JPERIOR COURT OF CALIFORNI/
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

Date: 04/20/2009 Time: 10:00:00 AM Dept: C-71

Judicial Officer Presiding: Judge Ronald S. Prager
Clerk: Kathleen Sandoval

Bailiff/Court Attendant: A. Salvardore
ERM: L. Longorini

Case Init. Date: 06/19/1998

Case No: JCCP4041

Case Title: JCCP4041 COORDINATION PROCEEDING TOBACCO LITIGATION

Case Category: Civil - Unlimited

Case Type: Misc Complaints - Other

Event Type: Ex Parte

Causal Document & Date Filed:

Appearances:

Appearances by Jeanne Finberg personally present and Shery Posner present telephonically for the State of California. Robert Wright and William Plesic are personally present for the Defendants.

Court and counsel discuss the Final Satement of Decision. Court indicates changes made to the tentative Statement of Decision. Court and counsl discuss the changes.

Court notes that all objections filed for this hearing or any filed for the original hearing shall be deemed objected to and noted.

Counsel will meet and confer regarding hearing dates for motions for attorney fees and costs.

The FINAL STATEMENT OF DECISION shall be deemed the order of the Court.

The FINAL STATEMENT OF DECISION is attached hereto.

FILED
Clerk of the Superior Court
APR 20 2009
By: K SANDOVAL, Deputy

SUPERIOR COURT OF CALIFORNIA,

COUNTY OF SAN DIEGO

PEOPLE OF THE STATE OF CALIFORNIA, ex rel. Edmund G. Brown, Jr., Attorney General of the Statement of California, Plaintiff, v. R.J. REYNOLDS TOBACCO COMPANY, a New Jersey corporation, Defendant.	CASE NO.: JCCP 4041 **FINAL STATEMENT OF DECISION** Dept.: 71 Judge: Hon. Ronald S. Prager

BACKGROUND

In November, 1998, an historic national settlement agreement called the Master Settlement Agreement (MSA) was reached between the largest tobacco companies in the United States, including Reynolds Tobacco Company (Reynolds) and 46 states. The objective of the states was the protection of public health, and one of the means for achieving the goal was by restricting the advertising of tobacco products. Among the restrictions on tobacco advertising was the prohibition against the use of cartoons in tobacco advertising. A permanent injunction was issued against the

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use of cartoons in tobacco advertising and was entered as part of the Consent Decree in California on November 19th, 1998, (Exhibit 19).

Pursuant to the Consent Decree, this court retained jurisdiction for enforcement purposes (Exhibit 19, §VI.A.). The Consent Decree specifically enjoined Reynolds from using cartoons in the advertisement or promotion of cigarettes. The MSA definition of cartoon is broader that what may commonly be thought of as a cartoon. (See MSA §II (l) incorporated into the Consent Decree §III).

In mid-2006, Reynolds began an advertising campaign called Farm Rocks to promote Camel cigarettes by sponsoring independent rock music events and print advertising appealing to smokers who enjoyed rock music. Reynolds used images which the State contends are cartoons as defined by the MSA in print advertising, including a special high-impact print ad which appeared in the November 15th, 2007 Anniversary Issue of *Rolling Stone* and in Farm Rocks images displayed at concerts it sponsored at five venues, including Los Angeles, in local newspaper ads related to those concerts, in a Farm Rocks CD and on a Farm Rocks website.

On December 4th, 2007, the People of the State of California filed this enforcement action against Reynolds for breach of the Consent Decree's ban on the use of cartoons in tobacco advertising arising primarily from a Reynolds advertisement in the November 15, 2007, 40th Anniversary issue of *Rolling Stone* magazine based not only on the contents of the ad itself but especially based on the fact that it was adjacent to and intertwined with cartoons contained in the *Rolling Stone* editorial. Soon after the filing of this lawsuit, Reynolds suspended the Farm Rocks campaign pending resolution of this lawsuit. Later Reynolds amended its print advertising insertion order to preclude positioning its ads adjacent to cartoons. Before this action there is no evidence that any state had ever sued for any violation based on adjacency of tobacco manufacturer's advertising to cartoons (stipulation No. 37).

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The State seeks monetary penalties as well as declaratory and injunctive relief for violation of the MSA/Consent Decree's prohibition against cartoons in the Farm Rocks advertising campaign. Reynolds contends that under the MSA/Consent Decree monetary penalties are not available to the State and that in any event Reynolds Farm Rocks advertising did not violate the cartoon prohibition of the MSA/Consent Decree .

FACTS

Beginning in 2006, Reynolds created the Farm Rocks advertising platform to promote the sale of Camel cigarettes. Reynolds wanted to establish a connection between adult smokers who enjoyed rock music and Camel cigarettes by using the Farm Rocks advertising campaign to sponsor rock music events in five cities, including Los Angeles, and by placing special advertisements in publications such as *Rolling Stone* as well as by creating a CD and a website to promote the Farm Rocks program.

In a May, 2007 meeting *Rolling Stone* representatives showed Reynolds employees a copy of a gatefold advertisement in the May 3rd issue, the first of the three planned 40th Anniversary issues. The gatefold in the May issue of *Rolling Stone* included an advertisement for Patron-brand Tequila and ran adjacent to a *Rolling* Stone editorial consisting of typed text and photographs. Based on this example and in statements made at the meeting, Reynolds representatives assumed that the November 15th gatefold would be adjacent to similar content. Reynolds did not include the cartoon ban in its insertion order or otherwise inform *Rolling Stone* about the cartoon ban.

