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**

REPLY IN SUPPORT OF PMI/ALTRIA'S OMNIBUS MOTION *IN LIMINE*

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I. MIL NO. 1: PRECLUDE RJR FROM RELYING ON NON-COMPARABLE AGREEMENTS TO SUGGEST THE AMOUNT OF A REASONABLE ROYALTY

RJR's response crystallizes two dispositive points: (1) RJR confirms it seeks to use [redacted] Opp. at 3, and (2) RJR ignores this Court's ruling that parties may ***not*** use "[t]he amounts paid" in undisputedly "not comparable" licenses "to suggest a reasonable royalty rate" at trial. *TecSec, Inc. v. Adobe Inc.*, No. 10-cv-115, 2018 WL 11388472, at *8 (E.D. Va. Nov. 21, 2018). But "the Federal Circuit has made clear that non-comparable licensing ***cannot*** be used as the basis for determining a reasonable royalty." *I/P Engine, Inc. v. AOL Inc.*, No. 11-cv-512, 2012 WL 12068846, at *2 (E.D. Va. Oct. 12, 2012). RJR's three arguments fail to overcome this law.

First, RJR is wrong that PMI/Altria's MIL is "premature" because it "does not discuss any specific" license. Opp. at 1. PMI/Altria told RJR during meet and confer that the subject agreements are specifically [redacted] identified in Section 12.3 of Dr. Sullivan's rebuttal report. Dkt. 895-1 at 3. PMI/Altria identified these agreements in its MIL, explaining that the parties' damages experts rely [redacted]. Mot. at 1 (citing Dkt. 895-3 ¶¶ 229-57). RJR does not dispute these facts and concedes [redacted] *Cf. id.* at 3 *with* Opp. at 1-3.

Second, RJR's argument that it is "well settled" that non-comparable agreements "***may*** be relevant" for "other purposes," such as "cross-examination," invites legal error. Opp. at 1. RJR's ***sole*** cited case—which deferred the motion until the pretrial conference (not trial as RJR suggests)—explains that the opposite is true: "A non-comparable license is ***irrelevant*** to prove a reasonable royalty" and, even if a party "at least proffered some possibly relevant lines of cross-examination" (RJR has not), "that does ***not*** mean that the jury should hear irrelevant evidence."

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