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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

**PEOPLE OF THE STATE OF CALIFORNIA, ex
rel. BILL LOCKYER, Attorney General of the State
of California,**

Plaintiff,

v.

**U. S. SMOKELESS TOBACCO COMPANY, a
Delaware corporation,**

Defendant.

General Civil

Case No:

**COMPLAINT FOR
ENFORCEMENT OF THE
SMOKELESS TOBACCO
CONSENT DECREE AND
STMSA IN CASE NO. JCCP
4041**

(NHRA-Related Sponsorships)

Dept.: 71

Judge: Hon. Ronald S. Prager

The People of the State of California, by and through Bill Lockyer, Attorney General
of the State of California, ("the People") allege on information and belief:

NATURE OF ACTION

1. U.S. Smokeless Tobacco Company ("USSTC") is violating the Smokeless
Tobacco Master Settlement Agreement ("STMSA") because it promotes its Skoal brand of

1 Tobacco Products^{1/} by sponsoring National Hot Rod Association (“NHRA”) racing events with
2 contestants younger than age 18. The STMSA bans Brand Name Sponsorship of events in which
3 any contestant is under 18.

4 2. Because the STMSA bans USSTC’s NHRA-related sponsorships, the agreement
5 also bans the Skoal advertising in connection with the sponsorship. Therefore, USSTC is not
6 only violating the STMSA by sponsoring events in which contestants are Youth, but also is
7 violating the STMSA and/or related consent decree by: (i) selling or permitting to be sold
8 prohibited Skoal hats, clothes, toy cars, and other Skoal merchandise at NHRA events; (ii)
9 engaging in prohibited paid Skoal product placement at NHRA live and televised events; and
10 (iii) engaging in prohibited Outdoor Advertising of Skoal at NHRA events, such as by having the
11 Skoal name on signs and race cars.

12 3. Additionally, USSTC is violating the STMSA ban on having more than one
13 Brand Name Sponsorship per year. Since 2004, USSTC has sponsored multiple NHRA race cars
14 and multiple NHRA-sanctioned national series or tours.

15 **BACKGROUND**

16 4. In November 1998, the People and defendant United States Tobacco Company,
17 now known as USSTC, stipulated to entry of a Consent Decree and Final Judgment with Respect
18 to the Smokeless Tobacco Master Settlement Agreement (“Consent Decree”) and signed the
19 STMSA.

20 5. The Consent Decree and the STMSA were among the documents that settled the
21 People’s landmark litigation against the major tobacco companies, *People of the State of*
22 *California, et al. v. Philip Morris Inc., et al.*, Judicial Council Coordination Proceeding No.
23 4041. The STMSA was approved by the San Diego Superior Court, the Honorable Ronald S.
24 Prager presiding, as part of the Consent Decree entered by the Court on December 9, 1998.

25 6. The 1994 Surgeon General’s Report states, “Sponsorship is an efficient way for
26 an advertiser to have its brand name and logo achieve the equivalent effect of broadcast

27 1. The definitions in the STMSA are incorporated herein by reference, and words defined
28 in the STMSA are capitalized in the Consent Decree, the STMSA and this complaint.

1 advertising without having to include any government-mandated warnings.” (U.S. Dep’t of
2 Health & Human Services, *Preventing Tobacco Use Among Young People: A Report of the*
3 *Surgeon General*, 1994, p. 185.) That report also notes that, when tobacco products sponsor
4 sports, “the harmful effects of tobacco are camouflaged against the backdrop and thrill of athletic
5 victory.” (*Id.* at p. 186.)

6 7. Under the STMSA, a Participating Manufacturer is permitted only one Brand
7 Name Sponsorship. Even as to that sponsorship, there are restrictions with respect to the scope
8 and nature of the sponsorship.

9 PARTIES

10 8. Plaintiff Bill Lockyer is the duly elected Attorney General of the State of
11 California and is the chief law enforcement officer of the State. (Cal. Const., art. V, §13.)
12 Pursuant to section VI.A of the Consent Decree and section VII(c) of the STMSA, the Attorney
13 General is authorized to bring actions in this Court on behalf of the People to enforce, and to
14 obtain relief for violations of, the Consent Decree and the STMSA.

15 9. Defendant USSTC is a tobacco product manufacturer that signed the STMSA.
16 USSTC is a “Participating Manufacturer,” as defined in STMSA section II(ee).

17 10. Defendant USSTC is a Delaware corporation with its principal place of business
18 in Connecticut. USSTC markets its smokeless tobacco products within California.

