

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Civil Action No. 99-CV-2496 (GK)
)	Next scheduled court appearance:
and)	NONE
)	
TOBACCO-FREE KIDS)	
ACTION FUND, <i>et al.</i>)	
)	
Plaintiff-Intervenors)	
)	
v.)	
)	
PHILIP MORRIS USA INC., <i>et al.</i> ,)	
)	
Defendants,)	
)	
<i>and</i>)	
)	
ITG BRANDS, LLC, <i>et al.</i> ,)	
Post-Judgment Parties Regarding)	
Remedies.)	
)	

~~(Proposed)~~
ORDER # 81 -Remand

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

Upon consideration of the Consent Motion for Entry of Third Superseding Consent Order Implementing the Corrective Statements Remedy for Websites and Onserts (filed April 26, 2018), and the entire record herein, the motion is GRANTED and it is hereby ORDERED that:

The corrective statements remedy under Order #1015 (Dkt. No. 5733; issued Aug. 17, 2006), published as *United States v. Philip Morris USA Inc.*, 449 F. Supp. 2d 1, 938-41 (D.D.C.

2006), *aff'd in part & vacated in part*, 566 F.3d 1095 (D.C. Cir. 2009) (*per curiam*), *cert. denied*, 561 U.S. 1025 (2010), is hereby MODIFIED as set forth below:

PART 1: REVISED IMPLEMENTATION SPECIFICATIONS FOR CORRECTIVE STATEMENTS FOR WEBSITES AND ONSETS

I. Definitions

A. “Above the Fold” means:

1. For websites other than mobile websites, the text that begins on the first screen of the home page for the web address, without scrolling, or
2. For mobile websites that do not use responsive design, the text that begins on the first screen in portrait orientation, without scrolling.

B. “Acquired Brands” means the Winston, Salem, Kool, and Maverick brands.

C. “April 2014 Joint Praecipe” means the Joint Praecipe Regarding Issues Raised at the January 22, 2014 Status Conference (Dkt. No. 6081; filed Apr. 22, 2014), which included as attachments exemplars for the Corrective Statements executions in (as pertinent here) websites.

D. “Corrective Statements” or “Statements” mean the text of the statements set forth in Part 1 of Order #72-Remand (Dkt. No. 6227; issued Oct. 5, 2017).

E. “Covered Websites” refers to the websites listed on **Exhibit A** in the April 2014 Joint Praecipe, and any successor or replacement websites and any additional Defendant websites that promote or advertise cigarettes, and any websites on which Corrective Statements must be included as provided by Order #56-Remand, ¶ 9(b); provided, however, that the term “Covered Websites” does not include (i) log in and age verification pages, if any, for the Covered Websites, or (ii) websites advertising only products other than cigarettes, including but not limited to smokeless tobacco, e-cigarettes, and other tobacco-derived nicotine products.

F. “Defendants” means Altria, R.J. Reynolds Tobacco Company, Lorillard Tobacco Company, and Philip Morris USA. To the extent any obligations under this Third Superseding Consent Order pertaining to Lorillard Tobacco Company have been transferred to R.J. Reynolds Tobacco Company, as contemplated by the Notice of Transaction Involving Defs. R.J. Reynolds Tobacco Company and Lorillard Tobacco Company (Dkt. No. 6141; filed Apr. 7, 2015), such obligations shall apply to R.J. Reynolds Tobacco Company. The obligations of the Remedies Parties as a result of that transaction and Order #56-Remand (Dkt. No. 6151; issued June 8, 2015), are set out in Order #56-Remand, as modified by this Order.

G. “Exhibit,” unless the context indicates otherwise, will refer to exhibits filed with the Consent Motion (filed April 26, 2018) to Enter Third Superseding Consent Order Implementing Corrective Statements for Websites and Onserts.

H. “Remedies Parties” refers to ITG Brands, LLC (“ITG Brands”), Commonwealth Brands, Inc. (“Commonwealth”), and Commonwealth-Altadis, Inc. (“Commonwealth-Altadis”).

I. “Preamble Text” refers to the portion of the text of each Corrective Statement that begins with the words “A Federal Court” and precedes the bulleted text.

J. “Remedial Order” refers to Order #1015 in *United States v. Philip Morris USA Inc. et al.*

K. “Social media” refers to web pages and internet-connected applications that enable users to create and share content or otherwise to participate in social networking, excluding web addresses that fall within the definition of “Covered Websites.”

L. “Spanish version” of the Statements refers to the text of the Statements translated into Spanish, as set forth in **Exhibits 1 and 2** of the Consent Motion for Entry of Second

Superseding Consent Order Implementing the Corrective Statements Remedy for Newspapers and Television (Dkt. No. 6223; filed Oct. 2, 2017).

M. “Trigger Date” for publication on websites and package onserts means the date of filing the Consent Motion for Entry of Third Superseding Consent Order Implementing Corrective Statements Remedy for Websites and Onserts, provided that this Order is entered on or before May 11, 2018. To the extent the Court enters the Third Superseding Consent Order Implementing Corrective Statements Remedy for Websites and Onserts *after* May 11, 2018, the “Trigger Date” will be the first business day following the date on which the Court enters this Order.

