

**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

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.

**DEFENDANT PHILIP MORRIS PRODUCTS S.A.'S PARTIAL ANSWER TO
COMPLAINT AND COUNTERCLAIMS**

Defendant Philip Morris Products S.A. (“PMP” or “Defendant”) respectfully submits its Partial Answer in response to Plaintiffs RAI Strategic Holding, Inc. (“RAI”) and R.J. Reynolds Vapor Company’s (“RJR”) (collectively, “RJR”) Complaint. To the extent not specifically admitted herein, the allegations of the Complaint are denied, including any allegations contained in the headings of the Complaint.

INTRODUCTION AND PRELIMINARY STATEMENT OF PMP

RJR appears to have brought this action in the hopes of stopping PMP's 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 overtaking 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 PMP.

While Philip Morris International, PMP's ultimate parent, built its success on the basis of combustible cigarettes, it has committed itself to building its future on the basis of smoke-free products that are substantially less harmful than combustible cigarettes. Consistent with that vision, PMP has emerged as the global leader and pioneer in reduced-risk alternatives to combustible cigarettes ("Reduced Risk Products" or "RRPs"). PMP has invested over seven billion dollars since 2008 on research and development relating to RRP's such as IQOS. And it has 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, 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 select cities in Italy and Japan in 2014. It is now sold in over 50 countries throughout the world. To date, over 10.6 million smokers have switched to IQOS and given up smoking for good, and this number is growing daily. PMP conducted 10 clinical studies on IQOS and published over 340 peer-reviewed articles on RRP's. 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 its distributor, Altria) in the United States. In granting that request, the FDA determined that marketing IQOS “would be appropriate for the protection of the public health.” To date, no other HNB or e-vapor product has received such an authorization.

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 PMP and co-defendants Altria Client Services and Philip Morris USA, Inc. PMP thus responds to RJR’s Complaint and brings counterclaims to recover the considerable damages flowing from RJR’s infringement.

RESPONSES TO THE SPECIFIC ALLEGATIONS OF COMPLAINT

THE PARTIES

1. PMP is without knowledge or information sufficient to admit or deny the allegations in paragraph 1 of the Complaint and, on that basis, denies them.
2. PMP is without knowledge or information sufficient to admit or deny the allegations in paragraph 2 of the Complaint and, on that basis, denies them.
3. PMP is without knowledge or information sufficient to admit or deny the allegations in paragraph 3 of the Complaint and, on that basis, denies them.
4. PMP is without knowledge or information sufficient to admit or deny the allegations in paragraph 4 of the Complaint and, on that basis, denies them.

5. PMP is without knowledge or information sufficient to admit or deny the allegations in paragraph 5 of the Complaint and, on that basis, denies them.

6. PMP is without knowledge or information sufficient to admit or deny the allegations in paragraph 6 of the Complaint and, on that basis, denies them.

7. PMP is without knowledge or information sufficient to admit or deny the allegations in paragraph 7 of the Complaint and, on that basis, denies them.

8. Admitted.

9. Admitted.

10. Admitted.

JURISDICTION AND VENUE

11. Paragraph 11 contains legal conclusions to which no answer is required. To the extent an answer is required, PMP admits 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 PMP denies that there is any legal or factual basis for such action.

12. PMP is without knowledge or information sufficient to admit or deny the allegations in paragraph 12 of the Complaint and, on that basis, denies them.

13. Paragraph 13 contains legal conclusions to which no answer is required. To the extent an answer is required, PMP admits for purposes of this action only that this Court has personal jurisdiction over it. PMP otherwise denies the allegations in paragraph 13 of the Complaint.

14. PMP is without knowledge or information sufficient to admit or deny the allegations in paragraph 14 of the Complaint and, on that basis, denies them.

15. Paragraph 15 contains legal conclusions to which no answer is required. To the extent an answer is required, PMP admits for purposes of this action only that venue exists in this District for the claims against PMP pursuant to 28 U.S.C. §§ 1391 and 1400(b). PMP otherwise denies the allegations in paragraph 15 of the Complaint. PMP specifically denies the allegations of paragraph 15 of the Complaint relating to PMP's alleged infringement of any patents.

FACTUAL BACKGROUND

THE ASSERTED PATENTS

16. In lieu of responding to the allegations in paragraph 16, PMP has filed a motion to dismiss concurrently with this Partial Answer directed to the allegations of this paragraph.

17. In lieu of responding to the allegations in paragraph 17, PMP has filed a motion to dismiss concurrently with this Partial Answer directed to the allegations of this paragraph.

18. The Court has stayed Plaintiff's Counts Three, Four, and Five pursuant to 28 U.S.C. § 1659. *See* Dkt. 27. PMP will provide a response at the appropriate time when the stay is lifted.

19. The Court has stayed Plaintiff's Counts Three, Four, and Five pursuant to 28 U.S.C. § 1659. *See* Dkt. 27. PMP will provide a response at the appropriate time when the stay is lifted.

20. The Court has stayed Plaintiff's Counts Three, Four, and Five pursuant to 28 U.S.C. § 1659. *See* Dkt. 27. PMP will provide a response at the appropriate time when the stay is lifted.

21. The Court has stayed Plaintiff's Counts Three, Four, and Five pursuant to 28 U.S.C. § 1659. *See* Dkt. 27. PMP will provide a response at the appropriate time when the stay is lifted.

22. The Court has stayed Plaintiff's Counts Three, Four, and Five pursuant to 28 U.S.C. § 1659. *See* Dkt. 27. PMP will provide a response at the appropriate time when the stay is lifted.

23. The Court has stayed Plaintiff's Counts Three, Four, and Five pursuant to 28 U.S.C. § 1659. *See* Dkt. 27. PMP will provide a response at the appropriate time when the stay is lifted.

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