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CIGARETTE MACHINES DRAWING OBJECTIONS FROM STATE REGULATORS

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HARTFORD, Conn. — Using a roll-your-own cigarette machine is easy enough. The machine automatically fills each tube with tobacco and then ejects the finished cigarette into a collection bin, an eight-minute process that produces the equivalent of a carton of cigarettes — 10 packs of 20.

But officials in some states say operating the machines without a cigarette manufacturer's license is illegal.

In August, Connecticut Attorney General George Jepsen, on behalf of Kevin B. Sullivan, state commissioner of revenue services, filed a lawsuit in Superior Court in Hartford against Tracey's Smoke Shop and Tobacco LLC for illegally manufacturing cigarettes at its two Connecticut stores.

Tracey Scalzi, the stores' owner, said she owns four of the machines at the two stores, which opened about a year ago.

The Department of Revenue Services claims the machines are commercial cigarette-making machines and retailers who operate them must obtain a cigarette-manufacturing license and pay the associated fees and tariffs, including Connecticut's cigarette tax, which adds \$3.40 to a pack of cigarettes.

"We don't see ourselves as manufacturers; the customers make them themselves," said Michael Horak, general manager of the Tobacco Place, which has two of the machines. Tobacco Place opened in Wethersfield, Conn., this month.

The attorney general's office would not comment on the lawsuit because the matter is pending, awaiting the court's decision.

If the court finds in the agency's favor, those who continue to operate the machines could face potential arrest, hefty fines and loss of their existing tobacco sales licenses, DRS spokeswoman Sarah Kaufman said.

Wisconsin and Michigan have filed lawsuits similar to Connecticut's, claiming that the product is a commercial cigarette-making machine and its use requires a cigarette-manufacturing license.

New Hampshire's Supreme Court and the Alaska's Superior Court have found that using the machine constitutes cigarette manufacturing, "regardless of ... who loads the machine and presses the 'start' button," according to court documents cited by Connecticut officials.

A federal appeal filed by the Alcohol and Tobacco Tax and Trade Bureau is under consideration in a U.S. District Court in Ohio to decide whether the machines should be classified as commercial cigarette-making machines. A spokesman for the agency would not comment on the matter because "it is in court right now."

The machines, made by Cincinnati-based RYO Machine LLC, began appearing a few years ago. Bryan Haynes, an attorney representing the company, which was founded in 2008, said RYO's machines are not in the same league as commercial cigarette-making equipment.

"The advanced machines used by companies like Philip Morris and R.J. Reynolds will produce 20,000 cigarettes in a minute," said Haynes, a partner at Atlanta-based Troutman Sanders LLP.

"We're talking about horses and buggies vs. fighter jets."

For smokers accustomed to paying \$70 or more for a carton of cigarettes, the machines can reduce the cost of a carton by at least \$30. Typically, customers pay about \$40 for 8 ounces of loose tobacco, 200 hollow cigarette tubes and the use of the machine, which costs about \$40,000. Employees tell customers how to operate the computerized rolling machines.

"We just talk the customers through the process," Horak said.

"There are now 1,700 of our RYO Filling Stations in 40 states," said Phil Accordino, the company's chief executive.

"We are providing a more convenient service to our customers that have either been rolling their own cigarettes at home for years or have found us to be a less expensive alternative to other larger brands," Accordino said.

"Our machines have helped create additional jobs and revenue for small businesses across the country," he said.

“I believe we have come under attack because big tobacco companies perceive us as a threat to their market share. Many state budgets have relied on tobacco money that has been dwindling for years due to excessive taxes and less smokers, so budget holes need to be made back and we have become the new target.”

Store owners say the machines are roll-your-own devices that only produce enough cigarettes for personal use.

“You can go next door to the gas station and buy tobacco. You can buy the (cigarette) tubes, and you can buy the roll-your-own machines — I sell a couple models here, a \$49 machine and an \$8 machine. The only difference is my machine is bigger,” said Michael Hatzisavvas, who opened Big Cat’s Smoke Shop in Bristol, Conn. seven weeks ago.

“We don’t do the manufacturing. I don’t touch the machine,” Hatzisavvas said. Like the other stores, Big Cat’s four employees tell customers how to operate the machines.

Hatzisavvas, a former restaurant owner, said he’s aware of the lawsuit, but decided to open a store anyway.

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