19 11. Defendant USSTC changed its name from United States Tobacco Company to
20 U.S. Smokeless Tobacco Company in 2001.

21 12. In July 2005, defendant USSTC’s website stated, “USSTC is the world’s leading
22 producer and marketer of the only growing segment of the tobacco industry, moist smokeless
23 tobacco. The company’s leading brands, Copenhagen and Skoal, each represent more than \$1
24 billion at retail. . . . The company sells more than 1.7 million cans of moist smokeless tobacco
25 per day, or approximately 650 million cans annually.”

26 13. In July 2005, defendant USSTC’s website stated, “Skoal is the No. 1 flavored
27 moist smokeless tobacco on the market, and the acknowledged leader in innovative flavor
28 offerings. With retail sales surpassing \$1 billion, it has become one of America's favorite and

1 most widely recognized brands, synonymous with outdoor activities and recreation.”

2 14. U.S. Smokeless Tobacco Brands, Inc. (“USSTB”) and USSTC are both wholly
3 owned subsidiaries of UST, Inc. At all times mentioned in this complaint, USSTB was acting in
4 concert or participation with USSTC, within the meaning of STMSA Section VII(e). In
5 executing the NHRA sponsorship-related contracts hereinafter mentioned, USSTB was acting in
6 concert or participation with USSTC, within the meaning of STMSA Section VII(e). Whenever
7 in this Complaint reference is made to an act or omission of USSTC, that reference includes acts
8 or omissions of USSTC alone or in concert or participation with USSTB.

9 **JURISDICTION AND VENUE**

10 15. This Court has retained exclusive jurisdiction for the purposes of implementing
11 and enforcing the provisions of the Consent Decree and the STMSA. (Consent Decree, § VI.A;
12 STMSA, § VII(a).)

13 **LEGAL BACKGROUND**

14 16. “Brand Name Sponsorship” in the STMSA is defined, in part, to mean: “an
15 athletic, musical, artistic, or other social or cultural event as to which payment is made (or other
16 consideration is provided) in exchange for use of a Brand Name or Names (1) as part of the
17 name of the event or (2) to identify, advertise, or promote such event or an entrant, participant,
18 or team in such event in any other way. Sponsorship of a single national or multi-state series or
19 tour . . . **or** of one or more events within a single national or multi-state series or tour, **or** of an
20 entrant, participant, or team taking part in events sanctioned by a single approving organization .
21 . . constitutes one Brand name Sponsorship.” (STMSA, § II(h). Bold added.)

22 17. The STMSA provides, in part: “No Participating Manufacturer may engage in
23 more than one Brand Name Sponsorship in the States in any twelve-month period.” (STMSA, §
24 III(c)(2)(A).)

25 18. The STMSA provides, in part: “Prohibited Sponsorships. . . [N]o Participating
26 Manufacturer may engage in any Brand Name Sponsorship in any State consisting of . . . events
27 in which any paid participants or contestants are Youth.” (STMSA, § III(c)(1)(C).)

28 19. “Youth” in the STMSA means “any person or persons under 18 years of age.”

1 (STMSA, § II(uu).)

2 20. Section V.C of the Consent Decree permanently enjoins USSTC from “making or
3 causing to be made any payment or other consideration to any other person or entity to use,
4 display, make reference to or use as a prop within the State of California any Tobacco Product,
5 Tobacco Product package, advertisement for a Tobacco Product, or any other item bearing a
6 Brand Name in any Media.” This prohibition does not apply to actions taken by USSTC in
7 connection with a Brand Name Sponsorship the STMSA permits. (Consent Decree, § V.C.)

8 21. Section III(e) of the STMSA prohibits USSTC from making “any payment or
9 other consideration to any other person or entity to use, display, make reference to, or use as a
10 prop any Tobacco Product, Tobacco Product package, advertisement for a Tobacco Product, or
11 any other item bearing a Brand Name in any motion picture, television show, theatrical
12 production or other live performance, live or recorded performance of music, commercial film or
13 video, or video game.” This prohibition does not apply to actions taken by USSTC in
14 connection with a Brand Name Sponsorship the STMSA permits. (STMSA, § III(c)(3)(c).)

15 22. Section V.D of the Consent Decree permanently enjoins USSTC from marketing,
16 distributing, offering, selling, licensing or causing to be marketed, distributed, offered, sold or
17 licensed apparel or other merchandise which bears a Brand Name unless one of several listed
18 exceptions is met, including that it is marketed, distributed, offered, sold or licensed at the site of
19 a Brand Name Sponsorship the STMSA permits. (Consent Decree, § V.D.)