N. “Website Corrective Statements” refers to the versions of the Corrective Statements described in Section II below, under the heading “Corrective Statements on Websites.”

O. “Website Mock ups” refers to the mock ups filed as **Exhibit F** to the April 2014 Joint Praecipe, **Exhibit 3** to the Joint Motion (filed April 8, 2016) to Enter Joint Superseding Consent Order Implementing Corrective Statements, **Exhibits 1-13** to the Consent Motion (filed April 26, 2018) to Enter Third Superseding Consent Order Implementing Corrective Statements for Websites and Onserts, and any mock ups (i) agreed upon by the parties, (ii) approved by the Court subsequent to entry of this Order, or (iii) about which Plaintiffs have not expressed a concern within 8 weeks of receipt.

II. Corrective Statements On Websites

1. The Website Corrective Statements will be published as described in this Section.
 - a. Defendants and the Remedies Parties will not interfere with or impede a user’s ability to print or copy the Website Corrective Statements. The full-text display (as defined below) will not be an image, and will be in a format that allows a user to print or copy all or part of its text.

- b. The specifications below assume a website viewed on a monitor screen with a resolution of 72 DPI.
- c. The specifications for non-mobile-device presentations assume a 17 inch monitor with an overall screen width of 1024 pixels and a height of 768 pixels; and for mobile-device presentations, assume an overall screen width of 320 pixels and a height of 480 pixels. For clarity, mobile device specifications may be measured on a 17 inch monitor with a viewable area that is 320 pixels wide and 480 pixels high.
- d. With respect to any new or redesigned Covered Website, the comparative prominence of the website preamble tile and the full-text display (as defined below) in relation to the other elements on the screen will be at least as great as in any of the mock ups in the relevant phase and section (*i.e.*, non-mobile, responsive design mobile, and non-responsive design mobile) of the **Website Mock ups**.
- e. If Plaintiffs have a concern that the Corrective Statement execution on a Covered Website does not satisfy the requirements of this Order, the following procedure shall apply:
 - i. Plaintiffs will meet and confer, over a period of four weeks, with the relevant Defendant or Remedies Party.
 - ii. If, at the end of the four weeks, the parties have not reached agreement, the Defendant or Remedies Party will provide a brief addressing why that design satisfies the requirements of this Order and a mockup showing the specifications of the Corrective Statement execution on the specified Covered Website. Within 7 days, Plaintiffs may provide response brief(s) addressing why that design does not satisfy the requirements of this Order. Within 7 days, the Defendant or Remedies Party may

provide a reply brief. The briefs of the Defendant or Remedies Party may contain a total of up to 10 pages between them, divided as the party sees fit. The brief or briefs of the Plaintiffs may contain a total of up to 10 pages between them, divided as the Plaintiffs see fit. All briefs shall be formatted for filing in accordance with Local Civil Rule 5.1(d).

iii. If the parties do not reach agreement within another 7 days after the Defendant's or Remedies Party's reply is due, any party may file an unopposed motion for the Court to resolve the dispute, along with the mockup and the parties' exchanged briefs. The filing will be made subject to a motion for leave to file under seal under Local Rule 5.1(h) to the extent warranted to protect the confidentiality of a website design that has not yet been made public. The parties agree to ask the Court to issue an Order that contains the Court's reasoning as to whether the design satisfies the requirements of this Order; and if the Court concludes that the Defendant or Remedies Party's execution does not satisfy the requirements of this Order, to provide sufficient direction for the Defendant or Remedies Party to bring its execution into compliance.

iv. The Court will thereafter determine, based on the parties' briefs, whether the Defendant or Remedies Party's design satisfies the requirements of this Order. If the Court concludes that the Defendant or Remedies Party's design does not satisfy the requirements of this Order, then the Defendant or Remedies Party will either revert to a website design that the Defendant or Remedies Party previously utilized under this Order or within 14 days of the Court's order modify the design such that it is compliant with this Order per the Court's decision, at which point the Defendant or Remedies Party will supply a mockup showing the specifications of that design. The duration of

the then-current implementation phase shall be extended, for only the website in question, by the length of time the Defendant or Remedies Party had displayed any non-conforming execution on the website. If the Defendant or Remedies Party appeals, there shall be no stay of the Court's decision pending appeal.

f. To the extent a Defendant or Remedies Party intends to change a Covered Website in a way that affects (i) the location or pixel area of the corrective statement tile or full text display; or (ii) the size of the font of the corrective statement tile or full-text display, the Defendant or Remedies Party will give Plaintiffs no less than 8 weeks advance notice and a mockup of the proposed Corrective Statement execution. If Plaintiffs have a concern that the proposed Corrective Statement execution does not satisfy the requirements of this Order, then the procedure in paragraph II.1.e shall apply.

g. Nothing in this Section gives Plaintiffs any right of pre-approval over Defendants' or the Remedies Parties' ability to advertise or promote their products on websites, nor does any provision herein restrict the frequency of any changes or redesigns made to Defendants' or the Remedies Parties' websites.

h. In the case of a published execution that clearly and significantly violates the terms of this Order, such as removing the preamble from the home page of a Covered Website, changing the text of the Corrective Statements, or rendering the website preamble or full text display effectively illegible, beginning one business day after Plaintiffs provide the Defendant or Remedies Party with notice of their concerns that might trigger this paragraph, Plaintiffs may seek immediate relief while the parties pursue the procedure in II.1.e.

