

1 BILL LOCKYER  
Attorney General of the State of California  
2 RICHARD M. FRANK  
Chief Assistant Attorney General  
3 DENNIS ECKHART  
Senior Assistant Attorney General  
4 MICHELLE L. FOGLIANI  
Deputy Attorney General  
5 LAURA KAPLAN  
Deputy Attorney General  
6 State Bar No. 64264  
1300 I Street  
7 P.O. Box 944255  
Sacramento, CA 94244-2550  
8

9 Attorneys for Plaintiff

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11 SUPERIOR COURT OF CALIFORNIA  
12 COUNTY OF SAN DIEGO  
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14 **THE PEOPLE OF THE STATE OF CALIFORNIA,**  
15 **ex rel. BILL LOCKYER, ATTORNEY**  
16 **GENERAL OF THE STATE OF**  
17 **CALIFORNIA,**

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,**

Defendants.

Case No. \_\_\_\_\_

**COMPLAINT FOR  
INJUNCTION, CIVIL  
PENALTIES, AND OTHER  
RELIEF (Bus. & Prof. Code, §§  
17200, 17500 and 22963(b)4 and  
Rev. and Tax. Code, § 30101.7(d))**

23 The People of the State of California, through Bill Lockyer, Attorney General of the State  
24 of California, hereby allege on information and belief as follows:

25 **INTRODUCTION**

26 Youth smoking is a serious pediatric health problem in California and the rest of the  
27 nation. More than 80% of regular smokers began smoking as children. Every day in the United  
28 States more than 2,000 children begin smoking cigarettes, and one-third of those children will die

1 one day from tobacco-related disease. It has been shown that the younger a person begins  
2 smoking, the more likely it is that he or she will be unable to quit in later life and will suffer a  
3 disease attributable to tobacco use. Recent studies indicate that youth demonstrate signs of  
4 addiction after smoking only a few cigarettes. Exacerbating these problems, an estimated 690  
5 million packs of cigarettes are sold illegally to children each year nationwide.

6 Defendants are cigarette sellers who advertise and sell cigarettes over the Internet to  
7 California consumers and consumers in other states. Defendants state on their web site that  
8 minors under the age of 18 are prohibited from purchasing cigarettes and are subject to criminal  
9 penalties. However, defendants in fact facilitate and promote purchase of cigarettes by children  
10 because neither defendants' web site nor their delivery procedures require face-to-face delivery or  
11 otherwise adequate verification of age and identity of would-be purchasers. Defendants have sold  
12 cigarettes to children in California from their web site, and the People have so informed  
13 defendants on several occasions. Defendants have been similarly informed by other states on  
14 other occasions. Notwithstanding the fact that they have been so notified, defendants have not  
15 taken adequate precautions to ensure that children cannot purchase cigarettes and receive delivery  
16 from their web site. Specifically, defendants fail or refuse to put in place effective safeguards so  
17 as to prevent or seriously discourage further sales to minors. By refusing to do so and completing  
18 sales of cigarettes to minors, defendants are encouraging and allowing children to purchase  
19 cigarettes from their web site and thus undermining the state's efforts to reduce smoking by  
20 minors.

21 Defendants, in violation of state law, also fail or refuse either to pay taxes owed on  
22 cigarettes shipped into California or notify purchasers that they are responsible for taxes owed. In  
23 violation of federal law, defendants fail or refuse to report the shipments of cigarettes into the  
24 state, including the identity of the purchasers, to the California Board of Equalization (BOE), the  
25 entity responsible for collecting those taxes. Defendants also induce consumers to purchase  
26 defendants' cigarettes by false and misleading statements concerning defendants' obligation to  
27 report to the BOE shipments of cigarettes and consumers' obligation to pay taxes on cigarettes  
28 purchased from defendants and shipped into California.





1 knowledge, sells cigarettes to persons under the age of 18 years is subject either to a  
2 misdemeanor criminal action or to a civil action punishable by a fine.

3           8. Defendants have knowledge or grounds for knowledge that it is selling cigarettes  
4 to children from its web sites. Defendants were notified in writing by Plaintiff's attorney that  
5 since on or before March 2001 Dirt Cheap has sold cigarettes from its web site to children in  
6 California on numerous occasions. Dirt Cheap does not have adequate procedures and safeguards  
7 in place to ensure that minors cannot receive cigarettes purchased from its web site.

