

OTP Enforcement: Oregon's Use of Delivery Sales

Donna Brecker Maddux
Assistant Attorney General
Oregon Department of Justice
Tobacco Compliance Task Force
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Search Warrant Executed at LBSS!



LBSS – Warehouse Space



LBSS – Drive up window & Seizure



How did we get to LBSS?

- Oregon's Tobacco Delivery Sales laws
- The Grand Plan: Target out of state sources & investigate related crimes
- Collaborate with Department of Justice and Postal Inspection Service

Tobacco Delivery Sales

ORS 323.700 et seq

- Standard delivery sales provisions: age verification, licensing, shipping, disclosure, reporting
- Includes all tobacco products
- Expressly applies to “Indian country” and “outside the state”

What We Knew ...

Traditional investigation told us:

- LBSS was single largest source of non-tax paid OTP in Oregon
- Oregon tax evaders were ordering via phone, fax and internet in addition to driving
- Enforcement efforts complicated by out of state tribal location

The Grand Plan

- Focus on violations of delivery sales – opens up potential federal mail fraud, wire fraud, and money laundering charges
- Provide Hunters with clear notice, in person and in writing, of requirements of Oregon law and expectations
- Wait and see what happens

Notice to LBSS

November 2004

- Return receipt mail notice to John Hunter, Judy Hunter, Jennifer Hunter and John's attorney
- Recorded meeting in Portland – attended by Hunters, their attorney, Oregon DOJ, California DOJ, and Washington ATF

Notice to LBSS

- Full education about our laws
- Told them – stop violating our law or we must take enforcement action



Result:

- No change by LBSS
- Website went fully interactive days later



Investigation

- Continue to work traditional in-state cases
 - find more examples of delivery sales violations by LBSS
- Undercover buys to confirm failure to perform age verification or comply with other requirements
- Pitched idea for a federal criminal case to local AUSA

The Theory

LBSS conspired with purchasers in and/or from Oregon to evade Oregon tobacco taxes by way of internet sales and large volume sales with drive-up customers from Oregon.

The **scheme to defraud** Oregon of tobacco tax funds provides basis for mail fraud & wire fraud.

Execution

- Lead federal investigative agency is Postal Inspection Service
 - ATF & WA LCB: not involved
- Federal prosecution through Portland USA office
- TCTF provides: investigative and knowledge basis for violations of tobacco delivery sales

Execution

- Postal writes search warrant – for records and computers

Key factors:

- Actual notice of laws to LBSS
- Provable losses of over \$750K based on traditional investigations in OR
- Undercover buys
- UPS records

Execution

- August 17 at LBSS
- Postal, IRS CID, TCTF
- Shut the place down for the day
- Seized records, interviewed employees
- Contacted domain name web host and email server host for LBSS – federal preservation letters

Next Steps

- Go through evidence
- Consider federal charging options
- Consider best settlement offer
- Come up with effective method for sharing information and charging in-state offenders

Internet Tobacco Retailer Attack Plan (ITRAP) for OTP

- Compliance - ask nicely first
- Contact OTP distributor
 - Educate on phone and in writing
 - Officer does call and writes report
 - Return receipt mail of notice of laws, license application packet and request to comply with reporting requirement retroactive to Jan 2004
 - **Goal**: solid track record of notice

House of Oxford

- Asked nicely – didn't work
- Start criminal investigation into violation of Tobacco Delivery Sales
- Undercover buys
- Draft criminal indictment including Class A Felony Racketeering charge
- Send to primaries – call and negotiate or be charged

House of Oxford

- As part of Assurance of Voluntary Compliance - received all records of sales into Oregon from Jan 2004 – July 2005
- Updates provided upon request
- Continue to monitor compliance

ITRAP for OTP

- Continue to identify and contact out of state OTP distributors
- Review records as received
- Major violators: criminal investigation/traditional approach
- Minor violators: Dept of Rev audit
- Get word out locally about aggressive enforcement

OTP Crimes in Oregon: ORS 323.500 et seq

All Class C Felonies unless otherwise indicated:

- OTP Distribution without a License
- Unlawful Distribution of OTP
 - A Mis < \$1K per quarter tax evaded
 - C Fel - \$1K per quarter, < \$5K
 - B Fel > \$5K per quarter (CC 5 or 7)
- Filing a False Report
- Falsifying an Invoice
- Transporting No-Tax Paid OTP w/out Lic.

Traditional Approach to OTP Enforcement

- Target and prosecute in-state distributors/retailers
- Resulted in convictions, money judgments, positive press/visibility

Biennium to Date for OTP:

Projected Rev.: \$23.1 mil

Actual Rev.: \$32.6 mil