

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

R.J. REYNOLDS TOBACCO COMPANY,
LORILLARD TOBACCO COMPANY,
COMMONWEALTH BRANDS, INC., and
LIGGETT GROUP, LLC,

CIVIL ACTION NO. _____

Plaintiffs,

v.

UNITED STATES FOOD AND DRUG
ADMINISTRATION, MARGARET
HAMBURG, Commissioner of the United
States Food and Drug Administration; and
KATHLEEN SEBELIUS, Secretary of the
United States Department of Health and
Human Services,

Defendants.

DECLARATION OF VICTOR D. LINDSLEY, III

I, Victor D. Lindsley, III, declare under penalty of perjury that the following is true and correct to the best of my knowledge, information, and belief:

1. I am Senior Group Brand Director at Lorillard Tobacco Company (“Lorillard”), the manufacturer of, among other tobacco products, Newport cigarettes. I have been employed at Lorillard since 1981 and have worked in different positions in Lorillard’s Brand Marketing Department since 1982. My responsibilities in the Brand Marketing Department have included all aspects of development and implementation of the marketing plans, strategies, and tactics for Lorillard’s cigarette brands.

2. I submit this Declaration in support of Plaintiffs' Motion to Postpone the Effective Date of new cigarette advertising regulations promulgated by the Food and Drug Administration ("FDA") on June 22, 2011, 21 C.F.R. 1141 ("the Regulations") pursuant to the Family Smoking Prevention and Tobacco Control Act, Pub. Law No. 111-31, 123 Stat. 1776 (2009) (the "Act"), to allow Plaintiffs fifteen months following the entry of final judgment by the Court on Plaintiffs' claims in this case, to implement the new advertising requirements of the Regulations, as may be modified or changed as a result of such judicial review, and in support of Plaintiffs' Motion for Summary Judgment with regard to the Regulations.

3. As a result of my work as Senior Group Brand Director for Lorillard, I am familiar with Lorillard's process for producing advertisements, and with the steps that will need to be taken and the time frame that will be required to comply with new Regulations. The facts stated herein are based on my personal knowledge regarding the time frames required to change, and the costs of changing existing advertisements to comply with the Regulations as they address graphic warnings on cigarette advertising.

4. Lorillard's brand marketing, including the marketing for Newport, depends in significant part on advertising and point-of-sale displays. The brand's identity depends on Lorillard's trade dress for its products and advertising.

5. The current trade dress and overall advertising theme and color scheme for Newport were first introduced in 1973 and have been in continuous use since then. Over this period of 38 years, Lorillard has invested hundreds of millions of dollars in advertising that reinforces the Newport image in the minds of existing and potential customers. Based on the taste and quality of the product and supported by this consistent marketing program, Newport has increased its market share from 1 percent in 1972 to 10.47 percent in 2010. Lorillard has

built customer satisfaction and loyalty in part by delivering a quality product as our advertising depicts.

6. I have reviewed the portions of the Act and Regulations related to requirements for the inclusion of graphic warnings in advertisements. The Act and Regulations require that the graphic warnings cover the “top 20 percent of the area of advertisements.” The Act and Regulations also require rotation of images and warnings.

7. To comply with the Regulations, Lorillard will have to make significant changes to all of its advertising materials for each of its cigarette products so that they include the required warnings and graphic images on every advertisement, including those at the point of sale, and comply with the mandatory requirements for rotations.

8. To ensure compliance and be in a position to begin manufacturing cigarettes in compliant advertising by that time, Lorillard will have to incur very significant costs to redesign, and distribute its new advertising materials by the effective date. The steps Lorillard will need to take are described in greater detail below.

9. Through its merchandising programs, Lorillard has contracts with independent businesses that operate more than 130,000 retail stores that sell cigarettes. Lorillard provides point-of-sale advertising materials to these retailers through its sales force. These retail locations are independent businesses that are not subject to Lorillard’s control.

10. There are also approximately 16,000 retail outlets that have Lorillard point-of-sale materials that do not have a contract with Lorillard.

11. To ensure compliance with the Regulations, Lorillard would need to contact not only the retailers involved in the merchandising programs but also the other retailers that sell

Lorillard brands, meaning that Lorillard would need to contact approximately 146,000 retailers before the restrictions take effect in order to ensure timely compliance.

12. Lorillard would also need to create new advertising materials that comply with the advertising restrictions of the Regulations. We estimate that it would take approximately four months to design the new materials, an additional two months to manufacture the materials and have them ready to be shipped to the field sales force, and then at least three months for the sales force to visit each of the approximately 146,000 retail locations to take down non-compliant point of sale materials and install compliant displays.

13. Producing the new point of sale advertising materials will result in additional costs of approximately \$800,000 per year, as graphics will now need to be produced with six colors rather than the current three color prints.

14. The cost to Lorillard of the required redesign and distribution of advertising materials in order to be compliant with the new Regulations is substantial. Production of the graphic warnings on advertisements will require the use of six color prints, whereas Lorillard's historical advertisements has used three color prints. Based on this change, and on the best estimates Lorillard is able to make at this time, the costs of coming into compliance with the requirements of the new Regulations will be a minimum of \$800,000. These costs will have to be incurred between now and September 2012 even though review by the Court may result in revision or modification of the Regulation.

15. So long as any uncertainty exists with regard to the final advertising requirements promulgated by the FDA, Lorillard would have no choice other than to proceed with implementing the extensive changes necessary to implement the Regulations, even before judicial review can take place, as it could not otherwise risk the possibility of noncompliance.

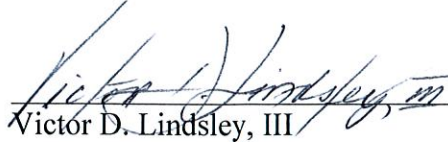
Unless the Court were to grant the request of Lorillard and the other plaintiffs in this case to extend the effective date of the Regulations with regard to required labeling changes until fifteen months from the date of a final Order issued by this Court, to enable the companies to come into compliance with the Regulations, as reviewed by the Court, Lorillard would be required to incur at least the foregoing \$800,000 in expenditures, even though the Regulations may be revised, changed or limited by the Court.

16. Were the Regulations to be revised, changed or limited by the Court based on its review of the Regulations and decision in this case, Lorillard would not be able to recoup the foregoing \$800,000 in expenditures, and could also be required to expend at least that much again to come into compliance with any revisions, changes or modifications determined by the Court to be legally required. Moreover, because Lorillard currently has no way of knowing what changes, revisions or limitations to the Regulations might be required, if any, by a decision of the Court, Lorillard could also find itself out of compliance with the Regulations, as determined to be legally appropriate following judicial review, if an additional fifteen months to come into compliance with any revisions to the Regulations were not provided to come into compliance with any modification that may be required.

17. If the Court were to grant the relief sought in order to preserve the status quo until fifteen months after the entry of a final decision by the Court, consumers of Lorillard's cigarette products would still receive and be informed by the currently required warnings, which appear on all Lorillard cigarette advertising.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 5 day of August, 2011, in Greensboro, North Carolina.

A handwritten signature in black ink, appearing to read "Victor D. Lindsley, III". The signature is written in a cursive style with a horizontal line underneath it.

Victor D. Lindsley, III
Senior Group Brand Director
Lorillard Tobacco Company