Phase 1

2. Beginning on the 8th Monday following the Trigger Date, and continuing for five years thereafter (years 1 through 5) or for the duration of the Remedial Order, whichever is shorter, the format specified in this paragraph will be on each Covered Website. Any existing Covered Website that is not redesigned shall meet the requirements of this Order as long as it is substantially similar to and meets the specifications depicted in its **Website Mock ups** (but using the specific words for each Statement as set forth in Part 1 of Order # 72-Remand), whether or not the website conforms to the specifications contained in this paragraph. Any new or redesigned Covered Website must conform to the specifications of this paragraph.

- a. The “Phase 1 website preamble tile” will appear on each of the Covered Websites, with the individual company that is making the Corrective Statement being listed first (except for Remedies Parties, where the order is specified below):

- i. For Defendants:

A Federal Court has ordered Altria, R.J. Reynolds Tobacco, Lorillard, and Philip Morris USA to make these statements.

- * Health effects of smoking
- * Addictiveness of smoking and nicotine
- * Low tar and light cigarettes being as harmful as regular cigarettes
- * Designing cigarettes to enhance the delivery of nicotine
- * Health effects of secondhand smoke
- * *Para información en español, clic aquí*

- ii. For Remedies Parties, with each Defendant’s name appearing once:

A Federal Court has ordered [Lorillard (the previous maker of Maverick) *or* R.J. Reynolds Tobacco (the previous maker of Winston, Salem, and Kool)], Altria, Philip Morris USA, and [R.J. Reynolds Tobacco (the previous maker of Winston, Salem, and Kool), *or* Lorillard (the previous maker of Maverick)] to make these statements.¹

¹ If a Remedies Party establishes any publicly-accessible website that promotes or advertises a single Acquired Brand, or less than all Acquired Brands, it may modify the preamble

- * Health effects of smoking
- * Addictiveness of smoking and nicotine
- * Low tar and light cigarettes being as harmful as regular cigarettes
- * Designing cigarettes to enhance the delivery of nicotine
- * Health effects of secondhand smoke
- * *Para información en español, clic aquí*

b. The phrase “these statements” will hyperlink to the “full-text display” that will open when clicked.

i. For Defendants, the full text display will contain the full text of the Corrective Statements.

ii. For Remedies Parties, the full text display for each Corrective Statement shall begin with the following preamble language, with each Defendant’s name appearing once:

A. Adverse Health Effects of Smoking

A Federal Court has ordered [Lorillard (the previous maker of Maverick) *or* R.J. Reynolds Tobacco (the previous maker of Winston, Salem, and Kool)], Altria, Philip Morris USA, and [R.J. Reynolds Tobacco (the previous maker of Winston, Salem, and Kool) *or* Lorillard (the previous maker of Maverick)] to make this statement about the health effects of smoking.

B. Addictiveness of Smoking and Nicotine

A Federal Court has ordered [Lorillard (the previous maker of Maverick) *or* R.J. Reynolds Tobacco (the previous maker of Winston, Salem, and Kool)], Altria, Philip Morris USA, and [R.J. Reynolds Tobacco (the previous maker of Winston, Salem, and Kool) *or* Lorillard (the previous maker of Maverick)] to make this statement about the addictiveness of smoking and nicotine.

language in every place it appears on any such website and in any phase to refer only to the brand or brands promoted or advertised. In such an instance, the name of the previous maker of the Acquired Brand to which the website relates (whether Lorillard or R.J. Reynolds) will appear last with the parenthetical, and the name of the other entity from which ITG Brands acquired the Acquired Brands (either R.J. Reynolds or Lorillard) will appear first without a parenthetical.

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

A Federal Court has ordered [Lorillard (the previous maker of Maverick) *or* R.J. Reynolds Tobacco (the previous maker of Winston, Salem, and Kool)], Altria, Philip Morris USA, and [R.J. Reynolds Tobacco (the previous maker of Winston, Salem, and Kool) *or* Lorillard (the previous maker of Maverick)] to make this statement about low tar and light cigarettes being as harmful as regular cigarettes.

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

A Federal Court has ordered [Lorillard (the previous maker of Maverick) *or* R.J. Reynolds Tobacco (the previous maker of Winston, Salem, and Kool)], Altria, Philip Morris USA, and [R.J. Reynolds Tobacco (the previous maker of Winston, Salem, and Kool) *or* Lorillard (the previous maker of Maverick)] to make this statement about designing cigarettes to enhance the delivery of nicotine.

E. Adverse Health Effects of Exposure to Secondhand Smoke

A Federal Court has ordered [Lorillard (the previous maker of Maverick) *or* R.J. Reynolds Tobacco (the previous maker of Winston, Salem, and Kool)], Altria, Philip Morris USA, and [R.J. Reynolds Tobacco (the previous maker of Winston, Salem, and Kool) *or* Lorillard (the previous maker of Maverick)] to make this statement about the health effects of secondhand smoke.

