



NEW YORK CITY LAW DEPARTMENT
OFFICE OF THE CORPORATION COUNSEL

Michael A. Cardozo, *Corporation Counsel*

Press Release

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**NEW YORK CITY ANNOUNCES \$10 MILLION AWARD IN LONG ISLAND
CIGARETTE BOOTLEGGING LAWSUIT**

***COURT RULES THAT LARGE-SCALE TRAFFICKING OF UNTAXED CIGARETTES FROM LONG ISLAND-BASED
RESERVATION VIOLATES FEDERAL AND STATE LAW***

Contact: Kate O'Brien Ahlers / Elizabeth Thomas, (212) 788-0400, media@law.nyc.gov

New York, New York, April 2, 2013 – Corporation Counsel Michael A. Cardozo, Finance Commissioner David M. Frankel, and Health Commissioner Thomas A. Farley today announced a win awarding the City over \$10 million in its lawsuit against large-scale cigarette trafficking on the Long Island reservation of the Unkechauge Indian Nation (also known as the Poospatuck Reservation). The court also issued a permanent injunction against any future sales by the defendants of “unstamped” cigarettes—those on which state and local taxes have not been paid.

“This is yet another major success in the legal battle against untaxed cigarettes,” said Corporation Counsel Michael Cardozo. “It should be very clear by now to those who sell and deliver untaxed cigarettes that flouting the law and undermining our City’s public health measures will cost them. Thanks to the aggressive efforts of our legal team, it is costing these particular defendants a great deal.”

“Untaxed cigarettes put legitimate businesses at a tremendous disadvantage, put the public’s health at risk, and cheat our residents out of tax revenue,” said Finance Commissioner David Frankel. “This decision underlines the City’s commitment to make sure that those who fail to charge the appropriate tax are the ones who pay in the end. 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.”

“The City’s efforts over the last decade have led to a decrease in adult smokers, but smoking is still the leading cause of preventable premature death in New York City and claims thousands of lives every year,” said Health Commissioner Dr. Thomas Farley. “Businesses that cheat on cigarette taxes are not only unfair competition for law-abiding businesses, but they also entice young people to smoke by offering cigarettes at illicit low prices. The City’s ongoing efforts to crackdown on illegal cigarettes is just one of many ways we can curb smoking rates.”

The case is *City of New York v. Golden Feather Smokes Shop, Inc. et al*, 08-cv-3966 (E.D.N.Y. (CBA). The March 28th decision by Chief Judge Carol B. Amon of the U.S. District Court for the Eastern District of New York affects the three remaining defendants in the litigation—Peace Pipe Smoke Shop, TDM Discount Cigarettes, and Red Dot & Feather Smoke Shop. The court noted that “unstamped cigarettes sold by these defendants were trafficked in large quantities into the City from the Poospatuck Reservation for many years. Traveling into the City via a stream of commerce existing outside the stamping system, these cigarettes entered the City without payment of City cigarette taxes.” As the court found, sales of untaxed cigarettes violate the federal Contraband Cigarette Trafficking Act (CCTA) and the New York State Cigarette Marketing Standards Act (CMSA).

The City’s lawsuit was commenced in 2008 against eight “smoke shops” and their operators, all located

on the Mastic, N.Y., Poospatuck Reservation and involved in bulk sales of unstamped cigarettes to traffickers. Early in the case, the court issued a preliminary injunction against the defendants' sales of unstamped cigarettes to the public, effectively halting their operations. Following the preliminary injunction decision, five of the eight defendants entered into consent decrees with the City, agreeing permanently to cease their illegal activities. The remaining three defendants, along with their owners, refused settlement and continued to insist on the right to sell cigarettes outside of New York State's cigarette regulatory scheme. However, the court found that State tax laws, which previously barred Indian sales of unstamped cigarettes to the public, had been amended during the pendency of the suit to bar *any* sales of unstamped cigarettes by Indian sellers, and the court issued that even broader injunction.

The court also determined that each carton of unstamped cigarettes sold by the defendants constituted a loss to the City equal to the amount of the tax on a carton of cigarettes. Based on the City's proof of the quantities of cigarettes trafficked or sold directly into the City, including the testimony of former bootleggers and one of the defendant's own sales records, the court awarded the City \$10,041,075 from Peace Pipe Smoke Shop, and \$450,000 from TDM Discount Cigarettes. A third defendant, Red Dot & Feathers Smoke Shop, Inc. will be assessed a penalty that could amount to up to two percent of its annual sales volume. The court also awarded the City its attorneys fees.

The Golden Feather suit is related to an earlier lawsuit, *City of New York v. Milhelm Attea Bros. Inc.*, 06-cv-3620 (E.D.N.Y. (CBA), commenced against wholesale suppliers of cigarettes to the Golden Feather defendants. In the prior lawsuit, the City claimed that the wholesalers had violated the CCTA and CMSA. The suit ended in an award of summary judgment to the City under the CCTA. Hearings are scheduled in June 2013 to determine the wholesaler defendants liability for up to \$14 million in penalties.

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 both cases suggest that entities at any level of the cigarette industry, including manufacturers, may have liability for promoting sales of untaxed cigarettes.

The legal team is led by Eric Proshansky, Deputy Chief of the Law Department's Affirmative Litigation Division, and includes Senior Counsels William Miller and Aaron Bloom, with assistance from Division Chief Gail Rubin and paralegal support from Eli Jacobson.

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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