



NEW YORK CITY LAW DEPARTMENT
OFFICE OF THE CORPORATION COUNSEL

Michael A. Cardozo, Corporation Counsel

Press Release

Web: nyc.gov/html/law/home.html

For Immediate Release

**CITY EXPANDS INTERNET CIGARETTE SUITS WITH ACTION
AGAINST ILLEGAL SHIPMENTS INTO NEW YORK CITY**

***INTERNET CIGARETTES SELLERS' VIOLATION OF STATE STATUTE BANNING SHIPMENTS OF CIGARETTES
INTO NEW YORK STATE AND THE JENKINS ACT RESULTS
IN ANOTHER CITY SUIT ALLEGING PUBLIC NUISANCE AND SEEKING TREBLE DAMAGES***

Contact: Kate O'Brien Ahlers, Communications Director, (212) 788-0400, kahlers@law.nyc.gov

New York, Oct. 17, 2003 -- Corporation Counsel Michael A. Cardozo and Commissioner of the Department of Finance Martha E. Stark announced today that the City had filed a lawsuit in the Federal District Court in Manhattan against corporations and individuals that operate Internet sites shipping cigarettes to New York City residents in violation of State and Federal statutes regulating such shipments.

The City's complaint alleges that the defendants, who own or control Internet websites selling cigarettes, have been shipping cigarettes to residents of New York City in violation of recently enacted New York Public Health Law §1399-II. That law bans such shipments and declares the delivery of cigarettes to New Yorkers by sellers located either out of state or in state to be a public nuisance. The City's complaint seeks abatement of the nuisance by barring the defendants from making further shipments.

As in an earlier suit brought by the City against a different group of Internet sellers in January 2003, the present action also alleges that the defendants refused to file Federal "Jenkins Act" reports, which are intended to alert state tax authorities to out-of-state cigarette purchases, so that taxes owed by the purchaser can be collected. That conduct is chargeable under Federal mail and wire fraud statutes and the Federal racketeering or "RICO" (Racketeer Influenced and Corrupt Organizations) statute. The City's earlier suit is pending before Judge Deborah A. Batts in the Federal District Court for the Southern District of New York. Both suits are highly innovative and unusual in the use of RICO statutes in pursuing alleged Internet cigarette tax evaders.

Corporation Counsel Cardozo said of the City's lawsuit, "This new suit is part of the City's continuing program to curb patently illegal activities that the State Legislature has determined to be a public nuisance affecting New York City's people and its economy."

Commissioner Stark said, "We are committed to enforcing New York City's cigarette laws, which are intended to reduce smoking among minors and level the playing field for businesses that obey the law. In addition to this lawsuit, Finance is stepping up its enforcement of the cigarette tax, so that the City and its legitimate businesses are not cheated."

The complaint alleges that cigarettes ordered from the following Internet sites were shipped into to New York City in violation of the State statute:

- www.cheapsmoke.com

- www.discountcigarettes.com
- www.dannystobacco.com
- www.nccigarettes.com
- www.keweenawbay.com
- www.cigoutlet.com
- www.cigs4cheap.com

During July and August of this year, private investigators and a tax fraud investigator from the City's Department of Finance placed orders for cigarettes at the above-mentioned websites and requested deliveries at addresses within New York City. Each of the websites filled the orders, illegally sending cartons of cigarettes by common carrier or U.S. Mail to the New York City addresses provided with the orders. None of the packages were marked as containing cigarettes, as required under State law, and none of sales were reported under the Jenkins Act, also as required under Federal law.

Internet cigarette sellers are prohibited from "shipping or causing to be shipped any cigarettes to any person in this state," under New York Public Health Law §1399-ll. The United States Court of Appeals for the Second Circuit recently upheld the statute's constitutionality in *Brown & Williamson Tobacco Corp. v Pataki*, 320 F.3d 200 (2d Cir. 2003), and the law went into effect in March 2003.

The enactment of the law was accompanied by a legislative finding that:

"When cigarettes are shipped directly to a consumer, adequate proof that the purchaser is of legal age cannot be obtained by the vendor, which enables minors to avoid the provisions of article 13-F of the public health law."

The legislative finding is borne out by a study published in the Sept. 10th issue of the *Journal of the American Medical Association* by K. Ribisl, R. Williams and A. Kim. The study concluded that minors have easy access to cigarettes over the Internet because Internet sellers have weak or non-existent age verification procedures.

The United States General Accounting Office has concluded that most Internet cigarette sellers do not comply with the Jenkins Act (cite: "Internet Cigarette Sales: Giving ATF Investigative Authority May Improve Reporting and Enforcement," *GAO Report 02-742*, August 2002). These illegal actions of Internet cigarette sellers cost State and local governments nationwide hundreds of millions of dollars every year, with some analysts suggesting as much as an \$800 million tax loss by 2005. An exhibit filed with the City's complaint demonstrates through shipping information obtained from an Internet cigarette seller that most sales are made to purchasers residing in States with high cigarette taxes, suggesting that tax evasion is the principal economic basis for Internet purchases.

Well-established Federal case law provides that the failure to file Jenkins Act reports amounts to a violation of the Federal racketeering statutes, entitling the City to recover treble or three times its actual losses in addition to attorney fees. Eric Proshansky, Deputy Chief of the Law Department's Affirmative Litigation Division, is the case's lead attorney. The legal papers were filed on Sept. 30th and are in the process of being served now.

To view the Law Department's press release on its original Internet cigarette suit from January 2003, please visit the office's web site (address below), click on the "Press Releases" section and go to the Internet cigarette release from Jan. 17, 2003. Proshansky is also the lead attorney on that case.

The New York City Law Department is one of the oldest, largest and most dynamic law offices in the world, ranking among the top three largest law offices in New York City and the top three largest public law offices in the country. Tracing its roots back to the 1600's, the Department's 650-plus lawyers handle more than 90,000 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 criminal prosecution of juveniles. Its web site can be accessed through the City government home page at www.nyc.gov or via direct link at www.nyc.gov/html/law/home.html.

###