

**IN THE 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

**REPLY IN SUPPORT OF REYNOLDS'S MOTION *IN LIMINE* NO. 8 TO EXCLUDE
REFERENCES TO THE LOCATION IN CHINA OF REYNOLDS'S
MANUFACTURERS AND SUPPLIERS OF THE VUSE PRODUCTS**

TABLE OF AUTHORITIES

	Page
CASES	
<i>Apple, Inc. v. Samsung Electronics Co.</i> , No. 11-CV-01846-LHK, 2014 WL 549324 (N.D. Cal. Feb. 7, 2014).....	4
<i>Apple, Inc. v. Samsung Electronics Co.</i> , No. 11-CV-01846-LHK, 2016 WL 824711 (N.D. Cal. Mar. 2, 2016).....	2
<i>Black & Decker Corp. v. Positec USA Inc.</i> , No. 11-cv-5426, 2017 WL 4010922 (N.D. Ill. Sept. 11, 2017).....	5
<i>CH₂O, Inc. v. Meras Eng’g, Inc.</i> , No. LA CV13-08418, Dkt. 349 (C.D. Cal. May 16, 2016)	2
<i>Contour IP Holding, LLC v. GoPro, Inc.</i> , No. 3:17-cv-04738-WHO, 2021 WL 75666 (N.D. Cal. Jan. 8, 2021).....	3, 5
<i>Dentsply Sirona Inc. v. Edge Endo, LLC</i> , No. 1:17CV1041-JFB-SCY, 2020 WL 6392764 (D.N.M. Nov. 2, 2020).....	3, 4
<i>Maxell, Ltd. v. Apple Inc.</i> , No. 5:19-CV-00036-RWS, 2021 WL 3021253 (E.D. Tex. Feb. 26, 2021).....	1, 4, 5
<i>Personalized User Model, L.L.P v. Google Inc.</i> , No. 09-525-LPS, 2014 WL 807736 (D. Del. Feb. 27, 2014).....	3
<i>Universal Electronics, Inc. v. Universal Remote Control, Inc.</i> , No. SACV 12-00329 AG (JPRx), 2014 WL 8096334 (C.D. Cal. Apr. 21, 2014).....	1, 3
OTHER AUTHORITIES	
Fed. R. Evid. 403	1, 4, 5

The location in China of the manufacturers and suppliers of Reynolds's VUSE products is not relevant to this trial. And even if this location information had any minimal relevance, it would be substantially outweighed by the risk of unfair prejudice; commentary or references that even implicitly or unintentionally invites bias should be precluded under Federal Rule of Evidence 403. Indeed, PM/Altria agrees to "not make any 'negative references to Chinese or overseas manufacturing or supply-chain roles.'" Dkt. 981 at 1, 3. This agreement logically includes the full scope of Reynolds's motion. Its MIL 8 should be granted.

1. The location in China of Reynolds's manufacturers and suppliers is not relevant to any issue to be tried. Dkt. 849 at 3-5. While PM/Altria asserts this information is "probative and relevant" and even "highly probative," PM/Altria fails to substantiate this. Dkt. 981, at 3 nn.1 & 4; *see also id.* at 1 ("learning relevant facts"), ("indisputably relevant technical documents"), *id.* at 2 ("relevance of technical documents"). It does not, and cannot, show that the manufacturers' location is relevant to any element of any claim to be tried.

Nor do PM/Altria's cited cases establish relevance. In *Maxell, Ltd. v. Apple Inc.*, No. 5:19-CV-00036-RWS, 2021 WL 3021253 (E.D. Tex. Feb. 26, 2021), the court did not find location information relevant; it expressly premised reference to foreign suppliers on first establishing relevance: "***To the extent that such evidence is relevant***, Maxell may reference a component of an Apple accused product that is produced by a foreign supplier or manufacturer without violating this order." *Id.* at *10 (emphasis added). In citing *Universal Electronics, Inc. v. Universal Remote Control, Inc.*, No. SACV 12-00329 AG (JPRx), 2014 WL 8096334 (C.D. Cal. Apr. 21, 2014), PM/Altria omits that court's direction that "all counsel shall refrain from unnecessarily mentioning, dwelling on, remarking on, or encouraging inferences related to national origin or foreign incorporation, manufacturing, or ownership." *Id.* at *7. And in citing

