

ATTORNEY GENERAL OF THE STATE OF NEW YORK
HEALTH CARE BUREAU

In the Matter of

UNITED PARCEL SERVICE, INC.

ASSURANCE OF DISCONTINUANCE

Pursuant to N.Y. Executive Law (“EL”) § 63(12), ELIOT SPITZER, Attorney General of the State of New York, has caused an inquiry to be made into certain business practices of United Parcel Service, Inc. (“UPS”) related to N.Y. Public Health Law (“PHL”) § 1399-*ll*. As a result of such inquiry, the Attorney General has made the following findings:

1. UPS is a corporation, organized and existing under the laws of the State of Delaware, with its principal place of business located at 55 Glenlake Parkway, Atlanta, Georgia 30328.

2. UPS is a package delivery company and provider of specialized transportation and logistics services, and in the regular course of its business delivers packages to persons located in New York.

3. PHL §1399-*ll*, entitled “Unlawful Shipment of Cigarettes,” states that it shall be unlawful for a common carrier like UPS to knowingly transport cigarettes to any person in New York whom it reasonably believes to be other than a person who is authorized to receive such shipment. The statute provides in pertinent part:

1. It shall be unlawful for any person engaged in the business of selling cigarettes to ship or cause to be shipped any cigarettes to any person in this state who is not: (a) a person licensed as a cigarette tax agent or wholesale dealer under article twenty of the tax

law or registered retail dealer under section four hundred eighty-a of the tax law; (b) an export warehouse proprietor pursuant to chapter 52 of the internal revenue code or an operator of a customs bonded warehouse pursuant to section 1311 or 1555 of title 19 of the United States Code; or (c) a person who is an officer, employee or agent of the United States government, this state or a department, agency, instrumentality or political subdivision of the United States or this state, when such person is acting in accordance with his or her official duties.

2. It shall be unlawful for any common or contract carrier to knowingly transport cigarettes to any person in this state reasonably believed by such carrier to be other than a person described in paragraph (a), (b) or (c) of subdivision one of this section. For purposes of the preceding sentence, if cigarettes are transported to a home or residence, it shall be presumed that the common or contract carrier knew that such person was not a person described in paragraph (a), (b) or (c) of subdivision one of this section. It shall be unlawful for any other person to knowingly transport cigarettes to any person in this state, other than to a person described in paragraph (a), (b) or (c) of subdivision one of this section.

4. PHL § 1399-// became effective on or about April 10, 2003 (the “Implementation Date”).

5. EL § 63(12) prohibits repeated illegal acts and persistent illegality in carrying on, conducting or transacting business.

6. On or about August 6, 2004, the Attorney General caused a subpoena to be served

on UPS pursuant to EL § 63(12). Schedule C attached to the subpoena identified the names of shippers that sell and ship cigarettes in the course of their business, and the subpoena sought information about whether UPS may have transported cigarettes from such shippers in violation of PHL § 1399-*ll*(2) and EL § 63(12). On or about April 11, 2005, the Attorney General caused a second subpoena to be served on UPS pursuant to EL § 63(12). Among other things, the second subpoena sought additional information about whether UPS has transported cigarettes in violation of PHL § 1399-*ll*(2) and EL § 63(12), as well as information relating to persons who may be shipping cigarettes via UPS in violation of PHL § 1399-*ll* and EL § 63(12).

7. UPS produced information in response to the subpoenas, and has cooperated with the Attorney General's investigation.

8. The Attorney General alleges that since the Implementation Date, UPS has delivered many packages containing cigarettes to persons who were not authorized to receive them pursuant to PHL § 1399-*ll* in violation of PHL § 1399-*ll*(2) and thereby engaged in repeated illegal acts and business activities in violation of EL § 63(12) (the "Alleged Past Violations").

9. UPS disputes the Attorney General's allegations, and denies that its actions have violated PHL § 1399-*ll*(2) and EL § 63(12) in any manner. UPS also asserts that even before the Attorney General's investigation was initiated, UPS adopted revised policies governing the transportation of tobacco products, and that the UPS policies, among other things, are meant to ensure that UPS does not knowingly deliver cigarettes to unauthorized recipients in violation of various state laws, including PHL § 1399-*ll*(2).

