EXHIBIT 2

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. 1:20cv00393-LO-TCB

RAI STRATEGIC HOLDINGS, INC. AND R.J. REYNOLDS VAPOR COMPANY'S EIGHTH SUPPLEMENTAL OBJECTIONS AND RESPONSES TO ALTRIA CLIENT SERVICES LLC, PHILIP MORRIS USA, INC., AND PHILIP MORRIS PRODUCTS S.A.'S FIRST SET OF INTERROGATORIES (NO. 4)

Pursuant to Federal Rules of Civil Procedure 26 and 33, RAI Strategic Holdings, Inc. and R.J. Reynolds Vapor Company (collectively, "Reynolds") hereby supplement their responses to Altria Client Services LLC, Philip Morris USA, Inc., and Philip Morris Products S.A.'s (collectively, "Defendants" or "Counterclaim Plaintiffs") First Set of Interrogatories (Nos. 1-11) as follows.

PRELIMINARY STATEMENT AND OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS

Reynolds incorporates and reiterates its preliminary statement and objections to the Definitions and Instructions.

INTERROGATORY NO. 4:

For each RJR Accused Product, separately for each of the Counterclaim Asserted Patents, describe in detail all theories and bases under which Counterclaim Defendants contend damages should be measured, and explain in detail how such damages are computed, including identifying all Products for which damages should be awarded, whether and to what extent there have been

convoyed sales, the amount of any reasonable royalty that should be awarded, any royalty base and rate which Counterclaim Defendants contend is reasonable, how such amount, base, and rate are computed, the date(s) on which you contend the hypothetical negotiation would have occurred, the parties to the hypothetical negotiation, the appropriate time period(s) for which damages should be assessed, all facts and evidence that support or refute Counterclaim Defendants' damages theories and bases, and identify the three (3) Persons most knowledgeable concerning such facts. Your response should include, but not be limited to, the bases for Your contentions regarding the factors set forth in *Georgia-Pacific Corp. v. U.S. Plywood Corp.*, 318 F. Supp. 1116, 112 (S.D.N.Y. 1970).

OBJECTIONS:

Reynolds objects to this interrogatory as premature because it seeks information that is the subject matter of expert reports and discovery that are not yet due. Reynolds objects to this interrogatory to the extent that the response will require information and discovery from Defendants/Counterclaim Plaintiffs that has not yet been made available to Reynolds. Reynolds objects to this interrogatory as unduly burdensome to the extent it seeks an identification of "all" facts and evidence that support or refute Counterclaim Defendants' damages theories and bases. Reynolds objects to this interrogatory as composed of multiple discrete subparts under Fed. R. Civ. P. 33, which causes this interrogatory to count as more than one interrogatory.

RESPONSE:

Subject to and without waiving its objections, Reynolds responds as follows:

Reynolds contends that no measure or computation of damages should be made with respect to the alleged infringement of the Counterclaim Asserted Patents by the RJR Accused Products because the Counterclaim Asserted Patents are not infringed either directly, indirectly, literally, or under the doctrine of equivalents as described in response to Interrogatory No. 1. Moreover, the claims of the Counterclaim Asserted Patents are invalid under one or more sections of the Patent Act, for the reasons described in response to Interrogatory No. 2. Damages can only be made upon a finding of infringement, 35 U.S.C. § 284, and there can be no infringement of an invalid patent. *See, e.g., Viskase Corp. v. Am. Nat'l Can Co.*, 261 F.3d 1316, 1323 (Fed. Cir. 2001).

Reynolds maintains that Defendants/Counterclaim Plaintiffs must first set forth a damages theory and basis, explain in detail how they contend that such damages should be computed, and provide their positions concerning convoyed sales, the proper calculation of a reasonable royalty and associated details concerning the hypothetical negotiation, and the application of the *Georgia-Pacific* factors. When Defendants/Counterclaim Plaintiffs do so, Reynolds will respond. Reynolds notes that, if infringement of a valid patent is found, Defendants/Counterclaim Plaintiffs would be entitled to at least a reasonable royalty as a measure of damages.

Reynolds further states that it understands that Defendants/Counterclaim Plaintiffs accuse the following products of infringing the listed patents, and thus will be entitled to damages should they prevail on the merits of any particular infringement claim:

- U.S. Patent No. 6,803,545 ('545 Patent): VUSE Alto®, VUSE Solo®, and VUSE Vibe™, as well as their associated Flavor Packs.
- U.S. Patent No. 10,420,374 ('374 Patent): VUSE Solo®, VUSE Alto®, VUSE Vibe™, and VUSE Ciro®, as well as their associated Flavor Packs.
- U.S. Patent No. 9,814,265 ('265 Patent): VUSE Alto® and its associated Flavor Packs.
- U.S. Patent No. 10,555,556 ('556 Patent): VUSE Vibe™ and its associated Flavor Packs.
- U.S. Patent No. 10,104,911 ('911 Patent): VUSE Solo®, VUSE Ciro®, and VUSE Vibe™, as well as their associated Flavor Packs.