20 23. Section III(f) of the STMSA prohibits USSTC from marketing, distributing,
21 offering, selling, licensing or causing to be marketed, distributed, offered, sold or licensed
22 apparel or other merchandise which bears a Brand Name unless one of several listed exceptions
23 is met, including that the apparel or other merchandise is marketed, distributed, offered, sold or
24 licensed at the site of a Brand Name Sponsorship the STMSA permits. (STMSA, § III(c)(3)(D).)

25 24. Section III(d) of the STMSA requires USSTC to eliminate Outdoor Advertising
26 of its Tobacco Products. Section III(c)(3)(E) of the STMSA excepts from this ban certain
27 Outdoor Advertising in connection with a Brand Name Sponsorship the STMSA permits.

28 **FACTS**

1 25. Skoal is a “Brand Name,” as defined in STMSA section II(g).

2 26. One reason USSTC engages in NHRA-related Brand Name Sponsorship using the
3 Skoal Brand Name is to advertise and promote its Skoal brand of Tobacco Products.

4 27. The NHRA is an “approving organization,” as that term is used in STMSA
5 section II(h). The NHRA sanctions race series, such as the NHRA POWERade Drag Racing
6 Series and the NHRA Sport Compact Drag Racing Series.

7
8 **USSTC’s Skoal Brand Sponsored NHRA National Events, 2004 to the Present**

9 28. During 2004 to the present, USSTC used its Skoal Brand Name to sponsor the
10 NHRA POWERade Drag Racing Series. The NHRA POWERade Drag Racing Series is a
11 national or multi-state series or tour. Each of the approximately 23 drag racing events in the
12 NHRA POWERade Drag Racing Series is a “National Event.” As such, USSTC’s Skoal Brand
13 Name sponsored each National Event in the NHRA POWERade Drag Racing Series during 2004
14 to the present. True and correct copies of the 2004 and 2005 NHRA POWERade Drag Racing
15 Series schedules are attached hereto as Exhibit A and incorporated herein.

16 29. Each National Event lasts approximately three or four days. Attendees buy only
17 one ticket per day to gain entrance to all of the different races at the National Event on that day.

18 30. On or about November 6, 2003, USSTC and NHRA entered into an agreement
19 entitled “The Sponsorship Agreement By And Between U.S. Smokeless Tobacco Brands Inc.
20 and National Hot Rod Association” (“NHRA Sponsorship Agreement”). A true and correct
21 copy of the NHRA Sponsorship Agreement, with certain dollar amounts redacted, is attached as
22 Exhibit B and incorporated herein.

23 31. Pursuant to the NHRA Sponsorship Agreement, in exchange for consideration,
24 USSTC has the right to use its Skoal Brand Name at National Events, including but not limited
25 to:

26 (1) an approximately 4 foot x 28 foot “Skoal Racing” sign to be displayed across the
27 bottom of the big screen video display that is traveled to each National Event (a true
28 and correct copy of a photograph of such a sign is attached hereto as Exhibit C);

- (2) one thirty second feature on the big screen video display featuring USSTC's sponsorship program which shall be aired at least six times at each National Event;
- (3) a minimum of three public address announcements each day of each National Event;
- (4) two semi-permanent signs on both sides of the drag strip (on the outside guardwalls) at each National Event facility;
- (5) an additional four inside guardwall signs at each NHRA-owned National Event facility (a true and correct copy of a photograph of such a sign is attached hereto as Exhibit **D**);
- (6) USSTC supplied banners in high visibility locations at each National Event facility; and,
- (7) exclusive sponsorship and name entitlement to the "NHRA Skoal Showdown," an annual competition for Funny Car competitors.

USSTC's Skoal Brand Sponsored NHRA Sport Compact Events During 2004

32. During 2004, USSTC used its Skoal Brand Name to sponsor a series of Sport Compact drag racing events, which the NHRA Sponsorship Agreement calls the "NHRA Sport Compact Drag Racing Series." A true and correct copy of the 2004 NHRA Sport Compact Drag Racing Series schedule is attached hereto as Exhibit **E** and incorporated herein.

33. The NHRA Sport Compact Drag Racing Series, to which the NHRA Sponsorship Agreement refers, is a single national or multi-state series or tour. In 2004, the Sport Compact Drag Racing Series consisted of ten "Sport Compact Events," each of which lasted for approximately two days.

