

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 REYNOLDS' RENEWED MOTION TO SEAL

This matter is before the Court on the motion filed by R.J. Reynolds Vapor Company (“Reynolds”) to file Reynolds’ Opposition to Plaintiff’s Motion for a Permanent Injunction, or Alternatively, an Ongoing Royalty (“Opposition”) and Exhibits 1-4, 10-14, 19, 25, 28-31, 39, 42, and 44 thereto (“Exhibits”), under seal (Dkt. 1458) pursuant to Federal Rule of Civil Procedure 5.2(d) and Local Civil Rule 5(C). Because the documents that Reynolds seeks to seal include Plaintiff Philip Morris Products S.A.’s (“Philip Morris”) confidential, financial, proprietary, and competitively sensitive business information that falls within the scope of the Stipulated Protective Order (Dkt. 103), Philip Morris filed a memorandum in support of Reynolds’ sealing request.

Before this Court may seal documents, it must: “(1) provide public notice of the request to seal and allow interested parties a reasonable opportunity to object, (2) consider less drastic alternatives to sealing the documents, and (3) provide specific reasons and factual findings supporting its decision to seal the documents and for rejecting the alternatives.” *Ashcraft v. Conoco, Inc.*, 218 F.3d 282, 288 (4th Cir. 2000) (internal citations omitted). Upon consideration

of Reynolds' motion to seal and memorandum in support thereof, the Court hereby **FINDS** as follows:

1. The public has received notice of the request to seal and has had reasonable opportunity to object. Reynolds' sealing motion was publicly docketed in accordance with Local Civil Rule 5. Phillip Morris has filed a memorandum in support of sealing. The "public has had ample opportunity to object" to Reynolds' motion and, since "the Court has received no objections," the first requirement under *Ashcraft*, 218 F.3d at 302, has been satisfied. *GTSI Corp. v. Wildflower Int'l, Inc.*, No. 1:09-cv-123-JCC, 2009 WL 1248114, at *9 (E.D. Va. Apr. 30, 2009); *U.S. ex rel. Carter v. Halliburton Co.*, No. 1:10-cv-864-JCC/TCB, 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. Reynolds seeks to seal and redact from the public record only information designated by the parties as confidential. Reynolds has filed publicly a redacted version of Reynolds' Opposition and Exhibits, in addition to a sealed version, and has redacted 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. *Adams v. Object Innovation, Inc.*, No. 3:11-cv-272-REP-DWS, 2011 WL 7042224, at *4 (E.D. Va. Dec. 5, 2011) (The "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 information that is confidential to Reynolds and Phillip Morris. *Id.* at *4. The information that Reynolds 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. Specifically, the

sensitive information that Reynolds moves for leave to file under seal, and to redact from a publicly filed version, includes materials from the parties and/or third parties, such as highly confidential terms of agreements, highly confidential sales data, highly confidential future plans in the market, and information that third parties have designated confidential that the parties are required to keep confidential.

3. There is support for filing portions of Reynolds' Opposition and Exhibits under seal, with a publicly filed version containing strictly limited redactions. Reynolds' Opposition and Exhibits contain material that falls within the scope of 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. 1:08-cv-00371-JCC, 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 shown, it is hereby

ORDERED that the motion is **GRANTED**, and Reynolds is granted leave to file a **REDACTED** version of Reynolds' Opposition and Exhibits.

And to file **UNDER SEAL** an unredacted version of Reynolds' Opposition and Exhibits.

And **FURTHER ORDERED** that the unredacted version of Reynolds' Opposition and Exhibits shall remain **SEALED** until further order of the Court.

ENTERED this ____ day of _____, 2023.

Alexandria, Virginia
