

FOR IMMEDIATE RELEASE

**A.G. SCHNEIDERMAN AND NYC CORPORATION COUNSEL
CARDOZO SUE TWO “ROLL-YOUR-OWN” CIGARETTE BUSINESSES
FOR EVADING TAXES**

*To Skirt The Law, Stores Claim They Do Not Sell Cigarettes, Yet Customers
Walk Out Of Stores with Assembled Cigarettes*

*Lawsuit Also Charges Businesses With Violating State Law For Selling Cigarettes
Not Certified As “Fire-Safe”*

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New York, Mar. 13, 2012 – Attorney General Eric T. Schneiderman and New York City Corporation Counsel Michael A. Cardozo today announced the joint filing of a federal lawsuit against BB’s Corner, located at 8415 18th Avenue in Brooklyn, and Nitecap Entertainment, at 690 Gulf Avenue in Staten Island, businesses that evade cigarette taxes by providing customers with loose tobacco, tubes of cigarette paper, and access to machinery that instantly produces finished cigarettes for the customer onsite. These “roll-your-own” businesses sell cigarettes in violation of tax and other regulatory statutes applicable to cigarettes, by claiming that they do not sell cigarettes, but merely facilitate the customers’ assembly of the cigarettes.

The City and State’s lawsuit against BB’s Corner and Nitecap, filed in the Federal District Court for the Southern District of New York, charges that these businesses, along with their owners and employees, violate 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.

“Rather than playing by the rules, these stores and others like them 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,” Attorney General Schneiderman said. “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.”

“Any business that tries to get around paying its taxes may as well be taking money away from companies that follow the rules,” said Mayor Bloomberg. “We won’t let anyone break the law, especially one that helps prevent tobacco use among young adults. The Surgeon General recently reported that New York City’s youth smoking levels are at their lowest in a decade – and less than half the national rate. Those important gains come from smart policy and committed enforcement, and we’ll continue our work to ensure that success continues.”

“The City has successfully shut down all six of the illegal operations that were previously uncovered, and we are pleased that the State is joining our efforts to go after more smoke shops,” said Corporation Counsel Cardozo. “Regardless of who does the rolling, people are walking out of these stores with unsafe and untaxed cartons of cigarettes. It’s unfair to the law-abiding businesses down the street and undermines public health efforts to curb smoking.”

(more)

“The Sheriff’s Office is on the street sniffing out all types of illegal cigarette activity and we will work with all of our partners in law enforcement to bring these schemes to an end,” said Finance Commissioner Frankel. “When one business doesn’t play by the rules it hurts not only the taxpayers, who rely on tax revenue to pay for vital services, but all of the small businesses who do the right thing. It is our job to help level the playing field for businesses and ensure all tax revenue due to the City is collected.”

“Roll-your-own cigarette shops are avoiding the life-saving policy of taxing cigarettes,” said 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. However, smoking is still the leading cause of premature death in our city. Lives are at risk when we allow businesses to undermine laws that protect health.”

As described by investigators with the New York City Sheriff’s Office, Division of Tax Enforcement, customers at BB’s Corner and Nitecap purchase loose tobacco and packages of cigarette paper tubes with attached filters. Store employees then assist customers in making cigarettes on machines located in and owned by the store. The machines fill the paper tubes with compacted tobacco to produce completed cigarettes, which the customers then pay for by the pack or the carton. Despite claiming not to sell cigarettes, BB’s Corner and Nitecap advertised “200 count cartons” of “smokes” for “\$29.95 per carton” – less than half of the amount of the taxes alone on a carton of cigarettes.

Sales of non-taxed 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. The joint State-City lawsuit against BB’s Corner and Nitecap seeks an injunction to stop the defendants from continuing their illegal sale, distribution, and advertising of non-taxed cigarettes, as well as compensation for the tax revenue lost by the City and State as a result of defendants’ unlawful activities.

New York State is being 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.

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

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