

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Civil Action No. 99-CV-2496 (PLF)
)	
)	
v.)	
)	
PHILIP MORRIS USA INC., <i>et al.</i> ,)	
)	
Defendants.)	
)	
)	

**CONSENT MOTION FOR ENTRY OF THIRD SUPERSEDING CONSENT ORDER
IMPLEMENTING THE CORRECTIVE STATEMENTS REMEDY
FOR WEBSITES AND ONSERTS**

The parties have reached agreement for the Corrective Statements remedy to begin on dates certain in two media channels—namely, websites and package “onserts”—and respectfully ask the Court to review and, if acceptable, promptly enter the attached (proposed) Consent Order Implementing the Corrective Statements Remedy For Websites and Onserts (the “(proposed) Website and Onsert Consent Order”).¹

The (proposed) Order would resolve the third and fourth of the four media channels at issue on remand from the D.C. Circuit’s most recent decision, *United States v. Philip Morris USA Inc.*, 855 F.3d 321 (D.C. Cir. 2017). The (proposed) Order will not resolve the point-of-sale media channel vacated and remanded in *United States v. Philip Morris USA Inc.*, 566 F.3d

¹ The parties are the United States and Public Health Intervenors (collectively “Plaintiffs”); Philip Morris USA Inc., Altria Group, Inc., and R.J. Reynolds Tobacco Company (individually, as successor in interest to Brown & Williamson Tobacco Corporation, and as successor to Lorillard Tobacco Company) (collectively “Defendants”); and ITG Brands, LLC, Commonwealth Brands, Inc., and Commonwealth-Altadis, Inc. (collectively “Remedies Parties”).

1095, 1141-42 (D.C. Cir. 2009) (*per curiam*), *cert. denied*, 561 U.S. 1025 (2010).

If the Court approves the (proposed) Website and Onsert Consent Order in the form proposed, and enters it by **Friday, May 11, 2018**, the Corrective Statements will begin to appear on covered websites by **Monday, June 18, 2018**, and on package “onserts” by **Wednesday, November 21, 2018**. If the Court requires more time to review and enter the proposal, the start date would come some weeks later, as calculated by a formula in the (proposed) Website and Onsert Consent Order.

The (proposed) Consent Orders that the parties previously filed in 2014 and 2016 and that the Court subsequently entered were consensual as to implementation details (such as font, type, and layout), but subject to the tobacco companies’ objections to the Court-ordered text. Those 2014 and 2016 Consent Orders also expressly reserved the tobacco companies’ right to appeal from the statement text.

By contrast, the present (proposed) Website and Onsert Consent Order provides that if the Court adopts the (proposed) Website and Onsert Order without modification, then the tobacco companies will not challenge that Order on appeal, and the specific implementation executions for websites and onserts will commence on the schedule specified in that Order. (Proposed) Website and Onsert Consent Order, ¶ IV(4), at 26. The (proposed) Order also provides that if the District Court should modify any term or requirement, no party waives or abandons any appeal or appellate rights or argument, and the parties reserve the right to seek different requirements than those stated in the (proposed) Website and Onsert Consent Order. *Id.*

The parties respectfully request the Court’s prompt review of the (proposed) Website and Onsert Consent Order, and—if the Court finds it acceptable—prompt entry as an Order, no later than Friday, May 11, 2018.

Dated: April 26, 2018

Respectfully submitted,

GUSTAV W. EYLER, Acting Director
ANDREW CLARK, Assistant Director
Consumer Protection Branch

_____/s/_____
DANIEL K. CRANE-HIRSCH
Trial Attorney
Civil Division
United States Department of Justice
PO Box 386
Washington, DC 20044-0386
Telephone: 202-616-8242 (Crane-Hirsch)
Facsimile: 202-514-8742
daniel.crane-hirsch@usdoj.gov

*Attorneys for Plaintiff United States of
America*

_____/s/_____
Katherine A. Meyer (D.C. Bar 244301)
MEYER GLITZENSTEIN & EUBANKS
LLC
4115 Wisconsin Ave., N.W. Suite 210
Washington, DC 20016
202-588-5206
kmeyer@meyerglitz.com

*Attorney for the Public Health Plaintiff-
Intervenors*

_____/s/ Anand Agneshwar_____
Anand Agneshwar
ARNOLD & PORTER KAYE SCHOLER
LLP
250 West 55th Street
New York, NY 10019-9710
Telephone: (212) 836-8011
Fax: (212) 836-8689

Miguel A. Estrada (D.C. Bar No. 456289)
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.

Washington, D.C. 20036-5306
Telephone: (202) 955-8257
Fax: (202) 530-9016

*Attorneys for Defendants Altria Group, Inc.
and Philip Morris USA Inc.*

/s/
Peter J. Biersteker (D.C. Bar No. 358108)
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001-2113
Telephone: (202) 879-3939
Fax: (202) 626-1700

Jeffrey A. Mandell (D.C. Bar No. 999791)
STAFFORD ROSENBAUM LLP
222 West Washington Avenue, Suite 900
Madison, Wisconsin 53703
Telephone: (608) 256-0226
Fax: (608) 259-2600

Geoffrey K. Beach (D.C. Bar No. 439763)
WOMBLE CARLYLE SANDRIDGE &
RICE, LLP
One West Fourth Street
Winston-Salem, NC 27101
Telephone: (336) 721-3600
Fax: (336) 721-3660

*Attorneys for Defendant R.J. Reynolds
Tobacco Company (individually, as
successor in interest to Brown & Williamson
Tobacco Corporation, and as successor to
Lorillard Tobacco Company)*

/s/
Robert J. Brookhiser, Jr. (D.C. Bar No.
202168)

Elizabeth B. McCallum (D.C. Bar No.
451361)
BAKER & HOSTETLER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5304
Telephone: (202) 861-1500
Fax: (202) 861-1783

*Attorneys for Post-Judgment Parties
Regarding Remedies ITG Brands, LLC,
Commonwealth Brands, Inc. and
Commonwealth-Altadis, Inc.*