

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
Plaintiff,

and

TOBACCO-FREE KIDS ACTION FUND,
et al.,

Plaintiff-Intervenors,

v.

PHILIP MORRIS USA, INC., *et al.*,
Defendants,

and

ITG BRANDS, LLC,
COMMONWEALTH BRANDS, INC.,
AND COMMONWEALTH-ALTADIS,
INC.

(Proposed) Post-
Judgment Parties
Regarding Remedies.

Civil Action No.: 99-2496 (GK)

(Proposed)
ORDER # 56 - Remand

~~PROPOSED~~ UNOPPOSED ORDER AUTHORIZING
TRANSFER OF CERTAIN CIGARETTE BRANDS AND BUSINESSES
TO ITG BRANDS, LLC, PURSUANT TO ORDER #1015, PARAGRAPH 20

Upon consideration of the Unopposed Motion for an Order Authorizing Transfer of Certain Cigarette Brands and Businesses to ITG Brands, LLC; the Statement of Points and Authorities in Support; and the Affidavit of Rob Wilkey, General Counsel and Secretary for ITG Brands, dated April 29, 2015; and the entire record herein, the Court hereby **FINDS** that:

1. ITG Brands, LLC (“ITG Brands”), a Texas limited liability company formerly known as Lignum-2, L.L.C., is not a defendant, or subject to any prior orders, in the above-captioned matter.

2. ITG Brands will have the capacity to comply with the obligations contained in Order #1015, as supplemented and modified by subsequent orders (collectively “Order #1015”).

3. The “Acquired Brands” are defined as any of the Winston, Salem, Kool, or Doral cigarette brands currently manufactured by R.J. Reynolds Tobacco Company (“RJRT”) and/or the Maverick brand currently manufactured by Lorillard Tobacco Company (“Lorillard Tobacco”).

4. ITG Brands submits to the jurisdiction of this Court concurrently with its acquisition by sale or transfer of the Acquired Brands, brand names, cigarette product formulas, or cigarette businesses.

5. ITG Brands’s United States cigarette affiliates, Commonwealth Brands, Inc., a Kentucky corporation (“Commonwealth”), and Commonwealth-Altadis, Inc., a Delaware corporation (“Commonwealth-Altadis”), also submit to the jurisdiction of this Court concurrently with ITG Brands’s acquisition by sale or transfer of the Acquired Brands, brand names, cigarette product formulas, or cigarette businesses.

6. ITG Brands, along with the defendants that manufacture the Acquired Brands, RJRT and Lorillard Tobacco, has applied for this Order subjecting ITG Brands to certain provisions of Order #1015 concurrent with its acquisition by sale or transfer of the Acquired Brands, brand names, cigarette product formulas, or cigarette businesses; and authorizing RJRT and Lorillard Tobacco to sell or transfer the Acquired Brands, brand names, cigarette product formulas, and cigarette businesses.

7. Commonwealth and Commonwealth-Altadis have applied for this Order subjecting their entire cigarette businesses to Order #1015 pursuant to the terms set forth in this Order concurrent with ITG Brands's acquisition by sale or transfer of the Acquired Brands, brand names, cigarette product formulas, or cigarette businesses.

8. ITG Brands, Commonwealth, and Commonwealth-Altadis have also asked this Court to make them parties to this litigation for the sole and limited purpose of compliance with Order #1015 on the terms set forth in this Order, including participation as parties in future proceedings with respect to Order #1015. (Those three entities collectively are the "Post-Judgment Parties Regarding Remedies").

9. After the acquisition of the Acquired Brands, ITG Brands will own the Acquired Brands, and will carry out and execute all functions covered by Order #1015 with respect to the Acquired Brands. ITG Brands, Commonwealth, and Commonwealth-Altadis will also continue to carry out and execute certain functions covered by Order #1015 with respect to cigarette brands that are not Acquired Brands. ITG Brands, Commonwealth, and Commonwealth-Altadis represent that they currently have no other Affiliates, as defined in Paragraph 3 below, that are engaged in functions that may be covered by the provisions of Order #1015, including activity in the United States relating to the manufacturing, marketing, promotion, health consequences, or sale of cigarettes.

