

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 99-2496 (GK)
	:	
PHILIP MORRIS USA INC., et al.,	:	
	:	
Defendants.	:	

ORDER

As counsel well know, in United States of America, et al. v. Philip Morris USA Inc., formerly known as Philip Morris Inc., et al., 566 F.3d 1095, 1150 (D.C. Cir. 2009), the Court of Appeals remanded several issues to this Court. All but two of those issues have been resolved. See Dkt. Nos. 5846, 5877. The two remaining issues are corrective action statements, and placement of advertisement materials in small retail stores. It would appear that resolution of the second issue would be affected by resolution of the first issue.

The Court is well aware that there is a great deal of on-going litigation challenging the Regulations promulgated by the Food and Drug Administration (“FDA”), Required Warnings for Cigarette Packages & Advertisements, 76 Fed. Reg. 36,628 (June 22, 2011), under the Tobacco Control Act, Pub. L. No. 111-31, 123 Stat. 1776 (2001), raising both constitutional and non-constitutional claims. Again, as counsel know, the Government submitted proposed corrective action statements in this case, and those statements are significantly different from the verbal and pictorial advertisements required by the FDA Regulations.

Given the posture of the corrective action statements issue, the Court hereby **orders** the parties to submit their views on the following questions: (1) should this Court defer consideration of the issue of corrective action statements (as well as the issue of retail store advertising placement), (2) if so, for how long should such consideration be deferred?¹

WHEREFORE, it is this ____ day November, 2011, hereby

ORDERED, that the parties shall submit, simultaneously, their views on this issue no later than **December 20, 2011, by 5:00 p.m.**

/s/

Gladys Kessler
United States District Judge

Copies via ECF to all counsel of record

¹ It must be recognized that should the Court decide to defer ruling on these two issues, completion of the FDA challenges will most probably take a substantial period of time. At the same time, if there is no point in this Court proceeding in the face of the FDA litigation, then judicial resources should certainly not be wasted.