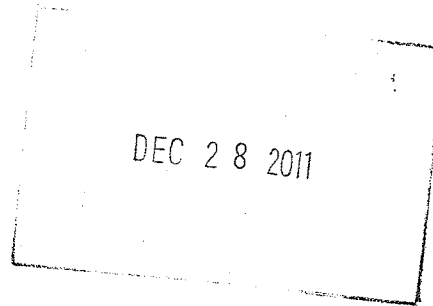


PAULA T. DOW  
ATTORNEY GENERAL OF NEW JERSEY  
Division of Law  
124 Halsey Street - 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101  
Attorney for Plaintiffs



By: Glenn T. Graham  
Deputy Attorney General  
(973) 648-7457

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
ESSEX COUNTY

DOCKET NO. C 289-11

PAULA T. DOW, Attorney General of the State of  
New Jersey, and THOMAS R. CALCAGNI,  
Director of the New Jersey Division of Consumer  
Affairs,

Plaintiffs,

v.

AMERICAN THRUST TOBACCO, LLC and  
XYZ CORPORATIONS 1-10,

Defendants.

Civil Action

COMPLAINT

Plaintiffs Paula T. Dow, Attorney General of the State of New Jersey ("Attorney General"),  
and Thomas R. Calcagni, Director of the New Jersey Division of Consumer Affairs ("Consumer  
Affairs"), with offices located at 124 Halsey Street, Seventh Floor, Newark, New Jersey 07101

(collectively, "Plaintiffs"), by way of this Complaint against Defendant, American Thrust Tobacco, LLC, using a mailing address of Post Office Box 3355, 33 West Service Road, Suite 200, Champlain, New York 12919, and a business address of 35 Gateway Drive, Suite 300, Plattsburgh, New York 12901, state:

### **PARTIES**

1. Plaintiff Attorney General Dow is duly authorized to bring this civil action to enforce compliance with the provisions the New Jersey Consumer Fraud Act, N.J.S.A. 56:81 et seq. ("CFA").
2. Plaintiff Consumer Affairs Director Calcagni is charged with the responsibility of enforcing compliance with the provisions of the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. ("CFA"), pursuant to N.J.S.A. 52:17B-120.
3. Defendant American Thrust Tobacco, LLC is a business entity using a mailing address of Post Office Box 3355, 33 West Service Road, Suite 200, Champlain, New York 12919, and a business address of 35 Gateway Drive, Suite 300, Plattsburgh, New York 12901, and has conducted business in the State of New Jersey.
4. XYZ Corporations 1 through 10 are fictitious corporations meant to represent any additional corporations that have been involved in the conduct that gives rise to this Complaint, but are heretofore unknown to the Plaintiffs. As these Defendants are identified, Plaintiffs shall amend the Complaint to include them.

### **JURISDICTION AND VENUE**

5. This Court has personal jurisdiction over Defendant because Defendant advertised, sold, distributed, and profited from the sale of Roll-Your-Own tobacco ("RYO") to

consumers located within the State of New Jersey, thus purposely availing itself of the privilege of conducting business in this State.

6. Venue is properly laid in Essex County, pursuant to R. 4:3-2(a)(2), because it is the location of the New Jersey Division of Consumer Affairs.

### **GENERAL ALLEGATIONS COMMON TO ALL COUNTS**

#### **A. Defendant's Websites:**

7. Defendant advertises, offers for sale, sells, and distributes RYO to consumers in New Jersey through its websites, located at www.americanthrusttobacco.com and www.americanthrustryo.com.

8. Defendant's website, www.americanthrusttobacco.com, ("Products Site") proclaims that Defendant is "AMERICA'S SUPPLIER OF ROLL YOUR OWN (RYO) TOBACCO, CIGARS, PIPE TOBACCO, CIGARETTE MACHINES, PARTS AND REPAIRS, CIGARETTE TUBES AND ACCESSORIES."

9. Defendant's Products Site states, "We would like to assure all of our customers that our company and products are properly licenced and registered with the USA and the State of New York and will continue to be in full compliance with all the rules, regulations and guidelines affecting the ever changing tobacco industry."