10. ITG Brands, Commonwealth, and Commonwealth-Altadis represent that ITG Brands does not currently submit disaggregated marketing data relating to cigarettes to the Federal Trade Commission, and that Commonwealth is the only Affiliate of ITG Brands that currently does so.

11. As set forth in the Notice of Transaction Involving Defendants R.J. Reynolds Tobacco Company and Lorillard Tobacco Company filed on April 7, 2015 (Dkt. No. 6141), and in the moving parties' Statement of Points and Authorities in Support, RJRT has committed itself to fulfill all of its own and all of Lorillard Tobacco's obligations under Order #1015 related to the Acquired Brands that ITG Brands is not bearing under this Order. This includes without limitation RJRT's commitments to fulfilling all of its own and all of Lorillard Tobacco's obligations under Order #1015 related to the Acquired Brands concerning dissemination of corrective statements by newspaper and television.

12. ITG Brands, Commonwealth, and Commonwealth-Altadis consent to entry of this Order. ITG Brands, Commonwealth, and Commonwealth-Altadis understand the obligations they will bear under this Order and waive any objections under Federal Rule of Civil Procedure 65(d)(1) to this Order's describing the acts restrained and required in part by referring to Order #1015 and other Orders.

It is hereby **ORDERED** that:

1. This Order takes effect concurrently with ITG Brands's acquisition by sale or transfer of the Acquired Brands, brand names, cigarette product formulas, or cigarette businesses.

2. As of the effective date of this Order, ITG Brands, Commonwealth, and Commonwealth-Altadis submit to, and will be subject to, the jurisdiction of this Court for purposes of compliance with Order #1015 as set forth in this Order. As of the effective date of this Order, ITG Brands, Commonwealth, and Commonwealth-Altadis shall become parties to this litigation for the sole and limited purpose of compliance with Order #1015 on the terms set forth in this Order.

3. If, in the future, functions that may be covered by the provisions of Order #1015, including the manufacturing, marketing, promotion, health consequences, or sale of cigarettes in the United States, or activities directly, substantially, and foreseeably related to same, are assumed by an "Affiliate," as defined below, such Affiliate (hereinafter "Covered Subsequent Affiliate") also will become subject to Order #1015 pursuant to the terms set forth in this Order. "Affiliate" for purposes of this Order means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, ITG Brands, Commonwealth, or Commonwealth-Altadis. Solely for purposes of this definition, the terms "owns," "is owned," and "ownership" mean ownership of an equity interest, or the equivalent thereof, of 10 percent or more, and the term "person" means an individual, partnership, committee, association, corporation, or any other organization or group of persons.

4. ITG Brands, Commonwealth, and Commonwealth-Altadis will provide actual notice of this Order to each of their current and future directors, officers, subsidiaries, ultimate parent, and Covered Subsequent Affiliates; and to such subsidiaries', ultimate parent's, and Covered Subsequent Affiliates' current and future directors and officers.

5. This Order shall also apply to those persons in active concert or participation with ITG Brands, Commonwealth, Commonwealth-Altadis, Covered Subsequent Affiliates, or those entities' current and future directors, officers, agents, servants, employees, attorneys, assigns, and successors, who have received actual notice of this Order by personal service or otherwise (hereinafter "Covered Persons and Entities").

6. ITG Brands, Commonwealth, Commonwealth-Altadis, current and future officers, agents, servants, employees, attorneys, and Covered Subsequent Affiliates who receive actual

notice of this Order by personal service or otherwise, and Covered Persons and Entities shall be subject to the provisions of Order #1015, except as set forth in this Order.

7. Absent the acquisition of any other brands, brand names, cigarette product formulas, or cigarette businesses from any defendant, in no event shall Commonwealth, Commonwealth-Altadis, any Covered Subsequent Affiliate, or any Covered Person or Entity be required by Order #1015, § II.B.7 or Order 51-Remand to publish, display, disseminate, or otherwise provide Corrective Statements for any specific cigarette brand other than an Acquired Brand through any media or method whatsoever, including retail point of sale obligations if Point of Sale Corrective Statements are ultimately imposed on any other party.