CH₂O, Inc. v. Meras Engineering, Inc., No. LA CV13-08418, Dkt. 349 (C.D. Cal. May 16, 2016), and *Apple, Inc. v. Samsung Electronics Co.*, No. 11-CV-01846-LHK, 2016 WL 824711 (N.D. Cal. Mar. 2, 2016), PM/Altria omits that those cases involved foreign parties and their foreign operations, which is not the case here, and even so, the courts circumscribed the evidence. *See CH₂O*, Dkt. 349 at 1 (limiting evidence of “Defendants’ foreign operations” for “background purposes” of “Defendants’ businesses”); *Apple*, 2016 WL 824711, at *3 (permitting references to the defendant as “Samsung Korea” or similar, and references to the country of employment of Samsung witnesses, in order to “explain Samsung’s corporate structure and the interplay between various executives”). Here, in contrast, Reynolds (*i.e.*, RAI Strategic Holdings, Inc. and R.J. Reynolds Vapor Company) is a domestic company, its employees live locally, and the Chinese manufacturers and suppliers are third parties not directly involved in this case.¹

As for PM/Altria’s argument that Reynolds’s motion is “overbroad” and would “sweep[]” in entity “names” and documents that “reveal” an entity’s location abroad, that is a straw man. *See* Dkt. 981 at 1-2. Reynolds’s MIL 8 does **not** request exclusion of names or other “indicia” of an entity’s location in China. Reynolds likewise does **not** seek exclusion of any documentary evidence simply because the document happens to list a location. Accordingly, PM/Altria’s concern with entity names and documents like its Exhibit A (a technical specification of a foreign entity whose “corporate name,” identified on the document,

¹ PM/Altria argues that, in a prior discovery ruling, Magistrate Judge Buchanan found “that RJR controls its suppliers.” Dkt. 981 at 2. That is incorrect. As explained in Reynolds’s opposition to PM/Altria’s MIL 6, Magistrate Judge Buchanan found only that Reynolds has control “over the ability to produce the source code” for purposes of document production in discovery. *See* Dkt. 965 at 13-14 (Part VI). Magistrate Judge Buchanan did not find that Reynolds has a corporate relationship with or other “control” over the suppliers.

“indicate[s]” that the entity is located in China, *id.* at 2 & 4) is misplaced. PM/Altria’s invocation of case law allowed documents with “stray” or “incidental references” to location (*Contour*) or that “happen[] to contain a foreign address” (*Personalized User Model*) is likewise off point. *Id.* at 2.

Rather, given the irrelevance of such information to this trial, Reynolds’s motion seeks exclusion of affirmatively *referencing* that its manufacturers and suppliers are located abroad and particularly in China, *i.e.*, eliciting testimony on this topic, highlighting it in demonstratives, or raising it in opening statements, closing arguments, or other commentary before the jury. *See, e.g.*, Dkt. 849 at 1-2. PM/Altria’s own cited cases reflect the distinction. As *Personalized User Model* explained, while “relevant admissible evidence” that “happens to contain a foreign address” may not warrant exclusion “solely based on the foreign address,” counsel and witnesses should be precluded from referencing the foreign nature of the location, such as by labeling an entity as “foreign.” *Personalized User Model, L.L.P v. Google Inc.*, No. 09-525-LPS, 2014 WL 807736, at *4 (D. Del. Feb. 27, 2014). PM/Altria’s *Contour* case made the same point. *See Contour IP Holding, LLC v. GoPro, Inc.*, No. 3:17-cv-04738-WHO, 2021 WL 75666, at *9 (N.D. Cal. Jan. 8, 2021) (while permitting “stray geographic markers on otherwise admissible documents,” endorsing the parties’ stipulation to “not ‘elicit from any witness the geographic location of GoPro’s manufacture, sale, offer to sell, use, or importation,’” which would be improperly “aimed at the introduction of evidence to purposefully show these geographic connections of the company,” and directing the parties to present the incidental evidence of foreign location “in a neutral, uninflamatory way”); *see also Dentsply Sirona Inc. v. Edge Endo, LLC*, No. 1:17CV1041-JFB-SCY, 2020 WL 6392764, at *3 (D.N.M. Nov. 2, 2020) (while allowing relevant documents that recited the Chinese manufacturer’s name, directing plaintiffs to

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