8           9. The People, along with 39 other states, sent a letter to defendants on September  
9 16, 2002, informing defendants that the states had information documenting sales to minors from  
10 Dirt Cheap's web site and asking defendants to immediately review their web site in light of the  
11 state's laws prohibiting the sale of cigarettes to minors. (A copy of this letter is attached as  
12 Exhibit "A" and incorporated herein by reference.) Defendants did not respond to this letter nor  
13 did they change their procedures and practices to ensure that children cannot readily purchase  
14 cigarettes from their web site.

15           10. The People sent another letter to defendants on January 23, 2003, informing them  
16 that the California Attorney General had documented sales of cigarettes to minors from  
17 defendants' web site on three occasions beginning in March 2001, that the Attorney General of  
18 Michigan had documented a sale to a minor on May 30, 2000, and that the New York City  
19 Department of Consumer Affairs had cited Dirt Cheap for deceptive trade practices for selling  
20 cigarettes to a minor without verifying age. (A copy of this letter is attached as Exhibit "B" and  
21 incorporated herein by reference.) The People also requested that defendants enter into a  
22 settlement agreement ("agreement) between defendants and a significant number of states. A  
23 copy of the proposed agreement setting forth procedures to ensure that children could not  
24 purchase cigarettes from their web sites was included in the January 2003 letter. The People also  
25 informed defendants of their obligation to comply with the Jenkins Act in this letter. Although  
26 defendants received this letter, defendants did not respond in any way.

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## Internet Cigarette Sales-Excise Tax Evasion

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2           11. Pursuant to Revenue and Taxation Code section 30101.7(d), if an out-of-state  
3 retailer does not collect and remit the tax to the state, the consumer purchasing the cigarettes is  
4 ultimately liable for the excise tax. Because Dirt Cheap does not collect and remit any of the  
5 applicable California taxes, California consumers who purchase cigarettes from Dirt Cheap are  
6 responsible for paying these taxes directly to the state.

7           12. Pursuant to the Jenkins Act, 15 U.S.C. section 375 et seq. (“Jenkins Act”),  
8 vendors who sell and ship cigarettes in interstate commerce other than to a licensed distributor  
9 must register with the tobacco tax administrator of each state shipped to and, on a monthly basis,  
10 report (1) the name and address of the persons to whom cigarette shipments were made, (2) the  
11 brands of cigarettes shipped, and (3) the quantities of cigarettes shipped. Reports must be filed no  
12 later than the 10<sup>th</sup> day of each calendar month, reporting each and every cigarette shipment made  
13 to the state during the previous calendar month. The seller’s registration must list the seller’s  
14 name, trade name, and the address of all business locations.

15           13. The Board of Equalization (“BOE”), the California taxing entity responsible for  
16 collecting cigarette taxes, sends letters to out-of-state distributors, companies, or agencies selling  
17 cigarettes to California consumers when it learns that these entities have not reported shipments  
18 of cigarettes in compliance with the Jenkins Act. Such a letter is referred to as a “Jenkins Act”  
19 letter. If the BOE does not receive a response, it will routinely send a follow-up letter requesting  
20 compliance from the entities.

21           14. The BOE sent a Jenkins Act letter to Dirt Cheap on at least several occasions  
22 requesting that the company report all its shipments of cigarettes to California consumers as  
23 required by the Jenkins Act. It sent letters to the company’s Fenton, Missouri address on May 23,  
24 2000, and to the company’s Paducah, Kentucky address on June 21, 2002. (Copies of these  
25 letters are attached, as Exhibits “C” and “D”, and incorporated herein by reference.)

26           15. On July 14, 2000, Dirt Cheap sent a letter to the BOE, through its attorney,  
27 claiming that it was not required to comply with the Jenkins Act for the following reasons: all of  
28 Dirt Cheap’s cigarette sales are booked in Missouri, the company pays Missouri cigarette taxes,

1 and since Dirt Cheap has only “mere incidental” contacts with states other than Missouri, it is not  
2 required to pay cigarette taxes in other states. The BOE responded in a letter dated October 25,  
3 2000, stating “The Jenkins Act requires a report whenever cigarettes are shipped into a state  
4 which taxes the sale or use of cigarettes. California is clearly such a state.” (A copy of this letter  
5 is attached as Exhibit “E” and incorporated herein by reference.) Defendant did not respond to  
6 this letter.

7 16. Dirt Cheap clearly has extensive contacts with California. It purposefully targets  
8 California by directing its activities to California consumers. Dirt Cheap solicits business from  
9 California consumers and transacts business in California both by delivering its cigarettes to  
10 California residents and by advertising in local periodicals in the state. (A copy of one such  
11 advertisement placed in a local California newspaper, dated April 24, 2000, is attached as Exhibit  
12 “F” and incorporated herein by reference.)