8. ITG Brands, Commonwealth, and Commonwealth-Altadis shall have no obligation to publish Corrective Statements on television or in newspapers pursuant to Order #1015, § II.B.7.c and d. ITG Brands, Commonwealth, and Commonwealth-Altadis shall have no obligation to publish Corrective Statements for any brand except the Acquired Brands, except as otherwise provided in paragraph 9(b) below with respect to Covered Websites.

9. ITG Brands's, Commonwealth's, and Commonwealth-Altadis's obligation to publish Corrective Statements shall be limited to the following media in the following manner:

a. Onserts. ITG Brands shall affix onserts to packaging as required by Order #1015, § II.B.7.a, as supplemented and modified by Order # 34-Remand and by Order #51-Remand on any Acquired Brand(s), as follows.

i. Such onserts, with respect to any Acquired Brands currently manufactured by RJRT, shall substantially conform to the language in Order #51-Remand, containing the following slightly modified preamble language for each

Corrective Statement. The name of the brand on which the onserts will be placed will be specified in place of the bracketed “[insert brand]” language below:

A. Adverse Health Effects of Smoking

A Federal Court has ruled that Altria, Philip Morris USA, Lorillard, and R.J. Reynolds Tobacco (the previous maker of [insert brand]) deliberately deceived the American public about the health effects of smoking and ordered this statement. Here is the truth:

B. Addictiveness of Smoking and Nicotine

A Federal Court has ruled that Altria, Philip Morris USA, Lorillard, and R.J. Reynolds Tobacco (the previous maker of [insert brand]) deliberately deceived the American public about the addictiveness of smoking and nicotine, and ordered this statement. Here is the truth:

C. Lack of Significant Health Benefit from Smoking “Low Tar,” “Light,” “Ultra Light,” “Mild,” and “Natural” Cigarettes

A Federal Court has ruled that Altria, Philip Morris USA, Lorillard, and R.J. Reynolds Tobacco (the previous maker of [insert brand]) deliberately deceived the American public by falsely selling and advertising low tar and light cigarettes as less harmful than regular cigarettes, and ordered this statement. Here is the truth:

D. Manipulation of Cigarette Design and Composition to Ensure Optimum Nicotine Delivery

A Federal Court has ruled that Altria, Philip Morris USA, Lorillard, and R.J. Reynolds Tobacco (the previous maker of [insert brand]) deliberately deceived the American public about designing cigarettes to enhance the delivery of nicotine, and ordered this statement. Here is the truth:

E. Adverse Health Effects of Exposure to Secondhand Smoke

A Federal Court has ruled that Altria, Philip Morris USA, Lorillard, and R.J. Reynolds Tobacco (the previous maker of [insert brand]) deliberately deceived the American public about the health effects of secondhand smoke, and ordered this statement. Here is the truth:

ii. Such onserts, with respect to Maverick, currently manufactured by

Lorillard Tobacco, shall substantially conform to the language in Order #51-

Remand, containing the following slightly modified preamble language for each

Corrective Statement:

A. Adverse Health Effects of Smoking

A Federal Court has ruled that Altria, Philip Morris USA, R.J. Reynolds Tobacco, and Lorillard (the previous maker of Maverick) deliberately deceived the American public about the health effects of smoking and ordered this statement. Here is the truth:

B. Addictiveness of Smoking and Nicotine

A Federal Court has ruled that Altria, Philip Morris USA, R.J. Reynolds Tobacco, and Lorillard (the previous maker of Maverick) deliberately deceived the American public about the addictiveness of smoking and nicotine, and ordered this statement. Here is the truth:

C. Lack of Significant Health Benefit from Smoking “Low Tar,” “Light,” “Ultra Light,” “Mild,” and “Natural” Cigarettes

A Federal Court has ruled that Altria, Philip Morris USA, R.J. Reynolds Tobacco, and Lorillard (the previous maker of Maverick) deliberately deceived the American public by falsely selling and advertising low tar and light cigarettes as less harmful than regular cigarettes, and ordered this statement. Here is the truth:

D. Manipulation of Cigarette Design and Composition to Ensure Optimum Nicotine Delivery

A Federal Court has ruled that Altria, Philip Morris USA, R.J. Reynolds Tobacco, and Lorillard (the previous maker of Maverick) deliberately deceived the American public about designing cigarettes to enhance the delivery of nicotine, and ordered this statement. Here is the truth:

E. Adverse Health Effects of Exposure to Secondhand Smoke

A Federal Court has ruled that Altria, Philip Morris USA, R.J. Reynolds Tobacco, and Lorillard (the previous maker of Maverick) deliberately deceived the American public about the health effects of secondhand smoke, and ordered this statement. Here is the truth:

iii. The onserts described in sections (i) and (ii) above shall be in

substantially the same form as the exemplars attached as Exhibit A, including *e.g.*, the placement of the “Here is the truth” language on both sides of the onserts, and the bulleted language on the back of the onserts.

b. Websites

i. *Covered Websites.* This paragraph is to be construed to be consistent with the meaning of “Covered Websites” in Order #51-Remand ¶ 1(D) and its Exhibit A.

1. Any publicly-accessible website ITG Brands operates, controls, or to which it contributes content or direct financial support that promotes or advertises cigarettes generally in the United States will be a Covered Website which will carry Website Corrective Statements, regardless of which cigarette brands are mentioned.

2. Any publicly-accessible website ITG Brands, Commonwealth, Commonwealth-Altadis, or any Covered Subsequent Affiliates operates, controls, or to which it or they contribute content or direct financial support that promotes or advertises one or more of the Acquired Brands in the United States will carry Website Corrective Statements, regardless of whether any other cigarette brands are mentioned.

3. Any publicly-accessible website ITG Brands Commonwealth, Commonwealth-Altadis, or any Covered Subsequent Affiliates operates, controls or to which it or they contribute content or direct financial support, that promotes or advertises only brands other than Acquired Brands in the United States, and neither mentions Acquired Brands nor (with respect to ITG Brands only) promotes or advertises cigarettes generally, will not be required to carry Website Corrective Statements.

ii. *Text of Website Corrective Statements.* The Website Corrective Statements made by ITG Brands shall be presented in the manner required by Order #1015, § II.B.6, as modified by Order #34-Remand and in Order #51-Remand, with the following slight modifications:

1. Preambles:

a. In the “Phase 1 website preamble,” as defined in Order-#51 Remand (at 11), such Website Corrective Statements shall contain the following preamble language:

A Federal Court has ruled that Altria, Philip Morris USA, R.J. Reynolds Tobacco (the previous maker of Winston, Salem, [and]Kool[, and Doral] ¹), and Lorillard (the previous maker of Maverick) deliberately deceived the American public and ordered these statements. Here is the truth:

- * Health effects of smoking
- * Addictiveness of smoking and nicotine
- * Falsely selling and advertising low-tar and light cigarettes as less harmful than regular cigarettes
- * Designing cigarettes to enhance the delivery of nicotine
- * Health effects of secondhand smoke
- * *Para información en español, clic aquí*

b. In the “Phase 2 website preamble,” as defined in Order-#51 Remand (at 15), such Website Corrective Statements shall contain the following preamble language:

A Federal Court has ruled that Altria, Philip Morris USA, R.J. Reynolds Tobacco (the previous maker of Winston, Salem, [and]Kool[, and Doral]), and Lorillard (the previous maker of Maverick) deliberately deceived the American public and ordered these statements. Here is the truth:

2. Full text display: In the “full-text display,” as defined in Order #51-Remand (at 11), such Website Corrective Statements shall contain the following preamble language for each Corrective Statement specified in Order #34-Remand, as modified by Order #51-Remand:

A. Adverse Health Effects of Smoking

¹ If Doral is included in the transfer, the bracketed word “and” before the word “Kool” will be deleted, and the bracketed words “and Doral” will be added, to the Preambles. If Doral is not included in the transfer, the bracketed word “and” before the word “Kool” will be added, and the bracketed words “and Doral” will be deleted, from the Preambles.

