

## IN FIRST RULING OF ITS KIND, FEDERAL COURT BARS CARRIER FROM SHIPPING CONTRABAND CIGARETTES

### **COURT RULES THAT TRANSPORT OF “UNSTAMPED” CIGARETTES BY SHIPPER VIOLATES FEDERAL CONTRABAND CIGARETTE TRAFFICKING ACT**

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New York, New York, May 23, 2013 – Corporation Counsel Michael A. Cardozo, Finance Commissioner David M. Frankel, and Health Commissioner Thomas A. Farley today announced that a Manhattan federal court has granted a preliminary injunction barring a shipping company from transporting cigarettes that do not bear New York State and New York City tax stamps.

In the first ruling of its kind, Federal District Court Judge Jesse M. Furman of the Southern District of New York found that transporting cigarettes on which applicable taxes have not been paid violates the federal Contraband Cigarette Trafficking Act (CCTA) when the carrier is aware of the nature of the shipments.

In issuing the injunction, the court found that the City was likely to prove that Regional Integrated Logistics, Inc., a Buffalo, N.Y. shipping and warehousing company, violated the CCTA, which bars transactions involving cigarettes on which applicable taxes have not been paid. City investigations demonstrated that Regional Integrated Logistics, operating under the name Regional Parcel Services or RPS, has been transporting large quantities of untaxed cigarettes to the City. The cigarettes are sold by numerous upstate mail order or internet sellers of untaxed cigarettes, one of which was also targeted in tandem with RPS.

“This is an especially important success in the legal battle against untaxed cigarettes,” said Corporation Counsel Michael Cardozo. “Delivery services must now be aware that they can be held liable in civil and criminal actions for transporting untaxed cigarettes. This new legal remedy efficiently targets a choke-point in the flow of untaxed cigarettes that harm our City’s public and fiscal health, and we’ll aggressively make use of it.”

"This victory demonstrates that we are going after every single component of the illegal cigarette industry," said Finance Commissioner David Frankel. "Whether it's online sales, roll-your-own shops, retailers selling illegal cigarettes, or the trucks that transport them, our investigators will find you, and the City will prosecute. I want to thank Corporation Counsel Michael Cardozo and his team, especially Deputy Chief of the Affirmative Litigation Division Eric Proshansky, for their dedicated work on this issue."

“One of the most effective ways to prevent kids from smoking is through high prices,” said Health Commissioner Dr. Thomas Farley. “Illegal cigarette smuggling undermines these efforts and allows these deadly products to be accessible to more young people. Smoking remains the leading cause of preventable death, and this is an important win in the continued effort to reduce smoking rates in New York City.”

The case in which the decision was issued is *City of New York v. Robert Gordon et al.*, 12 Civ 4838

(S.D.N.Y.) (JMF). The May 21st decision also enjoined further sales of untaxed cigarettes by Robert and Marcia Gordon, operating as “All of Our Butts,” a Salamanca, N. Y. cigarette seller. The court rejected defenses advanced by Robert Gordon—a member of the Seneca Nation of Indians—that Indian sovereignty protected his sales, and found that state and local governments had long been able under the Constitution to regulate Indian cigarettes sales to the public.

With regard to RPS, the court held that the exemption under the CCTA for common carriers was intended to allow for the transport of unstamped cigarettes, but only within the legitimate supply chain (so that unstamped cigarettes can be transported to distributors licensed to affix tax stamps), and not to immunize common carriers transporting cigarettes outside of regulated channels.

The court also ruled that—consistent with the CCTA’s goal of halting interstate cigarette trafficking—the injunction can broadly bar *all* shipments of untaxed cigarettes by RPS, regardless of final destination or initial origin of the cigarettes. RPS, like many regional shippers, transferred shipments to intermediate and “last-mile” services that actually deliver the shipments to consumers. Even if not expressly named in court-ordered injunctions, entities having knowledge of an injunction can face their own liability for conduct that assists violations of the terms of the injunction. The City plans a general information campaign informing the regional shipping industry of potential CCTA liability for shipping unstamped cigarettes.

The use of smaller delivery companies to transport untaxed cigarettes increased after the 2010 passage of the federal Prevent All Cigarette Trafficking Act, which prohibited the mailing of tobacco products. Major delivery services such as Federal Express and UPS have entered into agreements with various state Attorneys General to refrain from transporting tobacco products. In March, Fed Ex Ground settled with the City for \$2.4 million to resolve similar claims to those against RPS.

Sales of non-tax-stamped cigarettes deprive the State and City of millions of dollars in lost cigarette tax revenues, hurt law-abiding small businesses, and undercut public health measures designed to discourage smoking. Legal rulings in this and other cases suggest that entities at any level of the cigarette industry, including manufacturers, may have liability for promoting sales of untaxed cigarettes.

The case was handled by Eric Proshansky, Deputy Chief of the Law Department’s Affirmative Litigation Division, and Senior Counsel Aaron Bloom.

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