34. Pursuant to the NHRA Sponsorship Agreement, in exchange for consideration, USSTC has the right to use its Skoal Brand Name at NHRA Sport Compact Events, including, for example:

- (1) A minimum of three public address announcements each day of each Sport Compact Event; and,

1 (2) Placement of USSTC's banners in high visibility locations at each Sport Compact
2 Event facility.

3 35. The NHRA Sport Compact Drag Racing Series is a separate national or multi-
4 state series or tour from the NHRA POWERade Drag Racing Series. The NHRA publishes
5 separate schedules for the NHRA Sport Compact Drag Racing Series and the NHRA
6 POWERade Drag Racing Series. (See, e.g., Exhibits E and A.)

7
8 **Youth as Contestants at NHRA National Events and Sport Compact Events**

9 36. The NHRA's official rules allow drivers as young as age 16 to compete in some
10 categories of races at National Events.

11 37. Drivers under the age of 18 have competed at National Events including:

12 (a) the 44th Annual K & N Filters Winternationals in February 2004 in Pomona,
13 California; and,

14 (b) the 45th Annual CARQUEST Auto Parts NHRA Winternationals in February
15 2005 in Pomona, California.

16 38. The NHRA's official rules allow drivers as young as age 16 to compete in some
17 categories of the Sport Compact Drag Racing Series.

18 39. In 2004, drivers under the age of 18 competed at Sport Compact Events,
19 including:

20 (a) the California NHRA Sport Compact Nationals in March 2004 in Fontana,
21 California; and,

22 (b) the NHRA Sport Compact World Finals in October 2004 in Pomona, California.

23 40. During 2004, the People, directly and through the National Association of
24 Attorneys General (NAAG), notified USSTC of the People's concerns that USSTC's NHRA-
25 related sponsorships violate the STMSA and/or the Consent Decree for multiple reasons
26 including that some of the drivers are under 18 years of age.

27 41. In a letter dated December 21, 2004, from USSTC to the NHRA, USSTC sought
28 to modify the NHRA Sponsorship Agreement. A true and correct copy of that letter ("NHRA

Sponsorship Agreement Modification”) is attached to this complaint as Exhibit F and incorporated herein.

42. In the NHRA Sponsorship Agreement Modification, USSTC acknowledged that drivers age 16 and 17 are allowed by NHRA’s official rules to participate in the NHRA Sport Compact Drag Racing Series.

43. The NHRA Sponsorship Agreement Modification terminates certain of USSTC’s Brand Name sponsorship rights in connection with the NHRA Sport Compact Drag Racing Series.

44. The NHRA Sponsorship Agreement Modification provides that USSTC still sponsors the NHRA POWERade Drag Racing Series using the Skoal Brand Name. Accordingly, in 2005 USSTC’s Skoal brand sponsors NHRA National Events.

NHRA Jr. Drag Racing League Drivers Competed at Skoal-Sponsored National Events in California

45. The NHRA sanctions a Jr. Drag Racing League in which race drivers are ages 8 to 17 years old. NHRA Jr. Drag Racing League competitors generally drive half-scale versions of Top Fuel Dragsters and race at NHRA member tracks.

46. The NHRA offers a “Jr. Comp” category for drivers age 14 and older, which is designed to assist Jr. Drag racers in moving into other NHRA categories.

47. NHRA Jr. Drag racers competed at the Skoal-sponsored National Event in November of 2004 at Pomona Raceway in Pomona, California. These racers were as young as nine and ten years old. A true and correct copy of a photograph of a Jr. Drag racer lining up to race at this National Event is attached hereto as Exhibit G.

48. The Jr. Drag event at the Skoal-sponsored National Event in November of 2004 at Pomona Raceway was the Jr. Drag Racing Division 7 Championships.

49. The 2004 Jr. Drag Racing Division 7 Championships took place on the same race track as the other National Event races that weekend. Skoal signs remained on that race track during the Jr. Drag races. Additionally, Jr. Drag racers were shown on the big screen video

1 display, which was bordered by a large Skoal sign.

2 50. Trophies and Champions Jackets were awarded to Jr. Drag racers who competed
3 in the Jr. Drag Racing Division 7 Championships, and NHRA Gold Cards were awarded to the
4 overall division champions.

5 51. NHRA Jr. Drag racers were scheduled to race at a National Event at Pomona
6 Raceway in February 2005, but those races were canceled due to inclement weather.

