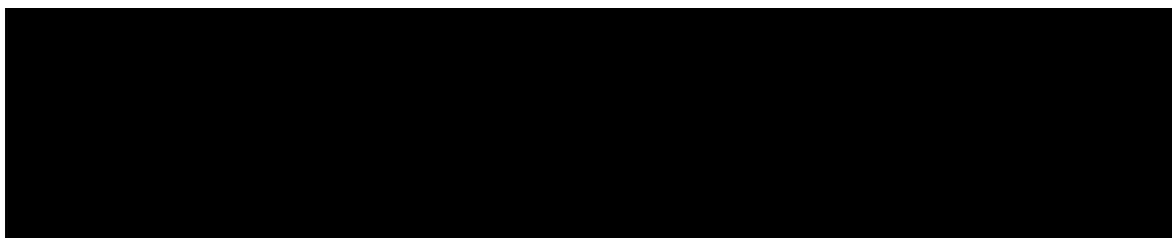


Exhibit 23



1 UNITED STATES DISTRICT COURT

2 FOR THE EASTERN DISTRICT OF VIRGINIA

3 ---oOo---


4 RAI STRATEGIC HOLDINGS, INC.,
and R.J. REYNOLDS VAPOR COMPANY;

5 Plaintiffs and CounterClaim Defendants,

6 vs. No. 1:20cv00393-LO-TCB

7 ALTRIA CLIENT SERVICES LLC; PHILIP
8 MORRIS USA, INC.; and PHILIP MORRIS
9 PRODUCTS S.A.,

10 Defendants and Counterclaim Plaintiffs.
_____ /

11
12
13 
14 VIDEOTAPED REMOTE CONFERENCING DEPOSITION OF
15 MOIRA GILCHRIST

16
17
18
19 Stenographically reported by NICOLE HATLER

20 California CSR No. 13730

21 June 18, 2021

22
23
24
25 JOB NO. 195611

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1 A. I see that statement. Yes.

2 Q. What evidence does PMP have that IQOS sales

3 could have been stronger if Vuse products hadn't

4 been in -- on the market?

5 A. So I don't know if this -- whether this

6 constitutes evidence, but I can tell you what --

7 what I have noticed. For example, I -- prior to

8 the pandemic, I was often in the United States and

9 see Vuse products or did see Vuse products. I did

10 see Vuse products in many different retail

11 locations.

12 You can see it on NASCAR. A team member of

13 mine sent me photographs from the Indy 500 showing

14 the product advertised widely, including on

15 television, which means that, you know, consumers

16 when they're thinking about switching away from

17 electronic cigarettes, they are -- are faced with,

18 you know, Vuse products on -- on pretty much every

19 street corner, in every retail outlet, on their

20 televisions, and in sports events.

21 So I think that, you know, naturally

22 advertising is intended to encourage people to go

23 and try and -- and buy a product. So clearly, Vuse

24 being on the market may have, you know, increased

25 the number of smokers who might otherwise have gone

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1 and so, you're -- you're saying that it's possible

2 that customers who would have searched out IQOS

3 instead chose Vuse when they were looking for an

4 alternative to combustion.

5 Do I have that right so far?

6 A. I believe that's entirely possible that,

7 you know, a smoker who would have made the mental

8 decision that they wanted to go and seek out an --

9 an alternative product, when faced with advertising

10 and -- and widespread availability of a -- of a

11 product like Vuse, potentially would go and choose

12 that product rather than searching further to see

13 if there was -- there was another alternative. I

14 think that's certainly plausible.

15 Q. And my point is -- one point I'm trying to

16 make is, or ask you about is, JUUL is also widely

17 available in the United States, correct?

18 A. I have seen JUUL in -- in many retail

19 locations in the United States.

20 Q. And -- and JUUL has a much bigger market

21 share than Vuse.

22 You're aware of that, correct?

23 A. I -- I'm not sure exactly of the -- the

24 full market share. I'm aware that it's -- it's the

25 top player in the United States. I don't think

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1 and -- and -- and searched out IQOS going and

2 reaching for Vuse.

3 That would be one example. I don't know if

4 that's what -- if that answers your question or

5 helps to answer it in some way.

6 Q. It does. It does and it doesn't address

7 the question.

8 Does PMP have any evidence specifically

9 that that happened, like specific customers that

10 would have bought IQOS but instead bought Vuse?

11 A. So I'm -- I'm not aware of -- of that type

12 of evidence being available. Perhaps the best

13 person to answer that would be -- would be Martin

14 King because he's on the ground in the United

15 States, and I'm not sure if -- if studies have been

16 done on that in -- in collaboration with Altria,

17 but certainly, personally, I'm not -- not familiar

18 with that.

19 Q. And the same is true with respect to other

20 e-cigarette products, isn't it?

