

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

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

Civil Action No. 11-01482 (RCL)

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.

**UNOPPOSED MOTION OF ASSOCIATION OF NATIONAL ADVERTISERS, INC.,
AND AMERICAN ADVERTISING FEDERATION FOR LEAVE TO FILE BRIEF AS
AMICI CURIAE IN SUPPORT OF PLAINTIFFS**

Movants the Association of National Advertisers (“ANA”) and American Advertising Federation (“AAF”) (collectively, the “Advertising Associations”), hereby move the Court for leave to file a brief as *amici curiae* in support of the motion by Plaintiffs R.J. Reynolds Tobacco Company, *et al.*, for a preliminary injunction against the graphic labeling requirements for tobacco packaging and advertising adopted on June 22, 2011, under Section 201 of the Family Smoking Prevention and Tobacco Control Act, Pub. L. No. 111-31, 123 Stat. 1776 (2009) (the “Tobacco Control Act”), by the Food and Drug Administration (“FDA”). *See Required*

Warnings for Cigarette Packages and Advertisements, 76 Fed. Reg. 36628 (June 22, 2011) (the “*Graphic Warnings Rule*”).

Movants are advertising trade associations that serve their members by advocating clear and coherent legal standards governing advertising, and by opposing laws that violate established First Amendment protections for commercial speech. Movant ANA’s members include over 350 companies with 9,000 brands that account collectively for over \$100 billion in expenditures for marketing and advertising annually in the U.S. The ANA provides insights, collaboration and advocacy on behalf of its marketing community membership, which strives to communicate marketing best practices, to lead industry initiatives, and to advance, promote, and protect advertisers and marketers. Movant AAF is a trade association whose 130 advertiser, ad agency and media company members, comprising the nation’s leading brands and corporations, represent 50,000 advertising industry professionals.

The Advertising Associations’ interest in this matter lies in their concern that the *Graphic Warnings Rule*, and the Tobacco Control Act under which the FDA adopted it, require tobacco purveyors to carry government-mandated graphic images and textual warnings to proselytize the public in an effort to change behavior, not to prevent deception or to convey product information about which consumers are unaware. Although the particular provisions challenged affect tobacco marketing, the constitutional focus of this case is not “about” cigarettes or other tobacco products, but rather involves our nation’s commitment to the First Amendment, and particularly its command that “the speaker and the audience, not the government, assess the value of the information presented.” *Sorrell v. IMS Health Inc.*, 131 S. Ct. 2653, 2671-72 (2011) (quoting *Edenfield v. Fane*, 507 U.S. 761, 767 (1993)). These constitutional concerns bear directly on the Advertising Associations’ members, and the industry generally.

Plaintiffs have consented to Movants' filing of their *amicus* brief, and the government parties have stated they do not object to its filing on or before September 16, 2011.

WHEREFORE, Movants respectfully request that this Court grant their Unopposed Motion for Leave to File Memorandum in Support of Plaintiffs and enter the attached proposed order.

Respectfully submitted,

/s/ Robert Corn-Revere
Robert Corn-Revere (D.C. Bar No. 375415)
Ronald G. London (D.C. Bar No. 456284)
DAVIS WRIGHT TREMAINE LLP
19191 Pennsylvania Avenue, N.W., Suite 800
Washington, D.C. 20006-3401
Tel: (202) 973-4200
Fax: (202) 973-4499

COUNSEL FOR *AMICI CURIAE*
ASSOCIATION OF NATIONAL ADVERTISERS
AMERICAN ADVERTISING FEDERATION

September 16, 2011

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Unopposed Motion for Leave to File Brief as Amici Curiae in Support of Plaintiffs, Proposed Order on Motion for Leave to File Brief as Amici Curiae, Proposed Amici Curiae Brief, and LCVR 7.1 Certificate were, this September 16, 2011, filed through the ECF system, which will send a notice of electronic filing to the following counsel for all parties in this case:

Noel J. Francisco
Geoffrey K. Beach
Warren Postman
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001

Floyd Abrams
Joel Kurtzberg
Kayvan Sadeghi
CAHILL GORDON & REINDELL LLP
80 Pine Street
New York, N.Y. 10005

**Counsel for Plaintiff R. J. Reynolds and
Santa Fe Natural Tobacco Company**

- and-

Philip J. Perry
LATHAM & WATKINS LLP
555 11th Street, N.W., Suite 1000
Washington, D.C. 20004

Patricia A. Barald
Scott D. Danzis
COVINTON & BURLING LLP
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

**Counsel for Plaintiff Commonwealth
Brands, Inc.**

Jonathan D. Hacker
O'MELVENY & MYERS LLP
1625 Eye Street, N.W.
Washington, D.C. 20006

**Counsel for Plaintiff Lorillard Tobacco
Company**

Drake S. Cutini
DEPARTMENT OF JUSTICE
Civil Division
Office of Consumer Litigation
P.O. Box 386
Washington, D.C. 20044

Counsel for Plaintiff Liggett Group LLC

**Counsel for Defendant United States Food
and Drug Administration, Margaret A.
Hamburg and Kathleen Sebelius**

/s/ Robert Corn-Revere
Robert Corn-Revere
DAVIS WRIGHT TREMAINE LLP
1919 Pennsylvania Avenue, N.W., Suite 800
Washington, D.C. 20006-3401
Tel: (202) 973-4200
Fax: (202) 973-4499