

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

**PLAINTIFFS' RESPONSE TO
DEFENDANTS' MOTION TO DISMISS**

Plaintiffs RAI Strategic Holdings, Inc. and R.J. Reynolds Vapor Company (collectively, "Plaintiffs") submit this response to Altria Client Services LLC's, Philip Morris USA, Inc.'s, and Philip Morris Products S.A.'s (collectively, "Defendants") Partial Motion to Dismiss Plaintiffs' Complaint For Patent Infringement (Dkt. No. 36) ("Motion to Dismiss").

Plaintiffs initiated this action, and served the Summons and Complaint on certain Defendants on April 13, 2020. On May 4, 2020, the Court extended Defendants' time to respond to the Complaint until June 29, 2020. On May 5, 2020, the Court dismissed Defendants Altria Group, Inc. and Philip Morris International Inc. from the case. The remaining Defendants filed their Partial Answers and Counterclaims to Plaintiffs' Complaint on June 29, 2020. On that same day, Defendants filed their Partial Motion To Dismiss Plaintiffs' Complaint for Patent Infringement (Dkt. No. 36) ("Motion to Dismiss").

Under the federal rules, Plaintiffs have the option of amending their Complaint as of right within 21 days of Defendants' filing their Motion to Dismiss. Fed. R. Civ. P. 15(a)(1)(B). When this provision of Rule 15 was enacted, the Advisory Committee explained that the rule was designed to encourage amendments that might obviate or reduce objections to the pleading and conserve judicial resources:

This provision will force the pleader to consider carefully and promptly the wisdom of amending to meet the arguments in the motion. A responsive amendment may avoid the need to decide the motion or reduce the number of issues to be decided, and will expedite determination of issues that otherwise might be raised seriatim. It also should advance other pretrial proceedings.

Fed. R. Civ. P. advisory committee's note to 2009 Amendment.

In this case, Plaintiffs have carefully considered the arguments in Defendants' motion, and while Plaintiffs do not agree with Defendants' assertions, they have concluded that further motion practice might be avoided or, at least, reduced, by amending the Complaint. Thus, in keeping with the policy behind the rule to conserve judicial resources and to amplify the factual support in their original Complaint, Plaintiffs are filing concurrently an Amended Complaint in accordance with Rule 15(a)(1)(B).

Plaintiffs' filing of this Amended Complaint automatically renders Defendant's pending motion moot. *See, e.g., Wilson v. City of Chesapeake*, No. 2:16CV301, 2016 WL 11671375, *1 (E.D. Va. July 20, 2016) ("Because an amended complaint supersedes the original complaint and renders it of no legal effect, ... Defendants' Motion to Dismiss ... is DENIED as moot."); *Roncales v. County of Henrico*, No. 3:19CV234, 2019 WL 8112889, at *1-*2 (E.D. Va. July 11, 2019) (finding amended complaint "supersedes the original and renders it of no legal effect" and denying pending motion to dismiss as moot).

Therefore, Plaintiffs respectfully request that Defendants' Motion to Dismiss be denied as moot.

Dated: July 13, 2020

Respectfully submitted,

/s/ David M. Maiorana

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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of July, 2020, a true and correct copy of the foregoing was served using the Court's CM/ECF system, with electronic notification of such filing to all counsel of record.

/s/ David M. Maiorana

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