10. UPS represents that, after the Implementation Date, the UPS Tariff and UPS's

Terms and Conditions, which describe the terms and conditions pursuant to which UPS provides package delivery services for shippers, and together form parts of the UPS shipping contract, were amended to provide in pertinent part: “Shippers are prohibited from shipping, and no service shall be rendered in the transportation of, any tobacco products that shippers are not authorized to ship under applicable state law or that are addressed to recipients not authorized to receive such shipments under applicable law.”

11. UPS represents that, since the Implementation Date, it has provided formal training to its employees regarding PHL § 1399-ll, and it has educated its New York delivery drivers and pre-loaders about the statute’s delivery restrictions and instructed New York drivers and pre-loaders not to load for delivery, or deliver, packages in violation of PHL § 1399-ll.

12. UPS represents, that on June 13, 2003, it wrote to approximately 400 shippers who have UPS accounts to notify them of the provisions of PHL § 1399-ll, and advised them that it would no longer accept packages containing cigarettes for delivery to unauthorized recipients in New York.

13. UPS represents that, shortly after UPS responded to the Attorney General’s Subpoena, it conducted an unannounced audit of the ten shippers identified on Schedule C of the Subpoena who had shipped more than 1,000 packages each to New York after June 18, 2003.

14. UPS represents that (a) its audit revealed that two of the shippers were shipping packages that contained cigarettes in violation of PHL § 1399-ll, (b) it returned the packages to the shippers, and (c) it immediately terminated any further pickup service to these shippers.

15. UPS has made a business decision to adopt a formal policy expressly prohibiting

the shipment of cigarettes to individual consumers in the United States while still permitting the lawful shipment of cigarettes to licensed tobacco businesses and other persons legally authorized to receive shipments of cigarettes (the “UPS Cigarette Policy”). Specifically, the UPS Cigarette Policy states as follows:

- “1. UPS does not provide service for shipments of cigarettes to consumers.
2. UPS only accepts shipments of cigarettes for delivery to recipients who are licensed or otherwise authorized by applicable federal, state, provincial or local law or regulation to receive deliveries of cigarettes.”

WHEREAS, UPS offers this Assurance of Discontinuance in settlement of the Alleged Past Violations asserted by the Attorney General, and intending that this Assurance of Discontinuance will promote further and ongoing cooperation between UPS and the Attorney General concerning UPS’s compliance with PHL § 1399-ll; and

WHEREAS, the Attorney General accepts the following assurances from UPS pursuant to Executive Law § 63(15) in lieu of commencing a civil action against UPS for the Alleged Past Violations;

NOW, THEREFORE, IT IS HEREBY UNDERSTOOD AND AGREED AS FOLLOWS:

Definitions

16. In addition to the terms defined throughout this Assurance of Discontinuance, the following terms shall have the meanings indicated for purposes of this Assurance of

Discontinuance:

- A. “Authorized Recipient” shall mean tobacco manufacturers; licensed wholesalers, tax agents, retailers, and export warehouses; government employees acting in accordance with

their official duties; or any other person or entity to whom cigarettes may be lawfully transported pursuant to federal law and the law of the state in which delivery is made, including those persons described in PHL §1399-ll(1) with respect to the State of New York.

- B. “Cigarette” shall have the meaning set forth in N.Y. Tax Law § 470(1): “any roll for smoking made wholly or in part of tobacco or of any other substance, irrespective of size or shape and whether or not such tobacco or substance is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco.”
- C. “Cigarette Retailer” shall mean and refer to a person or entity that sells and ships Cigarettes to Individual Consumers in the ordinary course of the person’s or entity’s business.
- D. “Cigarette Website” shall mean and refer to an internet website through or at which a person sells Cigarettes.
- E. “Delivery Services” shall mean and refer to any outbound delivery services provided to a shipper, when the shipper’s packages are tendered to UPS for delivery from the shipper’s pickup address. “Delivery Services” shall also include outbound delivery services provided to a shipper, when the shipper’s packages are tendered to UPS for delivery by other means (*e.g.*, drop box, authorized shipping outlet, UPS customer counter), except that where this Assurance of Discontinuance requires UPS to suspend or refuse to provide Delivery Services, UPS shall only be required to make a reasonable, good faith effort to suspend or refuse to provide outbound delivery services when the shipper’s packages are tendered to UPS by means other than pickup from a shipper’s pickup address.
- F. “Effective Date” shall mean and refer to the date on which this Assurance of Discontinuance is fully and completely executed by the parties hereto.
- G. “Individual Consumer” shall mean and refer to any person or entity other than an Authorized Recipient.
- H. “Prohibited Shipment” shall mean and refer to any package containing Cigarettes tendered to UPS where the shipment, delivery or packaging of such Cigarettes would violate Public Health Law § 1399-ll.

