

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

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UNITED STATES OF AMERICA,		)	
		)	
	Plaintiff,	)	
and		)	
		)	Civil Action
TOBACCO-FREE KIDS ACTION FUND, <i>et al.</i> ,		)	No. 99-CV-02496 (GK)
		)	
	Plaintiff-Intervenors,	)	Next scheduled appearance:
		)	None Scheduled
v.		)	
		)	
PHILIP MORRIS USA INC.,		)	
f/k/a PHILIP MORRIS INC., <i>et al.</i> ,		)	
		)	
	Defendants.	)	
<hr/>		)	

**UNITED STATES’ NOTICE OF COMPLIANCE WITH ORDER #1015**

The United States files this notice in compliance with this Court’s Order #1015, ¶ 5. Along with this notice, the United States is filing proposed language for scientifically accurate concepts on (a) the adverse health effects of smoking; (b) the addictiveness of smoking and nicotine; (c) the lack of any significant health benefit from smoking “low tar,” “light,” “ultra light,” “mild,” and “natural” cigarettes; (d) defendants’ manipulation of cigarette design and composition to ensure optimum nicotine delivery; and (e) the adverse health effects of exposure to secondhand smoke (also know as environmental tobacco smoke, or ETS) that should be communicated by corrective statements that are developed and tested by an independent third party retained by the United States. Also accompanying this filing are declarations from several expert witnesses who were qualified by this Court in their respective fields. The witnesses

include Jonathan Samet, M.D., Jack Henningfield, Ph.D, Dean Krugman, Ph.D, Paul Slovic, Ph.D, and Michael Eriksen, Sc.D.

As this Court recognized, the purpose of the corrective statements issued by Defendants pursuant to Order 1015 is to correct Defendants' false, deceptive, and misleading public statements about cigarettes and smoking. See Final Opinion at 1632-1637 (August 17, 2006); Warner-Lambert Co. v. FTC, 562 F.2d 749, 769-70 (D.C. Cir. 1977). As the Court found, "the trial record amply demonstrates that Defendants have made false, deceptive, and misleading public statements about cigarettes and smoking" for more than 50 years. Final Opinion at 1632. The Court ordered corrective communications in order to prevent ongoing and future consumer deception or confusion arising from these decades of false statements, and recognized that future statements made by Defendants on the subject of smoking and health do not issue in a vacuum, but rather, draw from a "large reservoir of erroneous consumer belief[.]" Id. at 1633-34 (citing Warner-Lambert, 562 F.2d at 756.).

As several expert witnesses testified at trial, ongoing planning and prospective research and market testing of mandated messages are necessary to help ensure the success of mandated messages. See, e.g., Declaration of Dean Krugman, PhD at ¶¶ 6-7, 9-12 (Att. 1); Written Direct Testimony of Dean Krugman, 189:8-191:22; 193:19-195:11; Declaration of Paul Slovic, PhD, at ¶¶ 8-11 (Att. 2); Written Direct Testimony of Paul Slovic, 34:7-39:7; Declaration of Michael Eriksen, Sc.D at ¶¶ 4-5, (Att. 3); Written Direct Testimony of Michael Eriksen (Remedies), 11:1-12; 23:6-15. The testimony of the United States' experts adduced at trial demonstrates that it is not sufficient to mandate a single set of fixed, black and white text statements to be communicated through all the media ordered by the Court. As but a few examples of factors that

will determine the effectiveness of the corrective statements, messages communicate differently in print than on television; younger viewers or readers can be reached more effectively in some media than older viewers or readers, and vice versa; and messages communicating health risks tend to “wear out” over time, reducing or eliminating their effectiveness in communicating the information the Court intends the public to receive from these statements. See, e.g., Krugman Decl. at ¶¶ 11-12. In order to ensure that the Court’s order has the intended effect of correcting the 50-plus year reservoir of deceptive and misleading statements by Defendants, the statements mandated by the Court should be tested for effectiveness before they are finalized for dissemination, and tested after dissemination for actual and continuing effectiveness. Id.; Slovic Decl. at ¶¶ 8-11. Such development and testing should be implemented by independent, third-party professionals qualified to test and devise the corrective statements required by the Court. Eriksen Decl. at ¶ 5; Slovic Decl. at ¶ 11; Krugman Decl. at ¶¶ 9-10.

The United States emphasizes that while the language included in its proposal is scientifically accurate, see Declaration of Jonathan Samet (Att. 4) and Declaration of Jack Henningfield (Att. 5), the overwhelming evidence adduced at trial and supporting this Court’s factual findings makes clear that communication research and other developmental components are necessary to make the statements effective in achieving their remedial purpose. The testimony at trial conclusively established that mandated text warnings, standing alone, do not effectively communicate a corrective message. Krugman Decl. at ¶¶ 6-10; Written Direct Testimony of Dean Krugman at 187:13-197:4. The United States therefore respectfully requests that the Court’s order mandating corrective communications include provisions for independent third-party application of strategic research techniques and development of meaningful design

characteristics utilizing ongoing testing and adjustment of the corrective statements to ensure their continuing effectiveness. Krugman Decl. at ¶¶ 6-12; Slovic Decl. at ¶¶ 8-11; Eriksen Decl. at ¶¶ 4-5.

Dated: October 16, 2006  
Washington, DC

Respectfully submitted,

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