

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK**

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**THE STATE OF NEW YORK and ELIOT SPITZER,  
Attorney General of the State of New York, for and on  
behalf of the PEOPLE OF THE STATE OF NEW YORK,**

**Plaintiffs,**

**-against-**

**R. J. REYNOLDS TOBACCO CO.,**

**Defendant.**

**SUMMONS**

Index No. 01/401561

**Hon. Stephen G. Crane**

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**TO THE ABOVE-NAMED DEFENDANT:**

You are hereby summoned and required to serve upon plaintiffs' attorney an answer to the complaint in this action within twenty days after the service of this summons, exclusive of the day of service, or within thirty days after service is complete if this summons is not personally delivered to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of the venue designated is the county where plaintiffs have their business addresses.

Dated: March 19, 2001  
New York, New York

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State of New York  
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By:



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-against-

R. J. REYNOLDS TOBACCO CO.,

Defendant.

COMPLAINT FOR  
ENFORCEMENT OF THE  
MASTER SETTLEMENT  
AGREEMENT

Index No.

Hon. Stephen G. Crane

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The State of New York by its Attorney General, Eliot Spitzer and Attorney  
General Eliot Spitzer on behalf of the People of the State of New York, bring this action to  
obtain injunctive and other equitable relief, and allege as follows:

**INTRODUCTION**

1. In November 1998, the State of New York through the Attorney General ("the  
State") and the major U.S. tobacco companies, including Defendant R. J. Reynolds Tobacco  
Company ("Reynolds"), stipulated to the entry of a Consent Decree and Final Judgment  
("Consent Decree") and signed the Master Settlement Agreement ("MSA") settling the State's  
landmark litigation against the tobacco companies, The State of New York et al. v. Philip Morris  
Inc., et al., Index No. 400361/97, Supreme Court of the State of New York, New York County.

2. The MSA was approved by the Supreme Court of the State of New York, New  
York County, the Honorable Stephen G. Crane presiding, as part of the Consent Decree entered

by the Court on December 23, 1998. The MSA's stated goals include reducing Youth<sup>1/</sup> smoking and promoting public health. Important provisions of the MSA that further the MSA's goals are the prohibition (with limited exceptions) against outdoor signs advertising Tobacco Products (MSA, § III(d)) and the limitations on tobacco Brand Name Sponsorships (MSA, § III(c)).

3. Beginning on a date unknown to the State, defendant Reynolds has failed to comply with the MSA's provisions severely restricting outdoor advertisements for cigarettes. At numerous race tracks throughout the Settling States, including New York, Reynolds has placed and/or failed to remove multiple, large outdoor signs advertising year-round its Winston sponsorships. These signs, which associate Reynolds' addictive and harmful tobacco products with popular sports competitions, are viewed repeatedly by millions of people both at the tracks and on television broadcasts of events at the tracks, including events which the MSA prohibits Reynolds from sponsoring using its Winston brand.

4. Watkins Glen International Speedway in Watkins Glen, New York ("Watkins Glen") is a motorsports complex with events scheduled from early May through the end of October each year. The track hosts nationally televised events, including the National Association for Stock Car Auto Racing, Inc. ("NASCAR") Winston Cup, the NASCAR Busch Series, the 2001 Porsche Challenge, the 2001 Ferrari Challenge and the Zippo U.S. Vintage Grand Prix. In addition, Watkins Glen is the site for events that do not involve motorsports, including the Chemung Canal Historics and the 2001 Finger Lakes Wine Festival.

5. The MSA permits a Participating Manufacturer to have one Brand Name

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1. Capitalized terms that are defined in the MSA and used in this Complaint are defined here as in the MSA. (See MSA, § II)

Sponsorship each year. The Sponsorship of a single national or multi-state series or tour constitutes one Brand Name Sponsorship. Reynolds sponsors NASCAR races at racetracks around the country, including the NASCAR Winston Cup Series race at Watkins Glen. The NASCAR Winston Cup Series race at Watkins Glen takes place over four days in August each year.

