

**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.	)	
	)	

**JOINT STATUS REPORT REGARDING RETAIL POINT-OF-SALE DISPLAYS**

Pursuant to the Court’s minute order issued May 1, 2018, the parties respectfully submit this joint status report on the status of the corrective statements for retail point-of-sale (“POS”) displays. The first portion of this joint status report summarizes the procedural history on remand relevant to the POS issue. The second part sets forth the parties’ suggestions for next steps.

**PROCEDURAL HISTORY**

Order #1015 provided for the publication of the corrective statements through five media channels: newspapers, television, package onserts, company websites, and retail point-of-sale displays—the last, by directing the tobacco companies to require retailers that participate in any of the companies’ retailer-participation programs to display the POS displays, and to suspend from their programs any retailers that fail to comply with the requirement. *United States v. Philip Morris USA Inc.*, 449 F. Supp. 2d 1, 939-40 (D.D.C. 2006), *vacated in relevant part*, 566 F.3d 1095 (D.C. Cir. 2009) (per curiam), *cert. denied*, 561 U.S. 1025 (2010). As part of its 2009 review of this Court’s final opinion and remedial order, the D.C. Circuit vacated as to the POS media channel and remanded to this Court. *United States v. Philip Morris USA Inc.*, 566 F.3d 1095, 1141-42, 1150 (D.C. Cir. 2009) (per curiam).

On remand, the Court solicited the parties' suggestions regarding "independent third parties who should be asked to file briefs on the impact of point-of sale displays," Order #14-Remand at 3 (Dkt. No. 5878; entered Feb. 25, 2011), and granted eight of those suggested third parties leave to file briefs, *see* Order #19-Remand (Dkt. No. 5916; entered Apr. 11, 2011). The Court received briefing in 2011 from the parties and two trade associations representing retailers: NACS (formerly the National Association of Convenience Stores) and the National Association of Tobacco Outlets ("NATO"). Dkt. Nos. 5903, 5905-06 (filed 4/1/2011); Dkt. Nos. 5919, 5921-22 (filed 4/15/2011). In 2014, the Court received supplemental briefs from the parties, NACS, and NATO. Dkt. Nos. 6096-6101 (filed 6/4/2014); Dkt. Nos. 6104-6108 (filed 6/18/2014).

In June 2015, ITG Brands, LLC, pursuant to Order #1015 ¶ 20, became subject to Order #1015 (subject to certain exceptions). Order #56-Remand (Dkt. No. 6151; entered June 8, 2015). The same Order joined ITG Brands and two affiliates, Commonwealth Brands, Inc. and Commonwealth-Altadis, Inc., as Post-Judgment Parties Regarding Remedies. It addressed the POS remedy at pages 6 and 12.

### **PROPOSED NEXT STEPS**

POS is the last remaining issue that the Court has not resolved on remand. It has been nearly four years since the parties and two retailer trade associations filed their supplemental briefs on this issue. During that time, there have been additional decisions addressing legal doctrines that may be relevant to various arguments, and ITG Brands has joined this case. Given the passage of time, the parties believe that it would be appropriate to update the Court on recent relevant legal and factual developments, and for the Court to solicit any updates on retailers' views on the POS issue so that all interested persons can be heard on this issue at the same time. Accordingly, the parties propose that they, and retailer trade associations that wish to do so, be

permitted to file supplemental briefs on this issue, and further propose that the Court schedule argument at its convenience.

The parties respectfully propose the following briefing schedule<sup>1</sup>:

- Friday, June 8: Defendants, ITG Brands, and retailer trade associations that wish to be heard file opening briefs. Defendants and ITG Brands shall have 30 pages to allocate as they wish; retailer trade associations up to 15 pages each.
- Friday, July 6: United States and Public-Health Intervenors file briefs in response, and shall have 50 pages to allocate as they wish.
- Monday, July 30: Defendants, ITG Brands, and retailer trade associations that filed opening briefs file reply briefs. Defendants and ITG Brands shall have 20 pages to allocate as they wish; retailer trade associations up to 10 pages each.

Dated: May 11, 2018

Respectfully submitted,

/s/

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<sup>1</sup> The parties propose staggered briefing with Defendants, ITG Brands, and retailer trade associations that wish to be heard going first as a way to flesh out the relevant doctrinal and/or practical issues and how they affect arguments for and against reinstating the POS remedy.

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