- iii. The full-text display text will be black on a white background and contain the identifying headings in Part 1 of Order # 72-Remand to segregate the individual Corrective Statements. In the Phase I website preamble tile, each of the topic-specific bullet points will hyperlink to the same full-text display. The phrase “these statements” and the topic-specific bullet points will be formatted as hyperlinks shown with an underline and/or in a color with a high contrast to the non-hyperlinked preamble text. Hyperlinked text must maintain readability against the background color. When one of those topics is clicked, the full-text display will open with the particular Corrective Statement associated with that

topic at the top. The user will be able to scroll through the rest of the full-text display to view the other Corrective Statements as well. The last bulleted hyperlink will open the portion of the full-text display containing the Spanish version of all five Corrective Statements. All of the above requirements apply to Spanish-language websites, which will display the Spanish version of the Corrective Statements, including the website preamble text, in Spanish.

- c. The website preamble text shall be black on white background, or white on a black background, or a similar text and contrasting background, and shall appear in a manner that contrasts, by typography, layout, or color, with all other material on that page of the website.
- d. The following requirements apply to all Phase 1 presentations other than those designed for mobile devices:
 - (i) The website preamble tile must appear in a prominent position on the home page Above the Fold, such that the amount of text on the first screen of the home page includes the text of the website preamble through and including the first bulleted text (“Health effects of smoking”). The website preamble tile will occupy a minimum total area of 90,000 pixels, and be coded to a minimum font size of 11 pixels.
 - (ii) The full-text display will: (A) appear within a full-text display containing window that is a minimum of 500 pixels wide and 575 pixels high and be viewable in its entirety by scrolling only the full-text display scroll bar; (B) contain the text of the preambles and the bullet point lists coded to a minimum font size of 14 pixels using Arial Regular font style; (C) contain a hard return between the preamble and the bulleted text; (D) contain an identifying heading for each Statement; and (E) contain

horizontal lines between the last bullet point of each Statement and the identifying heading of the next Statement.

e. The following requirements apply to all Phase 1 presentations designed for mobile devices.

(i) There will be a paragraph return below “these statements.” The website preamble tile and full-text display will be the full width of the mobile screen. The remaining elements may use either an accordion or full-text format as follows:

(A) Accordion format. Each topic headline will be displayed using an accordion menu with the topic name as a headline and the full Corrective Statement programmed to hide and reveal upon tap. The full-text display will initially show all topic headlines with all topic headline accordion menus in the closed position. A right-pointing arrow indicator shall appear to the right of each Statement title, indicating that more content can be viewed by tapping the Statement title or right-pointing arrow.

(B) Full-text format. The full-text display will (I) contain the text of the preambles and the bullet point lists; (II) contain a hard return between the preamble and the bulleted text; (III) contain an identifying heading for each Statement; and (IV) contain horizontal lines between the last bullet point of each Statement and the identifying heading of the next Statement.

(ii) For websites that adjust to different screen sizes (such as sites using responsive design), the website preamble tile appearing on the home page of the Covered Websites should be resized, match the hierarchy of, utilize the same font style as, and utilize a font size no smaller than the format used for larger screens under

paragraph 2(d) above. Such a website preamble tile is not required to appear Above the Fold, but must begin within 1111 pixels from the top of the screen. The **Phase 1 – Mobile Version for Responsive Design Website Mock ups** shown in **Exhibit F** to the April 2014 Joint Praecipe, **Exhibit 3** to the Joint Motion (filed April 8, 2016) to Enter Joint Superseding Consent Order Implementing Corrective Statements, and the **Website Mockups** shown in **Exhibits 1-13** to the Consent Motion (filed April 26, 2018) to Enter Third Superseding Consent Order Implementing Corrective Statements for Websites and Onsert comply with the requirements of this subparagraph.

(iii) For mobile websites that do not adjust to different screen sizes, the text of the website preamble and the full-text display will be coded to a minimum font size of 11 pixels using Arial Regular font style or an alternative font that is at least as large and readable. The website preamble tile must appear Above the Fold, such that the amount of text on the first screen of the home page includes the text of the website preamble through the list of Defendants (“A Federal Court has ordered Altria, R.J. Reynolds Tobacco, Lorillard, and Philip Morris USA”). The **Mobile Version – Not Responsive Design Website Mock ups** shown in **Exhibit F** to the April 2014 Joint Praecipe comply with the requirements of this subparagraph.

Phase 2

3. During the six years following the expiration of year five (years 6 through the expiration of year 11) or for the duration of the Remedial Order, whichever is shorter, the format specified in this paragraph will be on each Covered Website. Any existing Covered Website that is not redesigned shall meet the requirements of this Order as long as it is substantially similar to and meets the specifications depicted in its **Phase 2 Website Mock ups**, whether or not the

website conforms to the specifications contained in this paragraph. Any new or redesigned Covered Website must conform to the specifications of this paragraph.