13 17. Dirt Cheap has failed or refused to file any reports with the BOE, at any time, of  
14 shipments of cigarettes to California consumers, as required by section 376 of the Jenkins Act.

### 15 **Deceptive Advertising**

16 18. To induce consumers to purchase cigarettes from its web sites, defendants have  
17 not and do not presently inform prospective California purchasers of their obligation to pay  
18 California taxes on the cigarettes they purchase from Dirt Cheap. Those taxes amount to \$0.87  
19 per package of twenty cigarettes or \$8.70 per carton. Kentucky imposes one of the lowest excise  
20 taxes in the country – \$0.03 per pack or \$0.30 per carton. A California resident may purchase  
21 from Dirt Cheap located in Kentucky and pay a price that represents an apparent savings of \$8.40  
22 per carton.

23 19. Further, through statements on its web site, Dirt Cheap misrepresents and has  
24 misrepresented the obligation of potential purchasers in California to pay California taxes on  
25 cigarettes purchased through defendants’ web site. For example, Dirt Cheap states on its web  
26 site:

27 “By entering this website for any purpose, you agree that all actions which  
28 take place over this website, and all www.dircheapcig.com, Inc.’s actions in  
delivering through common carriers the tobacco products you purchase, are

1 governed exclusively under the laws of the State of Kentucky, with the sale  
2 having been made at Paducah, Kentucky”

3 20. Defendants’ representation concerning the obligation of California consumer to  
4 pay California taxes are false and misleading for the following reasons:

5 (a) Defendants’ implication that all tobacco product sales from their web site are  
6 governed by Kentucky law is erroneous and misleading because by law, consumers are obligated  
7 to pay taxes on cigarettes purchased from defendants over the Internet and shipped into  
8 California;

9 (b) Pursuant to Revenue and Taxation Code sections 30008, 30009 and 30109,  
10 California taxes are imposed and collected on the first distribution of untaxed cigarettes in the  
11 state. This means that since Smokin4Less does not pay taxes on cigarettes purchased from its  
12 web sites and shipped to consumers in California, the California consumers must pay all taxes  
13 owed on the cigarettes;

14 (c) Defendants advertise their cigarettes at a stated price but fail to inform  
15 California consumers that the stated price doesn’t include taxes

16 **Failure to Notify California Purchasers of Tax Obligations**

17 21. Effective January 1, 2003, California Revenue and Taxation Code section 30101.7(d)  
18 requires that a person may engage in non-face-to-face sales of cigarettes to California consumers  
19 provided that either of the following conditions is met:

20 (1) All applicable California taxes on the cigarettes have been paid, or

21 (2) The seller includes, on the outside of the shipping container for any cigarettes shipped to  
22 a resident in California from any source in the United States, an externally visible and easily  
23 legible notice located on the same side of the shipped container as the address to which the  
24 package is delivered as follows:

25 “IF THESE CIGARETTES HAVE BEEN SHIPPED TO YOU FROM A  
26 SELLER LOCATED OUTSIDE OF THE STATE IN WHICH YOU  
27 RESIDE, THE SELLER HAS REPORTED PURSUANT TO FEDERAL  
28 LAW THE SALE OF THESE CIGARETTES TO YOUR STATE TAX  
COLLECTION AGENCY, INCLUDING YOUR NAME AND ADDRESS.  
YOU ARE LEGALLY RESPONSIBLE FOR ALL APPLICABLE UNPAID  
STATE TAXES ON THESE CIGARETTES.”



1 cigarettes from defendants' web sites, in violation of section 17500 of the Business and  
2 Professions Code, in order to induce them to purchase cigarettes from defendants. Said untrue or  
3 misleading statements include, but are not limited to the following:

4 (a) Representing or implying that California consumers are not required to pay  
5 taxes in California on cigarettes purchased from Dirt Cheap over the Internet; and

6 (b) Advertising Dirt Cheap's cigarettes at a stated price but failing to inform  
7 California consumers that this stated price does not include California taxes.

8 27. Defendants knew, or by the exercise of reasonable care should have known, that  
9 the statements set forth in paragraph 26 were untrue or misleading at the time such statements  
10 were made.

11 **SECOND CAUSE OF ACTION**

12 **Business and Professions Code section 22963(b)(4)**  
13 **Delivery of Tobacco Products to Unverified Billing Address**

14 28. The People reallege and incorporate by reference, paragraphs 1 through 27,  
15 inclusive, as though fully set forth herein.

