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ANNE MILGRAM, Attorney General  
of New Jersey, DAVID SZUCHMAN,  
Director of the New Jersey Division of  
Consumer Affairs, and CHERYL FULMER,  
Acting Director of the New Jersey  
Division of Taxation,

Plaintiffs

v.

RED JACKET TOBACCO, LESLEY A.  
HOAG, individually, and as principal and  
owner of RED JACKET TOBACCO, XYZ  
CORPORATIONS 1-20, and JANE and  
JOHN DOES 1-20, individually and as  
principal(s) and owner(s) of RED JACKET  
TOBACCO,

Defendants.

STATE OF NEW JERSEY  
DEPARTMENT OF TREASURY  
RECEIVED AND FILED

OCT 7 2009

*Ann Rigan*  
CLERK OF SUPERIOR COURT

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
MERCER COUNTY

DOCKET NO. C-132-08

Civil Action

FINAL JUDGMENT BY  
DEFAULT AND ORDER

**THIS MATTER** was opened to the Court on application by Anne Milgram, Attorney General of the State of New Jersey ("Attorney General"), David Szuchman, Director of the New Jersey Division of Consumer Affairs ("Director") and Cheryl Fulmer, Acting Director of the New Jersey Division of Taxation ("Tax Director"), (collectively referred to as Plaintiffs') (by Cathy A. Melitski, Deputy Attorney General) by way of a Notice of Motion, Certification of Investigator Aziza Salikhov, with accompanying exhibits ("Salikhov Certification"),

<sup>1</sup> This action was commenced in part on behalf of former Director of the New Jersey Division of Taxation Maureen Adams. In accordance with R. 4:34-4, the caption has been revised to reflect the current Acting Director Cheryl Fulmer.

Certification of Cathy A. Melitski, with accompanying exhibits ("Melitski Certification"), Certification of Chief Edward Vrancik ("Vrancik Certification"), and Brief alleging that Defendants Red Jacket Tobacco and Lesley A. Hong have, directly or through others, engaged in conduct in violation the New Jersey Consumer Fraud Act ("CFA"), N.J.S.A. 56:8-1 et seq., as well as its Advertising Regulations, N.J.A.C. 13:45-5.1 et seq.; the Cigarette Tax Act, N.J.S.A. 54:40A-1 et seq.; Cigarette Sales Act, N.J.S.A. 54:40A-46 et seq.; and the New Jersey Tobacco Product Manufacturers' Responsibility Act, N.J.S.A. 52:4D-1 et seq. ("Responsibility Act").

On October 10, 2008, this action commenced when Plaintiffs filed their Complaint. Plaintiffs filed a Certification of Service of the Complaint on November 12, 2008. On February 20, 2008, Plaintiffs filed their First Amended Complaint, and on March 19, 2009 filed their Certification of Service of the First Amended Complaint. This Court entered default as to both Defendants on April 3, 2009, pursuant to R. 4:43-1.

To date, Defendants have not answered or otherwise defended this action or moved to vacate the default.

**THIS COURT NOW FINDS THAT:**

A. The Court has jurisdiction over the subject matter of this action and over all named and served defendants hereto.

B. Based upon the uncontroverted evidence submitted by Plaintiffs, including the Salikhov Certification, Vrancik Certification and Melitski Certification, Defendants have committed 60,000 separate violations of the CFA, N.J.S.A. 56:8-1 et seq., for the Red Jacket Tobacco Money Mailer advertisement sent to New Jersey consumers.

C. Based upon the uncontroverted evidence submitted by Plaintiffs, including the Salikhov Certification, Vrancik Certification and Melitski Certification, Defendants have committed eight (8) separate violations of the CFA, N.J.S.A. 56:8-1 et seq. for unconscionable

commercial practices and misrepresentations in connection with the advertising and sale of cigarettes into New Jersey.

D. Based upon the uncontroverted evidence submitted by Plaintiffs, including the Salikhov Certification, Vrancik Certification and Melitski Certification, Defendants have sold cigarettes into New Jersey without a license for at least 22 days, each of which is a separate violation pursuant to the Cigarette Tax Act, N.J.S.A. 54:40A-24

E. Based upon the uncontroverted evidence submitted by Plaintiffs, including the Salikhov Certification, Vrancik Certification and Melitski Certification, Defendants have violated the Tobacco Product Manufacturers' Responsibility Act, N.J.S.A. 52:4D-1 et seq., when on two separate occasions they sold cigarettes that were not on the Directory into New Jersey.

F. Based upon the uncontroverted evidence submitted by Plaintiffs, including the Salikhov Certification, Vrancik Certification and Melitski Certification, Defendants have violated all three (3) components of the Cigarette Sales Act when they failed to (1) comply with the Jenkins Act, 15 U.S.C. § 376; (2) verify, collect or pay all applicable State taxes; and (3) verify that the purchaser is at least 19 years old.