10. Defendant's Products Site further states that "Your Product(s) Are Delivered To Your Door" with this statement placed immediately above the logos of the United States Postal Service, UPS, and FedEx.

11. Defendant's Products Site indicates, "All RYO can be purchased on our new RYO web site www.AmericanThrustRYO.com."

12. Defendant's second website, [www.americanthrustryo.com](http://www.americanthrustryo.com), ("RYO Site") also states that Defendant is "AMERICA'S SUPPLIER OF ROLL YOUR OWN [RYO] TOBACCO."

13. Defendant's RYO Site further states that "We would like to assure all of our customers that our company and products are properly licensed and registered with the USA and the State of New York and will continue to be in full compliance with all the rules, regulations and guidelines affecting the ever changing tobacco industry."

14. Defendant's RYO site also states that "Your Product(s) Are Delivered To Your Door" with this statement placed immediately above the logos of UPS and FedEx.

**B. Prevent All Cigarette Trafficking Act Non-Compliance:**

15. The Prevent All Cigarette Trafficking Act of 2009 ("PACT Act"), 15 U.S.C. § 375 et seq., among other things, places restrictions on the "delivery sale" of cigarettes.

16. Under the PACT Act, the term "cigarette" includes RYO. 15 U.S.C. § 375(2)(A)(ii).

17. The PACT Act, 15 U.S.C. § 375(5), defines "delivery sale" as any sale of cigarettes to a consumer if:

(A) the consumer submits the order for the sale by means of a telephone or other method of voice transmission, the mails, or the internet or other online service, or the seller is otherwise not in the physical presence of the buyer when the request for purchase or order is made; or

(B) the cigarettes or smokeless tobacco are delivered to the buyer by common carrier, private delivery service, or other method of remote delivery, or the seller is not in the physical presence of the buyer when the buyer obtains possession of the cigarettes or smokeless tobacco.

18. A "delivery seller" is a person who makes a delivery sale. 15 U.S.C. § 375(6).

19. For purposes of the PACT Act, the term person is broadly defined and includes individuals, corporations, companies, associations, firms, partnerships, societies, State governments,

local governments, Indian tribal governments, governmental organizations, or joint stock companies.  
15 U.S.C. § 375(10).

20. For purposes of the PACT Act, “a delivery sale shall be deemed to have occurred in the State and place where the buyer obtains personal possession of the cigarettes or smokeless tobacco, and a delivery pursuant to a delivery sale is deemed to have been initiated by the delivery seller.” 15 U.S.C. § 376a(a)(f).

21. Defendant is a delivery seller that initiated delivery sales to consumers in New Jersey and such sales are deemed to have occurred in New Jersey.

22. The PACT Act provides that the Attorney General of the United States shall compile a list of delivery sellers of cigarettes, including RYO, that have not registered with the Attorney General of the United States, pursuant to 15 U.S.C. § 376(a), or otherwise are not in compliance with the PACT Act, 15 U.S.C. §§ 375 et seq. (“Non-Compliant List”). 15 U.S.C. § 376a(e)(1)(A). The Attorney General of the United States updates the Non-Compliant List at least once every four (4) months. 15 U.S.C. § 376a(e)(1)(C).

23. The PACT Act, 15 U.S.C. § 376a(e)(2) provides:

Prohibition on delivery.

(A) In general. Commencing on the date that is 60 days after the initial distribution or availability of the list described in paragraph (1)(A) [the Non-Compliant List], no person who receives the list under paragraph (1), and no person who delivers cigarettes or smokeless tobacco to consumers, shall knowingly complete, cause to be completed, or complete its portion of a delivery of any package for any person whose name and address are on the list, unless—

(i) the person making the delivery knows or believes in good faith that the item does not include cigarettes or smokeless tobacco; or

(ii) the delivery is made to a person lawfully engaged in the business of manufacturing, distributing, or selling cigarettes or smokeless tobacco; or

(iii) the package being delivered weighs more than 100 pounds and the person making the delivery does not know or have reasonable cause to believe that the package contains cigarettes or smokeless tobacco.