The editorial titled "Indie Rock Universe" was prepared by illustrator Benjamin Marra independent of Reynolds and consisted of five pages cataloging independent rock music labels and bands accompanied by hand-drawn illustrations depicting, *inter alia,* a rocket-powered guitar, a guitar-playing robot, a planet with a human mouth containing human-like teeth, as well as

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two arms, a headless, armless bagpiper and an "animal planet." Many of these images in the editorial were cartoons as defined by the MSA/Consent Decree.

The separation between advertising and editorial content is a standard industry practice. Reynolds was not directly involved in the development of the editorial nor did Reynolds preview or prepare it. However, in this case Reynolds tried to coordinate the subject matter of the Reynolds Farms Rocks ad with the editorial content of the gatefold (Exhibit 53). Reynolds also handed Rolling Stone representatives graphics of Farm Rocks images at a May 17, 2007, meeting (Deposition of Byron Brown, pps. 59-60; Deposition of Ed Hecht, pps. 39-40.) The court also notes that the final product displayed in the magazine reflects subject matter coordination between Farm Rocks advertising and editorial content. Nevertheless, counsel for the State admitted in closing argument that there is no direct evidence that Reynolds employees actually saw the editorial content before publication.

Reynolds used the Farm Rocks images in promotional materials, at events, and also on a special website and in a promotional CD collectively potentially resulting in millions of displays of these images. Over 536,000 "Fresh Mix Music Volume I Audio CDs were distributed nationwide to certified age-verified adults, including 56,803 in California (stipulation No. 3). There were 32 Camel Farm live events held at adult-only facilities in California in 2006 and 2007. The Farm Rocks website, *www.thefarmrocks.com*, was accessed by approximately 3,700 California residents who were certified and verified as adults (stipulation No. 10).

A video containing certain elements of the Camel Farm Rocks creative platform was played during at least two Camel Farm live music events at California adult-only facilities in 2007 (stipulation No. 8). Among the depictions displayed in a video were a radio flying by means of attached helicopter-like rotors and a jet-propelled tractor. There were two Camel Farm events scheduled to take place in December, 2007 which were canceled when Reynolds voluntarily

suspended the Camel Farm promotional program in early December, 2007 pending resolution of this litigation (stipulation No. 7).

On October 16th, 2007, over a dozen representatives of the National Association of Attorneys General (NAAG) and various settling states, including the State of California, met with representatives of Reynolds in Seattle for approximately one hour to discuss the States' concerns about three of Reynolds' marketing campaigns, including illustrations used in the Camel Artists Packs campaign and a direct mail piece used in the Farm Rocks campaign (stipulation 34). The Farm Rocks direct mail piece which included the audio CD entitled "Fresh Mix Music Volume 1" was available at the meeting, although California did not have a copy of it. Some of the Farm Rocks images the State contends are cartoons are found only on the inside of the packaging and on the inside contents of this direct mail piece, but the California representatives did not have a copy of it (stipulation No. 35). The subject and definition of cartoons was discussed only relating to Camel Artist Packs (stipulation No. 35). The Camel Farm Rocks advertisement scheduled to run November 15th had been created and approved by Reynolds but was neither discussed at the meeting nor was it made available to State representatives (stipulation No. 36). Several members of the California Attorney General's office accessed the website before November, 2007. However, there is no persuasive evidence that representatives of the California Attorney General's office actually scrutinized the images which are the subject matter of this enforcement action until the publication of the November 15th, 2007 issue of the *Rolling Stone*.

Reynolds paid $302,695.95 for a four-page gatefold advertisement in the November 15th, 2007, 40th Anniversary issue of *Rolling Stone* (stipulation No. 12; Exhibit No. 18). The gatefold advertisement contained four pages of Reynolds advertising and five pages of editorial content in the following arrangement: a lead-in page of advertising followed by a page of editorial content, followed by two opposing pages of advertising which opened to four pages of editorial content,

followed by a page of lead-in advertising. The Reynolds ad which appeared in the November 7, 2007, issue of *Rolling Stone* is made up of a collage of photographs with a "retro" look. Among the images displayed are, (1) a red tractor with film reels for wheels which appears to be floating on air; (2) radios, speakers and a television set growing on stalks from the ground; (3) a flying radio with helicopter rotors.

When various attorneys involved in enforcement of the MSA saw the *Rolling Stone* ad, they quickly acted against Reynolds based in large part on the assumption that Reynolds was responsible not only for the cartons in the advertising portion of the gatefold but also for the cartoons in the editorial content. On November 21, 2007 the two co-chairs of the national Association of Attorney Generals Tobacco Committee, Terry Godderd, Attorney General of Arizona, and Rob McKenna, Attorney General of Washington, wrote a letter to Mr. Martin Holton, Executive Vice President and General Counsel of Reynolds, stating that the November 15th, 2007 issue of *Rolling Stone* violated the MSA's prohibition in §III(b) against certain advertising because both the "Indie Rock Universe" special gatefold advertisement and the Camel Farm Advertisement, to which it was attached, contained cartoons which Reynolds used or caused to be used in the advertisement and promotion of Camel cigarettes. Not only did the letter demand Reynolds promise to cease running the ad, but also it demanded an "unconditional admission" that the conduct violated the MSA provision against the use of cartoons (Exhibit 22).

On November 28th, 2007 Mr. Holton responded, stating that the editorial was independently illustrated and created by *Rolling Stone* and contained no content previewed, prepared or paid for by Reynolds, and that other than being aware that the topic of the gatefold editorial would be independent rock music, Reynolds had no advance knowledge of the content and graphic format of *Rolling Stone's* editorial (Exhibit 508). He also stated that Reynolds was not provided with editorial

content before the magazine was printed and that Reynolds expected it to resemble the articles and photographs in the gatefold of the May Anniversary Issue of *Rolling Stone.*

After California and other states instituted enforcement actions, Reynolds suspended its Farm Rocks advertising campaign. (See transcript of December 4, 2007 hearing in this court.) Later, although the MSA did not require tobacco companies to avoid adjacency of their tobacco print ads to cartoons, Reynolds instituted new insertion guidelines to avoid future adjacency of its ads to cartoons.