7
8 **During 2004 and 2005, USSTC Paid for its Skoal Brand to be Used on Race Cars, Drivers**
9 **and Pits**

10 52. On or about November 19, 2003, USSTC entered into a sponsorship agreement
11 with Don Prudhomme Racing, Inc. ("2004 Prudhomme Sponsorship Agreement") to sponsor two
12 Top Fuel Funny Cars and a Top Fuel Dragster. A true and correct copy of the 2004 Prudhomme
13 Sponsorship Agreement (with certain financial information redacted by USSTC) is attached as
14 Exhibit **H** and incorporated herein.

15 53. The 2004 Prudhomme Sponsorship Agreement provides that USSTC is a sponsor
16 of both of Don Prudhomme Racing's Funny Cars, such that certain body panels on those cars are
17 reserved for USSTC's sponsorship placement. The Skoal-sponsored Funny Cars displayed the
18 word "Skoal." True and correct copies of photographs of Skoal-sponsored Funny Cars are
19 attached hereto as Exhibit **I**.

20 54. The 2004 Prudhomme Sponsorship Agreement also gives USSTC space to
21 display USSTC's Skoal Brand Name on a Top Fuel Dragster. The Top Fuel Dragster sponsored
22 by USSTC displayed the Skoal Brand Name.

23 55. The 2004 Prudhomme Sponsorship Agreement also gives USSTC the right to
24 have its Skoal logo on all support vehicles as well as the workday and race day uniforms of the
25 drivers and crew.

26 56. Top Fuel and Funny Car are two separate classes of NHRA drag racing. Top Fuel
27 Cars race separately from Funny Cars. Top Fuel Cars also earn points separately from Funny
28 Cars.

1 57. In 2004, pursuant to the Prudhomme Sponsorship Agreement, two Skoal-
2 sponsored Funny Cars and one Skoal-sponsored Top Fuel Dragster raced at NHRA National
3 Events, including:

4 (a) the 44th Annual K & N Filters Winternationals in February 2004, in Pomona,
5 California;

6 (b) the 17th Annual Fram Autolite NHRA Nationals in August 2004, in Sonoma,
7 California; and,

8 (c) the 40th annual Automobile Club of Southern California NHRA Finals in
9 November 2004, in Pomona, California.

10 58. During National Events in 2004:

11 (a) Tommy Johnson, Jr. drove a Skoal-sponsored Funny Car. Don Prudhomme
12 Racing, Inc.'s website called this the "Blue Team;"

13 (b) Ron Capps drove a Skoal-sponsored Funny Car. Don Prudhomme Racing, Inc.'s
14 website called this the "Green Team;" and,

15 (c) Larry Dixon drove a Skoal-sponsored Top Fuel Dragster. Don Prudhomme
16 Racing, Inc.'s website called this the "Miller Team."

17 59. On or about December 7, 2004, USSTC entered into a contract with Don
18 Prudhomme Racing, Inc ("2005 Prudhomme Sponsorship Agreement") to sponsor one Top Fuel
19 Funny Car and one Top Fuel Dragster. A true and correct copy of the 2005 Prudhomme
20 Sponsorship Agreement (with certain financial information redacted by USSTC) is attached
21 hereto as Exhibit J and incorporated herein.

22 60. The 2005 Prudhomme Sponsorship Agreement gives USSTC space to display
23 USSTC's Skoal Brand Name on a Top Fuel Funny Car and a Top Fuel Dragster. The Top Fuel
24 Funny Car and Top Fuel Dragster sponsored by USSTC displayed the Skoal Brand Name.

25 61. The 2005 Prudhomme Sponsorship Agreement also gives USSTC the right to
26 have its Skoal logo on all support vehicles as well as the workday and race day uniforms of the
27 drivers and crew.

28 62. In 2005, the Skoal-sponsored Funny Car raced at National Events, including:

1 (a) the 45th Annual CARQUEST Auto Parts NHRA Winternationals in February
2 2005, in Pomona, California; and,

3 (b) the 18th Annual Fram Autolite NHRA Nationals in July 2005, in Sonoma,
4 California.

5 63. In 2005, the Skoal-sponsored Top Fuel Dragster raced at National Events,
6 including:

7 (a) the 45th Annual CARQUEST Auto Parts NHRA Winternationals in February
8 2005, in Pomona, California; and,

9 (b) the 18th Annual Fram Autolite NHRA Nationals in July 2005, in Sonoma,
10 California.

11 64. During National Events in 2005:

12 (a) Tommy Johnson, Jr. drove a Skoal-sponsored Funny Car.

13 (b) Larry Dixon drove a Skoal-sponsored Top Fuel Dragster.

