

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

RAI STRATEGIC HOLDINGS, INC. AND
R.J. REYNOLDS VAPOR COMPANY

Plaintiffs and
Counterclaim Defendants,

v.

ALTRIA CLIENT SERVICES LLC; PHILIP
MORRIS USA INC.; and PHILIP MORRIS
PRODUCTS S.A.

Defendants and
Counterclaim Plaintiffs.

Case No. 1:20-cv-00393-LO-TCB

ORAL ARGUMENT REQUESTED



PMI/ALTRIA'S OPPOSITION TO RJR'S MOTION *IN LIMINE* NO. 11

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I. RJR'S MIL NO. 11: REFERENCES TO IQOS SUPPORT PMI/ALTRIA'S DAMAGES CASE AND PRESENT NO PREJUDICE, CONFUSION, OR DELAY

RJR contends that the Court should exclude *any* reference to PMI/Altria's IQOS heat not burn device because it is purportedly irrelevant. RJR is wrong. PMI/Altria and RJR are arch rivals and hot competitors in the market for alternatives to traditional combustible cigarettes. RJR's accused VUSE e-cigarettes compete with PMI/Altria's IQOS heat not burn products and technology. Consequently, information on IQOS is directly relevant to the *Georgia Pacific* analysis and damages. RJR's concerns about prejudice, confusion, or delay are conclusory, overstated, and misplaced. RJR's Motion *in Limine* ("MIL") No. 11 should be denied.

A. Evidence Of IQOS Is Relevant To Damages

PMI/Altria should be allowed to present evidence about IQOS at trial because it is relevant to damages for two separate reasons. *First*, evidence regarding IQOS is considered by both parties' damages experts when analyzing *Georgia Pacific* Factor No. 5. That factor looks at the "[t]he commercial relationship between the licensor and licensee, such as whether they are competitors in the same territory in the same line of business." *Georgia-Pacific Corp. v. U.S. Plywood Corp.*, 318 F. Supp. 1116, 1120 (S.D.N.Y. 1970). Here, the parties have competed throughout the entire damages period and, as Mr. Meyer explains, that competitive relationship

[REDACTED]

[REDACTED]¹ Ex. A (Meyer Op.) ¶¶ 346, 358-65.

¹ Each hypothetical negotiation relied on by Mr. Meyer for his royalty assessment includes a licensor involved in the manufacturing, sale, and/or distribution of IQOS in the United States. Ex. A (Meyer Op.) ¶¶ 34, 36, 47. For the '545 Patent, the parties are RJR and PM USA, [REDACTED] *Id.* ¶ 36. For the '265, '911, and '556 Patents, the parties are RJR and PMP, [REDACTED] *Id.* ¶ 47. For the '374 Patent, the parties are RJR and ACS, [REDACTED] *Id.* ¶ 34.

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