The State stipulated that no evidence of any specific compensable harm as a result of publication of any of the Farm Rocks imagery would be introduced, however the State contends that it was injured by Reynolds alleged violations of the Consent Decree (stipulation No. 29).

SUMMARY OF FINDINGS

AVAILABILITY OF MONETARY SANCTIONS

Monetary sanctions may be imposed on Reynolds since the MSA/Consent Decree grant this Court continuing jurisdiction to assess cumulative remedies in addition to other remedies the State has at law and equity, including monetary sanctions. Further, the Court of Appeal has upheld imposition of such sanctions in *People ex rel. Lockyer v. RJ Reynolds Tobacco Company (2004)* 116 Cal.App. 4th 1253, 1283-1290. Moreover, there is no procedural bar to this action because of the State's alleged failure to give good faith consideration to whether the participating manufacturer had taken appropriate and reasonable steps to cause the claimed violation to be cured because of the futility of further discussions in light of Reynolds' categorical denial its ads violated the cartoon prohibition in the MSA/Consent Decree and because Reynolds has been accused many times of violating the cartoon prohibition of the MSA/Consent Decree and has been held responsible for many violations of the public health provisions of the MSA regarding advertising.

Reynolds theoretically could be held responsible for violating the MSA prohibition against cartoons because of vicarious responsibility for the content of the Marra cartoons or because of its own Farm Rocks advertising. However, this Court finds that Reynolds was not responsible for the Marra cartoons since Reynolds was not involved in their creation and did not know of their cartoon content before publication. Also since the MSA/Consent Decree contains no proscription based on adjacency to cartoons, the Court concludes that Reynolds did not violate the MSA/Consent Decree because its advertisement was adjacent to the Marra cartoons. However, regarding Reynolds own advertising, the Court finds that some images contained in various Farm Rocks materials, including the *Rolling Stone* ad, violate the MSA/Consent Decree prohibition against cartoons because certain "depictions" of "objects" such as the flying radio and jet-powered tractor attribute "unnatural abilities" to these objects and thus are proscribed by the MSA/Consent Decree.

MONETARY SANCTIONS

The Court further finds that Reynolds' violations are of an unintentional nature and the offending images are but a relatively small part of the advertisements. Moreover, the State failed to prove any actual amount of damages. Although Reynolds has a history of prior public health violations and terminated the Farm Rocks campaign only after various states instituted enforcement actions, nevertheless, to Reynolds' credit, although not required to do so by the MSA, Reynolds instituted new insertion guidelines to avoid placement of future print ads adjacent to cartoons. Based on the totality of the evidence, the Court exercises the discretion expressly afforded to it by the MSA and imposes no monetary sanctions in this case. Further injunctive and declaratory relief is deemed unnecessary.

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AVAILABILITY OF MONETARY SANCTIONS

Reynolds contends that the State is not entitled to monetary penalties since the MSA is a contract and a party harmed by breach of contract is only entitled to actual damages. Reynolds points out that since the State has stipulated that it has produced no evidence of the amount of damages, damages for breach of contract may not be awarded. In opposition, the State contends that the Consent Decree expressly authorizes monetary sanctions in addition to any other remedies authorized in law or equity.

Through the Consent Decree, this court retained jurisdiction to allow the State "to apply to the court at any time for further orders or directions as may be necessary and appropriate for the implementation and enforcement of this Consent Decree and Final Judgment" (Consent Decree §VI.A.). The Consent Decree provides for cumulative remedies "in addition to any other remedies the State has at law or equity" (*id.* at §VI.E.). Plaintiff may "seek an order for *monetary,* civil contempt or criminal *sanctions* of any claimed violations…" (*id.* at §VI.A, emphasis supplied). This plain meaning interpretation of the Consent Decree authorizing the State to seek monetary sanctions was applied in *People ex rel. Lockyer v. RJ Reynolds Company (2004)* 116 Cal.App. 4th 1253, 128 where the Court of Appeal upheld imposition of monetary sanctions against Reynolds for violation of the MSA public health prohibition against youth advertising.

Reynolds next contends that the State failed to comply with the provisions of the Consent Decree, §VI.A, requiring the State to give good faith consideration "to whether (1) the participating manufacturer has taken appropriate and reasonable steps to cause the claimed violation to be cured; unless the party has been guilty of a pattern of violations of like nature; and (2) a legitimate good faith dispute exists as to the meaning of the terms in question of this Consent Decree and Final Judgment." The State contends that it was not required to consider whether Reynolds might cure the

violation because Reynolds had been responsible for a pattern of similar violations and Reynolds categorical denial of wrong doing made further discussion futile.

Reynolds has repeatedly been accused of violation of the cartoon prohibition of the MSA/Consent Decree. This Court took judicial notice of complaints to Reynolds regarding cartoon advertising on seven separate occasions, including a May 18th, 1999, complaint about an advertisement in *Rolling Stone* concerning chili peppers linked to form "lips" (Exhibit 249), a June 15th, 1999 letter complaining of four violations including a Doral ad depicting a caveman holding a club with comically exaggerated features (Exhibit 250); a June 30th, 1999 letter which contained cartoons imprinted on newspaper bags (Exhibit 251); a July 30th, 1999 letter regarding comically exaggerated features of a dog and fire hydrant (Exhibit 251); and a May, 2006 letter about characters with comically exaggerated features (Exhibit 253).