Reynolds states that the parties to the hypothetical negotiation would include R.J. Reynolds Vapor Company and the Counterclaim Defendant entities that owned the asserted patents at the time of the hypothetical negotiation.

Reynolds further states that it is premature to identify the three persons most knowledgeable about its "damages theories and bases" because Reynolds will be formulating those theories in response to the damages theories and assertions of Defendants/Counterclaim Plaintiffs. Reynolds states that the following witnesses are generally knowledgeable about the RJR Accused Products, the facts concerning the market for those RJR Accused Products, and financial information concerning those RJR Accused Products: Kara Calderon (Reynolds's marketing and distribution of the RJR Accused Products) and Nick Gilley (Reynolds's financial information associated with the manufacture and sale of the RJR Accused Products).

Reynolds will supplement its response to this interrogatory as discovery progresses and to the extent that Defendants/Counterclaim Plaintiffs provide their contentions with respect to any alleged damages that they claim to be entitled for alleged infringement by any RJR Accused Product of any asserted claim of the Counterclaim Asserted Patents in response to Reynolds's Interrogatory No. 13 and/or in an expert report.

FIRST SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 4 (Nov. 9, 2020):

Subject to and without waiving its objections, Reynolds further responds as follows:

Reynolds continues to object to Interrogatory No. 4 on the grounds that much of the information sought is properly the subject of expert testimony and is also information to be developed during discovery. Reynolds identifies Ryan Sullivan as an expert with information related to this Interrogatory. Reynolds incorporates by reference its forthcoming expert report in response to Defendants/Counterclaim Plaintiffs' expected expert report on damages, currently due on December 25, 2020.

Reynolds further states that it understands that Defendants/Counterclaim Plaintiffs accuse the following products of infringing the listed patents:

- U.S. Patent No. 6,803,545 ('545 Patent): VUSE Alto®, VUSE Solo®, VUSE Vibe™, and VUSE Ciro®, as well as their associated Flavor Packs.
- U.S. Patent No. 10,420,374 ('374 Patent): VUSE Solo®, VUSE Alto®, VUSE Vibe™, and VUSE Ciro®, as well as their associated Flavor Packs.
- U.S. Patent No. 9,814,265 ('265 Patent): VUSE Alto® and its associated Flavor Packs.
- U.S. Patent No. 10,555,556 ('556 Patent): VUSE Vibe™ and its associated Flavor Packs.
- U.S. Patent No. 10,104,911 ('911 Patent): VUSE Solo®, VUSE Ciro®, and VUSE Vibe™, as well as their associated Flavor Packs.

Reynolds's contentions regarding the *Georgia-Pacific* factors will be the subject of evaluation by its expert and will be set forth in Reynolds's responsive expert report.

Based on Defendants/Counterclaim Plaintiffs' recently supplemented answers to Reynolds's Interrogatory No. 13, Reynolds understands that Defendants/Counterclaim Plaintiffs seek damages in the form of a royalty based on a lump sum payment. Reynolds contends that damages should be measured in the form of a reasonable royalty. Reynolds expects that the royalty would be in the form of a running royalty based on Reynolds's sales, if Defendants/Counterclaim Plaintiffs prevail in this matter.

The parties to the hypothetical negotiation would include R.J. Reynolds Vapor Company and the Defendants/Counterclaim Plaintiffs who own the patents in question. Reynolds understands those parties to be Philip Morris USA, Inc. for the '545 patent, Altria Client Services, LLC for the '374 patent, and Philip Morris Products S.A. for the '265, '556, and '911 patents.

The hypothetical negotiation date for the '545 patent is March 2013, the date of the first sale by Reynolds of its VUSE Solo product. The hypothetical negotiation date for the '374 patent is September 24, 2019, the date of that patent's issuance. The hypothetical negotiation date for the '265 patent is August 2018, the date of the first sale by Reynolds of its VUSE Alto product. The hypothetical negotiation date for the '556 patent is February 11, 2020, the date of the patent's issuance. The hypothetical negotiation date for the '911 patent is October 23, 2018, the date of the patent's issuance.

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