

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

PHILIP MORRIS PRODUCTS S.A.,

Plaintiff,

v.

R.J. REYNOLDS VAPOR COMPANY

Defendant.

No. 1:20-cv-393-LMB-TCB

[PROPOSED] ORDER GRANTING PHILIP MORRIS' RENEWED MOTION TO SEAL

This matter is before the Court on the renewed motion filed by Plaintiff Philip Morris Products S.A. (“Philip Morris”) to file its Brief in Support of Philip Morris’ Motion for a Permanent Injunction or, Alternatively, an Ongoing Royalty (“Opening Brief”), Reply in Support of Philip Morris’ Motion For a Permanent Injunction or, Alternatively, an Ongoing Royalty (“Reply Brief”) (together, “Briefs”), and Exhibits 5, 18, 23-24, 27, 38, 41, 43-44, 47-48, 56, 65-66, 76, and 78 thereto (“Exhibits”), under seal pursuant to Federal Rule of Civil Procedure 5.2(d) and Local Civil Rule 5(C). In addition, Philip Morris seeks to maintain under seal the Memorandum Opinion entered by the Court on March 30, 2023 (Dkt. 1455) (“Memorandum Opinion”). Upon consideration of Philip Morris’ motion to seal and its memorandum in support thereof (“Sealing Motion”), the Court hereby **FINDS** as follows:

1. The public has received notice of the request to seal and has had reasonable opportunity to object. Philip Morris’ Sealing Motion was publicly docketed in accordance with Local Civil Rule 5. Defendant R.J. Reynolds Vapor Co. (“Reynolds”) has had an opportunity to respond. The “public has had ample opportunity to object” to Philip Morris’ Sealing Motion and, since “the Court has received no objections,” the first requirement under *Ashcraft v. Conoco, Inc.*,

218 F.3d 288, 302 (4th Cir. 2000), has been satisfied. *GTSI Corp. v. Wildflower Int'l, Inc.*, No. 09-cv-123, 2009 WL 1248114, at *9 (E.D. Va. Apr. 30, 2009); *see also U.S. ex rel. Carter v. Halliburton Co.*, No. 10-cv-864, 2011 WL 2077799, at *3 (E.D. Va. May 24, 2011) (“[T]he parties provided public notice of the request to seal that allowed interested parties a reasonable opportunity to object—nearly two weeks.”).

2. Philip Morris seeks to seal and to redact from the public record only information designated by the parties as confidential. Philip Morris will file publicly redacted versions of its Briefs, Exhibits, in addition to sealed versions, and will redact only those limited portions it seeks to seal. Further, Philip Morris has provided the Court with its proposed redactions to the Memorandum Opinion, proposing to redact only those limited portions it seeks to seal. This selective and narrow protection of confidential material constitutes the least drastic method of shielding the information at issue. *See Adams v. Object Innovation, Inc.*, No. 11-cv-272, 2011 WL 7042224, at *4 (E.D. Va. Dec. 5, 2011) (finding that plaintiffs’ “proposal to redact only the proprietary and confidential information, rather than seal the entirety of his declaration, constitutes the least drastic method of shielding the information at issue”). The public has no legitimate interest in the parties’ confidential information. *See id.* at *4 (“[T]here is no legitimate public interest in disclosing the proprietary and confidential information of [the defendant] . . . and disclosure to the public could result in significant damage to the company.”). The information that Philip Morris seek to seal includes confidential, proprietary, and competitively sensitive business information of the parties and/or third parties, each of which could face harm if such information were to be released publicly.

3. There is support for filing portions of the Briefs, Exhibits, and Memorandum Opinion under seal with publicly filed versions containing strictly limited redactions. The Briefs,

Exhibits, and Memorandum Opinion contain material designated confidential under the stipulated protective order. Accordingly, Philip Morris is required to file this material under seal pursuant to the stipulated protective order. Moreover, the information Philip Morris seeks to seal includes confidential, proprietary, and competitively sensitive business information of the parties and/or third parties, each of which could face harm if such information were to be released publicly. Placing these materials under seal is proper because the public's interest in access is outweighed by a party's interest in "preserving confidentiality" of the limited amount of confidential information that is "normally unavailable to the public." *Flexible Benefits Council v. Feltman*, No. 08-cv-371, 2008 WL 4924711, at *1 (E.D. Va. Nov. 13, 2008); *U.S. ex rel. Carter*, 2011 WL 2077799, at *3.

Therefore, based on the findings above, for good cause show, it is hereby

ORDERED that the motion is **GRANTED**, and Philip Morris is granted leave to file a **REDACTED** version of the Briefs, Exhibits, and Memorandum Opinion. And to file **UNDER SEAL** an unredacted version of the Briefs, Exhibits, and Memorandum Opinion.

And **FURTHER ORDERED** that the unredacted version of the Briefs, Exhibits and Memorandum Opinion, shall remain **SEALED** until further order of the Court.

ENTERED this ____ day of _____, 2023.

Alexandria, Virginia