Reynolds has been responsible for a pattern of violations of the public health provisions of the MSA. In *People ex rel. Lockyer v. RJ Reynolds Tobacco Company (2004)* 116 Cal.App. 4th 1253, this court imposed sanctions for Reynolds' wholesale violation of public health provisions of the MSA by repeated and substantial targeting of youth in its print advertising. Further, Reynolds has been the most frequent violator of public health provisions of the MSA in this and other California courts. Many of the public health violations have resulted in sanctions or settlements favorable to the State in addition to the youth advertising case, e.g. *People ex.rel. Lockyer v. RJ Reynolds Tobacco Company (2003)* 107 Cal.App. 4th 516 (outdoor ads); *People ex rel. Lockyer v. RJ Reynolds,* JCCP 4041 (2000) (brand name sponsorship); *People ex rel. Lockyer v. RJ Reynolds Tobacco Company (2000)* JCCP 4041 (free samples by mail); *People ex rel. Lockyer v. RJ Reynolds Tobacco Company (2005)* 37 Cal. 4th 707 (free samples on public grounds).

Moreover, on November 28th, when Reynolds responded to the Attorney General's complaint letter of November 21st concerning the November 15th edition of *Rolling Stone*, Reynolds completely

avoided discussion of whether the Reynolds Farm Rocks ad in *Rolling Stone* violated the cartoon prohibition. Thus since Reynolds categorically denied responsibility for its Farm Rocks ads, had been accused many times of violating the cartoon proscription in the MSA/Consent Decree and had a long history of similar public health violations, any requirement for good faith consideration of whether Reynolds might be convinced to modify its conduct was excused.

RESPONSIBILITY OF REYNOLDS FOR CREATION OF THE MARRA ADS

Initially the Court notes that the parties agree that many of the hand-drawn images in the Marra editorial of the November 15th, 2007 issue of *Rolling Stone* are cartoons as defined by the MSA/Consent Decree, e.g. the drawing of the planet with what appears to be a human mouth and teeth as well as two arms is an object with comically exaggerated features which resemble and to which human characteristics are attributed. In any enforcement proceeding seeking monetary sanctions, the State bears the burden to prove these violations of the MSA/Consent Decree by a preponderance of the evidence, if not by clear and convincing evidence, in this case that Reynolds either aided in the creation of and/or caused these cartoons to be distributed as part of a package surrounded by the Reynolds ad. Based on the credible testimony of Marra, *Rolling Stone* employees as well as Mullen Advertising and Reynolds' employees, this Court concludes that Reynolds did not assist in the preparation of the cartoons, had no advance knowledge of the use of cartoons in the editorial and only learned of it after publication of the November 15, 2007 issue of *Rolling Stone.*

RESPONSIBILITY OF REYNOLDS BASED ON ADJACENCY OF ITS ADVERTISING TO THE MARRA CARTOONS

The State contends that Reynolds is responsible for the Marra cartoons since its advertisement is adjacent to and intertwined with them. However, the Consent Decree and Master Settlement Agreement do not impose a duty upon Reynolds to ensure that its advertisements are not adjacent to cartoons. The Consent Decree only prohibits Reynolds from "using" cartoons or

"causing" others to do so "in the advertising of tobacco products." (Consent Decree §V.B.) As noted by the Washington state court in its decision in the related Washington state enforcement case, "(b)oth 'using' and 'causing' are active verbs and the Consent Decree's agreed (upon) language thus must be read to prohibit (Reynolds) from certain affirmative conduct." (WA June 2nd, 2008, Decision at P.5). Further, in the instant case the State failed to prove that Reynolds intended that its ads surround cartoons or be adjacent to cartoons and failed to prove that Reynolds had any advance knowledge that its ad would be positioned next to or intertwined with cartoons. Thus, this court finds no violation of the Consent Decree based on the adjacency of Reynolds' advertisement to the cartoons contained in the editorial material.

CULPABILITY OF REYNOLDS FOR ITS OWN ADVERTISEMENTS VIOLATING THE MSA PROHIBITION AGAINST CARTOONS

The Master Settlement Agreement §II(1) is incorporated into the Consent Decree in §III and defines "cartoon" as follows:

> "...any drawing or other *depiction of an object*, person, animal, creature or any other similar caricature *that satisfies any of the following criteria*:
> 1. Use of comically exaggerated features;
> 2. The attribution of human characteristics to animals, plants or other objects, or the similar use of anthropomorphic technique; or,
> 3. The *attribution of unnatural* or extra human *abilities*, such as imperviousness to pain or injury, ex-ray vision, tunneling at very high speeds or transformation." (Emphasis supplied.)

Reynolds contends that none of the Farm Rocks images come within the definition of cartoon because none of the images fit within any of the three criteria setting forth which make a depiction a cartoon, i.e. because none of the depictions of objects have comically exaggerated features (criterion 1) or have human characteristics (criterion 2). As to criterion 3, Reynolds attempts to apply the maxim of statutory or contractual construction of *ejusdem generis*, i.e. that specific examples define the general characteristics of a definition, to contend that attribution of unnatural abilities is limited

to the types of characteristics circumscribed by the specific examples in criterion 3, and thus do not include objects such as flying radios or tractors. However maxims of statutory or contractual construction such as *ejusdem generis* are only aids to interpretation of ambiguous provisions but do no apply at all where the questioned wording is clear and unambiguous. A court commits legal error when it attempts to apply principles of construction to clear, unambiguous provisions. (*United States v. Turkette (1981)* 42 US 576, 581.)