6. The Outdoor Advertising to promote an event which has a Brand Name Sponsorship is strictly limited under the provisions of the MSA. Specifically, signs are allowed at the site only during the 90 days before and 10 days after the event. Thus, under the MSA, Reynolds is permitted to exhibit its Winston-related signs at Watkins Glen from approximately early May until late August each year.

7. In violation of the MSA, Reynolds has displayed continuously Outdoor Advertising at Watkins Glen since at least August 1999.

8. Because Reynolds' signs are exhibited year round at Watkins Glen outside the permissible 100-day advertising window applicable to each site, the State brings this action to stop Reynolds from engaging in prohibited Outdoor Advertising for its deadly products and to ensure that Reynolds complies with the MSA.

#### **PARTIES**

9. Eliot Spitzer is the Attorney General of the State of New York. Pursuant to section VII(c) of the MSA, the Attorney General is authorized to bring actions in this Court on behalf of the People of the State of New York to enforce and to obtain relief for violations of the MSA.

10. Defendant R.J. Reynolds Tobacco Company is a manufacturer of Tobacco

Products and a party to the MSA. Reynolds promotes and distributes its Tobacco Products in the State of New York. Among its Tobacco Products are Winston brand cigarettes.

### **JURISDICTION AND VENUE**

11. This Court has retained exclusive jurisdiction for the purposes of implementing and enforcing the MSA. (Consent Decree, § VII.A; MSA, § VII(a).)

12. The State is authorized to bring an action in this Court to enforce the terms of the MSA. (MSA, § VII(c)(1).)

### **RELEVANT MASTER SETTLEMENT AGREEMENT PROVISIONS**

13. Section III(d) of the MSA states that “Each Participating Manufacturer shall discontinue Outdoor Advertising . . . advertising Tobacco Products within the Settling States as set forth herein.”

14. Section II(ii) of the MSA defines “Outdoor Advertising” by stating, in relevant part:

“Outdoor Advertising” means (1) billboards, (2) signs and placards in arenas, stadiums, shopping malls and Video Game Arcades (whether any of the foregoing are open air or enclosed) (but not including any such sign or placard located in an Adult-Only Facility), and (3) any other advertisements placed (A) outdoors, or (B) on the inside surface of a window facing outward.”

15. The MSA allows a limited exception to the section III(d) ban on Outdoor Advertising. Section III(c)(3)(E)(ii) of the MSA states:

(E) nothing contained in the provisions of subsection III(d) shall . . .  
(ii) apply to Outdoor Advertising the Brand Name Sponsorship, to the extent that such Outdoor Advertising is placed at the site of a Brand Name Sponsorship no more than 90 days before the start of the initial-sponsored event, is removed within 10 days after the end of the last sponsored event, and is not prohibited by subsection (3)(A) above.

16. Section III(i) of the MSA, which provides a limitation on Third Party Use of

Brand Names, states:

“...the Participating Manufacturer will promptly take commercially reasonable steps against any such non-de minimus third-party activity.”

### FACTUAL ALLEGATIONS

17. Reynolds is a “Participating Manufacturer” as that term is defined in section II(jj) of the MSA.

18. New York is a “Settling State” as that term is defined in section II(qq) of the MSA.

19. As part of its promotion of its Winston brand of cigarettes, Reynolds sponsors the NASCAR races at racetracks across the country, including Watkins Glen.

20. The Reynolds’ NASCAR Winston Cup Series race at Watkins Glen takes place over four days in August each year. The schedule for recent years is as follows: August 11-14, 1999; August 10-13, 2000; August 9-12, 2001.

21. Contrary to the provisions in the MSA, which permits Outdoor Advertising at the site for 90 days before the event until 10 days after the event, Outdoor Advertising stating “NASCAR Winston Cup Series” has been displayed at Watkins Glen continuously from at least August 1999 to the present.

22. Reynolds’ year-round “NASCAR Winston Cup Series” advertising is visible to the families and other persons who are among the more than 500,000 fans who visit Watkins Glen annually. Approximately 180,000 spectators attend the NASCAR Winston Cup Series race and approximately 20,000-30,000 spectators attend each of the motorsport races throughout the season. In addition, the racetrack is used continuously by driving schools and car clubs when

there are no race events. This advertising clearly is visible from the highways surrounding Watkins Glen and is seen by the millions of people viewing television coverage of events at the track.

