

Internet Enforcement

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Delivery Sales: Non Face-to-Face Sales Regulated

- Place a variety of requirements on Internet tobacco retailers
- Provide for criminal and civil penalties
- 19 states have adopted some version
- Legislation pending in other states

Delivery Sales Restriction Statutes

Broadest regulations require Internet retailers to:

- Be licensed to sell cigarettes/OTP into the state
- Conduct adequate age verification
- Provide customers with tax liability disclosures
- Meet requirements for shipping documentation and methods
- Report in-state sales on monthly basis

Efforts to Enforce State Delivery Sales

Comprehensive Approach

- 1) Cut off payment systems
- 2) Cut off shipment options
- 3) Cut off supply of product

Payment Systems

- March 2005 – all major credit card companies and PayPal adopt policies aimed at prohibiting illegal internet cig sales
- Initially, all the sites appeared to be cut off
- Slowly – ability to use credit cards reemerging

Payment Systems

- States are making buys from top sites (per *comScore*) and notifying Visa and MC

Recent notification to Visa:

- ten of eleven websites located in foreign countries and use foreign banks
- 5 banks: Israel; 4 banks: Iceland; 1 in Andorra

Shipment Options

NY Attorney General actions:

- NY is a delivery sale prohibited state
- Goal was to cease shipments of cigarettes to consumers – nationwide result
- Success with private carriers – not with Postal Service

Agreements to Cease Cig Sales to Consumers Nationwide

- DHL: July 2005
- UPS: October 2005
- FedEx: February 2006



Manufacturer Agreements

Per agreement, manufacturers agree to incorporate protocols aimed at combating the illegal sale of the company's cigarettes over the Internet and through the mails.

- Phillip Morris – Jan. 2006 (37 AGs)
- Lorillard – July 2006 (32 AGs)

The protocols provide for:

- Termination of shipments of cigarettes to any direct customers that the AG's find to be engaging in illegal Internet/mail order sales;
- Reduction in the amount of product made available to direct customers found by the AG's to be engaged in the illegal re-sale of cigarettes to the Internet vendors; and,
- Suspension from the company's incentive programs of any retailer found by the AG's to be engaging in such illegal sales.

Results of Assault on Internet Tobacco Sales

- Dramatic reduction in number of websites operating
 - “Mom & Pop” sites close in large numbers
 - Number of tribal sites consolidate and reorganize
- Dramatic reduction in estimated Internet cigarette sales in U.S.
 - Based on Comscore statistics

Jenkins Compliance Issues

- Scott Maybee sites complying nationwide
- Others sites complying when asked or sued
- Question becomes: what do you do with the invoices?
- Oregon – billing all taxpayers

Oregon's Billing Results to Date

As of July 2006:

Dollars billed: \$868,919

Payments rec'd: \$776,857

Collection rate: **89.4%**

Oregon's Conclusion

Monthly SM invoices

Jan 2005	1968
Feb	1828
Mar	1677
<u>April</u>	<u>1916</u>
May	2555
June	2389
July	2341
Aug	2507
Sept	2484
<u>Oct</u>	<u>2211</u>
Nov	1653
Dec	1234
Jan 2006	1217
Feb	1050

- Sales remained consistent even when invoices noticed buyers of reporting
- Sales dropped by half after bills were issued to Oregon taxpayers beginning in Oct.

Oregon's Conclusion

- **Majority of purchasers:** elderly fixed income
 - Consistent with recent national studies
- **Majority of purchases:** cheap tribal product (NPMs)
- **Anecdotal reports from retailers:** Internet buyers coming back to brick-and-mortar sources!

Next Steps

- **1) Agreements:** Work to ensure compliance
- **2) USPS** - Two options:
 - Work with Postal Inspection
 - Support federal legislation banning shipment
- **3) Enforcement actions** against entities/individuals still operating in violation of law

1) Agreements – email me if:

Credit Cards/Paypal

- You complete a transaction for cigs using any card or Paypal

UPS/DHL/Fed Ex

- You track a shipment of cigarettes to a consumer via these carriers

2) USPS

- Only enforcement option at this point – follow-up on 12/12/05 letter from Chief Postal Inspector
- Will require:
 - Investigations/intelligence on high-volume operators meeting the “profile”
 - Coordination with USPI and local AUSA
- Contact local reps to support legislation banning the shipment of cigarettes via USPS

3) Enforcement Actions

- South Dakota and Oregon suing Scott Maybee for NPM violations
- Suits/threat of criminal charges for violations of Delivery Sales – may be effective for targeting domestic sites/sources
- NYC and state efforts
- Looking for ways to “hit” other facilitators:
 - Affiliate site operators
 - Web hosts and registrants

Examples of Relief Awarded/Settlements in Civil Suits

- Injunctive relief
 - Prohibited sales of tobacco products to specified states
 - Required compliance with non face-to-face and consumer protection statutes
- Sales records
- Civil penalties

Delivery Sales - Unanswered Questions

New Hampshire Motor Transport Association v. Rowe

- UPS challenge to delivery sales
- **Question**: Does the Federal Aviation Administration Authorization Act (FAAAA) preempt state delivery sales laws?

Delivery Sales Preempted?

First Circuit Court of Appeals decision (May 19, 2006)

- The FAAAA preempts state police power enactments to the extent that the enactments have the effect of forcing a carrier to change its uniform package-processing procedures

Delivery Sales Preempted?

Under First Circuit ruling:

- **Preempted**: Requirements for delivery direct to purchaser, a signature and age verification
- **Not preempted**: Licensing, notice, reporting requirements

Next Steps

- Maine is filing a petition for a writ of certiorari to the Supreme Court
- Looking for other states to writing amicus brief in support
- Keep our fingers crossed