Restrictions

17. UPS shall comply with PHL § 1399-ll(2), and adhere to the UPS Cigarette Policy

described in Paragraph 15 prohibiting the shipment of Cigarettes to Individual Consumers in the United States.

18. Within thirty (30) days of the Effective Date, UPS shall set forth the UPS Cigarette Policy, using language that does not deviate in substance from the language used in Paragraph 15, in UPS's Terms and Conditions of Service and UPS's General Tariff Containing the Classifications, Rules and Practices for the Transportation of Property, published at <http://www.ups.com/>, and further incorporate the UPS Cigarette Policy into the addendum of contracts signed by shippers who ship Cigarettes.

19. UPS shall not amend its Tariff, its Terms and Conditions of Service or the UPS Cigarette Policy in a manner that is inconsistent with this Assurance of Discontinuance.

20. UPS shall revise, to the extent it has not yet done so already, and maintain its delivery policies and procedures for Cigarettes in accordance with this Assurance of Discontinuance.

Notifications to Cigarette Retailers

21. To the extent it has not already done so, within thirty (30) days after the Effective Date, UPS shall identify and compile a list that includes UPS customers that UPS believes may be Cigarette Retailers. UPS shall use the following sources of information to compile the list: (a) sellers and shippers identified on Schedule C of the Attorney General's subpoena duces tecum dated August 6, 2004, for which UPS has identified account numbers; (b) sellers and shippers identified as likely Cigarette Retailers based on UPS's search of names in its customer database for words such as "cigarette," "smoke," and "tobacco;" (c) sellers and shippers identified as likely

Cigarette Retailers based on UPS's search of codes in its customer database; and (d) UPS's knowledge of known Cigarette Retailers. As part of its production in response to the Attorney General's subpoenas, UPS shall provide a copy of the list to the Attorney General when completed, as well as copies of updated lists as may be requested from time to time by the Attorney General.

22. To the extent it has not already done so, within thirty (30) days of the Effective Date, and at ninety (90) day intervals thereafter, UPS shall use an appropriate Internet search engine to identify additional shippers who list UPS as a carrier for Cigarettes shipped to Individual Consumers. UPS will investigate shippers who use the Cigarette Websites identified by the search engine to determine whether these shippers in fact ship Cigarettes to Individual Consumers via UPS, and conduct audits of such shippers to the extent required by Paragraph 24 of the Assurance of Discontinuance. In the event UPS's Internet searches in any consecutive twelve (12) month period do not uncover any shippers identified through such searches that have tendered Cigarettes to UPS for delivery to Individual Consumers, UPS's obligation to conduct such searches pursuant to this Paragraph shall cease.

23. Within thirty (30) business days of identifying a person as a Cigarette Retailer pursuant to Paragraphs 21 and 22, or becoming aware through some other means that a person is using or purporting to use UPS's Delivery Services to ship Cigarettes to Individual Consumers, UPS shall correspond in writing with such person, indicating that UPS no longer transports Cigarettes to Individual Consumers and does not accept such shipments for delivery.

Audits

24. UPS shall audit shippers where there is a reasonable basis to believe that such shippers may be tendering Cigarettes for delivery to Individual Consumers, in order to determine whether the shippers are in fact doing so.

Database; Record Keeping

25. UPS shall develop and maintain a database that includes information regarding Cigarette Retailers (the "Tobacco Shipper Database") with the following minimum components:

- A. A record of those shippers UPS has identified as Cigarette Retailers through the procedures implemented pursuant to Paragraphs 21, 22 and 23. The record shall include the following information, when available, as to the shipper and the shipment: (i) the shipper's name, (ii) known business address(es), (iii) known website address(es), (iv) known pick-up location(s), (v) UPS account number(s), (vi) the name of the contact person for the shipper, and (vii) the UPS account executive responsible for the shipper, if any (collectively, "Shipper Information").
- B. A record of Cigarette Retailers' non-compliance with the UPS Cigarette Policy, including a list of tracking numbers for shipments of Cigarettes to Individual Consumers intercepted by UPS, available Shipper Information, and the date of the shipment.
- C. A record of the results of audits of any Cigarette Retailers performed by UPS.
- D. A record of discipline taken against any Cigarette Retailers by UPS.