14 65. Both the 2004 and 2005 Prudhomme Sponsorship Agreements provided USSTC
15 with space in the pits for Skoal advertising during National Events. (See, e.g. Exhibit K, a true
16 and correct copy of a photograph of a Skoal pit.)
17

18 **Paid Product Placement at NHRA Live and Televised Events**

19 66. During 2004 and 2005 portions of the following NHRA National Events, which
20 included Skoal Brand Name advertising, were televised:

21 (a) the 44th Annual K & N Filters Winternationals in February 2004, in Pomona,
22 California;

23 (b) the 17th Annual Fram Autolite NHRA Nationals in August 2004, in Sonoma,
24 California;

25 (c) the 40th annual Automobile Club of Southern California NHRA Finals in
26 November 2004 in Pomona, California;

27 (d) the 45th Annual CARQUEST Auto Parts NHRA Winternationals in February
28 2005, in Pomona, California; and,

(e) the 18th Annual Fram Autolite NHRA Nationals in July 2005, in Sonoma, California.

67. During 2004 some of the NHRA Compact Events were televised, including:

(a) the California NHRA Sport Compact Nationals in March 2004, in Fontana, California; and

(b) the NHRA Sport Compact World Finals in October 2004, in Pomona, California.

Prohibited Outdoor Advertising at NHRA Events

68. During 2004 and 2005 outdoor advertisements bearing the word “Skoal,” including but not limited to signs, were displayed at NHRA National Events, including:

(a) the 44th Annual K & N Filters Winternationals in February 2004, in Pomona, California;

(b) the 17th Annual Fram Autolite NHRA Nationals in August 2004, in Sonoma, California;

(c) the 40th Annual Automobile Club of Southern California NHRA Finals in November 2004, in Pomona, California;

(d) the 45th Annual CARQUEST Auto Parts NHRA Winternationals in February 2005, in Pomona, California; and,

(e) the 18th Annual Fram Autolite NHRA Nationals in July 2005, in Sonoma, California.

69. During 2004, outdoor advertisements bearing the word “Skoal,” including but not limited to signs, were displayed at NHRA Sport Compact Events, including:

(a) the California NHRA Sport Compact Nationals in March 2004, in Fontana, California; and,

(b) the NHRA Sport Compact World Finals in October 2004, in Pomona, California.

Prohibited Brand Name Merchandise at NHRA Events

70. During 2004 and 2005 USSTC marketed or sold, or caused to be marketed or

1 sold, merchandise bearing the Skoal Brand Name at NHRA National Events, including:

2 (a) the 44th Annual K & N Filters Winternationals in February 2004, in Pomona,
3 California;

4 (b) the 17th Annual Fram Autolite NHRA Nationals in August 2004, in Sonoma,
5 California;

6 (c) the 40th Annual Automobile Club of Southern California NHRA Finals in
7 November 2004, in Pomona, California;

8 (d) the 45th Annual CARQUEST Auto Parts NHRA Winternationals in February
9 2005, in Pomona, California; and,

10 (e) the 18th Annual Fram Autolite NHRA Nationals in July 2005, in Sonoma,
11 California.

12 71. During 2004, USSTC marketed or sold, or caused to be marketed or sold,
13 merchandise bearing the Skoal Brand Name at NHRA Sport Compact Events, including:

14 (a) the California NHRA Sport Compact Nationals in March 2004, in Fontana,
15 California; and,

16 (b) the NHRA Sport Compact World Finals in October 2004, in Pomona, California.
17

18 **Efforts to Resolve the Alleged Violations by Discussion have Failed**

19 72. Since at least February 2004, Attorneys General of states which are parties to the
20 STMSA have informed USSTC of their concerns that USSTC's NHRA-related sponsorship
21 activities do not comply with the Consent Decree and the STMSA. Attorneys General of
22 California and other Settling States repeatedly asked USSTC to modify its NHRA-related
23 sponsorship activities. USSTC has failed and refused, and unless this Court issues an
24 enforcement order, will continue to fail and refuse, to bring its NHRA-related sponsorship
25 activities into compliance with the Consent Decree and STMSA.

26 73. On or about April 14, 2005, the People gave USSTC written notice, pursuant to
27 section VI.A of the Consent Decree and section VII(c)(2) of the STMSA, of intent to initiate
28 proceedings concerning specified USSTC violations of the Consent Decree and STMSA related

1 to USSTC's NHRA sponsorship activities ("Notice of Intent"). The Attorney General of
2 California and the Attorneys General of the following Settling States joined in the Notice of
3 Intent: Alaska, Arizona, Arkansas, Connecticut, Georgia, Hawaii, Idaho, Indiana, Iowa,
4 Kentucky, Louisiana, Maine, Michigan, Montana, Nevada, New Hampshire, New Jersey, New
5 York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee,
6 Vermont, West Virginia, Wisconsin and the Northern Mariana Islands.

