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F I L E D

Clerk of the Superior Court

SEP 17 2004

By: J. JOHNSON, Deputy

9 Attorneys for Plaintiffs the People of the State of
10 California

11
12 SUPERIOR COURT OF CALIFORNIA

13 COUNTY OF SAN DIEGO

14
15 **PEOPLE OF THE STATE OF CALIFORNIA, ex**
16 **rel. BILL LOCKYER, ATTORNEY GENERAL OF**
THE STATE OF CALIFORNIA,

17 Plaintiff,

18 v.

19 **D.C. INC., a Missouri Corporation, doing business**
20 **as WWW.DIRTCHEAPCIG.COM and DIRT**
21 **CHEAP CIGARETTES; FRED W. TEUTENBERG,**
22 **an individual, and DOES 1 through 15, inclusive,**

23 Defendants.

CASE NO. GIC 808194

**STIPULATED CONSENT
JUDGMENT AND
PERMANENT INJUNCTION**

Dept: 75
Judge: The Hon. Richard
E.L. Strauss

24
25 This Consent Judgment and Permanent Injunction is issued and entered based upon the
26 Stipulation for Entry of Consent Judgment and Permanent Injunction entered into by the Parties to
27 this action and the Court's approval of the same based on its independent analysis of the Stipulation,
28 and is made with reference to the following findings of fact:

1 1. On April 1, 2003, the People filed a Complaint alleging that, in the course of selling
2 cigarettes over the Internet, Defendants www.dirtcheapcig.com, Inc. ("www.dirtcheapcig.com"),
3 Fred Teutenberg IV ("Teutenberg") and D.C., Inc. engaged in unlawful business practices in
4 violation of Business & Professions Code Section 17200 by:

- 5 (a) selling cigarettes to children,
6 (b) failing to implement adequate safeguards to ensure that minors cannot receive
7 cigarettes purchased from their web sites,
8 (c) failing to comply with the Jenkins Act, 15 U.S.C. § 375 *et seq.* (the "Jenkins
9 Act") requiring reporting the shipment of cigarettes into California by an out-of-state seller,
10 (d) failing to comply with Revenue & Taxation Code Section 30101.7, effective
11 January 1, 2003, prohibiting non face-to-face cigarette sales unless the seller complies with one of
12 two specified requirements concerning the payment of taxes on cigarette sales to California
13 customers,
14 (e) failing to comply with Business & Professions Code Section 22963, effective
15 January 1, 2003, prohibiting non face-to-face sales of tobacco products through any private or public
16 delivery service unless the seller complies with certain specified requirements including verifying
17 that the purchaser is at least 18 years of age, and delivering the tobacco products to the verified
18 billing address on the check or credit card used for payment, and
19 (f) engaging in false and misleading advertising for the purpose of inducing
20 California consumers to purchase Defendants' cigarettes (Cal. Bus. & Prof. Code § 17500).

21 2. The People also alleged in the Complaint that these three Defendants separately
22 violated Business & Professions Code Section 17500, 22963 and Revenue & Taxation Code Section
23 30101.7.

24 3. Teutenberg and D.C., Inc. specially appeared and filed a Motion to Quash the Service
25 of Summons for lack of personal jurisdiction over them, which was granted by the Court on
26 November 14, 2003. No appeal was taken with respect to the ruling granting the Motion to Quash
27 and the time to appeal has expired.

28

1 4. Defendant www.dirtcheapcig.com filed an Answer to the Complaint which disputed
2 the material allegations of the Complaint as against it or that it was liable for civil penalties as
3 alleged.

4 5. This matter was litigated for many months and a trial was set for September 2004.

5 6. The Parties have entered into a Stipulation for Entry of Consent Judgment and
6 Permanent Injunction in order to settle this action and have requested that the Court approve the
7 Stipulation. Concurrently with the entry of this Consent Judgment and Permanent Injunction, the
8 Court is approving and signing the Stipulation.

9 In light of the foregoing,

10 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

11 1. The court has subject matter jurisdiction of this action and personal jurisdiction over
12 Defendant www.dirtcheapcig.com, Inc. The Court previously held that it did not have personal
13 jurisdiction over former Defendants D.C., Inc. or Fred W. Teutenberg IV.