Discipline of Shippers

26. If UPS discovers a shipment of Cigarettes to Individual Consumers, UPS shall make and maintain a record of the shipper of such package or shipment. Within thirty (30) days of a written request in the form of a subpoena, which may be adequately served by letter or e-mail to the person identified pursuant to Paragraph 38 of this Assurance of Discontinuance, UPS shall provide the Office of the Attorney General with a written record of shipments of Cigarettes to Individual Consumers, if any.

27. If UPS has a reasonable basis to believe that a shipper has willfully or intentionally violated UPS's Cigarette Policy, UPS shall immediately and permanently suspend all Delivery Services for such shipper. For other violations of UPS's Cigarette Policy, which UPS has a reasonable basis to believe are not willful or intentional, UPS shall apply the discipline procedures established in Paragraphs 28 through 33 of this Assurance of Discontinuance.

28. In response to a shipper's first violation of UPS's Cigarette Policy, UPS shall give the shipper notice of the violation, in writing, by telephone call, or by in-person meeting with the shipper, and discuss the violation with a management-level person at the shipper. Such contact shall occur no later than five (5) business days after UPS discovers the violation, and UPS shall make a written record of each contact. UPS shall tell the shipper why the shipment was non-compliant, reiterate its policy of not accepting packages containing Cigarettes for shipment to Individual Consumers, explain UPS's progressive discipline policy, and ask the customer to increase its efforts to comply with UPS's policy. Within two (2) business days of such contact, UPS shall suspend Delivery Services for such shipper for a period of ten (10) days unless and until

a reasonable and verifiable written action plan for compliance with UPS's Policies is provided by the shipper and approved by UPS. UPS shall maintain a copy of the action plan, and conduct an audit of such shipper within ninety (90) days after Delivery Services to the shipper are reinstated to determine if the shipper is complying with UPS's Policies.

29. In response to a shipper's second violation of UPS's Cigarette Policy within one-hundred eighty (180) days after the date of contact for the first violation, UPS shall give the shipper notice of the violation in writing, by telephone call, or by in-person meeting, and discuss the violation with a management-level person at the shipper. Such contact shall occur no later than five (5) business days after UPS discovers the second violation, and UPS shall make a written record of each contact. UPS shall tell the shipper why the shipment was non-compliant, reiterate its policy of not accepting packages containing Cigarettes for shipment to Individual Consumers, explain UPS's progressive discipline policy, and ask the customer to increase its efforts to comply with UPS's policy. UPS shall also advise the shipper that it has violated UPS's restrictions a second time, and that a third non-compliant shipment within one (1) year after the date of contact for the first violation will result in a three-year suspension of Delivery Services. Within two (2) business days of such contact, UPS shall suspend Delivery Services for such shipper for a period of thirty (30) days. UPS may, however, restore Delivery Services for products other than Cigarettes after a minimum of ten (10) days of suspension if UPS receives reasonable and verified assurances from the shipper that the shipper no longer ships Cigarettes via UPS. UPS shall maintain a copy of any assurances received pursuant to this Paragraph, and conduct an audit of such shipper within ninety (90) days after Delivery Services to the shipper are reinstated to

determine if the shipper is complying with UPS's Policies.

30. In response to a shipper's third violation of UPS's Cigarette Policy within one-hundred eighty (180) days after the date of contact for the second violation, UPS shall give the shipper notice of the violation in writing, by telephone call, or by in-person meeting, and discuss the violation with a management-level person at the shipper. Such contact shall occur no later than five (5) business days after UPS discovers the third violation, and UPS shall make a written record of each contact. UPS shall tell the shipper why the shipment was non-compliant, reiterate its policy of not accepting packages containing Cigarettes for shipment to Individual Consumers, explain UPS's progressive discipline policy, and ask the customer to increase its efforts to comply with UPS's policy. Within two (2) days of such contact, UPS shall suspend Delivery Services for the shipper for a period of three (3) years. UPS may, however, restore Delivery Services for products other than Cigarettes after a minimum of six (6) months of suspension if UPS receives reasonable and verified assurances from the shipper that the shipper no longer ships Cigarettes via UPS. UPS shall maintain a copy of any assurances received pursuant to this Paragraph, and conduct an audit of such shipper within ninety (90) days after Delivery Services to the shipper are reinstated to determine if the shipper is complying with UPS's Policies.