- a. The “Phase 2 website preamble tile” will appear as follows on each of the home pages of the Covered Websites, with the individual company that is making the Corrective Statement listed first (except for Remedies Parties, where the order is specified below):
 - i. For Defendants: “A Federal Court has ordered Altria, R.J. Reynolds Tobacco, Lorillard, and Philip Morris USA to make these statements.”
 - ii. For Remedies Parties, with each Defendant’s name appearing once:

A Federal Court has ordered [Lorillard (the previous maker of Maverick) *or* R.J. Reynolds Tobacco (the previous maker of Winston, Salem, and Kool)], Altria, Philip Morris USA, and [R.J. Reynolds Tobacco (the previous maker of Winston, Salem, and Kool) *or* Lorillard (the previous maker of Maverick)] to make these statements.
- b. The phrase “these statements” will hyperlink to a full-text display that will open when clicked. The phrase will be formatted in a manner to make it recognizable as a hyperlink. When a reader clicks on the link, a full-text display will appear containing the full-text of all of the Corrective Statements, in compliance with the full-text display for the Phase 1 executions above.
- c. For Phase 2 website presentations other than those designed for mobile devices, the website preamble tile must appear entirely Above the Fold. For Phase 2 website presentations designed for mobile devices (whether or not they adjust to different screen sizes), the website preamble tile must appear Above the Fold.

- d. The text of the website preamble for Phase 2 presentations will be coded to a minimum font size of 10 pixels using Arial Regular font style or an alternative font that is comparable in size and readability.
- e. For the link on the home page and for the Statements on the full-text display, each Defendant and Remedies Party will utilize font styles and sizes, and text and background colors, that are consistent with those used for other links appearing on the home page.

Phase 3

4. During the year following the expiration of year 11 and thereafter (year 12 and thereafter) or for the duration of the Remedial Order, whichever is shorter, the format specified in this paragraph will be on each Covered Website. Any existing Covered Website that is not redesigned shall meet the requirements of this Order as long as it is substantially similar to and meets the specifications depicted in its **Phase 3 Website Mock ups**, whether or not the website conforms to the specifications contained in this paragraph. Any new or redesigned Covered Website must conform to the specifications of this paragraph. With the exception of mobile-device presentations that do not adjust to different screen sizes (which may place the text anywhere on the home page provided it is fully Above the Fold), the following text will appear Above the Fold at the top of each of the home pages of the Covered Websites: “Court Ordered Corrective Statements.” That text will be coded to a minimum font size of 9 pixels using Arial Regular font style or an alternative font that is comparable in size and readability, and will be formatted in a manner to make it recognizable as a hyperlink. That text will hyperlink to a full-text display that will open when clicked, in compliance with the full-text display for the Phase 1 execution above. When a reader clicks on the link, a full-text display will appear containing the

full-text of the Corrective Statements. For the link on the home page and for the full-text display, each Defendant and Remedies Party will utilize font styles and sizes, and text and background colors, that are consistent with those used for other links appearing on the home page.

Social Media

5. Defendants and the Remedies Parties represent that they do not currently advertise or promote their cigarettes on social media. In the event a Defendant or ITG Brands chooses to launch any social media that promotes or advertises cigarettes (or for ITG Brands that promotes or advertises the Acquired Brands or cigarettes generally), the company will, where reasonably feasible, utilize the applicable website Corrective Statement requirement. That is, if the social media is launched in Year 2, the Defendant or ITG Brands will first attempt to utilize the Phase 1 website execution; if the social media is launched in Year 7, the Defendant or ITG Brands will first attempt to utilize the Phase 2 website execution. If it is not reasonably feasible to implement the applicable website execution, the Defendant or ITG Brands will attempt to implement the execution applicable to the next website phase. If that execution is not reasonably feasible, the Defendant or ITG Brands will utilize the next website execution phase.

If none of the website executions are reasonably feasible, the Defendant or ITG Brands shall implement an alternative Corrective Statement execution that follows the principles in this Order. In such a case, the Defendant or ITG Brands shall notify Plaintiffs of its alternative social media Corrective Statement execution at least 28 days prior to launch of the social media. At the conclusion of the 28 days, the Defendant or ITG Brands may launch the social media. If Plaintiffs have a concern about an execution under this paragraph, the following procedure shall apply:

- i. Plaintiffs will meet and confer, over a period of four weeks, with the relevant Defendant or Remedies Party.

ii. If, at the end of the four weeks, the parties have not reached agreement, the Defendant or Remedies Party will provide a brief addressing why that design satisfies the requirements of this Order and a mockup showing the specifications of the Corrective Statement execution on the specified social media. Within 7 days, Plaintiffs may provide a response brief addressing why that design does not satisfy the requirements of this Order. Within 7 days, the Defendant or Remedies Party may provide a reply brief. The briefs of the Defendant or Remedies Party may contain a total of up to 10 pages between them, divided as the party sees fit. The brief or briefs of the Plaintiffs may contain a total of up to 10 pages between them, divided as the Plaintiffs see fit. All briefs shall be formatted for filing in accordance with Local Civil Rule 5.1(d).

