

STATE OF VERMONT
WASHINGTON COUNTY FILED

State of Vermont,)
Plaintiff)
v.)
Habana Premium Cigar Shop,)
Defendant)

2009 JUL 7 P 3:30
Washington Superior Court
Case No. _____
499-7-09Wnw

COMPLAINT

Plaintiff, the State of Vermont, through William H. Sorrell, Attorney General of the State of Vermont, alleges as follows:

Introduction

1. This is a civil action brought by the State of Vermont, through William H. Sorrell, Attorney General of the State of Vermont, to enforce Vermont's ban on mail-order and Internet sales and delivery of tobacco products, and the Consumer Fraud Act.

Jurisdiction and Venue

- 2. The Court has subject matter jurisdiction over this matter pursuant to 4 V.S.A. § 113.
- 3. The Court has personal jurisdiction over Defendant Habana Premium Cigar Shop because Defendant transacts business within the state, and acts giving rise to this cause of action occurred within this state.
- 4. Venue is proper pursuant to 9 V.S.A. § 2458(a), because some of the business conducted by Defendant occurred in Washington County.

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

Parties

5. Plaintiff, the State of Vermont, through William H. Sorrell, Attorney General, is charged, inter alia, with the enforcement of the Vermont Consumer Fraud Act, 9 V.S.A §§ 2451-66, and Vermont's ban on mail-order and Internet sales and deliveries of tobacco products, 7 V.S.A. § 1010.

6. Defendant owns and/or operates an interactive website, www.pipesandcigars.com/fagoryoto.html.

7. Defendant maintains a physical facility at 1537 Central Ave., Albany, N.Y. 12205.

8. Defendant is an online retailer of tobacco products and conducts business in many locations, including in the State of Vermont.

9. Defendant is a "person" under 1 V.S.A. § 128.

Facts

10. The Vermont Attorney General's Office advised Defendant of its obligation to cease causing tobacco products to be sold and shipped to Vermont consumers under Vermont's ban on mail-order and Internet sales, 7 V.S.A. § 1010, on or about January 26, 2009.

11. Defendant, alone or acting in concert with others, subsequently caused tobacco products to be sold and shipped to a Vermont consumer.

12. Defendant, alone or acting in concert with others, sold tobacco products via its website to a Vermont consumer on or about April 13, 2009.

13. Defendant, alone or acting in concert with others, caused tobacco products ordered on Defendant's website to be shipped to a Vermont consumer on or about April 20, 2009.

Count One

14. Plaintiff incorporates and realleges paragraphs 5 through 13 above.

15. Defendant's conduct alleged above violates 7 V.S.A. § 1010(b) which states that "No person shall cause cigarettes, roll-your-own tobacco, little cigars, or snuff, ordered or purchased by mail or through a computer network, telephonic network, or other electronic network, to be shipped to anyone other than a licensed wholesale dealer, distributor, or retail dealer in this state."

Count Two

16. Plaintiff incorporates and realleges paragraphs 5 through 15 above.

17. A person who violates 7 V.S.A. § 1010 engages in an unfair or deceptive trade practice in violation of the state's Consumer Fraud Act, 9 V.S.A. §§ 2451-66.

18. The acts and practices engaged in and employed by Defendant as alleged herein are unfair or deceptive acts or practices affecting the conduct of trade and commerce in Vermont, in violation of the Vermont Consumer Fraud Act 9 V.S.A. §§ 2451-66.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court enter an Order:

A. Issuing a permanent injunction prohibiting Defendant, its agents, employees, and all other persons and entities, corporate or otherwise, in concert or participation with any of them from further violating 7 V.S.A. § 1010(b),

B. Issuing a permanent injunction prohibiting Defendant, its agent, employees, and all other persons and entities, corporate or otherwise, in concert or participation with any of them from engaging in unfair or deceptive conduct in violation of 9 V.S.A. §§ 2451-66,

C. Imposing the maximum penalty allowed under 7 V.S.A. § 1010(d)(2),

D. Imposing the maximum penalty allowed under 9 V.S.A. § 2458(b)(1),

E. Awarding attorneys fees and costs of the prosecution and investigation of this action as allowed under 7 V.S.A. § 1010(d)(4) and 9 V.S.A. § 2458(b)(3), and

F. Granting any further relief as the Court deems equitable and proper.

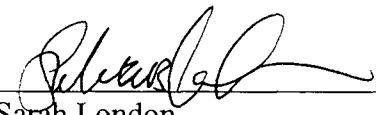
Jury Demand

Plaintiff asserts its right to a trial by jury on any issue so triable.

Date: July 7, 2009

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

By: 
Sarah London
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609-1001
Telephone: 802-828-5479
Facsimile: 802-828-2154

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609