16 29. Since January 1, 2003, Dirt Cheap has delivered and continues to deliver tobacco  
17 products to persons in California at an address other than the purchasers' verified billing address  
18 on the check or credit card used for payment, in violation of Business and Professions Code  
19 section 22963(b)(4).

20 **THIRD CAUSE OF ACTION**

21 **Revenue and Taxation Code section 30101.7(d)**  
22 **Failure to Notify California Purchasers of Their Tax Obligations**

23 30. The People reallege and incorporate by reference, paragraphs 1 through 29,  
24 inclusive, as though fully set forth herein.

25 31. Since January 1, 2003, Dirt Cheap has engaged and continues to engage in non-  
26 face-to-face sales of cigarettes to California consumers without satisfying either of the following  
27 conditions required by Revenue and Taxation Code section 30101.7: (1) paying all applicable  
28 California taxes or (2) including on the outside of the shipping container for any cigarettes

1 shipped to a resident in California from any source in the United States an externally visible and  
2 easily legible notice located on the same side of the shipped container as the address to which the  
3 package is delivered.

4 **FOURTH CAUSE OF ACTION**

5 **Business and Professions Code Section 17200**  
6 **Unfair or Unlawful Business Acts or Practices**

7 32. The People reallege and incorporate by reference paragraphs 1 through 31,  
8 inclusive, as though fully set forth herein.

9 33. Within the past four (4) years from the date of the filing of this Complaint,  
10 defendants, and each of them, engaged in acts of unfair competition, as defined in and prohibited  
11 by Business and Professions Code section 17200, by engaging in conduct which includes, but is  
12 not limited to:

13 (a) Making untrue or misleading statements as referenced in paragraphs 26 of this  
14 Complaint, in violation of Business and Professions Code section 17500;

15 (b) Selling cigarettes over the Internet and delivering them by common carrier to  
16 California children since at least March 2001, in violation of Penal Code section 308(a);

17 (c) Failing to maintain adequate or effective safeguards or procedures to ensure  
18 that children cannot purchase cigarettes from defendants' web site and that cigarettes will not be  
19 delivered to children, in violation of Penal Code section 308(a);

20 (d) Failing to report to the BOE shipments of cigarettes to California consumers  
21 as required by the Jenkins Act;

22 (e) Delivering tobacco products to an address other than the purchaser's verified  
23 billing address on the check or credit card used for payment, in violation of Business and  
24 Professions Code section 22963(b); and

25 (f) Failing either to pay the California taxes owed on cigarettes purchased by  
26 California consumers over the Internet from defendants or to clearly notify consumers that  
27 defendants have reported the sale of cigarettes to the BOE and that the purchaser is responsible  
28 for the unpaid taxes, in violation of Revenue and Taxation Code section 30101.7(d).

1           **WHEREFORE**, the People respectfully pray that this Court grant the following relief:

2           1. Pursuant to Business and Professions Code section 17535, defendants, their  
3 successors, employees, agents and representatives, and all other persons who are acting in concert  
4 with them, be preliminarily and permanently enjoined from making untrue or misleading  
5 statements in violation of Business and Professions Code section 17500 and be specifically  
6 enjoined from making the untrue or misleading statements set forth in the First Cause of Action.

7           2. Pursuant to Business and Professions Code section 17203, defendants, their  
8 successors, employees, agents, representatives, and all other persons who are acting in concert  
9 with them, be preliminarily and permanently enjoined from engaging in unfair competition as  
10 defined in Business and Professions Code section 17200 and be specifically enjoined from  
11 engaging in the types of acts or practices set forth in the Fourth Cause of Action.

12           3. Pursuant to Revenue and Taxation Code section 30101.7(e), defendants, their  
13 successors, employees, agents, representatives, and all other persons who are acting in concert  
14 with them, be preliminarily and permanently enjoined from failing to comply with Revenue and  
15 Taxation Code section 30101.7(d)

16           4. That defendants be required to pay to the People civil penalties pursuant to  
17 Business and Professions Code section 17536 of \$2,500 for each violation, as determined by  
18 proof, in an amount of no less than \$100,000.

19           5. That defendants be required to pay to the People civil penalties pursuant to  
20 Business and Professions Code section 17206 of \$2,500 for each violation, as determined by  
21 proof, in an amount of no less than \$100,000.

22           6. That defendants be required to pay to the People civil penalties pursuant to the  
23 schedule set forth in Revenue and Taxation Code section 30101.7(e), in an amount to be  
24 determined by proof.

25           7. That defendants be required to pay to the People civil penalties pursuant to the  
26 schedule set forth in Business and Professions Code section 29963(f), in an amount to be  
27 determined by proof.

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