In this case the definition of cartoon in §II (l) of the MSA is unambiguous and includes, "any drawing or other depiction of an object" to which "unnatural…abilities" are "attribute[d]". Objects with unnatural abilities, such as jet-powered tractors which fly, radios flying by means of attached helicopter rotors or televisions that grow on plant stems clearly constitute "depictions of objects" to which "unnatural abilities" are attributed. Although the Farm Rocks video depicting the flying radio was not widely disseminated, it convincingly demonstrated to this Court that the radio flying be means of helicopter rotors and the jet powered tractor do indeed have the unnatural ability of flight. Flying radios and jet-powered tractors as well as the tractor with wheels made of film reels able to defy gravity do come within the plain meaning of cartoon as defined in the MSA and Consent Decree since these depictions of objects display unnatural abilities.

On the other hand, most of the other images complained of by the State do not necessarily fit within the definition of cartoon. For example, the woman's red hair, although not the most natural shade, is not a comically exaggerated feature. The duck sitting on the cow does not constitute an object with comically exaggerated features or attribution of human characteristics to animals.

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PROPRIETY OF MONETARY SANCTIONS AGAINST REYNOLDS

In determining whether to impose monetary sanctions and their amount, the Court should consider the following factors: (1) The reprehensibility of conduct as opposed to unintentional, merely technical violation, (2) the relationship of punitive sanctions to actual damages, (3) prior history violations of the public health provisions of the MSA/Consent Decree, and (4) modification of behavior to avoid future violations.

In upholding monetary sanctions against Reynolds under the MSA/Consent Decree in the youth targeting print advertising case, the Court of Appeal noted that the law involving punitive damages is instructive, citing *State Farm Mutual Auto Insurance Company v. Campbell (2003)* 538 U.S. 408, 123 S.CT. 1513, 1521, 1522, and stated that the "most important indicium of reasonableness of a punitive damages award is the degree of reprehensibility of a defendant's conduct." Accordingly, this court must qualitatively determine whether Reynolds' violations are best described as intentional or reprehensible on the one hand, or unintentional and technical on the other hand, or some level in between these extremes. This Court has determined that Reynolds can not be held responsible for the creation of the Marra cartoons or for their placement adjacent to the Reynolds' ads. Thus any monetary sanctions in this case must be based on the violation of the cartoon prohibition in Reynolds' own ads. Only after careful analysis of the evidence and the MSA did this court conclude that a relatively small portion of the depictions in Reynolds' Farm Rocks materials violates the cartoon prohibition of the MSA. The Court finds credible the testimony of the Reynolds employees that they attempted to follow the dictates of the MSA as they understood them and did not believe the Farm Rocks ads violated the MSA/Consent Decree. Thus this court concludes since Reynolds did not intend to violate the prohibition against use of cartoons in its advertising, these violations were not reprehensible and were unintentional.

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Among the evidence that could be helpful in assessing monetary sanctions is proof of the amount of damages caused by the proscribed conduct. However, in this case the State stipulated there is no proof of the amount of actual damages. Although the State does not concede that there were no damages, calculation of the damages caused by the Farm Rocks campaign in California is difficult. Although many people in California were exposed to the Farm Rocks advertising, it is hard to quantify the exact number of people who actually saw the ad in *Rolling Stone* or in the local newspapers and the effect these particular images may have had on viewers. Thus, any calculation of actual damages is arguably speculative.

The Court notes that Reynolds has a history of violating the public health provisions of the MSA/Consent Decree. Although Reynolds stopped the Farm Rocks campaign abruptly, it did so only after enforcement actions were filed. However, to its credit, Reynolds modified its ad insertion requirements to rule out future adjacency of its print ads to cartoons even though adjacency to cartoons was not proscribed by the MSA/Consent Decree.

This Court has discretion not to award monetary sanctions even in a case such as this where violations could conceivably support monetary sanctions. §VI (A) of the Consent Decree which authorizes monetary sanctions also states: "The Court *in any case in its discretion* may determine not to enter an order for monetary, civil contempt or criminal sanctions." (emphasis supplied) In the final analysis, given the technical, unintentional nature of violations which in no way were reprehensible or intentional and the inability to quantify actual damages, despite Reynolds' history of violations of the MSA but considering Reynolds' efforts to avoid violation in this case and its efforts to rule out future problems arising from adjacency to cartoons, this Court exercises the discretion expressly afforded it by the MSA not to award monetary sanctions against Reynolds.

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Aside from the clarification of the definition of cartoon contained in this decision, further declaratory relief is not required. Concerning injunctive relief, since Reynolds terminated the Farm Rocks campaign, and because use of cartoons in advertising is already prohibited by the MSA/Consent Decree and since Reynolds has already taken steps to avoid future adjacency to cartoons, injunctive relief is not necessary.

Dated: APR 20 2009

RONALD S. PRAGER
Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO Central 330 West Broadway San Diego, CA 92101	
SHORT TITLE: JCCP4041 COORDINATION PROCEEDING TOBACCO LITIGATION	
CLERK'S CERTIFICATE OF SERVICE BY MAIL	CASE NUMBER: **JCCP4041**

I certify that I am not a party to this cause. I certify that a true copy of the FINAL STATEMENT OF DECISION was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The mailing and this certification occurred at San Diego, California, on 04/22/2009.

Clerk of the Court, by: K. Sandoval, Deputy

Jeanne Finberg
Deputy Attorney General
P.O. Box 70550
Oakland, CA 94612-0550

WILLIAM T PLESEC
North Point
901 Lakeside Avenue
Cleveland, OH 44114

ROBERT C. WRIGHT
WRIGHT & L'ESTRANGE
401 W A Street # Suite 2250
San Diego, CA 92101

☐ Additional names and address attached.

