

# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

**No. 06-5267**

**September Term, 2006**

**99cv02496**

**Filed On: May 22, 2007** [1042029]

United States of America, United States Department  
of Justice, et al.,  
Appellees

v.

Philip Morris USA Inc., et al., *f/k/a* Philip Morris  
Incorporated,  
Appellees

British American Tobacco (Investments) Ltd., Directly  
and as Successor to BRITISH-AMERICAN  
TOBACCO COMPANY, LTD,  
Appellant

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Consolidated with 06-5268, 06-5269, 06-5270,  
06-5271, 06-5272, 06-5332, 06-5367,

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07-5102

99cv02496

United States of America, United States Department  
of Justice,  
Appellee

v.

Philip Morris USA Inc., et al., *f/k/a* Philip Morris  
Incorporated,  
Appellees

The Tobacco Institute, Incorporated,  
Appellant

**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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**No. 06-5267**

**September Term, 2006**

07-5103

99cv02496

United States of America, United States Department  
of Justice,  
Appellee

v.

Philip Morris USA Inc., et al., *f/k/a* Philip Morris  
Incorporated,  
Appellees

The Council for Tobacco Research-USA, Inc.,  
Appellant

**BEFORE:** Randolph and Griffith, Circuit Judges

**ORDER**

Upon consideration of the unopposed joint motion for consolidation; the motion to dismiss intervenor's appeal, the opposition thereto, the reply, and the United States' response; the joint proposed briefing plan; and the intervenors' proposed briefing format and the responses thereto, it is

**ORDERED** that the unopposed joint motion for consolidation be granted. Nos. 07-5102 and 07-5103 are hereby consolidated with No. 06-5267, et al. It is

**FURTHER ORDERED** that the motion to dismiss be referred to the merits panel to which this appeal is assigned. The parties are directed to address in their briefs the issues presented in the motion to dismiss rather than incorporate those arguments by reference. It is

**FURTHER ORDERED** that the following briefing format and schedule will apply in these consolidated cases:

# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

**No. 06-5267**

**September Term, 2006**

Joint Brief of Appellants-Cross Appellees Philip Morris USA, Inc., et al. (not to exceed 42,000 words)	August 10, 2007
Brief of Appellee-Cross Appellant United States of America (not to exceed 49,000 words)	November 19, 2007
Brief of Appellee-Cross Appellant-Intervenors Tobacco-Free Kids Action Fund, et al. (not to exceed 8,750 words)	December 10, 2007
Response and Reply Brief of Appellants-Cross Appellees Philip Morris USA, Inc., et al. (not to exceed 28,000 words)	February 27, 2008
Brief of Appellee Liggett Group, Inc. (not to exceed 7,000 words)	February 27, 2008
Reply Brief of Appellee-Cross Appellant United States of America (not to exceed 7,000 words)	April 14, 2008
Reply Brief of Appellee- Cross Appellant-Intervenors Tobacco-Free Kids Action Fund, et al. (not to exceed 4,375 words)	April 28, 2008
Deferred Appendix	May 5, 2008
Final Briefs	May 19, 2008

The parties have failed “to provide detailed justifications for [their] request to . . . exceed in the aggregate the standard word allotment . . . [and] specify the word allotment necessary for each issue.” See Order, November 28, 2006. The parties will be informed by separate order of the oral argument date and the composition of the merits panel. The court reminds the parties that

a petitioner whose standing is not self-evident should establish its standing by the submission of its arguments and any affidavits or other evidence appurtenant thereto at the first appropriate point in the review proceeding.

**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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**No. 06-5267**

**September Term, 2006**

In some cases that will be in response to a motion to dismiss for want of standing; in cases in which no such motion has been made, it will be with the petitioner's opening brief—and not ... in reply to the brief of the respondent agency. In either procedural context the petitioner may carry its burden of production by citing any record evidence relevant to its claim of standing and, if necessary, appending to its filing additional affidavits or other evidence sufficient to support its claim. In its opening brief, the petitioner should also include in the "Jurisdictional Statement" a concise recitation of the basis upon which it claims standing.

Sierra Club v. EPA, 292 F.3d 895, 900-01 (D.C. Cir. 2002). See also D.C. Cir. Rule 28(a)(7).

Parties are strongly encouraged to hand deliver their briefs to the Clerk's office on the date due. Filing by mail may delay the processing of the brief. Additionally, counsel are reminded that if filing by mail, they must use a class of mail that is at least as expeditious as first-class mail. See Fed. R. App. P. 25(a). All briefs and appendices must contain the date that the case is scheduled for oral argument at the top of the cover, or state that the case is being submitted without oral argument. See D.C. Cir. Rule 28(a)(8).

**Per Curiam**

**FOR THE COURT:**  
Mark J. Langer, Clerk

BY:

Deputy Clerk/LD