THEREFORE, IT IS on this *7<sup>th</sup>* day of *October*, 2009,

1. **ORDERED** that the acts and omissions of Defendants constitute multiple instances of unlawful practices in violation of the Cigarette Tax Act, N.J.S.A. 54:40A-1 et seq., the Tobacco Product Manufacturers' Responsibility Act N.J.S.A. 52:4D-1 et seq., and the Cigarette Sales Act N.J.S.A. 54:40A-46 et seq., and the CPA, N.J.S.A. 56:8-1 et seq.

2. **IT IS FURTHER ORDERED** that Defendants are immediately ordered to comply with the reporting requirements of the Cigarette Sales Act, N.J.S.A. 54:40A-46 et seq., which includes complying with the Jenkins Act, 15 U.S.C. § 376.

3. **IT IS FURTHER ORDERED** that Defendants shall immediately and

permanently cease and desist from advertising, or selling cigarettes to New Jersey consumers unless and until they are properly licensed in New Jersey pursuant to N.J.S.A. 54:40A-1 et seq.

4. **IT IS FURTHER ORDERED** that Defendants and their officers, directors, shareholders, founders, owners, agents, servants, employees, sales representatives, independent contractors, attorneys, corporations, subsidiaries, affiliates, successors, assigns and all other persons or entities directly under their control or under common control with them and all other persons or entities in active concert or participation with them, are enjoined from engaging in, continuing to engage in, or doing any acts or practices in violation of the CFA, N.J.S.A. 56:8-1 et seq. and all regulations promulgated thereo, including, but not limited to, the acts and practices alleged in the Complaint.

5. **IT IS FURTHER ORDERED** that Defendants are immediately and permanently enjoined from selling cigarette brands and manufacturers into New Jersey that are not listed on the Directory.

6. **IT IS FURTHER ORDERED** that Defendants, jointly and severally, shall pay attorneys' fees incurred in the prosecution of this matter, in the total amount of \$38,245; for the use of the State of New Jersey, as authorized by the CFA, N.J.S.A. 56:8-19; the Cigarette Tax Act, N.J.S.A. 54:40A-24c; and the Tobacco Product Manufacturer's Responsibility Act, N.J.S.A. 52:4D-11c.

7. **IT IS FURTHER ORDERED** that Defendants, jointly and severally, shall pay investigative costs and fees, in the total amount of \$3,091.40, for the use of the State of New Jersey, as authorized by the Cigarette Tax Act, N.J.S.A. 54:40A-24c; the CFA, N.J.S.A. 56:8-11; and the Tobacco Product Manufacturer's Responsibility Act N.J.S.A. 52:4D-11c.

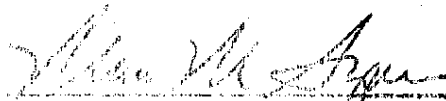
8. **IT IS FURTHER ORDERED** that Defendants, jointly and severally, shall pay a civil penalty in the amount of \$30,500 (\$250 a day \* 122 days = \$30,500), for violations of the



not a party hereto, or preclude actions against any unnamed parties.

15. **IT IS FURTHER ORDERED** that this Judgment and Order may be enforced only by Plaintiffs or their successors in title.

16. **IT IS FURTHER ORDERED** that this Court retains jurisdiction for the purpose of enabling Plaintiffs to apply to this Court for any such further orders and directions as may be necessary and appropriate for the enforcement of the above-mentioned Judgment and Order.



The Honorable Maria Manthari Sypek, P.J.Ch.

Financial Itemization and Breakdown of the Red Jacket Tobacco Order

Total: \$721,500 – Plus \$38,245\* awarded for Attorney fees and \$3,031.40 for Investigative costs

The Division of Taxation

Count I: Sale of cigarettes to NJ consumer w/o a license (\$250 days \* 122 days unlicensed)

\$30,500

Count II: Sales of cigarettes not on the AG Directory

\$10,000

Count III: Violation of the Cigarette Sales Act (Non face-to-face sales)

\$1,000

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Total due the Division of Taxation

\$41,500

The Division of Consumer Affairs

Count IV: 60,000 separate violations of the CFA

\$600,000

Count V: 8 violations of the advertising regulations

\$80,000

Investigative costs:

\$3,031.40

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Total due the Division of Consumer Affairs

\$683,031.40

\* The attorney's fees belong to the Division of Law.

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The Division of Consumer Affairs

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\$600,000

Count V: 8 violations of the advertising regulations

\$80,000

Investigative costs:

\$3,031.40

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Total due the Division of Consumer Affairs  
\$683,031.40

\* The attorney's fees belong to the Division of Law.