**Reynolds Controls the Outdoor Advertising**

23. Reynolds and/or its agents, employees, representatives, or affiliates placed or caused to be placed the Winston sponsorship Outdoor Advertising which is at Watkins Glen.

24. Reynolds is the owner, directly or indirectly through its agents, employees, representatives, wholly owned subsidiaries or affiliates (including, without limitation, GMB, Inc.), of one or more federally registered trademarks of the word "Winston" in connection with cigarettes.

25. Reynolds has used one or more of its Winston trademarks in commerce in connection with the sale or marketing of cigarettes since at least 1952.

26. Reynolds also is the senior user and common law owner of the distinctive red and white Winston trade dress for Winston brand cigarettes (the "Winston Trade Dress").

27. In addition, Reynolds is the owner of the federally registered trademarks "Winston Cup" and "Winston Racing Series."

28. Although such trademarks purportedly are used to promote auto racing events, Reynolds causes the Winston trademarks to appear in the same color scheme and with the same lettering that it uses in the Winston Trade Dress to promote Winston Brand cigarettes. Reynolds' intent in doing so is to enhance recognition for its Winston Brand cigarettes.

29. Reynolds owns the right to control the use and appearance in commerce of all

of its trademarks and of the Winston Trade Dress.

30. Reynolds specifically owns the right to control where and when its trademarks and the Winston Trade Dress may appear in advertisements.

31. One or more of Reynolds' Winston trademarks and the Winston Trade Dress appear on the Outdoor Advertising which is at Watkins Glen year-round.

32. The appearance of one or more of Reynolds' Winston trademarks and the Winston Trade Dress on the Outdoor Advertising at Watkins Glen is expressly or implicitly authorized by Reynolds. Thus, Reynolds is in violation of the MSA including, without limitation, §§ III(d) and III(c)(3)(E)(i).

33. Alternatively, such appearance is unauthorized by Reynolds and therefore in violation of trademark and trade dress rights that Reynolds owns or controls.

34. As owner of the Winston trademarks and the Winston Trade Dress, Reynolds and/or its agents, employees, representatives or affiliates have the right to demand the removal or covering of Outdoor Advertising for its Winston-sponsored events during times when the MSA does not authorize such Outdoor Advertising.

35. On information and belief, Reynolds and/or its agents, employees, representatives or affiliates also have a separate contractual right to place and remove the "NASCAR Winston Cup Series" Outdoor Advertising at Watkins Glen.

36. Section III(i) of the MSA requires Reynolds to "take commercially reasonable steps against" third-party activity involving use of its Brand Names "in a manner prohibited by [the MSA] if done by [Reynolds] itself."

37. If the appearance at Watkins Glen of Winston-sponsorship Outdoor

Advertising which the MSA prohibits is third-party activity, Reynolds has breached section III(i) of the MSA by failing to take commercially reasonable steps to prevent the appearance of such advertising. Specifically, but without limitation, Reynolds has failed to prevent the unauthorized use of its trademarks or the Winston Trade Dress and/or to enforce its contractual rights to control placement and removal of the prohibited Outdoor Advertising.

**Settling States' Efforts to Resolve the Violations**

38. As required by the MSA, representatives of the Settling States have tried to resolve with Defendant Reynolds the MSA violations alleged in this Complaint.

a. On August 17, 2000, the California Attorney General's Office wrote to Reynolds concerning a number of large, prominent signs at California's Sears Point Raceway advertising the NASCAR Winston Cup Series. The letter explained that the NASCAR Winston Cup Series was held at the Sears Point Raceway only on June 22-25, 2000, yet investigators observed multiple NASCAR Winston Cup Series signs at the National Hot Rod Association Nationals held on August 4-6, 2000, at Sears Point Raceway. The California Attorney General's Office informed Reynolds that these NASCAR Winston Cup Series signs constituted impermissible Outdoor Advertising because they were displayed more than 10 days after the end of the sponsored events they advertised. Reynolds responded in a letter dated September 1, 2000, stating that the "NASCAR Winston Cup Series signage... is posted entirely within this time period and, therefore, specifically is contemplated by the MSA."