(B) Implementation of updates. Commencing on the date that is 30 days after the date of the distribution or availability of any updates or corrections to the list described in paragraph (1)(A), all recipients and all common carriers or other persons that deliver cigarettes or smokeless tobacco to consumers shall be subject to subparagraph (A) in regard to the corrections or updates.

24. Since at least July 25, 2011, American Thrust Tobacco, LLC's websites have been included on the Non-Compliant List; accordingly Defendant cannot lawfully ship, or cause to be shipped, RYO through common carriers, such as FedEx and UPS.

25. Upon information and belief, since at least July 25, 2011, Defendant has sold, caused to be sold, shipped, and/ or caused to be shipped RYO to consumers in New Jersey despite being included on the Non-Compliant List, in violation of the PACT Act, 15 U.S.C. §§ 375 et seq.

## COUNT I

### VIOLATION OF THE CONSUMER FRAUD ACT (UNCONSCIONABLE COMMERCIAL PRACTICES)

26. Plaintiffs repeat and allege each and every allegation set forth in paragraphs 1 through 25 of the Complaint and incorporate said allegations as if fully set forth herein.

27. The Consumer Fraud Act ("CFA"), N.J.S.A. 56:8-2 prohibits:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing [] concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the

subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby...

28. The CFA defines “merchandise” as including “any objects, wares, goods, commodities, services or anything offered, directly or indirectly to the public for sale.” N.J.S.A. 56:8-1(c).

29. Since at least July 25, 2011, Defendant has engaged in the advertisement and sale of merchandise within the meaning of N.J.S.A. 56:8-1(c), specifically through the advertisement and/ or sale of RYO through Defendant’s Products Site, RYO Site, and other means.

30. When advertising and selling RYO in New Jersey, Defendant has engaged in unconscionable commercial practices including, but not limited to, the following:

- (A) misrepresenting that RYO may be sold to New Jersey consumers and delivered through the United States Postal Service, FedEx, and/ or UPS while Defendant was included on the Non-Compliant List;
- (B) misrepresenting that Defendant had complied with all provisions of the PACT Act and other legislation;
- (C) selling RYO to New Jersey consumers while being included on the Non-Compliant List; and
- (D) failing to comply with the terms of the PACT Act and other related legislation.

31. Defendant’s advertisement and sale of RYO to New Jersey consumers constitutes multiple unconscionable commercial practices.

32. Each unconscionable commercial practice by Defendant constitutes a separate violation of the CFA, N.J.S.A. 56:8-2.

33. Pursuant to N.J.S.A. 56:8-8, the Attorney General may seek and obtain an injunction prohibiting a person from continuing to engage in an unlawful practice.

**COUNT II**

**VIOLATION OF THE CONSUMER FRAUD ACT**  
**(FALSE PROMISES, MISREPRESENTATIONS AND KNOWING OMISSIONS OF**  
**MATERIAL FACT)**

34. Plaintiffs repeat and allege each and every allegation set forth in paragraphs 1 through 33 of the Complaint and incorporate said allegations as if fully set forth herein.

35. Defendant's conduct in violation of the CFA includes, but is not limited to, the following false promises and/ or misrepresentations:

- (A) misrepresenting on Defendant's websites that Defendant is "properly licensed with the USA" and "in compliance with all the rules, regulations and guidelines affecting the ever changing tobacco industry;"
- (B) misrepresenting on Defendant's websites that Defendant could deliver RYO "To Your Door;" and
- (C) misrepresenting that RYO may be sold to New Jersey consumers and delivered through the United States Postal Service, FedEx, and/ or UPS while Defendant was included on the Non-Compliant List.

36. Defendant's conduct in violation of the CFA includes the following knowing omissions of material fact including, but not limited to:

- (A) failing to inform consumers that Defendant could not sell, cause to be sold, deliver, and/ or caused to be delivered, RYO while on the Non-Compliant List.

