

NEW YORK CITY LAW DEPARTMENT

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A.G. SCHNEIDERMAN & NYC CORPORATION COUNSEL CARTER ANNOUNCE LAWSUIT ACCUSING UPS OF ILLEGALLY SHIPPING NEARLY 700,000 CARTONS OF UNTAXED CIGARETTES IN NEW YORK

Shipping Giant Allegedly Made Nearly 80,000 Separate Illegal Shipments During a Four-Year Period

Schneiderman: Trafficking Cigarettes Damages Our Health, Hurts Our Pocketbooks

(New York, NY) -- Attorney General Eric T. Schneiderman and New York City Corporation Counsel Zachary W. Carter today announced the filing of a multimillion-dollar lawsuit alleging that United Parcel Service, Inc. unlawfully shipped over 136 million contraband cigarettes – or nearly 700,000 untaxed cartons— across New York State in violation of federal and state laws. The lawsuit was jointly filed in federal court in Manhattan by the State of New York and City of New York.

"Our lawsuit alleges that UPS blatantly disregarded New York and federal tax and public health laws, by shipping tens of millions of cheap, untaxed cigarettes to New Yorkers," said **Attorney General Schneiderman**. "We contend that UPS cost this state millions in revenue and is helping to make illegal, low-cost cigarettes available to our young people, who are disproportionately lured to smoking by lower costs. If we are committed to discouraging our kids from smoking we must stop the flow of untaxed cigarettes. To limit smoking, which remains the number one preventable public health crisis today, we must stop the flow of illegal cigarettes and enforce the law."

"UPS has deliberately turned a blind eye to the fact that millions of dollars' worth of untaxed cigarettes are shipped each year through its facilities, as outlined in our complaint," said **New York City Corporation Counsel Carter**. "We allege that the entities that ship these cigarettes through UPS earn enormous profits by avoiding the payment of required taxes and that the fees collected by UPS to ship these untaxed cigarettes are paid out of these illegal profits. Today's action is intended to take the profit out of this enterprise for UPS and to seek penalties sufficient to discourage other common carriers from facilitating the illegal sale and delivery of untaxed cigarettes."

The joint complaint against UPS alleges that, between at least 2010 and 2014, the company made more than 78,500 illegal shipments of cigarettes to consumers and other unauthorized recipients in New York State, amounting to over 683,000 cartons of untaxed cigarettes and a direct tax loss to the state and city of over \$29.7 million and \$4.7 million, respectively. The lawsuit maintains that the shipments were in clear violation of both federal and state laws, as well as a settlement UPS entered into with the New York State Attorney General's Office in 2005 in which UPS agreed to cease all cigarette deliveries to unauthorized recipients, such as residences and unlicensed dealers, both in New York and throughout the country. The lawsuit further alleges that the company engaged in a pattern of racketeering activity with various cigarette dealers to traffic contraband cigarettes in violation of the federal anti-racketeering statute.

Of the total number of UPS deliveries in New York State, the complaint alleges that almost 36,000 went to addresses in the five boroughs and at least 70 were marked in UPS's own records as having been handed to a child. Under New York law, it is illegal to sell cigarettes to minors.

(more)

The joint investigation and lawsuit are based on subpoenaed UPS documents, which allegedly show that UPS made tens of thousands of shipments of cigarettes to New York consumers from unlicensed cigarette vendors located on Indian Reservations throughout the state. As outlined in the complaint, the shipments violated New York Public Health Law 1399-II, which prohibits, among other things, direct shipment of cigarettes to homes or residences in the state. In addition, as these cigarettes allegedly did not bear New York State or New York City tax stamps, the shipments violated the federal Contraband Cigarette Trafficking Act (CCTA), which specifically prohibits shipments of more than 10,000 untaxed cigarettes in a jurisdiction where cigarette tax stamps are required by state or local law.

The alleged shipments by UPS are also prohibited by the federal Prevent All Cigarette Trafficking (PACT) Act and by New York State tax law. With multiple violations of the federal CCTA, UPS engaged in a pattern of racketeering activity with the various cigarette dealers. Thus, the lawsuit maintains that New York State is entitled to treble damages under the federal Racketeer Influenced and Corrupt Organizations Act, also known as the RICO Act, amounting to over \$89 million.

The Assurance of Discontinuance agreement reached with UPS in 2005 provides that that company must pay the State a stipulated penalty of \$1000 per violation, amounting to approximately \$78.5 million.

The complaint seeks damages and penalties totaling over \$180 million:

- \$78.5 million: Penalties due to the State as a result of violations of the OAG's 2005 agreement
- \$89.1 million: Treble damages for the State under RICO
- \$14.1 million: Treble damages for the City under RICO

The UPS lawsuit is similar a \$70 million joint suit filed against FedEx in 2014 for allegedly shipping illegal cigarettes to New Yorkers. More information about that suit is available [here](#).

Attorney General Schneiderman has led anti-smoking initiatives, including a national effort calling on major pharmacies to stop selling tobacco products. In addition, to further combat the likelihood of nicotine addiction among our youth, Attorney General Schneiderman has sponsored a multi-state effort by state attorneys general urging the federal Food & Drug Administration to enact regulations restricting the manufacture, marketing and advertising of electronic cigarettes (e-cigarettes). For more information on these initiatives, click [here](#).

His office has also successfully undertaken a number of efforts to keep tobacco out of the hands of young New Yorkers. Under his leadership, the state's [Tobacco Compliance Bureau](#) has cracked down on websites illegally selling cigarettes, which provide teens with easy access to tobacco, and shut down so-called "roll your own" cigarette shops both Upstate and in New York City, which were popular among teenagers and young adults. The Attorney General's Organized Crime Task Force has also taken down a cigarette trafficking ring that operated up and down the Eastern Seaboard.

The New York City Law Department has initiated numerous suits against cigarette traffickers. The office has partnered with the Attorney General's office in actions against FedEx and UPS, has concluded successful lawsuits against other home delivery services, common carriers, cigarette wholesalers, reservation and internet cigarette sellers and out of state suppliers. The City prevailed against a challenge by the major tobacco manufacturers to a local law that prohibits the sale of discounted cigarettes (e.g. two packs for the price of one).

The lawsuit against UPS is being handled on behalf of the State by Assistant Attorney General Christopher K. Leung with Dana Biberman, Bureau Chief of the Attorney General's Tobacco Compliance Bureau. The Executive Deputy Attorney General for Social Justice is Alvin Bragg and the office's First Deputy for Affirmative Litigation is Janet Sabel.

The lawsuit is being handled on behalf of the City by Assistant Corporation Counsel Leonard Braman with Eric Proshansky, Deputy Chief of the Division of Affirmative Litigation of the New York City Law Department. Division Chief is Gail Rubin. The office of the New York City Sheriff supported the investigations.