untaxed cigarette dealers put legitimate businesses at a competitive disadvantage, rob the City of revenue that supports vital services, and put the health of our citizens at risk. I would like to thank the Law Department for its relentless drive to put these illicit operations out of business, as well as Sheriff Edgar Domenech and his incredible team for their work on this investigation."

"The battle for the health of New Yorkers continues, and this is an important victory," said Health Commissioner Dr. Thomas Farley. "High taxes on cigarettes prevent youth from trying cigarettes and motivate smokers to quit."

In her decision, Judge Cote found that barring Wolfpack's sales was in the public's interest because, "Both Congress and the New York State legislature have found that remote sales of cigarettes are a serious public health threat, deprive governments of significant tax revenue, harm competition, and increase the likelihood that cigarettes will wind up in the hands of children." The Court referenced a previous study by the City's Department of Health and Mental Hygiene showing that cigarette bootlegging increased the number of annual premature deaths related to smoking.

The City filed its lawsuit against Wolfpack and its owners in March 2013, after investigations by the New York City Finance Department. City attorneys also named Wolfpack's delivery service, PM Delivery, in its complaint. After the lawsuit was filed, the delivery service voluntarily ended all shipments of Wolfpack cigarettes.

Wolfpack's actions have resulted in the loss of approximately \$1,500,000 in City taxes since March 2009 alone—only a fraction of the amount evaded since Wolfpack began selling non-tax-paid cigarettes in 2002. The City's ongoing lawsuit seeks compensation for lost tax revenue and penalties for the defendants' illegal actions.

The case is being handled by Senior Counsel Aaron Bloom of the Law Department's Affirmative Litigation Division and Deputy Chief of the Affirmative Litigation Division Eric Proshansky.

The New York City Law Department is one of the oldest, largest and most dynamic law offices in the world. Tracing its roots back to the 1600's, the Department's 650-plus lawyers handle more than 80,000 cases and transactions each year in 17 separate legal divisions. The Corporation Counsel heads the Law Department and acts as legal counsel for the Mayor, elected officials, the City and all its agencies. The Department's attorneys represent the City on a vast array of civil litigation, legislative and legal issues and in the prosecution of juvenile delinquency matters. For more information, please visit nyc.gov/law.

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