iii. If the parties do not reach agreement within another 7 days after the Defendant's or Remedies Party's reply is due, any party may file an unopposed motion for the Court to resolve the dispute, along with the mockup and the parties' exchanged briefs. The filing will be made subject to a motion for leave to file under seal under Local Rule 5.1(h) to the extent warranted to protect the confidentiality of a new social media design that has not yet been made public. The parties agree to ask the Court to issue an Order that contains the Court's reasoning as to whether the design satisfies the requirements of this Order; and if the Court concludes that the Defendant or Remedies Party's execution does not satisfy the requirements of this Order, to provide sufficient direction for the Defendant or Remedies Party to bring its execution into compliance.

iv. The Court will thereafter determine, based on the parties' briefs, whether the Defendant or Remedies Party's proposed alternative social media execution

satisfies the requirements of this Order. If the Court finds that the Defendant or Remedies Party's alternative execution does not satisfy the requirements of this Order, then the Defendant or Remedies Party will either revert to a social media execution that the Defendant or Remedies Party previously utilized under this Order or within 14 days of the Court's order modify the design such that it is compliant with this Order per the Court's decision, at which point the Defendant or Remedies Party will supply a mockup showing the specifications of that design. The duration of the then-current implementation phase shall be extended, for only the social media in question, by the length of time the Defendant or Remedies Party had displayed any non-conforming execution. If the Defendant or Remedies Party appeals, there shall be no stay of the Court's decision pending appeal.

v. This paragraph does not give Plaintiffs any right of pre-approval over Defendants' or the Remedies Parties' ability to advertise or promote their products on social media.

III. Corrective Statements On Cigarette Pack Onserts

1. On the schedule provided in paragraphs 2-5 below, each Defendant or, for the Acquired Brands, ITG Brands, will affix to cigarette packaging, either to the outside of or within the outer cellophane wrapping around each package, an "onsert" containing one of the Corrective Statements. The order in which the companies are listed will be as reflected in **Exhibits 14-20** to the Consent Motion (filed April 26, 2018) to Enter Third Superseding Consent Order Implementing Corrective Statements for Websites and Onsert.

2. For each installment of onserts, and for each of the Defendant's cigarette brand styles and the Acquired Brands, each Defendant and ITG Brands will affix the onsert to two

weeks' worth of estimated annual volume shipped to distributors in the United States, as defined in 15 U.S.C. § 1332(3), which determines the geographic scope of Surgeon General's warnings, including to distributors to duty-free locations in the United States; and all distributors of cigarettes for sale or distribution to members or units of the Armed Forces of the United States located outside of the United States, with the exception of Italy, for which R.J. Reynolds Tobacco Company has represented that a required tax stamp makes the onsert technologically infeasible for it.

3. Each Defendant and ITG Brands will ship the onserted product three times per year for two years, for a total of six installments, with the installments timed approximately four months apart based on target wholesale delivery dates (*e.g.*, March, June and October). Each Defendant and ITG Brands will begin shipping onserted product no later than Wednesday, November 21, 2018 (or, if the Court enters the Third Superseding Consent Order Implementing Corrective Statements Remedy for Websites and Onserts *after* May 11, 2018, thirty weeks after the Trigger Date).

4. Each Defendant and ITG Brands will include each of the five Corrective Statements in at least one two-weeks' worth shipment of each brand. Alternatively, a Defendant or ITG Brands may elect to include an approximately equal number of all five Corrective Statements in each shipment.

5. If a Defendant or ITG Brands elects to include a single Corrective Statement in each shipment, the Corrective Statements will be disseminated on onserts in this sequence: (1) Adverse Health Effects of Smoking; (2) Addictiveness of Smoking and Nicotine; (3) Lack of Significant Health Benefits from Lights; (4) Manipulation of Cigarette Design; and (5) Secondhand Smoke.

6. The Corrective Statements for the onserts shall be in black text on a white background, using the Univers family fonts. The onserts will look substantially similar to and meet the specifications depicted in the mock ups for each company contained in **Exhibits 14-20** to the Consent Motion (filed April 26, 2018) to Enter Third Superseding Consent Order Implementing Corrective Statements for Websites and Onsert. Based on the onsert parameters provided by the Defendants and ITG Brands, each company's specifications are as follows:

- a. For Philip Morris's onserts, the preamble text will appear on the outside cover, visible on the face of the pack, and the rest of each Statement will be printed on the unfolded back side of the onsert. At the end of the copy on the outside panel, a right-facing, solid triangle will be placed, to show that there is more text on the next panel. The font size will vary slightly based on the length of the text of any given Statement. For Statement A (Adverse Health Effects), the preamble will be Univers Light, 12.5 point font size, 12.5 point leading. The bulleted text will appear in Univers Light 10 point font size, 11.75 point leading. The Spanish version of that Statement will be printed on the remaining panels. The font sizes and leading for the panels of the remaining four Statements will be adjusted proportionately, depending on the length of the Statements, as shown in **Exhibits 14-15** to the Consent Motion (filed April 26, 2018) to Enter Third Superseding Consent Order Implementing Corrective Statements for Websites and Onsert. The mock up for Virginia Slims Superslims, Exhibit 15, will be used only on the packaging of these four brand-styles: Virginia Slims Superslims Box, Virginia Slims Superslims Gold

Pack Box, Virginia Slims Superslims Menthol Box, and Virginia Slims Superslims Menthol Gold Pack Box.