21 A. And what -- what -- how do you mean the

22 same is true?

23 Q. Well, what I understood your testimony to

24 be is that Vuse is widely available in the United

25 States and Vuse is advertised in the United States,

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1 they're doing quite so much advertising as -- as

2 Vuse is doing. Certainly I have not seen it on --

3 on motor racing cars.

4 Q. But just as customers potentially could

5 have chosen Vuse instead of IQOS when they were

6 looking for an alternative, customers, potentially,

7 could have chosen JUUL instead of IQOS when they're

8 looking for an alternative; isn't that correct?

9 A. I think the question is -- is not

10 whether -- ask me the question again. I got lost

11 in my train of thought. Sorry.

12 Q. Yeah. Sure. I think your earlier

13 testimony -- if I understood you correctly, your

14 earlier testimony was positing that customers --

15 potential customers who are smokers are looking for

16 alternatives. Am I right so far?

17 A. So the pool of customers that we, PMP SA,

18 and Altria and RJR are competing for is adult

19 smokers, and within that pool, we are competing for

20 adult smokers who are looking for alternatives.

21 Q. And IQOS is competing for those customers

22 and Vuse is competing for those customers, correct?

23 A. For -- yes.

24 Q. And JUUL is also competing for those same

25 customers, correct?

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1 just don't -- I want to be sure that the witness
 2 doesn't inadvertently --
 3 MR. VITT: Sure.
 4 MR. REISER: -- offer up something that --
 5 that breaches the privilege.
 6 MR. VITT: Sure.
 7 MR. REISER: So --
 8 MR. VITT: It's really a predicate for --
 9 that I have some other questions. If -- if the
 10 witness has that understanding, that if the
 11 decision is upheld, the IQOS products are off the
 12 market in the United States. If she has that
 13 understanding, then I have some more questions. If
 14 she doesn't have that understanding, I'll have
 15 different questions.
 16 MR. REISER: Right. Just give us a few
 17 minutes, and we will back be back on. Thank you.
 18 MR. VITT: Okay.
 19 THE VIDEOGRAPHER: We are going off the
 20 record. The time is 3:34 p.m.
 21 (A recess was held from 3:34 p.m. until 3:39 p.m.)
 22 THE VIDEOGRAPHER: We are back on the
 23 record. The time is 3:39 p.m.
 24 MR. VITT: Okay. Thank you.
 25 BY MR. VITT:

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1 Do you have any understanding, outside
 2 of -- well, do you have any understanding at all
 3 that there's a risk to PMP that IQOS is going to be
 4 excluded from the United States market because of
 5 the ITC proceeding?
 6 A. Again, I -- I -- I -- I don't feel
 7 comfortable answering the question in the way that
 8 you're -- you're phrasing it because I'm I'm not a
 9 legal expert I --
 10 Q. Okay.
 11 A. -- I'm talking part in the case, but --
 12 Q. Let me ask a -- let me ask a different
 13 question.
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 Q. So there's another statement up above on
 25 14 -- on page 14 on Exhibit 5 that talks about --

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1 Q. So Dr. Gilchrist, you had a chance to take
 2 a break and talk to Mr. Reiser, your counsel --
 3 PMP's counsel, about the questions and the
 4 privilege issue?
 5 A. Yes.
 6 Q. Yes?
 7 So my -- my question is do you understand
 8 that Judge Cheney's initial determination
 9 recommends a remedy that would exclude IQOS from
 10 the US market?
 11 A. So I -- I really don't feel comfortable
 12 in -- in answering the question, as you posed it.
 13 Because I -- I am a scientist. I'm not a lawyer.
 14 I'm not an expert in the ITC process. But what I
 15 understand is that Judge Cheney's determination and
 16 decision is -- is -- is purely an interim step, and
 17 I'm just uncomfortable in speculating about what
 18 may happen afterwards. I'm -- I'm not qualified to
 19 do that. So I just wonder is there another way you
 20 could ask me the question. I want to be helpful --
 21 Q. Sure. Sure.
 22 A. -- but I'm not a lawyer, and I don't -- I
 23 don't feel comfortable.
 24 Q. Sure. Sure. And I'm not trying to ask a
 25 legal question.