7 74. The People held the Notice of Intent in abeyance until June 23, 2005, to allow the
8 parties more time to resolve the issues without litigation. Between April 14, 2005, and June 23,
9 2005, the People and USSTC exchanged letters, engaged in telephone calls, and met face-to-face
10 along with representatives from other Settling States and NAAG. These efforts to resolve the
11 issues short of litigation were unsuccessful. In a letter faxed and mailed to USSTC's attorney on
12 June 23, 2005, the People notified USSTC that it would no longer hold in abeyance the Notice of
13 Intent.

14 **FIRST CAUSE OF ACTION**

15 **Violation of STMSA Section III(c)(1)(C)**

16 **(Prohibited Sponsorship of Events with Paid Participants or Contestants Who are Youth)**

17 75. The People reallege and incorporate by reference paragraphs 4 through 74,
18 inclusive, as though fully set forth herein.

19 76. USSTC violated section III(c)(1)(C) of the STMSA by using its Skoal Brand
20 Name to sponsor NHRA National Events and NHRA Sport Compact Events in which some
21 drivers were younger than age 18.

22 **SECOND CAUSE OF ACTION**

23 **Violation of Consent Decree section V.C & STMSA section III(e)**

24 **(Prohibited Payments Related to Tobacco Products and Media)**

25 77. The People reallege and incorporate by reference paragraphs 4 through 74,
26 inclusive, as though fully set forth herein.

27 78. USSTC violated section V.C of the Consent Decree and section III(e) of the
28 STMSA by making or causing to be made payments to NHRA and Don Prudhomme Racing, Inc.

1 to use, display, and make reference to items, such as vehicles, signs, and clothes bearing the
2 Skoal Brand Name, in Media, such as live NHRA events, television broadcasts of NHRA events,
3 and Internet broadcasts of NHRA events in connection with its NHRA-related sponsorships.

4 **THIRD CAUSE OF ACTION**

5 **Violation of Consent Decree section V.D & STMSA, section III(f)** 6 **(Banned Tobacco Brand Name Merchandise)**

7 79. The People reallege and incorporate by reference paragraphs 4 through 74,
8 inclusive, as though fully set forth herein.

9 80. USSTC violated section V.D of the Consent Decree and section III(f) of the
10 STMSA by marketing, distributing, offering, selling, licensing, or causing to be marketed,
11 distributed, offered, sold or licensed apparel and other merchandise bearing the Skoal Brand
12 Name in connection with its NHRA-related sponsorships.

13 **FOURTH CAUSE OF ACTION**

14 **Violation of STMSA section III(d)** 15 **(Prohibited Outdoor Advertising)**

16 81. The People reallege and incorporate by reference paragraphs 4 through 74,
17 inclusive, as though fully set forth herein.

18 82. USSTC violated section III(d) of the STMSA, in connection with its NHRA-
19 related sponsorships, by using or causing to be used the Skoal Brand Name on signs, vehicles,
20 and other Outdoor Advertising at NHRA events.

21 **FIFTH CAUSE OF ACTION**

22 **Violation of STMSA section III(c)(2)(A)** 23 **(Prohibited Multiple Brand Name Sponsorships)**

24 83. The People reallege and incorporate by reference paragraphs 4 through 74,,
25 inclusive, as though fully set forth herein.

26 84. USSTC violated section III(c)(2)(A) of the STMSA by sponsoring in 2004:

27 (a) the NHRA POWERade Drag Racing Series;

28 (b) the NHRA Skoal Showdown in the NHRA POWERade Drag Racing Series;

1 (c) the NHRA Sport Compact Drag Racing Series;

2 (d) two NHRA Top Fuel Funny Cars in the NHRA POWERade Drag Racing Series;
3 and,

4 (e) one NHRA Top Fuel Dragster in the NHRA POWERade Drag Racing Series.

5 These sponsorships constituted more than one Brand Name Sponsorship in the States in the
6 twelve-month period of calendar year 2004.

7 85. USSTC violated section III(c)(2)(A) of the STMSA by sponsoring in 2005:

8 (a) the NHRA POWERade Drag Racing Series;

9 (b) the NHRA Skoal Showdown in the NHRA POWERade Drag Racing Series;

10 (c) one NHRA Top Fuel Funny Car in the NHRA POWERade Drag Racing Series;
11 and,

12 (d) one NHRA Top Fuel Dragster in the NHRA POWERade Drag Racing Series.