A Federal Court has ruled that Altria, Philip Morris USA, R.J. Reynolds Tobacco (the previous maker of Winston, Salem, [and]Kool[, and Doral]), and Lorillard (the previous maker of Maverick) deliberately deceived the American public about the health effects of smoking and ordered this statement. Here is the truth:

B. Addictiveness of Smoking and Nicotine

A Federal Court has ruled that Altria, Philip Morris USA, R.J. Reynolds Tobacco (the previous maker of Winston, Salem, [and]Kool[, and Doral]), and Lorillard (the previous maker of Maverick) deliberately deceived the American public about the addictiveness of smoking and nicotine, and ordered this statement. Here is the truth:

C. Lack of Significant Health Benefit from Smoking “Low Tar,” “Light,” “Ultra Light,” “Mild,” and “Natural” Cigarettes

A Federal Court has ruled that Altria, Philip Morris USA, R.J. Reynolds Tobacco (the previous maker of Winston, Salem, [and]Kool[, and Doral]), and Lorillard (the previous maker of Maverick) deliberately deceived the American public by falsely selling and advertising low tar and light cigarettes as less harmful than regular cigarettes, and ordered this statement. Here is the truth:

D. Manipulation of Cigarette Design and Composition to Ensure Optimum Nicotine Delivery

A Federal Court has ruled that Altria, Philip Morris USA, R.J. Reynolds Tobacco (the previous maker of Winston, Salem, [and]Kool[, and Doral]), and Lorillard (the previous maker of Maverick) deliberately deceived the American public about designing cigarettes to enhance the delivery of nicotine, and ordered this statement. Here is the truth:

E. Adverse Health Effects of Exposure to Secondhand Smoke

A Federal Court has ruled that Altria, Philip Morris USA, R.J. Reynolds Tobacco (the previous maker of Winston, Salem, [and]Kool[, and Doral]), and Lorillard (the previous maker of Maverick) deliberately deceived the American public about the health effects of secondhand smoke, and ordered this statement. Here is the truth:²

² If ITG Brands establishes any publicly-accessible website that promotes or advertises a single Acquired Brand, or less than all Acquired Brands, it may modify the preamble language above to refer only to the brand or brands promoted or advertised.

c. Social Media. In the event that ITG Brands employs Social Media to promote or advertise the Acquired Brands or cigarettes generally, ITG Brands shall be subject to Order #51-Remand, Section IV.5 (discussing Social Media). The full-text display preamble language to any Corrective Statements required with respect to such Social Media use shall be consistent with the language specified above in Paragraph 9(a)(i) and (ii), and the Phase 1 and Phase 2 website preambles will conform to section 9(b)(ii).

10. ITG Brands shall be subject to any order concerning the point-of-sale corrective-statement displays currently pending before the court and any appeals therefrom. *See, e.g.*, Dkt. Nos. 6096-6101, 6104-6108 (most recent briefing). However, nothing in this Order waives, prejudices, or diminishes ITG Brands's right to be heard as to the applicability of any point-of-sale remedy.

11. The timing for ITG Brands's, Commonwealth's, or Commonwealth-Altadis's obligations to run the Corrective Statements in onserts and on websites as required by this Order shall be consistent with the timing for defendants to carry out these obligations.

12. Defendants and ITG Brands's respective obligations to place onserts with corrective statements on packaging shall not be affected by any arrangement in which a brand on which onserts are required is manufactured by another entity.

13. ITG Brands, Commonwealth, Commonwealth-Altadis, Covered Subsequent Affiliates, and any Covered Persons and Entities will comply prospectively with the remedial obligations associated with Document Disclosure in Depositories and on Websites, as set forth in Order #1015, § II.C, and modified by Order #1021, and Order #27-Remand. ITG Brands shall create and maintain an Internet Document Website as set forth in Paragraphs 8-15 of Order

#1015 within forty days after the first time that documents or material subject to Paragraph 10(a) of Order #1015 are produced or received. ITG Brands shall provide on its Internet Document Website all such documents and material produced by, pertaining to, or concerning Commonwealth, Commonwealth-Altadis, Covered Subsequent Affiliates, and any Covered Person or Entity. The obligations of Commonwealth, Commonwealth-Altadis, Covered Subsequent Affiliates, and Covered Persons and Entities shall relate only to productions made and transcripts received after this Order becomes effective. The duration of ITG Brands's, Commonwealth's, Commonwealth-Altadis's, Covered Subsequent Affiliates', and any Covered Person or Entity's obligations with respect to Document Disclosure in Depositories and on Websites under Order #1015, § II.C. as modified by Order #1021, shall be coextensive with the time period previously established in this case for defendants.

