

**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 SECOND SUPERSEDING CONSENT ORDER  
IMPLEMENTING THE CORRECTIVE STATEMENTS REMEDY  
FOR NEWSPAPERS AND TELEVISION**

In Order #70-Remand (Dkt. No. 6222; issued September 25, 2017), the Court directed the parties to submit by today’s date a (proposed) consent order to implement the Corrective Statement remedy; or, failing that, a further status report addressing the particular matters yet to be resolved.

The parties now report that they have reached agreement for the Corrective Statements remedy to begin on a date certain in two media channels—namely, newspaper and television—and respectfully ask the Court to review and, if acceptable, promptly enter the attached (proposed) Consent Order Implementing the Corrective Statements Remedy For Newspapers and Television (the “(proposed) Newspaper and TV Consent Order”).<sup>1</sup> If the Court approves the

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<sup>1</sup> 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”).

(proposed) Newspaper and TV Consent Order in the form proposed, and enters it by **Friday, October 13, 2017**, the Corrective Statements will generally begin to appear in newspapers **Sunday, November 26**, and on television the following week. 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) Newspaper and TV Consent Order.

**A. Media channels**

The attached (proposed) Newspaper and TV Consent Order addresses two of the four media channels at issue:

1. Newspapers. The parties' two most recent Status Reports (Dkt. No. 6214, filed Aug. 11, 2017; Dkt. No. 6220, filed Sept. 11, 2017) reported that the parties had reached agreement on newspaper mockups, both print and online, and were seeking agreements on replacements for two small newspapers that had gone out of print since previous consent orders. The attached (proposed) consent order now includes agreed replacements for those papers.
2. Television. The two most recent Status Report also advised that the United States had provided TV spot mockups, and that the Defendants were considering them. Defendants have now approved those TV mockups.
3. Onserts and company websites. As discussed in more detail in a further Status Report being filed concurrently, the parties continue working toward agreement on mockups for the other media channels at issue—onserts and company websites. While that work continues, today's Consent Motion is meant to provide a date certain for the statements to begin in the newspaper and television media channels where full agreement has been reached.

**B. Spanish text**

The parties have reached agreement on the Spanish text, in accord with the estimated timeline set out in the parties' September 11, 2017, Status Report.

**C. English text**

The present (proposed) Newspaper and TV Consent Order incorporates the language approved by the District Court in the memorandum opinions accompanying Order #62-Remand and Order #67-Remand, on remand from the D.C. Circuit's ruling in *United States v. Philip Morris USA Inc.*, 855 F.3d 321 (D.C. Cir. 2017).

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

By contrast, the present (proposed) Newspaper and TV Consent Order provides that if the Court adopts the (proposed) Newspaper and TV Order without modification, then the tobacco companies will not challenge that Order on appeal, and the specific implementation executions for newspapers and television will commence on the schedule specified in that Order.

(Proposed) Newspaper and TV Consent Order, ¶ IV(4), at 13. The paragraph goes on to provide 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) Newspaper and TV Consent Order. *Id.*

The parties respectfully request the Court's prompt review of the (proposed) Newspaper and TV Consent Order, and—if the Court finds it acceptable—prompt entry as an Order, no later than Friday, October 13, 2017.

Dated: October 2, 2017

Respectfully submitted,

JILL FURMAN, Deputy Director  
ANDREW CLARK, Assistant Director  
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