

Exhibit 17

No. 22-1227

**United States Court of Appeals
for the Federal Circuit**

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

Appellants,

v.

INTERNATIONAL TRADE COMMISSION,

Appellee,

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

Intervenors.

On Appeal from the United States International Trade Commission
in Investigation No. 337-TA-1199

NONCONFIDENTIAL BRIEF OF APPELLANTS

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And IQOS's MRTP authorization allows Appellants to communicate with U.S. consumers about the reduced exposure benefits IQOS provides. No other inhalable smoke-free CC alternatives can do so lawfully, and none will be able to do so for years, as there are no MRTP applications even pending for such alternatives. Appx41387; Appx41104; Appx21343, Appx21358 (Tr. 1409:12-23, 1468:8-15); Appx20874, Appx20876 (Tr. 101:5-7, 109:4-9); FDA, *Modified Risk Granted Orders*, Decision Summary MR0000133 (July 7, 2020), <https://www.fda.gov/tobacco-products/advertising-and-promotion/modified-risk-orders>.

Second, no other CC alternative provides the same ritual, sensory experience, or satisfaction as IQOS. As organizations, physicians, and IQOS users told the Commission, IQOS is not interchangeable with other products; it plays a unique and vital role in reducing CC smoking. *Supra* at 11-12; Appx21295, Appx21299 (Tr. 1347:1-24; 1349:13-17, 1350:1-5, 1366:4-9); Appx21360 (Tr. 1479:17-23); Appx20865 (Tr. 67:16-24); Appx21140 (Tr. 840:9-25); Appx21273-21274 (Tr. 1260:14-18, 1263:9-25).¹⁸

¹⁸ See Appx41200-41201; Appx41256; Appx41432-41433; Appx40941; Appx40965-40966; Appx41981; Appx14003-14004; Appx13942; Appx13916; Appx13998; Appx13927; Appx13987; Appx13977; Appx14007; Appx14011; Appx13988; Appx13990; Appx14005; Appx13995; Appx13989; Appx13914-13918.

Nicotine replacement therapies are designed to stop all nicotine intake. Appx41594-41595 (Gilchrist Dep. 32:16-33:20); Appx21140 (Tr. 839:4-16); Appx21295 (Tr. 1349:6-10). Those are, therefore, fundamentally different from IQOS and regulated in a different manner. Appx21295 (Tr. 1349:10-12); Appx40959; 21 U.S.C. §§ 321(rr), 387k.

In sum, the lack of lawful, effective alternatives should have weighed heavily in the Commission’s public interest analysis. But it did not.

CONCLUSION

The Commission’s determination and orders should be reversed or vacated.

Dated: March 21, 2022

Respectfully submitted,

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