

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Civil Action No. 99-CV-2496 (GK)
)	
and)	
)	
TOBACCO-FREE KIDS ACTION FUND,)	
<i>et al.</i>)	
)	
Plaintiff-Intervenors)	
)	
v.)	
)	
PHILIP MORRIS USA, INC., <i>et al.</i> ,)	
)	
Defendants.)	
)	

**PLAINTIFF-INTERVENORS’ OPPOSITION TO CERTAIN DEFENDANTS’ MOTION
FOR CLARIFICATION OR IN THE ALTERNATIVE RELIEF
UNDER RULES 52, 59, AND 60**

Plaintiff-Intervenors Tobacco-Free Kids Action Fund, et al., join the United States in opposing certain Defendants’ motion seeking to have the Court clarify or modify two elements of the Court’s remedial Order, both of which are critical to stem Defendants’ decades-long, systematic violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961, *et seq.*. The Plaintiff-Intervenors fully support the legal and factual position of the United States in the Opposition it filed to the Defendants’ motion. In addition to concurring with the United States, Plaintiff-Intervenors wish to make a few additional points relevant to the Court’s consideration of the Motion:

1. With respect to the scope of the Court’s general prohibition against future acts of racketeering, because the Defendants’ motion is based on an inaccurate interpretation of the Court order and the position of the United States, its entire premise is itself inaccurate. In

particular, while Defendants accuse the government of interpreting the Court's injunction to prohibit "any act of racketeering," see Certain Defendants' Memorandum of Law in Support of Motion For Clarification (Aug. 31, 2006) ("Def. Mem.") at 6, the government has explained that the Court's general injunction is limited to acts of racketeering "relating in any way to the manufacturing, marketing, promotion, health consequences or sale of cigarettes" United States' Memorandum in Opposition to Certain Defendants' Motion for Clarification (Sept. 8, 2006) at 3, quoting Final Judgment and Remedial Order at II.A.1 (emphasis added). Because this relief, particularly in the context of the massive trial and evidentiary foundation for the Court's ruling, more than amply satisfies the requirements of Federal Rule of Civil Procedure 65, there are no grounds for Defendants' request that the Court clarify or modify the Order in this respect. See, e.g., Common Cause v. Nuclear Regulatory Comm'n, 674 F.2d 921, 927 (D.C. Cir. 1982).

2. With regard to the application of the Court's relief overseas, Defendants' argument on this issue itself suggests that they understand that the Court's Order is entirely appropriate in this respect. Indeed, while Defendants' principal argument against this relief is that it could "supercede other countries' regulatory policies concerning cigarette descriptors," Def. Mem. at 10, in fact, the Defendants have not cited a single country that mandates the use of these terms and whose laws would therefore be contravened, and the Plaintiff-Intervenors know of no such country. Accordingly, because Defendants have not shown that this Court's Order in any manner conflicts with the law of any other country, Defendants' effort to limit the scope of the Court's Order on that basis should also be rejected. There is more than ample evidence in the record to support the application of the Court's Order to support overseas conduct by these Defendants.

3. Finally, in asking the Court to clarify or modify its remedial Order, Defendants ignore their heavy burden to obtain such relief. Especially in a case such as this, where there was a nine month trial and significant post-trial briefing, a post-trial motion is only appropriate "to correct a clear error or prevent manifest injustice." Ayanwutaku v. Moore, 151 F.3d 1053, 1057-58 (D.C. Cir. 1998), quoting Firestone v. Firestone, 76 F.3d 1205, 1208 (D.C. Cir. 1996) (Rule 59 standard); see also National Metal Finishing Co. v. BarclaysAmerican/ Commercial, Inc., 899 F.2d 119 (1st Cir. 1990) (Rule 52 standard). As the government's opposition and these additional points demonstrate, Defendants have not met that heavy burden here.

CONCLUSION

For the foregoing reasons, as well as those set forth by the United States, Defendants' motion should be denied.

Respectfully submitted,

/s/

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