37. Each false promise, misrepresentation and/ or knowing omission of material fact by Defendant constitutes a separate violation of the CFA, N.J.S.A. 56:8-2.



### COUNT III

#### False Advertising

38. Plaintiffs repeat and allege each and every allegation set forth in paragraphs 1 through 37 of the Complaint and incorporate said allegations as if fully set forth herein.

39. The Regulations Governing General Advertising, N.J.A.C. 13:45A-9.1 et seq. (the “Advertising Regulations”), promulgated pursuant to the CFA, address, among other things, general advertising practices.

40. The Advertising Regulations provide, in relevant part:

(a) Without limiting the application of N.J.S.A. 56:8-1 et seq., the following practices shall be unlawful with respect to all advertisements:

...9. ...The making of false or misleading representations of facts concerning the reasons for,...the nature of an offering...of advertised merchandise available for sale.  
[N.J.A.C. 13:45A-9.2(a)(9)]

41. On its websites, Defendant misrepresented, among other things, that it has complied with the PACT Act and other legislation and that RYO may be sent to New Jersey consumers through the United States Postal Service, FedEx, and/ or UPS while Defendant was on the Non-Compliant List.


42. The above-referenced misrepresentations constitute multiple violations of the Advertising regulations.

43. Each violation of the Advertising Regulations by Defendant constitutes a per se violation of the CFA.

WHEREFORE, Plaintiffs request judgment in their favor affording the following relief:

- A. Granting a permanent injunction prohibiting Defendant from selling, offering for sale and/ or advertising RYO or cigarettes to New Jersey consumers;
- B. Declaring each unconscionable commercial practice to constitute a separate violation of the CFA, in accordance with N.J.S.A. 56:8-13;
- C. Declaring each false promise, misrepresentation and/ or knowing omission of material fact by Defendant to constitute a separate violation of the CFA, in accordance with N.J.S.A. 56:8-13;
- D. Assessing the maximum statutory civil penalties against Defendant for each and every violation of the CFA, in accordance with N.J.S.A. 56:8-13;
- E. Awarding attorneys fees and costs of suit against Defendant pursuant to N.J.S.A. 56:8-11 and N.J.S.A. 56:8-19; and
- F. Awarding such other and further relief as this Court deems just and proper.

PAULA T. DOW  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By:   
Glenn T. Graham  
Deputy Attorney General

Dated: December 28, 2011  
Newark, New Jersey


**RULE 4:5-1 CERTIFICATION**

I certify, to the best of my information and belief, that the matter in controversy in this action involving the aforementioned violations of the CFA and the Advertising Regulations is not the subject of any other action pending in any other court of this State.

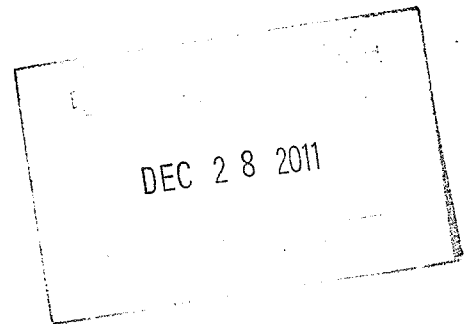
I further certify that the matter in controversy in this action is not the subject of a pending arbitration proceeding in this State, nor is any other action or arbitration proceeding contemplated.

I certify that there is no other party who should be joined in this action at this time.

PAULA T. DOW  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By:   
\_\_\_\_\_  
Glenn T. Graham  
Deputy Attorney General


Dated: December 28, 2011  
Newark, New Jersey



**RULE 1:38-7(c) CERTIFICATION OF COMPLIANCE**

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with R. 1:38-7(b).

PAULA T. DOW  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs


By:   
Glenn T. Graham  
Deputy Attorney General

Dated: December 28, 2011  
Newark, New Jersey

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to R. 4:25-4, Deputy Attorney General Glenn T. Graham is hereby designated as trial counsel on behalf of Plaintiffs in this action.

PAULA T. DOW  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By:   
Glenn T. Graham  
Deputy Attorney General

Dated: December 28, 2011  
Newark, New Jersey

DEC 28 2011