31. The violations found to have occurred pursuant to this Assurance of Discontinuance, as well as the periods of suspension that are imposed, shall be applied both to the shipper committing the violation, and to any other shipper, whether an existing UPS customer or a new UPS customer, that UPS has a reasonable basis to believe is shipping or seeking to ship Cigarettes (a) from the same location as the suspended shipper, (b) on behalf of a suspended

shipper, or (c) with the same account number as the suspended shipper.

32. In the event of an inadvertent and immaterial violation of the UPS Cigarette Policy by a shipper who predominantly ships products other than Cigarettes (meaning, shippers whose total UPS shipments of products other than Cigarettes in the previous year exceed ninety (90) percent of the total UPS shipments by such shipper in the previous year), UPS shall have discretion to make reasonable deviations from the discipline procedures established above in Paragraphs 28 through 30 for the limited purpose of affirmatively assisting such shippers to implement safeguards intended to eliminate future inadvertent and immaterial shipments of Cigarettes to Individual Consumers. In any case in which UPS deviates from the discipline procedures established above based on this Paragraph, within five (5) business days of its decision to deviate from the discipline procedures, UPS shall provide the Attorney General with written notice of its decision to deviate. Such notice shall include the following information: (a) the information described in Paragraph 25(A)-(D) as to the shipper; (b) the factual basis for the deviation; and (c) a record of the affirmative assistance UPS has given to the shipper to implement safeguards intended to eliminate future inadvertent and immaterial shipments.

33. The discipline procedures established herein above in Paragraphs 27 through 32 are minimum sanctions and shall not prevent UPS from imposing greater sanctions on any shipper.

Continuing Compliance Training

34. UPS shall continue periodically to train its drivers and pre-loaders and other relevant UPS employees about UPS's Cigarette Policy and the compliance measures agreed to in this Assurance of Discontinuance.

35. Within ninety (90) days after the Effective Date, and on at least an annual basis thereafter, UPS shall issue a Pre-work Communication Message (“PCM”) to UPS drivers, pre-loaders and any other UPS employees who are involved in the compliance measures agreed to in this Assurance of Discontinuance to help ensure that these personnel are actively looking for indications that a package contains Cigarettes being shipped to an Individual Consumer, alerting UPS management of such packages and attempting to intercept such packages.

36. Within ninety (90) days of the Effective Date, UPS shall issue a PCM to drivers to instruct them not to deliver packages that contain Cigarettes being shipped to Individual Consumers, and alerting UPS management if they know or believe that a business is engaged in shipping Cigarettes to Individual Consumers.

37. UPS shall continue periodically to train its account executives with tobacco accounts to which UPS provides Delivery Services about the UPS Cigarette Policy, PHL § 1399-ll, and the compliance measures agreed to in this Assurance of Discontinuance, including, but not limited to, UPS’s policy of not accepting packages containing Cigarettes for shipment to Individual Consumers, UPS’s right to conduct unannounced audits of shippers’ packages and UPS’s progressive discipline policy for shippers who tender Cigarettes for shipment to Individual Consumers.

Point of Contact

38. UPS designates Norman M. Brothers, Jr., Vice President—Legal, United Parcel Service, Inc., 55 Glenlake Parkway NE, Atlanta, GA 30328, (404) 828-6000, nbrothers@ups.com, as the point of contact within its legal department to whom the Office of the Attorney General or

any other New York State or local governmental authority can make the notifications contemplated by this Assurance of Discontinuance or address any concerns about Cigarette sellers and shippers using UPS to deliver Cigarettes to persons located in New York. UPS may change its designated point of contact within its legal department upon ten (10) days prior written notice to the Attorney General.

