

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

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

Plaintiffs,

v.

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

Defendants.

Case No. 1:20-cv-00393-LO-TCB

REDACTED

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

Counterclaim Plaintiffs,

v.

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

Counterclaim Defendants.

**DEFENDANTS ALTRIA CLIENT SERVICES LLC AND PHILIP MORRIS USA INC.'S
AMENDED PARTIAL ANSWER TO THE AMENDED COMPLAINT AND AMENDED
COUNTERCLAIMS**

Altria Client Services LLC (“ACS”) and Philip Morris USA Inc. (“PM USA”) respectfully submit their Partial Answer in response to Plaintiffs RAI Strategic Holding, Inc. (“RAI”) and R.J. Reynolds Vapor Company’s (“RJR”) (collectively, “RJR”) Amended Complaint. To the extent not specifically admitted herein, the allegations of the Amended Complaint are denied, including any allegations contained in the headings of the Amended Complaint.

INTRODUCTION AND PRELIMINARY STATEMENT OF ACS AND PM USA

RJR appears to have brought this action in the hopes of stopping the innovative IQOS heated tobacco system, which has a proven track record in switching smokers away from combustible cigarettes, from disrupting its core business in combustible cigarettes and overtake its secondary line of e-vapor products. Having failed to develop a competing offering in the heated tobacco space, RJR apparently now seeks to block that space in its entirety by bringing this meritless litigation. But in its haste to do so, RJR has overlooked the fact that its own line of e-vapor products (which are far less effective in switching smokers away from combustible cigarettes than IQOS) infringe multiple patents owned by ACS and PM USA.

ACS and PM USA have a strong legacy of leadership in traditional tobacco products, with profitable premium products and iconic brands, including Marlboro, Benson & Hedges, Parliament, and Virginia Slims. While ACS and PM USA will continue to lead in traditional tobacco products, ACS and PM USA recognize that adult preferences are changing. Thus, ACS and PM USA partnered with co-defendant Philip Morris Products S.A. (“PMP”) to commercialize IQOS, a product that heats rather than burns tobacco to produce an aerosol instead of smoke (known as a “Heat-Not-Burn” or “HNB” product) in the United States. ACS and PM USA have also amassed a substantial portfolio of intellectual property, covering numerous innovations relating to smoke-free technologies, including both heated tobacco and e-vapor products.

PMP first launched IQOS in select cities in Italy and Japan in 2014. It is now sold in over 57 countries throughout the world. To date, over 11.2 million smokers have switched to IQOS and given up smoking for good. This number is growing daily. PMP conducted 10 clinical studies on IQOS and published over 340 peer-reviewed articles on reduced risk products. There are also

over 30 independent studies corroborating PMP's findings with respect to IQOS. Among the findings: IQOS produces an aerosol with 90 to 95% less toxins than cigarette smoke.

In 2019, after a lengthy review, the United States Food and Drug Administration ("FDA") granted PMP's request for a pre-market authorization to commercialize IQOS through PM USA in the United States. In granting that request, the FDA determined that marketing IQOS "would be appropriate for the protection of the public health." On July 7, 2020, the FDA authorized the marketing of a version of IQOS as a modified risk tobacco product, finding that IQOS "significantly reduces the production of harmful and potentially harmful chemicals." To date, no other HNB or e-vapor product has received these authorizations.

Apparently concerned by the commercial threat posed by IQOS, RJR is now attempting to stop IQOS with this case. But in its haste to stop IQOS, RJR committed two fatal errors. First, it asserted meritless patent claims. Second, it overlooked the fact that its own e-vapor products infringe multiple patents owned by ACS, PM USA and co-defendant PMP. ACS and PM USA thus respond to RJR's Complaint and bring counterclaims to recover the considerable damages flowing from RJR's infringement.

RESPONSES TO THE SPECIFIC ALLEGATIONS OF COMPLAINT

THE PARTIES

1. ACS and PM USA are without knowledge or information sufficient to admit or deny the allegations in paragraph 1 of the Complaint and, on that basis, deny them.
2. ACS and PM USA are without knowledge or information sufficient to admit or deny the allegations in paragraph 2 of the Complaint and, on that basis, deny them.
3. ACS and PM USA are without knowledge or information sufficient to admit or deny the allegations in paragraph 3 of the Complaint and, on that basis, deny them.

4. Admitted.

5. Admitted.

6. ACS and PM USA are without knowledge or information sufficient to admit or deny the allegations in paragraph 6 of the Complaint and, on that basis, deny them.

JURISDICTION AND VENUE

7. Paragraph 7 contains legal conclusions to which no answer is required. To the extent an answer is required, ACS and PM USA admit that the Complaint purports to be an action arising under the patent laws of the United States, 35 U.S.C. §§ 271, *et seq.*, and that this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338, but ACS and PM USA deny that there is any legal or factual basis for such action.

8. Paragraph 8 contains legal conclusions to which no answer is required. To the extent an answer is required, ACS and PM USA admit for purposes of this action only that this Court has personal jurisdiction over it. ACS and PM USA otherwise deny the allegations in paragraph 8 of the Complaint.

9. Paragraph 9 contains legal conclusions to which no answer is required. ACS and PM USA are without knowledge or information sufficient to admit or deny the allegations in paragraph 9 of the Complaint and, on that basis, deny them.

10. Paragraph 10 contains legal conclusions to which no answer is required. To the extent an answer is required, ACS and PM USA admit for purposes of this action only that venue exists in this District for the claims against ACS and PM USA pursuant to 28 U.S.C. §§ 1391 and 1400(b). ACS and PM USA otherwise deny the allegations of paragraph 10 of the Complaint relating to ACS and PM USA. ACS and PM USA are without knowledge or information sufficient to admit or deny the remaining allegations in paragraph 10 of the Complaint and, on that basis,

deny them. ACS and PM USA specifically deny the allegations of paragraph 10 of the Complaint relating to ACS and PM USA's alleged infringement of any patents.

11. ACS and PM USA are without knowledge or information sufficient to admit or deny the allegations in paragraph 11 of the Complaint and, on that basis, deny them.

FACTUAL BACKGROUND

THE ASSERTED PATENTS

12. ACS and PM USA admit that the face of U.S. Patent No. 9,814,268 ("the '268 patent") states that it is titled "Tobacco-containing smoking article." ACS and PM USA further admit that the face of the '268 patent states that it issued on November 4, 2017 and that it includes two independent claims. ACS and PM USA admit that Plaintiffs have quoted claim 16 of the '268 patent in paragraph 12 of the Complaint. ACS and PM USA otherwise deny the allegations in paragraph 12 of the Complaint.

13. The Court has stayed Plaintiffs' Counts Two, Three, and Four pursuant to 28 U.S.C. § 1659. *See* Dkt. 27. ACS and PM USA will provide a response at the appropriate time when the stay is lifted.

14. The Court has stayed Plaintiffs' Counts Two, Three, and Four pursuant to 28 U.S.C. § 1659. *See* Dkt. 27. ACS and PM USA will provide a response at the appropriate time when the stay is lifted.

15. The Court has stayed Plaintiffs' Counts Two, Three, and Four pursuant to 28 U.S.C. § 1659. *See* Dkt. 27. ACS and PM USA will provide a response at the appropriate time when the stay is lifted.

16. The Court has stayed Plaintiffs' Counts Two, Three, and Four pursuant to 28 U.S.C. § 1659. *See* Dkt. 27. ACS and PM USA will provide a response at the appropriate time when the stay is lifted.

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