Superior Court of California County of San Diego **SIGN-IN SHEET**	Calendar No.: **3** Court Use Only

CASE: JCCP4041 - JCCP4041 COORDINATION PROCEEDING TOBACCO LITIGATION

EVENT TYPE: Ex Parte

EVENT DATE/TIME: 04/20/2009 10:00 am

DEPARTMENT: C-71

JUDGE: Ronald S. Prager

ATTORNEY/PARTICIPANT NAME	CLIENT NAME	SIGNATURE
ALLINDER, WILLIAM L	LORILLARD TOBACCO CO [DFN]	
AMERICAN CANCER SOCIETY CALIFORNIA DIVISION	[PLN]	
AMERICAN HEART ASSOCIATION	[PLN]	
ANDERSON TOBACCO COMPANY LLC	[DFN]	
ANDERSON TOBACCO COMPNAY LLC	[DFN]	
BAKER, FREDERICK D	BROWN & WILLIAMSON TOBACCO CORPORATION [DFN]	
BALLINGER, DANA L	PHILIP MORRIS INC [DFN]	
BARRY, MICHAEL B	UNITED STATES TOBACCO COMPANY [DFN]	
BECK, MARK E	CORE-MARK INTERNATIONAL INC et. al. [DFN]	
BEKENTON USA _1	[DFN]	
BEKENTON USA INC	[DFN]	
BOESCH, VICTORIA A	ROUND TABLE DEVELOPMENT CO et. al. [DFN]	
BOGGS, WILLIAM S	LORILLARD TOBACCO COMPANY [DFN]	
BONNER, PATRICK E	B A T INDUSTRIES PLC [DFN]	

ATTORNEY/PARTICIPANT NAME	CLIENT NAME	SIGNATURE
BOOTY, KELVIN H	CALIFORNIA DISTRICT OF THE AMERICAN ACADEMY OF PEDIATRICS [PLN]	
BREWER JR., ROBERT SELDEN	HOUSE OF PRINCE A/S [DFN]	
BROILLET, BRUCE	COUNTY OF LOS ANGELES et. al. [PLN]	
BROWN, CARRIE L	AMERICAN CANCER SOCIETY CALIFORNIA DIVISION [PLN]	
CABRERA, GUILLERMO	LORILLARD TOBACCO COMPANY [DFN]	
CALCAGNIE, KEVIN F	ELLIS, JAMES et. al. [PLN]	
CALIFORNIA DISTRICT OF THE AMERICAN ACADEMY OF PEDIATRICS	[PLN]	
CALIFORNIA MEDICAL ASSOCIATION	[PLN]	
CANARY ISLANDS CIGAR COMPANY	[DFN]	
CAPLAN, ALAN M	CALIFORNIA DISTRICT OF THE AMERICAN ACADEMY OF PEDIATRICS et. al. [PLN]	
CARNEVALE, STEVEN J	COUNTY OF LOS ANGELES [PLN]	
CASEY III, THOMAS F	CALIFORNIA DISTRICT OF THE AMERICAN ACADEMY OF PEDIATRICS [PLN]	
Casey, David S Jr	DAVIS, GRAY [PLN]	
CATON, CURTIS	PHILIP MORRIS INC [DFN]	
CHANCELLOR TOBACCO COMPANY PLC	[DFN]	
CLINTON, DEWITT	COUNTY OF LOS ANGELES [PLN]	
COCCHIA, ROBERT A.	HOUSE OF PRINCE [DFN]	
COMMONWEALTH BRANDS INC	[DFN]	
COMPANIA INDUSTRIAL DE TABACOS MONTE PAZ S A	[DFN]	

ATTORNEY/PARTICIPANT NAME	CLIENT NAME	SIGNATURE
COUGHLAN, R J JR	UNITED STATES TOBACCO COMPANY [DFN]	
COUGHLIN, PATRICK J	CORDOVA, JULIE [PLN]	
CUNEO, JONATHAN W	CALIFORNIA DISTRICT OF THE AMERICAN ACADEMY OF PEDIATRICS et. al. [PLN]	
CUNHA, MARK G	B A T INDUSTRIES PLC [DFN]	
DAUGHTERS AND RYAN INC	[DFN]	
DAVIES, PATRICK	THE TOBACCO INSTITUTE INC et. al. [DFN]	
DECORSO, ANTHONY A	KENNEDY WHOLESALE INC et. al. [DFN]	
DELLING, ANTHONY R.	AMERICAN TOBACCO COMPANY INC et. al. [DFN]	
DUNBAR, DANIEL W.	HILL AND KNOWLTON [DFN]	
DUNNE, KEVIN J.	BROWN & WILLIAMSON TOBACCO CORPORATION [DFN]	
EAGLE VENDING MACHINES CO INC	[DFN]	
ECKHART, DENNIS	PEOPLE OF THE STATE OF CALIFORNIA EX REL et. al. [PLN]	
ELLIS, ROGER R	VENTURELLI, ADA A et. al. [PLN]	
ESCHER III, H JOSEPH	R J REYNOLDS TOBACCO CO et. al. [DFN]	
FARMERS TOBACCO COMPANY	[DFN]	
FENNESSEY, SEAN	[PLN]	
FESLER, ROBERTA M	YAROSLAVSKY, ZEV [PLN]	
Finberg, Jeanne	PEOPLE OF THE STATE OF CALIFORNIA ex rel Edmund G Brown Jr, Attorney General of the State of California [PLN]	
FORSTER, KATHERINE	ROUND TABLE DEVELOPMENT CO et. al. [DFN]	
FOSTER, BRIAN A.	LORILLARD TOBACCO COMPANY [DFN]	