Response to Notice of Potential Violation

39. If the Attorney General or any other governmental authority provides UPS with evidence that a UPS customer is shipping Cigarettes to Individual Consumers, UPS shall discipline such shipper pursuant to the process set forth in Paragraphs 27 through 32 of this Assurance of Discontinuance.

40. If the Attorney General or any other governmental authority represents to UPS that a UPS customer is shipping Cigarettes to Individual Consumers, but does not provide evidence of such shipments, UPS shall conduct an audit of that shipper. UPS shall discipline, pursuant to the process set forth in Paragraphs 27 through 32 of this Assurance of Discontinuance, shippers found to be shipping Cigarettes to Individual Consumers.

Access to and Retention of Information

41. Within thirty (30) days of service of a subpoena by the Attorney General, which may be adequately served by first class mail or e-mail delivered to the person identified in Paragraph 38 of this Assurance of Discontinuance, UPS shall provide the Office of the Attorney General with access to any information relating to compliance with the terms of this Assurance of Discontinuance. UPS shall retain (a) information required to be collected pursuant to this

Assurance of Discontinuance, and (b) information relating to its compliance with this Assurance of Discontinuance, for a period of not less than five (5) years.

ENFORCEMENT, PENALTIES AND COSTS

42. UPS shall pay to the State of New York a stipulated penalty of \$1,000 for each and every violation of this Assurance of Discontinuance occurring after the Effective Date; provided, however, that no penalty shall be imposed if (a) the violation involves the shipment of Cigarettes to an Individual Consumer outside the State of New York, or (b) the violation involves the shipment of Cigarettes to an Individual Consumer within the State of New York, but UPS establishes to the reasonable satisfaction of the Attorney General that UPS did not know and had no reason to know that the shipment was a Prohibited Shipment.

43. Pursuant to EL § 63(15), evidence of a violation of this Assurance of Discontinuance that involves the shipment of Cigarettes to an Individual Consumer within the State of New York shall also constitute *prima facie* proof of a violation of PHL § 1399-ll(2) in any civil action or proceeding that the Attorney General hereafter commences against UPS for violation of PHL § 1399-ll(2).

EFFECT OF SETTLEMENT

44. This Assurance of Discontinuance represents a voluntary agreement, and is a settlement of the parties' claims and defenses, subject to the qualifications and limitations discussed in Paragraph 45.

45. Nothing about this Assurance of Discontinuance, including its existence or terms, shall in any way limit, impair or constrain UPS's ability to seek a court ruling that PHL § 1399-

11(2) is unconstitutional, preempted by federal law, or otherwise unenforceable as applied against UPS, including in any action or proceeding brought by the Attorney General against UPS alleging that UPS has violated PHL § 1399-11(2). In entering this Assurance of Discontinuance, UPS expressly reserves, and does not waive, its position that PHL § 1399-11(2) is preempted by the Federal Aviation Administration Authorization Act of 1994.

46. Notwithstanding the foregoing Paragraph 45, nothing about this Assurance of Discontinuance, including its existence or terms, or any obligation undertaken by UPS pursuant to this Assurance of Discontinuance, shall serve as proof or evidence in support of or in opposition to any claim or contention made in any action or proceeding, whether the claim or contention is asserted by UPS or any other person, alleging, in whole or in part, that PHL § 1399-11 is unconstitutional, preempted by federal law, or otherwise unenforceable as applied against UPS or any other carrier.

47. UPS and the Attorney General shall meet to discuss whether any changes or alterations to this Assurance of Discontinuance are warranted in the event that: (a) the New York State Legislature repeals or amends PHL § 1399-11 in a manner that permits common carriers to deliver Cigarettes to Individual Consumers in New York State; or (b) PHL § 1399-11 is determined to be invalid by and/or enforcement of such law against common carriers is enjoined by a court of competent jurisdiction, and no further appeal of such decision is available and no stay of such injunction is in effect. If no agreement can be reached, then UPS shall have the right to terminate this Assurance of Discontinuance upon thirty (30) days written notice sent to the Attorney General after such meeting. If such termination is based upon a repeal or amendment to PHL § 1399-11

pursuant to clause (a) above, then upon such termination the Attorney General shall have the right to seek any relief for violations of this Assurance of Discontinuance and/or any applicable laws that occurred during the period in which this Assurance of Discontinuance was in effect.