- b. For R.J. Reynolds Tobacco Company's onserts and the onserts for the Acquired Brands, the preamble text will appear on the outside cover. The preamble text is as specified in Part I of Order #72-Remand (Dkt. No. 6227; issued Oct. 5, 2017) for R.J. Reynolds Tobacco; and as specified in subparagraph (d) below for the Acquired Brands. At the end of the copy on the outside panel, a right-facing, solid triangle will be placed, to show that there is more text on the reverse. The back side of the onsert will display the bulleted text.
- c. The font size will vary slightly based on the length of the text of any given Statement:
 - i. For R.J. Reynolds Tobacco Company:
 - * for Statements A (Adverse Health Effects) and C (Light/low tar):
 1. The preamble will be Univers Light, 12 point font size, 13 point leading.
 2. The bullet list will appear in Univers Light Condensed, 8.6 point font size, 9.5 point leading.
 - * The font size and leading for the remaining Statements will be adjusted proportionately, depending on the length of the Statement, as shown in **Exhibit 16** to the Consent Motion (filed April 26, 2018) to Enter Third Superseding Consent Order Implementing Corrective Statements for Websites and Onsert.

* For all Corrective Statements, all emphasized words in the bullet list will appear in Univers Condensed, with the same font size and leading as the other bullet-list text for that Corrective Statement.

ii. For ITG Brands with respect to Winston, Salem, and Kool:

* for Statement A (Adverse Health Effects):

1. The preamble will be Univers Light, 11.5 point font size, 13 point leading.
2. The bullet list will appear in Univers Light Condensed, 9 point font size, 9 point leading.

* for Statement C (Light/low tar):

1. The preamble will be Univers Light, 10 point font size, 11.5 point leading.
2. The bullet list will appear in Univers Light Condensed, 8.75 point font size, 8.75 point leading.

* The font size and leading for the remaining three Statements will be adjusted proportionately, depending on the length of the Statement, as shown in **Exhibits 17-19** to the Consent Motion (filed April 26, 2018) to Enter Third Superseding Consent Order Implementing Corrective Statements for Websites and Onsert.

* For all Corrective Statements, all emphasized words in the bullet list will appear in Univers Condensed, with the same font size and leading as the other bullet-list text for that Corrective Statement.

iii. For ITG Brands with respect to Maverick, for Statement A (Adverse Health Effects), the preamble will be Univers Light, 10.5 point font size, 11.5 point leading. The bullet list will appear in Univers Light Condensed, 8 point font size, 8 point leading. For Statement C (Light/low tar), the preamble will be Univers Light, 9.5 point font size, 9.75 point leading. The bullet list will appear in Univers Light Condensed, 8.5 point font size, 8.5 point leading. The font size and leading for the remaining three Statements will be adjusted proportionately, depending on the length of the Statement, as shown in **Exhibit 20** to the Consent Motion (filed April 26, 2018) to Enter Third Superseding Consent Order Implementing Corrective Statements for Websites and Onsert. For all Corrective Statements, all emphasized words in the bullet list will appear in Univers Condensed, with the same font size and leading as the other bullet-list text for that Corrective Statement.

d. Preamble text for ITG Brands onserts

i. The preamble text for Winston, Salem, and Kool onserts will be as follows, with the relevant brand specified in place of the bracketed “[insert brand]” language below:

A. Adverse Health Effects of Smoking

A Federal Court has ordered Lorillard, Altria, Philip Morris USA, and R.J. Reynolds Tobacco (the previous maker of [insert brand]) to make this statement about the health effects of smoking.

B. Addictiveness of Smoking and Nicotine

A Federal Court has ordered Lorillard, Altria, Philip Morris USA, and R.J. Reynolds Tobacco (the previous maker of [insert brand]) to make this statement about the addictiveness of smoking and nicotine.

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

A Federal Court has ordered Lorillard, Altria, Philip Morris USA, and R.J. Reynolds Tobacco (the previous maker of [insert brand]) to make this statement about low tar and light cigarettes being as harmful as regular cigarettes.

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

A Federal Court has ordered Lorillard, Altria, Philip Morris USA, and R.J. Reynolds Tobacco (the previous maker of [insert brand]) to make this statement about designing cigarettes to enhance the delivery of nicotine.

E. Adverse Health Effects of Exposure to Secondhand Smoke

A Federal Court has ordered Lorillard, Altria, Philip Morris USA, and R.J. Reynolds Tobacco (the previous maker of [insert brand]) to make this statement about the health effects of secondhand smoke.

ii. The preamble text for Maverick inserts will be as follows:

A. Adverse Health Effects of Smoking

A Federal Court has ordered R.J. Reynolds Tobacco, Altria, Philip Morris USA, and Lorillard (the previous maker of Maverick) to make this statement about the health effects of smoking.

B. Addictiveness of Smoking and Nicotine

A Federal Court has ordered R.J. Reynolds Tobacco, Altria, Philip Morris USA, and Lorillard (the previous maker of Maverick) to make this statement about the addictiveness of smoking and nicotine.