ATTORNEY/PARTICIPANT NAME	CLIENT NAME	SIGNATURE
FRIEDMAN, DANIEL J	LIGGETT & MYERS et. al. [DFN]	
GALLO, JOAN R	CALIFORNIA DISTRICT OF THE AMERICAN ACADEMY OF PEDIATRICS [PLN]	
GENERAL TOBACCO	[DFN]	
GIRARDI, THOMAS V.	VENTURELLI, ADA A [PLN]	
GLASER BROTHERS INC	[DFN]	
GLICK, MARTIN R	R J REYNOLDS TOBACCO COMPANY [DFN]	
GREENE, R. BROWNE	COUNTY OF LOS ANGELES et. al. [PLN]	
Guinn, Susan L.	YAROSLAVSKY, ZEV [PLN]	
GUSTAFSSON, JOHN C	B A T INDUSTRIES PLC [DFN]	
HAKLAR, THOMAS	DAVIS, GRAY [PLN]	
HAMILTON, ALAN D	UNITED STATES TOBACCO COMPANY [DFN]	
HAWXHURST, GERALD E	B A T INDUSTRIES PLC [DFN]	
HAYES, LARRY E	LORILLARD TOBACCO COMPANY INC [DFN]	
HEALEY, CHRISTOPHER J.	THE AMERICAN TOBACCO COMPANY [DFN]	
HENDRICKS, THOMAS G	CALIFORNIA DISTRICT OF THE AMERICAN ACADEMY OF PEDIATRICS [PLN]	
HENNEBERRY, JAY	THE AMERICAN TOBACCO COMPANY [DFN]	
HERR, DWIGHT L	CALIFORNIA DISTRICT OF THE AMERICAN ACADEMY OF PEDIATRICS [PLN]	
HERSH, LEROY	DAVIS, GRAY [PLN]	
HILDRE, DONALD F	DAVIS, GRAY [PLN]	
HOLLAND, DOUGLAS C	CALIFORNIA DISTRICT OF THE AMERICAN ACADEMY OF PEDIATRICS [PLN]	

ATTORNEY/PARTICIPANT NAME	CLIENT NAME	SIGNATURE
HOUSE OF PRINCE A/S	[DFN]	
HOWARTH, DON	DAVIS, GRAY [PLN]	
HUTCHESON, STERLING	LORILLARD TOBACCO COMPANY [DFN]	
INTERNATIONAL TOBACCO GROUP [LAS VEGAS] INC	[DFN]	
JAHR, KAREN KEATING	CALIFORNIA DISTRICT OF THE AMERICAN ACADEMY OF PEDIATRICS [PLN]	
JANSSEN, HOWARD A	THE TOBACCO INSTITUTE INC [DFN]	
JAPAN TOBACCO INTERNATIONAL USA INC	[DFN]	
KAPLAN, BRADLEY	LORILLARD TOBACCO COMPANY [DFN]	
KASOWITZ, MARC E	LIGGETT & MYERS INC et. al. [DFN]	
KASS, DON	CALIFORNIA DISTRICT OF THE AMERICAN ACADEMY OF PEDIATRICS [PLN]	
KATZENSTEIN, WILLIAM C	CALIFORNIA DISTRICT OF THE AMERICAN ACADEMY OF PEDIATRICS [PLN]	
KING MAKER MARKETING INC	[DFN]	
KISSINGER, WILLIAM D	DNA PLANT TECHNOLOGY et. al. [DFN]	
KONCI G & D MANAGEMENT	[DFN]	
KOSMO JR., FREDERICK W.	THE COUNCIL FOR TOBACCO RESEARCH-USA INC [DFN]	
KRETEK INTERNATIONAL	[DFN]	
Lack, Walter J	STEINBARTH, WILLIAM H [PLN]	
LASKY, MICHAEL C	HILL & KNOWLTON INC et. al. [DFN]	
LEE, BARRY W	B A T INDUSTRIES PLC [DFN]	
LENDRUM, JEFFREY P	B A T INDUSTRIES PLC et. al. [DFN]	

ATTORNEY/PARTICIPANT NAME	CLIENT NAME	SIGNATURE
LERACH, WILLIAM S	CORDOVA, JULIE [PLN]	
LEVIN, BARRY S	PHILIP MORRIS INC [DFN]	
LIBERTY BRANDS LLC	[DFN]	
LINDHOLM, JAMES B	CALIFORNIA DISTRICT OF THE AMERICAN ACADEMY OF PEDIATRICS [PLN]	
LONG, GARY	LORILLARD TOBACCO COMPANY [DFN]	
L'ORANGE, H CHRISTIAN	LORILLARD TOBACCO COMPANY et. al. [DFN]	
LORENZ, M. JAMES	THE TOBACCO INSTITUTE INC [DFN]	
M/S DHANRAJ INTERNATIONAL	[DFN]	
Mansfield, Alan M	CORDOVA, JULIE [PLN]	
MARKS, ALAN K	CALIFORNIA DISTRICT OF THE AMERICAN ACADEMY OF PEDIATRICS [PLN]	
Mazzarella, Mark C	THE COUNCIL FOR TOBACCO RESEARCH [DFN]	
MCBRIDE, JAMES L	CALIFORNIA DISTRICT OF THE AMERICAN ACADEMY OF PEDIATRICS [PLN]	
MCCOY, JOYCE A.	PHILIP MORRIS INC et. al. [DFN]	
MCCUE, JONATHAN D.	CALIFORNIA DISTRICT OF THE AMERICAN ACADEMY OF PEDIATRICS et. al. [PLN]	
MCGARRY, M ELIZABETH	B A T INDUSTRIES PLC [DFN]	
MCGOWAN, MIRANDA	R J REYNOLDS TOBACCO COMPANY [DFN]	
MCKENNA, PETER J	UNITED STATES TOBACCO COMPANY [DFN]	
MCLEAN, ANNA S	PHILIP MORRIS INC [DFN]	
McMahon, Gerald L.	PHILIP MORRIS INC [DFN]	