Notwithstanding any provision of this Assurance of Discontinuance to the contrary, the termination of this Assurance of Discontinuance in accordance with the terms of this Paragraph 47 shall not constitute a violation of this Assurance of Discontinuance.

MISCELLANEOUS PROVISIONS

48. All correspondence and payment submitted by UPS to the State of New York and the Office of Attorney General pursuant to this Assurance of Discontinuance shall be sent to the attention of:

Vincent P. Esposito, Jr.
Assistant Attorney General
Office of the New York State Attorney General
Health Care Bureau
The Capitol
Albany, NY 12224

49. Within sixty (60) days of the Effective Date, a UPS management official shall file a report with the Office of the Attorney General verifying that UPS is in full compliance with all of the terms of this Assurance of Discontinuance and setting forth the details of all compliance measures undertaken by UPS pursuant to the terms hereof, with specific reference to the sections of this Assurance of Discontinuance. Such report shall include as attachments sufficient documents reasonably necessary for the Attorney General to determine whether UPS has complied with this Assurance of Discontinuance.

50. The acceptance of this Assurance of Discontinuance by the Attorney General shall

not be deemed or construed as an approval by the Attorney General of any of the activities of UPS, its officers, directors, employees, assignees and any individual, corporation, subsidiary, or division through which UPS may now or hereinafter act, or of any successors in interest; and none of the parties shall make any representation to the contrary. UPS may, however, disclose that it has resolved the Attorney General's investigation by mutual agreement with the Office of the Attorney General, and that UPS has voluntarily agreed as part of the resolution to prohibit the shipment of Cigarettes to Individual Consumers in the United States.

51. The rights and remedies in this Assurance of Discontinuance are cumulative and in addition to any other statutory or other rights that the Attorney General may have at law or equity, including but not limited to any rights and remedies under PHL § 1399-*II*.

52. This Assurance of Discontinuance shall not grant any rights or privileges to any person or entity who is not a party to this Assurance of Discontinuance, nor shall this Assurance of Discontinuance affect or limit in any way the rights of any such third party.

53. This Assurance of Discontinuance shall be binding on and apply to UPS, its officers, directors, employees, affiliates, assignees and any individual, corporation, subsidiary or division through which UPS may now or hereinafter act, as well as any successors in interest.

54. This Assurance of Discontinuance may not be altered, amended, modified or otherwise changed in any respect or particular whatsoever, except by a writing duly executed by the parties or their authorized representatives.

55. This Assurance of Discontinuance may be executed in telecopied counterparts, each of which will constitute an original but all of which taken together shall constitute one and the

same document.

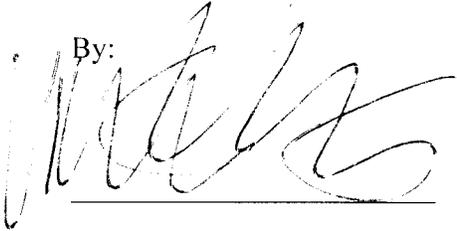
56. The individuals executing this Assurance of Discontinuance represent that they have full and complete authority to sign this document and to bind their respective parties to all the terms and conditions set forth herein.

WHEREFORE, the following signatures are affixed hereto effective this 21st of October, 2005.

ELIOT SPITZER

Attorney General of the State of New York

By:



Vincent P. Esposito, Jr.
Assistant Attorney General

UNITED PARCEL SERVICE, INC.

By:

Norman M. Brothers, Jr.
Vice President-Legal

same document.

56. The individuals executing this Assurance of Discontinuance represent that they have full and complete authority to sign this document and to bind their respective parties to all the terms and conditions set forth herein.

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ELIOT SPITZER

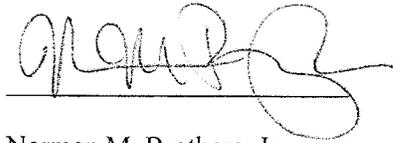
UNITED PARCEL SERVICE, INC.

Attorney General of the State of New York

By:

By:

Vincent P. Esposito, Jr.
Assistant Attorney General

A handwritten signature in black ink, appearing to read "Norman M. Brothers, Jr.", written over a horizontal line.

Norman M. Brothers, Jr.
Vice President-Legal