14 2. The Court accepts Teutenberg's consent to the jurisdiction of this Court for the express
15 and limited purposes of entering into the Stipulation and being bound by the terms of the Consent
16 Judgment as applicable to him. The Court acknowledges that Teutenberg does not consent or admit
17 that the State of California has jurisdiction over him for any other purpose, whether generally or
18 specially.

19 3. Pursuant to Business and Professions Code sections, 17203 and 17535, former Defendant
20 Teutenberg, Defendant www.dirtcheapcig.com, its officers, directors, partners, agents, employees,
21 representatives, assignees, successors in interest and all persons, corporations and other entities who
22 are acting in concert or participation with www.dirtcheapcig.com, with actual or constructive notice
23 of this Consent Judgment and Permanent Injunction ("enjoined parties") are hereby permanently
24 enjoined and restrained from directly or indirectly shipping cigarettes and other tobacco products
25 sold in a non face-to-face manner into the state of California.

26 4. The injunctive provisions of this Consent Judgment and Permanent Injunction ("Consent
27 Judgment") shall apply to Teutenberg not only in his individual capacity, but also as the principal
28 or owner of a business entity.

1 5. Pursuant to Business and Professions Code sections 17203 and 17535, the enjoined parties
2 shall do the following:

3 a) Within five (5) days of entry of the Consent Judgment, enjoined parties shall
4 permanently cease and desist from shipping tobacco products sold in a non-face-to-face transactions
5 to consumers located in the State of California and will exercise best efforts to ensure there is no
6 inadvertent shipment;

7 b) Within five (5) days of entry of the Consent Judgment, enjoined parties shall
8 place a statement, clearly and conspicuously, on each and every web site that enjoined parties own
9 or operate in which enjoined parties sell or offer to sell tobacco products in non face-to-face
10 transactions to California consumers, so that the system will reject any attempted order where the
11 shipping address is located in the State of California;

12 c) Within five (5) days of entry of the Consent Judgment, enjoined parties shall
13 configure each and every web site that enjoined parties own or operate in which enjoined parties sell
14 or offer to sell tobacco products in non face-to-face transactions to California consumers so that the
15 system will reject any attempted orders where the shipping address input by the consumer is located
16 within the state of California. If a potential customer tries to place an order for which the shipping
17 address is located in the State of California, the web site will (1) reject the order as indicated above,
18 and (2) immediately notify the consumer that enjoined parties do not ship to California and the order
19 will not be processed.

20 d) In addition to the above, enjoined parties agree to take other reasonable steps
21 to prevent non face-to-face sales of cigarettes and other tobacco products to persons located in
22 California and to assure that shipments of cigarettes or other tobacco products are not shipped to an
23 address in the State of California;

24 e) Within five (5) days of entry of the Consent Judgment, enjoined parties shall
25 adopt written policies and procedures to prevent non face-to-face sales of cigarettes and other
26 tobacco products to consumers in the State of California and that ensure that their web sites do not
27 ship cigarettes or other tobacco products into the State of California and shall provide a copy of the
28 policies and procedures to each employee with any responsibility in the sale or shipment of cigarettes

1 into the State of California;

2 f) Within thirty (30) days of the entry of the Consent Judgment, enjoined parties
3 shall provide Laura Kaplan, attorney for the people, a copy of the written policies and procedures
4 described in the preceding subparagraph and shall identify the steps taken to give effect to
5 subparagraphs 5(a) through 5(e) inclusive;

6 6. Defendant www.dirtcheapcig.com shall pay the People the sum of \$500,000, in four
7 monthly installments of \$125,000 each. The first installment shall be paid within twenty (20) days
8 after entry of this consent judgment. Each of the subsequent installments shall be paid within thirty
9 (30) days after the previous installment was due. Of that amount \$300,000 shall constitute a civil
10 penalty to be allocated in the following manner: \$100,000 pursuant to the Unfair Competition Law
11 (Business and Professions Code sections 17206 and 17536), \$100,000 pursuant to Business and
12 Professions Code section 22963, and \$100,000 pursuant to Revenue and Taxation Code section
13 30101.7(e). The remaining \$200,000 shall constitute reimbursement of the Attorney General's
14 investigative costs and attorney fees. The latter amount shall be deposited into the Attorney
15 General's Litigation Deposit Fund from which the Attorney General shall reimburse the National
16 Association of Attorneys General any monies previously received or costs paid via grant support of
17 this litigation, and any remaining funds will be transferred into the Attorney General's Public Rights
18 Division Law Enforcement Special Fund to be used for enforcement of Business & Professions Code
19 sections 17200, 17500 and 22963 and Revenue & Taxation Code section 30101.7 or other tobacco-
20 related laws and regulations.