ATTORNEY/PARTICIPANT NAME	CLIENT NAME	SIGNATURE
MERRITT, BRUCE	THE COUNCIL FOR TOBACCO RESEARCH et. al. [DFN]	
MERRIWEATHER, MARC D	B A T INDUSTRIES PLC [DFN]	
MEYER, JAYMA	B A T INDUSTRIES PLC [DFN]	
MOTLEY, RONALD L	COUNTY OF LOS ANGELES [PLN]	
MURPHY, DANIEL G	LIGGETT & MYERS et. al. [DFN]	
NEUMARK, PHILIP	CORDOVA, JULIE [PLN]	
NYHAN, JOHN	BRITISH AMERICAN TOBACCO COMPANY et. al. [DFN]	
OPPEDAHL, MARY	THE TOBACCO INSTITUTE INC [DFN]	
PACIFIC STANFORD MANUFACTURING CORPORATION	[DFN]	
Panish, Brian	ELLIS, JAMES [PLN]	
Patton, Stephen R	R J REYNOLDS TOBACCO COMPANY [DFN]	
PEOPLE OF THE STATE OF CALIFORNIA EX REL	[PLN]	
PETER STOKKEBYE INTERNATIONAL A/S	[DFN]	
PHILLIPS JR., GORDON G.	DAVIS, GRAY et. al. [PLN]	
PLESEC, WILLIAM T	R J REYNOLDS TOBACCO COMPANY [DFN]	William T Plesec
Posner, Shari	PEOPLE OF THE STATE OF CALIFORNIA ex rel Edmund G Brown Jr, Attorney General of the State of California [PLN]	
PT DJARUM	[DFN]	
QUINN, DARREN	CORDOVA, JULIE [PLN]	
RANDLES, BILLY	BROWN & WILLIAMSON TOBACCO CORP et. al. [DFN]	
RENNE, LOUISE	THE PEOPLE OF THE STATE OF CALIFORNIA [PLN]	
RICHARDSON, TONY L	BATUS INC et. al. [DFN]	

ATTORNEY/PARTICIPANT NAME	CLIENT NAME	SIGNATURE
RICKETTS, DONALD W	MOORE, DANIEL et. al. [PLN]	
RIVERS, MARI-ANN G	THE PEOPLE OF THE STATE OF CALIFORNIA [PLN]	
ROBINSON JR, MARK P	DAVIS, GRAY et. al. [PLN]	
ROMAN, STAN G	HILL & KNOWLTON INC [DFN]	
RYAN, ROBERT A	CALIFORNIA DISTRICT OF THE AMERICAN ACADEMY OF PEDIATRICS [PLN]	
S KIMBERLY BELSHE, DIRECTOR OF HEALTH SERVICES OF THE STATE OF CALIFORNIA	[PLN]	
SANSOME, JOHN	CALIFORNIA DISTRICT OF THE AMERICAN ACADEMY OF PEDIATRICS [PLN]	
SANTA FE NATURAL TOBACCO COMPANY INC	[DFN]	
SARNER, ERIC	UNITED STATES TOBACCO COMPANY [DFN]	
SCHAEVITZ, BARRY S	SMOKELESS TOBACCO COUNCIL INC [DFN]	
SCHOLL, RONALD E	LORILLARD TOBACCO COMPANY INC [DFN]	
SHERMAN 1400 BROADWAY N Y C INC	[DFN]	
SHIMOMURA, FLOYD D	BELSHE, S KIMBERLY [PLN]	
SILVERMAN, DANIEL S	THE AMERICAN TOBACCO COMPANY [DFN]	
SMITH, SUZELLE	DAVIS, GRAY [PLN]	
STARK, STEPHEN SHANE	CALIFORNIA DISTRICT OF THE AMERICAN ACADEMY OF PEDIATRICS [PLN]	
STEINER, ROBERT G.	THE AMERICAN TOBACCO COMPANY [DFN]	
STRAUSS, APRIL M	CORDOVA, JULIE [PLN]	
TAYLOR, TIMOTHY B.	BROWN & WILLIAMSON TOBACCO CORPORATION [DFN]	

ATTORNEY/PARTICIPANT NAME	CLIENT NAME	SIGNATURE
TOP TOBACCO L P	[DFN]	
VALZ, DUANE R	R J REYNOLDS TOBACCO COMPANY [DFN]	
VIRGINIA CAROLINA CORPORATION	[DFN]	
VIRGINIA CAROLINA CORPORATION INC	[DFN]	
VON EICKEN GROUP	[DFN]	
WALKER, SUSAN C	STATE OF OHIO ATTY GENERAL'S OFFICE [PLN]	
Weaver, Michael J.	BROWN & WILLIAMSON TOBACCO CORP et. al. [DFN]	
WEINBERGER, RANDI D	CORDOVA, JULIE [PLN]	
WESTMAN, VICTOR J	CALIFORNIA DISTRICT OF THE AMERICAN ACADEMY OF PEDIATRICS [PLN]	
WHEELER, TIMOTHY	COUNTY OF LOS ANGELES [PLN]	
WILLIAMS, PETER M	PEOPLE OF THE STATE OF CALIFORNIA EX REL [PLN]	
WOODSIDE, STEVEN M	CALIFORNIA DISTRICT OF THE AMERICAN ACADEMY OF PEDIATRICS [PLN]	
WRIGHT, ROBERT C.	R J REYNOLDS TOBACCO COMPANY [DFN]	Robert C. Wright
YOUNG, MERYL L.	HILL & KNOWLTON INC et. al. [DFN]	