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1 I'm looking at the fourth sentence. Such harms
 2 also undermined and dilute the branding -- well,
 3 let's not -- we're still at the top of 14 -- let's
 4 not --
 5 A. Oh, I'm sorry.
 6 Q. We're in that same paragraph.
 7 A. Yeah.
 8 Q. Just drawing your attention back to that
 9 first paragraph, top of 14, where it's talking
 10 about harms. It says, Such harms also undermine
 11 and dilute the branding, goodwill, and reputation
 12 of Philip Morris.
 13 What harm has Vuse caused the branding of
 14 Philip Morris, if any?
 15 A. So -- so maybe I take this back a bit to --
 16 to the -- to the, kind of, beginning of the -- of
 17 the smoke -- smoke-free transformation.
 18 We made a deliberate decision that we were
 19 going to develop a number of different platforms
 20 that would turn into -- into products over time;
 21 that we would have the best technology; that we
 22 would have the best -- we would satisfy the
 23 consumer pain points in the best way, better than
 24 any of our competitors; that we would produce the
 25 best science; and we would also develop the best

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1 brand, and that umbrella brand, if you like, is --
 2 is IQOS.
 3 And so, that's been the -- the approach
 4 that we've taken to the development, the
 5 assessment, the regulatory authorization, and the
 6 commercialization of -- of all of our products is
 7 we -- our aim is to be the leader of this category,
 8 and we are, right now, the leader of this category.
 9 So we always went above and beyond what we
 10 thought would delight consumers, solving problems
 11 that they had seen with -- with other products, and
 12 creating a brand that they felt loyal to, and
 13 nesting all of our products under that brand to
 14 give them the -- the -- the familiarity and
 15 knowledge that they were going to be getting the
 16 best quality products that are available with the
 17 best technology and innovation in the smoke-free
 18 space.
 19 So that was really the -- the ethos that
 20 we've had since -- since the beginning, and you
 21 know, we have talked about this publicly very
 22 often. So, you know, in -- in terms of what's
 23 happened with -- with other products that have --
 24 you know, are using, for example, our intellectual
 25 property, what that has is an effect of putting

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1 of Vuse products allegedly using your patents have
 2 done some concrete harm to the IQOS brand in the
 3 United States?
 4 A. So what -- what type of examples are you
 5 looking for?
 6 Q. Well, it's -- it's your company statement
 7 that Vuse products being sold has harmed the IQOS
 8 brand in the United States. I just want to know
 9 what evidence there is that that's true, if any.
 10 A. So, I mean, let me -- let me take this from
 11 two -- two angles. One is the technology angle and
 12 that's really a future-looking thing. But, you
 13 know, Vuse is on the market with technology that
 14 we -- we developed and we patented because we knew
 15 that it was unique and -- and really solved a
 16 number of consumer issues.
 17 For example, the mouth leakage, which is a
 18 common problem among electronic cigarettes that are
 19 available in the United States, we worked hard to
 20 create a technology that could -- could prevent
 21 that from happening. And you can imagine from a
 22 consumer perspective, that's a value-adding
 23 proposition.
 24 So now that's on the market with the Vuse
 25 technology using our patent so it's become

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1 something on the market and making it -- making it
 2 everyday, and something that we're deprived of
 3 being able to -- to really utilize under our own
 4 brand. And to give that feeling that the product
 5 is part of the IQOS ecosystem, if you'd like.
 6 So I think if you were to look at it from
 7 that perspective, that's, I think, what diluting
 8 the brand and diluting the goodwill would mean.
 9 Q. So the brand that we're talking about is
 10 the brand IQOS; is that right?
 11 A. The umbrella brand IQOS, under which the
 12 IQOS heated-tobacco fits, the VEEV fits, the IQOS
 13 TEEPS fits, and -- and so on.
 14 Q. And in the United States, the only product
 15 using that brand is the IQOS heated tobacco
 16 product, at least so far, correct?
 17 A. At this point in time on June the 18th,
 18 2021, in the United States, it's the IQOS heated
 19 tobacco product, but we have plans for our IQOS
 20 VEEV product to -- to go through the PMT process
 21 with FDA.
 22 Q. And I do have some questions on that for
 23 you later, but let's stick with IQOS heated tobacco
 24 product for now.
 25 What evidence are you aware of that sales

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1 somehow, a normal thing. It's -- when -- when we
 2 bring it on the market once we receive PMT
 3 authorization, if FDA decides to -- to do that,
 4 then this no longer will be a unique feature that's
 5 unique to an IQOS smoke-free product under that
 6 brand umbrella. So that's -- that's one -- one
 7 part.
 8 I think the -- the other thing in terms of
 9 the -- the branding, I think, IQOS stands for
 10 quality, it stands for science, and it stands for
 11 following the rules and the regulatory process.
 12 And what we see with product like Vuse is that
 13 it's -- it's on the market without standing for
 14 science, without having gone through the -- the
 15 rules, and I think this is somehow -- has the
 16 potential to be confusing for -- for consumers.
 17 So I think there are multiple different
 18 things that -- that can be determined as being a
 19 harm from -- from Vuse being on the market, from --
 20 from both the immediate and the longer term --
 21 historical and immediate and a future perspective
 22 for the umbrella IQOS brand.
 23 Q. So Vuse being on the market -- I'm not
 24 following how Vuse being on the market as Vuse
 25 could be confusing to consumers or do any harm to

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