

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

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

Plaintiffs and Counterclaim  
Defendants,

v.

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

Defendants and Counterclaim  
Plaintiffs.

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

**REDACTED**

**PHILIP MORRIS PRODUCTS S.A.'S REPLY IN SUPPORT OF MOTION  
FOR LEAVE TO AMEND COUNTERCLAIMS TO ADD INJUNCTIVE RELIEF**

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## I. INTRODUCTION

Reynolds' opposition is most notable for what it fails to dispute. Reynolds makes no contention that PMP's proposed amendment to include a request for injunctive relief is futile. Reynolds also does not dispute that PMP's proposed amendment adds no new claims. Instead, Reynolds focuses the majority of its brief on its purported prejudice of having to address PMP's demand for injunctive relief, and on accusatory assertions of delay by PMP for what Reynolds calls "strategic" reasons. Reynolds' bloated assertions about the scope of discovery and the scheduling impact lack merit and require Reynolds to ignore the discovery record in this case and the parallel ITC investigation. And Reynolds' accusations of intentional and undue delay likewise ignore the evidence that emerged at the recent ITC hearing and post-trial briefing, as well as other subsequent events, in January and February 2021, making plain that the grant of an injunction in this case is both *consistent* with PMP's ITC public interest contentions and compelled by the public interest.

*First*, Reynolds contends that PMP's amendment is prejudicial because injunctive relief will "significantly alter the scope of the case." But Reynolds ignores that the request for injunctive relief will have no impact on the upcoming jury trial preparations, pretrial proceedings, or the jury trial schedule. The upcoming pretrial conference is directed to the jury trial on liability and damages, which is distinct from the post-trial equitable proceedings associated with PMP's injunction request. And, to the extent any additional discovery is required, there is ample time between now and the jury trial (or even after the jury trial) for such discovery to be conducted with no disruption whatsoever of the upcoming jury trial preparations and proceedings.

Reynolds' "laundry list" of purported "necessary" discovery is belied by the record in this case and at the ITC. Reynolds fails to identify a single specific witness, a single specific category

of documents, or any specifics regarding the discovery it would allegedly require that has not already been extensively discovered in this case and in the ITC.<sup>1</sup> Given the breadth of the *Georgia Pacific* analysis, it is unsurprising that Reynolds cannot identify any new discovery because all relevant discovery has already been conducted in the context of damages. At the very least, Reynolds’ claim to need months of additional discovery simply cannot withstand scrutiny. Indeed, Reynolds readily concedes that the parties have already “engaged in extensive discovery relating to the question of” public interest in the related ITC case—which is central to the issue of injunctive relief here. Dkt. 476 at 6.<sup>2</sup> In the unlikely event that further discovery is needed on injunctive relief, it is untethered to the jury trial, and may take place on a separate schedule before or after the jury trial.

*Second*, Reynolds’ accusations of strategic gamesmanship and delay disregard the voluminous record developed during the ITC trial and since PMP’s previous amendment of its pleadings. The recently developed record now makes plain that the public interest is *served*, not disserved, by entry of an injunction here. Reynolds is selling its accused VUSE e-cigarettes unlawfully, and, contrary to Reynolds’ previous assertions, recent information reflects that FDA is actively engaged in enforcement activities against illegal sales of e-cigarettes in the U.S. Notably, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. In any event, the public interest is

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<sup>1</sup> Discovery from the ITC case is deemed produced in this case pursuant to the cross-use agreement entered into between the parties. Dkt. 103 ¶ 18.

<sup>2</sup> Other than the public interest element, Reynolds does not even attempt to address the remaining *eBay* elements for an injunction, including irreparable harm, availability of remedies at law, and balance of hardships. *eBay Inc. v. MercExchange, LLC*, 547 U.S. 388, 391 (2006).

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