21 7. The checks required to be paid pursuant to paragraph 6 shall be made payable to: "The
22 California Department of Justice," attention Nancy Wagner, and delivered to Laura Kaplan at State
23 of California Department of Justice, 1300 I Street, P.O. Box, Sacramento, CA 94244-2550.

24 8. Within sixty (60) days of entry of this consent judgment, defendant
25 www.dirtcheapcig.com shall file reports with the California Board of Equalization covering each and
26 every shipment of cigarettes made to California since January 1, 2000, including the names and
27 addresses of all persons to whom www.dirtcheapcig.com shipped cigarettes, the brands and the
28 quantities thereof, pursuant to 15 U.S.C. § 376 ("Jenkins Act reports"). The Jenkins Act reports

1 should be sent to: California Board of Equalization, Attention: Victor Day, Principal Compliance
2 Supervisor, 450 North N Street MIC 56, Sacramento, CA 94279-0056

3 9. In the event of a violation of this Consent Judgment; enjoined parties shall pay as a
4 penalty to the People one thousand dollars (\$1000) for each violation. For purposes of this Consent
5 Judgment, a violation of the Consent Judgment shall occur if an order for cigarettes or other tobacco
6 products submitted to a business that enjoined parties own or operate in which enjoined parties sell
7 or offer to sell tobacco products in non face-to-face transactions, results in the delivery of cigarettes
8 or other tobacco products to an address within the State of California. The fact of such delivery shall
9 constitute presumption of a violation of this Consent Judgment. Each delivery shall constitute a
10 separate violation.

11 10. The Court accepts that this Consent Judgment is a compromise of disputed litigation and
12 acknowledges that by entry into the Consent Judgment and Permanent Injunction that no enjoined
13 party admits any liability, obligation or wrongdoing of any kind.

14 11. The Court retains jurisdiction for the purpose of enabling any party to this Consent
15 Judgment to apply to the Court at any time for such further orders and directions as may be necessary
16 and appropriate for the construction or carrying out of this Consent Judgment, for the modification
17 or termination of any of its injunctive provisions, for the enforcement of any of its provisions, or for
18 punishment of any violations of its provisions.

19 Dated: **SEP 17 2004**

RICHARD E.L. STRAUSS

Honorable Richard E.L. Strauss

DECLARATION OF SERVICE

F I L E D
Clerk of the Superior Court

Case Name: People v. WWW.dirtcheapcig.com, et al

No.: **GIC 808194**

SEP 17 2004

By: J. JOHNSON, Deputy

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

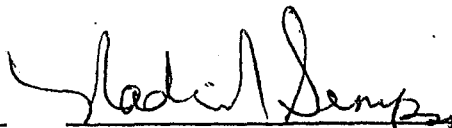
On September 15, 2004, I served the attached **STIPULATION FOR ENTRY OF CONSENT JUDGMENT AND PERMANENT INJUNCTION; STIPULATED CONSENT JUDGMENT AND PERMANENT INJUNCTION** by placing a true copy thereof enclosed in a sealed envelope as certified mail with postage thereon fully prepaid and return receipt requested, in the internal mail collection system at the Office of the Attorney General at 110 West "A" Street, Suite 1100, San Diego, California 92101, addressed as follows:

Thomas N. Fitzgibbon Attorneys for Defendants
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429 Santa Monica Blvd. Ste 220
Santa Monica CA 90401

John W. Rogers, Esq. Attorneys for Defendants
Bryan Cave, LLP
One Metropolitan Square
211 North Broadway, Suite 3600
St. Louis MO 63102-2750

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on September 15, 2004 at San Diego, California.

NADIRAH M. SIMPSON



Declarant

Signature