b. On December 11, 2000, the Chairperson of the National Association of Attorneys General ("NAAG") Tobacco Enforcement Committee, Pennsylvania Attorney General Mike Fisher, wrote to Reynolds on behalf of New York and the other Settling States, stating, in

part:

This [the section III(c)(3)(E)(ii)] exception to the section III(d) ban on Outdoor Advertising, allowing advertising of the Brand Name Sponsorship “at the site” of a Brand Name Sponsorship must be read in conjunction with the phrases “the start of the initial” and “the end of the last” sponsored event, i.e., the start and conclusion of sponsored events *at the site*. Otherwise, we would reach the absurd result that the MSA forces Washington State to allow Winston NHRA signs in October at Seattle International Raceway (the site of NHRA racing in July) merely because there is a Winston NHRA race in another state that month. . . . We believe the position set forth [by Reynolds] is completely at odds with the letter and intent of the MSA and borders on bad faith.

(Emphasis in original.) Attached to this December 11, 2000 letter was a list of 15 race venues in 10 different Settling States, including Watkins Glen in New York where Attorneys General’s Offices had found examples of year-round Outdoor Advertising for Winston-sponsored racing events.

c. On December 21, 2000, Reynolds wrote to the Chairperson of NAAG’s Tobacco Enforcement Committee not contesting the presence of the signs, and making it clear that Reynolds refused to discontinue its practice of year-round Outdoor Advertising for its Brand Name Sponsorships.

39. On February 16, 2001, the Attorney General of New York and the Attorneys Generals of the Settling States Arizona, California, Connecticut, Guam, Hawaii, Iowa, Kansas, Louisiana, Maine, Maryland, Michigan, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Utah, Vermont, and Washington gave Reynolds a written 30-day notice, pursuant to section VII(c)(2) of the MSA, of the intention of New York and other states to initiate proceedings concerning Reynolds’ violations of the MSA’s restrictions on Outdoor Advertising. A copy of this Notice is annexed as Exhibit A to this Complaint and incorporated herein.

40. Communications between the Settling States and Reynolds since the sending of this notice have not resolved this matter.

### **CAUSE OF ACTION**

41. The State realleges and incorporates paragraphs 1 through 40 inclusive, as though fully set forth herein.

42. Reynolds violates section III(d) and/or section III(i) of the MSA by engaging in Outdoor Advertising at Watkins Glen for its Winston-sponsored series during times when the MSA prohibits such Outdoor Advertising.

43. Section III(c)(3)(E)(ii) of the MSA does not authorize Reynolds to engage in year-round Outdoor Advertising at Watkins Glen for its Winston-sponsored series.

44. As set forth in paragraphs 38 through 40, despite repeated demands, Reynolds has refused to cease and desist from engaging in year-round Outdoor Advertising for its Winston-sponsored series. Unless enjoined by this Court, Reynolds will continue to engage in Outdoor Advertising at Watkins Glen in New York which violates section III(d) of the MSA.

### **PRAYER FOR RELIEF**

WHEREFORE, the State respectfully prays that this Court grant the following relief:

1. Pursuant to section VII(c)(3) of the MSA, issue an Enforcement Order:
  - a. Declaring that Reynolds is in breach of section III(d) and/or section III(i) of the MSA by engaging in year-round Outdoor Advertising at Watkins Glen in New York for its Winston-sponsored series.
  - b. Declaring that section III(c)(3)(E)(ii) of the MSA does not allow Reynolds to

have year-round Outdoor Advertising for its Brand Name Sponsorship at each and every site hosting any Brand Name Sponsorship event.

c. Ordering Reynolds and its successors, agents, representatives, employees, affiliates, wholly owned subsidiaries and all persons acting in concert with Reynolds, to take all actions necessary to ensure the immediate removal of all Outdoor Advertising in the State of New York which violates the MSA.

d. Permanently restraining Reynolds and its successors, agents, representatives, employees, affiliates, and all persons acting in concert with Reynolds, from placing or causing to be placed any Outdoor Advertising in the State of New York which violates of the MSA.

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

DATED: March 19, 2001

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