14. With respect to Disclosure of Disaggregated Marketing Data, Order #1015, § II.D, Commonwealth, Commonwealth-Altadis, Covered Subsequent Affiliates, and Covered Persons and Entities shall be subject to Paragraph 16 of Order #1015 as modified by Order #20-Remand (Dkt. No. 5924) (concerning disclosures to the Government of disaggregated marketing data disclosed to the Federal Trade Commission). In addition, within 30 days after this Order becomes effective, Commonwealth shall disclose in the same form to the Government the two most recent years' disaggregated marketing data relating to cigarettes it has disclosed to the Federal Trade Commission. Commonwealth, Commonwealth-Altadis, their Covered Subsequent Affiliates, and Covered Persons and Entities shall be subject to Paragraphs 17 – 19 of Order #1015, as modified by Order #20-Remand, except that they are not responsible for making available to the Government Disaggregated Marketing Data predating the year in which this Order becomes effective. ITG Brands, Commonwealth, Commonwealth-Altadis, Covered

Subsequent Affiliates and any Covered Person or Entity that makes disclosures to the Government under Order #1015, § II.D shall expressly be made parties to and shall be covered by Order #7 and Order #36. The duration of ITG Brands's, Commonwealth's, Commonwealth-Altadis's, any of their Covered Subsequent Affiliates', and any Covered Person or Entity's obligations with respect to Disclosure of Disaggregated Marketing Data under Order #1015, § II.D. shall be coextensive with the time period previously established in this case for defendants.

15. ITG Brands, Commonwealth, Commonwealth-Altadis, Covered Subsequent Affiliates, and any Covered Person or Entity shall be subject to the provisions of Paragraph 20 of Order #1015 governing Transfer of Cigarette Brands and Businesses with respect to selling or otherwise transferring or permitting the sale or transfer of any of the Acquired Brands, brand names, cigarette product formulas, or cigarette businesses.

16. ITG Brands, Commonwealth Brands, Commonwealth-Altadis, Covered Subsequent Affiliates, and Covered Persons and Entities shall not be subject to the provisions of Paragraph 21 of Order #1015 governing Costs.

17. This Order governs how ITG Brands, Commonwealth, and Commonwealth-Altadis will comply with provisions of Order #51-Remand, which is currently on appeal. *See United States v. Philip Morris USA Inc.*, No. 13-5028 (D.C. Cir.) (argued Feb. 23, 2015). If Order #51-Remand is subsequently reversed or altered on appeal Paragraph 18 below shall apply.

18. This Order imposes on ITG Brands, Commonwealth, Commonwealth-Altadis, Covered Subsequent Affiliates, and Covered Persons and Entities certain requirements originally imposed through earlier Court Orders including Order #1015 and Order #51-Remand. In the event any of those Orders' provisions that this Order imposes on ITG Brands, Commonwealth,

Commonwealth-Altadis, Covered Subsequent Affiliates, and Covered Persons and Entities are subsequently modified as to all defendants, those modifications shall also presumptively apply to ITG Brands, Commonwealth, Commonwealth-Altadis, Covered Subsequent Affiliates, and Covered Persons and Entities, unless company-specific factors warrant different treatment.

19. All capitalized terms in this Order, if not otherwise defined herein, shall be defined as noted in Order #1015 and subsequent orders, as modified by this Order.

DATED: June 8, 2015

Gladys Kessler
GLADYS KESSLER
U.S. District Judge

We consent to entry of the above Order.

Dated: April 30, 2015

Respectfully submitted,

s/ Robert J. Brookhiser, Jr.
Robert J. Brookhiser, Jr. (D.C. Bar No. 202168)
Elizabeth B. McCallum (D.C. Bar No. 451361)

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Regarding Remedies ITG Brands, LLC,
Commonwealth Brands, Inc. and
Commonwealth-Altadis, Inc.*