

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.**

Civil Action No. 1:20-cv-393

[PROPOSED] ORDER GRANTING DEFENDANTS' MOTION TO SEAL

This matter is before the Court on the motion filed by Defendants Altria Client Services LLC (“ACS”), Philip Morris USA Inc. (“PM USA”), and Philip Morris Products S.A. (“PMP”) (collectively, “Defendants”) to file Defendants’ Opposition to Plaintiffs’ Second Motion to Compel Production of Documents Related to Defendants’ ’374 Patent Infringement Counterclaim and certain accompanying declarations and exhibits under seal pursuant to Federal Rule of Civil Procedure 5.2(d) and Local Civil Rule 5(C). Upon consideration of Defendants’ motion to seal and its 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. Defendants’ sealing motion was publicly docketed in accordance with Local Civil Rule 5. Plaintiffs RAI Strategic Holdings, Inc. and R.J. Reynolds Vapor Co. (“Plaintiffs”) have had an opportunity to respond. The “public has had ample opportunity to object” to Defendants’ motion and, since “the Court has received no objections,” the first requirement under

Ashcraft v. Conoco, Inc., 218 F.3d 288, 302 (4th Cir. 2000), 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. Defendants seek to seal and to redact from the public record only information designated by the parties as confidential. Defendants will file publicly a redacted version of Defendants’ Opposition to Plaintiffs’ Second Motion to Compel Production of Documents Related to Defendants’ ’374 Patent Infringement Counterclaim and certain accompanying declarations and exhibits, in addition to a sealed version, and will redact 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. 3:11cv272-REP-DWD, 2011 WL 7042224, at *4 (E.D. Va. Dec. 5, 2011) (plaintiffs’ “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 Defendants and Plaintiffs. *Id.* at *4 (“[T]here is no legitimate public interest in disclosing the proprietary and confidential information of [the defendant] . . . and disclosure to the public could result in significant damage to the company.”). The information that Defendants seek to seal includes confidential, proprietary, and competitively sensitive business information of Defendants, Plaintiffs, and/or third parties, each of which could face harm if such information were to be released publicly.

3. There is support for filing portions of Defendants’ Opposition to Plaintiffs’ Second Motion to Compel Production of Documents Related to Defendants’ ’374 Patent Infringement

Counterclaim under seal, with a publicly filed version containing strictly limited redactions. The same is true for the accompanying declarations and exhibits Defendants filed under seal. Defendants' Opposition to Plaintiffs' Second Motion to Compel Production of Documents Related to Defendants' '374 Patent Infringement Counterclaim and accompanying declarations and exhibits contain material designated confidential under the stipulated protective order. Accordingly, Defendants are required to file this material under seal pursuant to the stipulated protective order. Furthermore, 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 show, it is hereby

ORDERED that the motion is **GRANTED**, and Defendants are granted leave to file a **REDACTED** version of Defendants' Opposition to Plaintiffs' Second Motion to Compel Production of Documents Related to Defendants' '374 Patent Infringement Counterclaim, accompanying declarations, and Exhibit Nos. 1-13.

And to file **UNDER SEAL** an un-redacted version of Defendants' Opposition to Plaintiffs' Defendants' Opposition to Plaintiffs' Second Motion to Compel Production of Documents Related to Defendants' '374 Patent Infringement Counterclaim, accompanying declarations, and Exhibit Nos. 1-13.

And **FURTHER ORDERED** that the un-redacted version of Defendants' Opposition to Plaintiffs' Second Motion to Compel Production of Documents Related to Defendants'

'374 Patent Infringement Counterclaim, accompanying declarations, and Exhibit Nos. 1-13 shall remain **SEALED** until further order of the Court.

ENTERED this ____ day of _____, 2021.

Alexandria, Virginia