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

A Federal Court has ordered R.J. Reynolds Tobacco, Altria, Philip Morris USA, and Lorillard (the previous maker of Maverick) to make this statement about low tar and light cigarettes being as harmful as regular cigarettes.

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

A Federal Court has ordered R.J. Reynolds Tobacco, Altria, Philip Morris USA, and Lorillard (the previous maker of Maverick) to make this statement about designing cigarettes to enhance the delivery of nicotine.

E: Adverse Health Effects of Exposure to Secondhand Smoke

A Federal Court has ordered R.J. Reynolds Tobacco, Altria, Philip Morris USA, and Lorillard (the previous maker of Maverick) to make this statement about the health effects of secondhand smoke.

IV. Additional Provisions

1. This Third Superseding Consent Order Implementing the Corrective Statements Remedy for Websites and Onserts modifies certain provisions of Order #1015, but does not modify the deadline for Defendants' and (where applicable under Order #56-Remand, the Remedies Parties') document depository obligations, which will continue until September 1, 2021. *See* Order #1021 (Dkt. No. 5765; issued Sept. 20, 2006). Where the terms of this Order differ from Order #1015 with respect to the publication of the Corrective Statements on websites and package onserts, this Order will govern. This Order does not address publication of the Corrective Statements in newspapers or on television; those issues were addressed in Order #72-Remand, and nothing in this Order changes those provisions. This Order does not resolve the outstanding issue of Corrective Statements in retail point-of-sale displays.

2. The Corrective Statement formats specified above are intended to be comprehensive. No Defendant or Remedies Party shall alter, modify, or add to the specified elements of these formats, and no additional text, images, voice-over or other elements may be included.

3. Defendants and the Remedies Parties shall be responsible for the placement of all Corrective Statements in the media described herein. Specific implementations for websites (Phase 1) and package onserts were filed as Exhibits to the Consent Motion for Entry of this order.

4. The parties agree that, if the parties' (Proposed) Third Superseding Consent Order Implementing the Corrective Statements Remedy for Websites and Onserts is approved by the district court without modification, then Defendants and the Remedies Parties will not challenge on appeal this Third Superseding Consent Order for Websites and Onserts, and the specific implementation executions for websites and packages onserts will commence on the schedule specified herein. However, should the district court modify any term or requirement in the parties' (Proposed) Third Superseding Consent Order Implementing the Corrective Statements Remedy for Websites and Onserts, 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 herein.

5. Defendants and the Remedies Parties' agreement to these terms and to these executions of the language of the Corrective Statements shall not be deemed or construed as an admission of the Defendants or the Remedies Parties, collectively or individually.

6. Nothing in this Order precludes Plaintiffs from seeking further relief of any kind based on violations of the Remedial Order injunction not related to the requirements of this agreement, or from presenting any argument not based on this agreement in defense of the Court-ordered Corrective Statements or Remedial Order.

7. The United States' agreement to these terms does not constitute, and shall not be used as evidence of, permission or authorization to advertise cigarettes on websites or social media notwithstanding the Broadcast Ban, 15 U.S.C. § 1335.

8. This Third Superseding Consent Order Implementing the Corrective Statements Remedy for Websites and Onserts is the complete agreement of the parties as to the implementation of the corrective statement remedy on websites and onserts and supersedes any

prior negotiations, agreements, or understandings of the parties with respect to those media only.

The terms of this Order cannot be modified or amended without written consent by all parties.

DATED: May 1, 2018


PAUL L. FRIEDMAN
U.S. District Judge

We consent to entry of the above superseding consent order:

Dated: April 26, 2018

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**Exhibits to Consent Motion (filed April 26, 2018) to Enter Third Superseding Consent
Order Implementing Corrective Statements for Websites and Onserts**

1. Phase 1 Website Mockup for Marlboro (Philip Morris USA)
2. Phase 1 Website Mockup for Parliament (Philip Morris USA)
3. Phase 1 Website Mockup for Newport (R.J. Reynolds Tobacco)
4. Phase 1 Website Mockup for Camel (R.J. Reynolds Tobacco)
5. Phase 1 Website Mockup for Pall Mall (R.J. Reynolds Tobacco)
6. Phase 1 Website Mockup for Kool (ITG Brands)
7. Phase 1 Website Mockup for Winston (ITG Brands)
8. Phase 1 Website Mockup for Altria Group Corporate Website
9. Phase 1 Website Mockup for Philip Morris USA Corporate Website
10. Phase 1 Website Mockup for Philip Morris USA Document Website
11. Phase 1 Website Mockup for R.J. Reynolds Tobacco Corporate Website
12. Phase 1 Website Mockup for R.J. Reynolds Tobacco Document Website

13. Phase I Website Mockup for ITG Brands Corporate Website
14. Onsert for all Philip Morris USA brands except Virginia Slims
15. Onsert for Virginia Slims (Philip Morris USA)
16. Onsert for all R.J. Reynolds Tobacco brands
17. Onsert for Kool (ITG Brands)
18. Onsert for Winston (ITG Brands)
19. Onsert for Salem (ITG Brands)
20. Onsert for Maverick (ITG Brands)