

FEDERAL COURT ORDERS TWO “ROLL-YOUR-OWN” CIGARETTE OPERATIONS TO SHUT DOWN FOR EVADING TAXES

*States and Cities Nationwide Can Now Use the Same Federal Law
Against Their Local Roll-Your-Own Stores*

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New York, June 27, 2012 – In a lawsuit brought jointly by the New York City Law Department and the New York State Attorney General, Judge Katherine B. Forrest of the Federal District Court for the Southern District of New York issued a preliminary injunction halting “roll-your-own” cigarette operations at two stores – BB’s Corner, located at 8415 18th Avenue in Brooklyn, and Nitecap Entertainment, at 690 Gulf Avenue in Staten Island. These businesses provide customers with loose tobacco, tubes of cigarette paper, and access to machinery that rapidly produces finished cigarettes for the customer onsite. “Roll-your-own” businesses sell cigarettes in violation of tax and other regulatory statutes applicable to cigarettes, claiming that the businesses do not sell cigarettes, but merely facilitate their customers’ assembly of the cigarettes.

Because the injunction was issued under a federal statute – the Contraband Cigarette Trafficking Act – other states and local jurisdictions can utilize the same legal arguments that were successfully advanced in this lawsuit against roll-your-own establishments nationwide. Although they are part of a young industry, roll-your-own stores are located in virtually every state.

“We have already closed down seven of these illegal businesses, and these two will now also have to shut down,” said Corporation Counsel Michael A. Cardozo. “These businesses had been skirting the law, hurting law-abiding businesses, providing unsafe cigarettes to people, and undermining the City’s successful efforts to curb smoking.”

“The Court agreed that roll-your-own tobacco stores are cheating the State and City of New York out of millions of dollars per year in legitimate tax revenue and endangering public health and safety while they’re doing it,” said Attorney General Eric T. Schneiderman. “The illegally low prices these businesses are charging for their store-made, machine-rolled cigarettes have been shown time and again to encourage people to take up smoking and to discourage smokers from quitting. Additionally, because cigarettes are the number one cause of deaths by fire in this country, New York State has long required that all cigarettes sold in the state be fire-safe; these cigarettes are not.”

“We hope this serves as a message to the would-be scammers trying to skirt New York City and State tax laws,” said New York City Finance Commissioner David M. Frankel. “The Sheriff will find you and the City will put an end to your operations. I want to thank the Corporation Counsel and his team for their continued focus on this issue.”

“This marks an important step in our commitment to ensure that businesses uphold our public health measures directed at lowering smoking rates in New York City,” said New York City Health Commissioner Dr. Thomas Farley. “Cigarette taxes and other tobacco control policies have helped bring New York City’s smoking rate to an all-time low of 14 percent.”

The City and State sought a preliminary injunction, under the Federal Contraband Cigarette Trafficking Act and the New York State Cigarette Marketing Standards Act that would halt the stores’ roll-your-own

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operations until a full trial. In granting the preliminary injunction, Judge Forrest agreed with arguments presented by the City and State that the defendants were evading taxes in violation of federal and state law, and rejected as “without merit” the defendants’ argument that they do not actually “sell cigarettes.” The Court noted that the public interest would be served by prohibiting the defendants’ advertisement and sale of “very inexpensive cartons of cigarettes made possible by tax avoidance,” which deprives New York City and State of needed revenue, frustrates an important deterrent to smoking, and harms law-abiding retailers who comply with the taxation scheme.

The City and State’s lawsuit against BB’s Corner and Nitecap charged that these businesses, along with their owners and employees, violated the Federal Contraband Cigarette Trafficking Act, the New York State Cigarette Marketing Standards Act, and New York State tax law, by selling cigarettes on which the required taxes have not been paid. The lawsuit also charges the defendants with violating New York’s Cigarette Fire Safety Act by selling cigarettes that have not been certified as “fire-safe,” as required by New York State law.

In addition to the injunction granted by the Court, the joint City-State lawsuit against BB’s Corner and Nitecap also seeks compensation for the tax revenue lost by the City and State as a result of defendants’ unlawful activities.

New York City is represented by Deputy Chief Eric Proshansky and Assistant Corporation Counsel Leonard Braman of the New York City Law Department’s Affirmative Litigation Division.

New York State is represented by Assistant Attorney General Marc Konowitz, under the supervision of Tobacco Compliance Bureau Chief Dana Biberman and Executive Deputy Assistant Attorney General for Social Justice, Janet Sabel.

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