13 These sponsorships constituted more than one Brand Name Sponsorship in the States in the
14 twelve-month period of calendar year 2005.

15 **RELIEF REQUESTED**

16 WHEREFORE, the People respectfully request that this Court grant the following
17 relief:

18 1. Issue an Order finding and declaring that USSTC or USSTC acting
19 through its successors and assigns, directors, officers, employees, agents, subsidiaries, divisions,
20 or other internal organizational units of any kind or any other entities acting in concert or
21 participation with USSTC violated the prohibition, set forth in section III(c)(1)(C) of the
22 STSMA, against engaging in any Brand Name Sponsorship of events in which any contestants
23 are Youth;

24 2. Issue an Enforcement Order permanently enjoining USSTC from
25 entering into agreements or engaging in acts that violate section III(c)(1)(C) of the STMSA;

26 3. Issue an Order finding and declaring that USSTC or USSTC acting
27 through its successors and assigns, directors, officers, employees, agents, subsidiaries, divisions,
28 or other internal organizational units of any kind or any other entities acting in concert or

1 participation with USSTC violated section V.C of the Consent Decree and section III(e) of the
2 STMSA by making or causing to be made any payment or other consideration to any other
3 person or entity to use, display, make reference to, or use as a prop any items (including, but not
4 limited to, vehicles, signs, and clothes) bearing the Skoal Brand Name in any Media (including,
5 but not limited to, live performances, television shows, and commercial video) in connection
6 with its NHRA-related sponsorships;

7 4. Issue an Enforcement Order permanently enjoining USSTC from
8 entering into agreements or engaging in acts that violate section V.C of the Consent Decree or
9 section III(e) of the STMSA;

10 5. Issue an Order finding and declaring that USSTC or USSTC acting
11 through its successors and assigns, directors, officers, employees, agents, subsidiaries, divisions,
12 or other internal organizational units of any kind or any other entities acting in concert or
13 participation with USSTC violated section V.D of the Consent Decree and section III(f) of the
14 STMSA by marketing, distributing, offering, selling, licensing, or causing to be marketed,
15 distributed, offered, sold or licensed apparel and other merchandise bearing the Skoal Brand
16 Name in connection with its NHRA-related sponsorships.

17 6. Issue an Enforcement Order permanently enjoining USSTC from
18 entering into agreements or engaging in acts that violate section V.D of the Consent Decree or
19 section III(f) of the STMSA;

20 7. Issue an Order finding and declaring that USSTC and/or USSTC acting
21 through its successors and assigns, directors, officers, employees, agents, subsidiaries, divisions,
22 or other internal organizational units of any kind or any other entities acting in concert or
23 participation with USSTC violated the ban on Outdoor Advertising in section III(d) of the
24 STMSA in that it used or caused to be used the Skoal Brand Name in Outdoor Advertising at
25 NHRA events which were not a permitted Brand Name Sponsorship;

26 8. Issue an Enforcement Order permanently enjoining USSTC from
27 entering into agreements or engaging in acts that violate section III(d) of the STMSA;

28 9. Issue an Order finding and declaring that in calendar years 2004 and

1 2005 USSTC or USSTC acting through its successors and assigns, directors, officers, employees,
2 agents, subsidiaries, divisions, or other internal organizational units of any kind or any other
3 entities acting in concert or participation with USSTC violated the STMSA section III(c)(2)(A)
4 ban on engaging in more than one Brand Name Sponsorship in the States in any twelve-month
5 period;

6 10. Issue an Enforcement Order permanently enjoining USSTC from
7 entering into agreements or engaging in acts that violate section III(c)(2)(A) of the STMSA;

8 11. Enter an Order for monetary sanctions and for civil contempt;

9 12. Grant the People reasonable attorneys' fees and costs incurred in this
10 proceeding pursuant to Consent Decree section VI.D; and,

11 13. Grant such other and further relief as the Court deems just and proper.

12 Dated: July 27, 2005

13 BILL LOCKYER
14 Attorney General of the State of California

15 THOMAS GREENE
16 Chief Assistant Attorney General

17 DENNIS ECKHART
18 Senior Assistant Attorney General

19 MICHELLE HICKERSON
20 AMY J. HERTZ
21 Deputy Attorneys General
22 Attorneys for Plaintiff

23 **THIS COMPLAINT IS SUBJECT TO CODE OF CIVIL PROCEDURE § 446(a)**
24 **GOVERNING VERIFICATION OF PLEADINGS**
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