

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

PHILIP MORRIS PRODUCTS S.A.,)	
)	
Plaintiff,)	
)	
v.)	1:20-cv-393 (LMB/WEF)
)	
R.J. REYNOLDS VAPOR COMPANY,)	
)	
Defendant.)	

ORDER

Before the Court are motions to seal filed by plaintiff Philip Morris Products S.A. (“Philip Morris”) and defendant R.J. Reynolds Vapor Company (“Reynolds”), in which they seek to file under seal portions of their briefing and exhibits concerning Philip Morris’s Motion for a Permanent Injunction or, Alternatively, an Ongoing Royalty. See [Dkt. Nos. 1408, 1419].

There are several problems with the pending motions. First, Philip Morris has filed entire exhibits attached to its opening brief and reply brief under seal and simply removed them from the public versions of its filings instead of filing redacted versions of the exhibits in the public docket. See [Dkt. Nos. 1406, 1425]. Local Civil Rule 5 provides that a party seeking to file material under seal “must make a good faith effort to redact or seal only as much as necessary to protect legitimate interests,” and “[b]lanket sealing of entire briefs, documents, or other papers is rarely appropriate.” The Rule further provides that “[w]here sealing is sought for less than an entire document or filing, an unsealed, redacted version of the document or filing shall be filed in the public record.” Philip Morris has not complied with these requirements, and its motion to seal fails to explain why entire exhibits must be sealed when there is material in those exhibits

that was publicly disclosed during the trial and motions hearings and does not otherwise appear to reveal confidential, proprietary, or competitively sensitive business information.

A party must provide sufficient justification for sealing to enable the Court to ensure that documents are sealed only when “the public’s right of access is outweighed by competing interests.” Ashcraft v. Conoco, Inc., 218 F.3d 288, 302 (4th Cir. 2000). As Local Civil Rule 5 explains, “[a]greement of the parties that a document or other material should be filed under seal or the designation of a document or other material as confidential during discovery is not, by itself, sufficient justification for allowing a document or other material to be filed under seal.” In addition, although Philip Morris has filed redacted versions of its opening brief and reply brief in the public docket, it has redacted material that does not warrant sealing. For instance, Philip Morris has redacted specific percentages of the ongoing royalty rates it requests that the Court award, but the Federal Circuit does not treat as confidential the ongoing royalty awarded to a patent holder. See, e.g., XY, LLC v. Trans Ova Genetics, L.C., 890 F.3d 1282, 1296-98 (Fed. Cir. 2018); Amado v. Microsoft Corp., 517 F.3d 1353, 1361-62 (Fed. Cir. 2008).

Therefore, Philip Morris’ Motion to Seal [Dkt. No. 1408] will be denied without prejudice. If Philip Morris still seeks to keep any portions of its opening or reply briefs or exhibits under seal, it must file a renewed motion to seal that complies with Local Civil Rule 5. Philip Morris’ sealed opening brief, reply brief, and exhibits [Dkt. Nos. 1411, 1429] will remain under seal conditional on the filing of an appropriate renewed motion to seal.

Although Reynolds has filed redacted versions of its opposition brief and accompanying exhibits in the public docket, some of its exhibits have also been filed entirely under seal. See [Dkt. No. 1423]. To ensure that only non-public and confidential, proprietary, or competitively sensitive business information is sealed and that its redactions are not excessive, Reynolds’

Motion to Seal [Dkt. No. 1419] will also be denied without prejudice to permit Reynolds to file appropriately redacted versions of its opposition brief and exhibits in accordance with the aforementioned instructions. Reynolds' opposition brief and exhibits [Dkt. No. 1421] will remain under seal conditional on the filing of an appropriate renewed motion to seal.

Finally, both parties have filed under seal excerpts of trial and hearing transcripts as attachments to their memoranda on the grounds that the transcripts had not been publicly released. Philip Morris filed under seal excerpts of two transcripts for hearings held on March 18, 2022 and July 21, 2022, but because those transcripts have been publicly released, see [Dkt. Nos. 1188, 1401], there is no longer any basis for sealing the excerpts.

As for the trial transcript, through inadvertence the transcript was not docketed until today. The trial transcript has been docketed on CM/ECF, and in accordance with the Eastern District of Virginia Electronic Case Filing Policies and Procedure Manual, the parties will have thirty days from today to file a Redaction Request with the court reporter to redact personal identifiers.¹ Should either party seek to seal any other portion of the trial transcript, the parties are advised that this Court looks unfavorably on motions to seal transcripts where, as here, the entire proceeding was conducted in open court. As soon as requests for redactions, if any, are resolved, the Clerk will make the transcript available to the public electronically on CM/ECF.

Accordingly, for the foregoing reasons, Philip Morris' Motion to Seal [Dkt. No. 1408] and Reynolds' Motion to Seal [Dkt. No. 1419] are DENIED WITHOUT PREJUDICE; however, the sealed filings [Dkt. Nos. 1411, 1421, 1429] are to remain under seal until any renewed motions to seal are refiled, and it is hereby

¹ See Electronic Filing and Service of Documents – Electronic Transcripts, Eastern District of Virginia Electronic Case Filing Policies and Procedure Manual, <https://www.vaed.uscourts.gov/sites/vaed/files/ECF-Manual%2012-17-2021.pdf>.


ORDERED that any renewed motions to seal the opening brief, opposition, and reply brief and attached exhibits concerning Philip Morris's Motion for a Permanent Injunction or, Alternatively, an Ongoing Royalty be filed within fourteen (14) days of the date of this Order; and it is further

ORDERED that any requests to redact the trial transcript be filed within thirty (30) days.

The Clerk is directed to forward copies of this Order to counsel of record.

Entered this 22ND day of March, 2023.

Alexandria, Virginia

lsl 

Leonie M. Brinkema
United States District Judge