

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

RAI STRATEGIC HOLDINGS, INC.)	
)	
et al.,)	Civil Action
)	No. 1:20-cv-00393-LO-TCB
Plaintiffs,)	
)	
v.)	April 16, 2021
)	10:00 a.m.
ALTRIA CLIENT SERVICES, LLC,)	
)	
et al.,)	
)	
Defendants.)	

**TRANSCRIPT OF MOTION HEARING PROCEEDINGS
BEFORE THE HONORABLE THERESA C. BUCHANAN,
(Via Zoom Conference)
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE**

APPEARANCES:

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MORNING SESSION, APRIL 16, 2021

(9:01 a.m.)

THE COURTROOM CLERK: *RAI Strategic Holdings, Inc., et al. versus Altria Client Services, LLC, et al.*, Case Number 20-cv-393.

Counsel, please note your appearances for the record.

MR. MOLSTER: Good morning, Your Honor, Charles Molster on behalf of the plaintiffs. With me on the Zoom is Thomas Vitt Jones Day. With Your Honor's permission, he will handle the motion the morning.

THE COURT: All right. Good morning.

MR. GRANT: Your Honor, this is Max Grant from Philip Morris, Altria representing, I guess, the putative plaintiffs in the case as they currently exist.

THE COURT: Right.

MR. VITT: With me is my partner Larry Gotts. He'll handle the motion to compel issues, and I'll do my best to deal with the scheduling issues and the pretrial scheduling.

THE COURT: All right. Good morning, everyone. This is on the defendant's counterclaim motion to compel. I read the pleadings, and I read your reply brief as well. Do you have anything to add to that?

MR. GOTTS: Your Honor, Larry Gotts here. I don't have anything in particular to add, Your Honor. The four forms of relief tie primarily to issues of relevance, and we do believe

that, frankly, all four categories we request, that the information is undisputably relevant.

We would be happy to address, Your Honor, any particular concerns or questions that derive from that or from our papers.

THE COURT: Did you request documents related to Issue 28, Topic 28?

MR. GOTTS: I'm sure we did, Your Honor. I haven't pulled those requests, but given the scope and breadth of the requests, I'm sure there are document requests that would encompass that.

THE COURT: Okay. Let me hear from the defendants -- from the plaintiffs, rather.

Can I hear from RAI, please?

You're muted, Mr. Gotts.

MR. VITT: Yes, Your Honor. I'm sorry. I had a Zoom quip and had to restart. I apologize.

THE COURT: That's okay.

MR. VITT: Can you all hear me and see me okay now?

THE COURT: I can hear you. I'm not sure which box you are, but.....

Okay. I see you now, Mr. Vitt.

Did you have anything to add to your opposition?

MR. VITT: Your Honor, I would like to address the reply, if the Court -- I missed the conversation you had with Mr. Grant, so I would like to address the reply, if the Court has any questions.

THE COURT: I don't really have any questions, but I did read the reply. But go ahead and add anything that you would like.

MR. VITT: Sure. So, on -- I would like to focus, I think, primarily on Topic 28, Your Honor, and the key issue there is there are really three legal principles that ought to drive this. The question we're looking at is, is there anything relevant about the negotiations and the lead up to that font in RJ Reynolds' agreement.

The first legal principle, Your Honor, is we all agree that a settlement agreement can be a comparable license. And then the Federal Circuit's kind of instructed us to look at, is the settlement agreement about valuing the patents or is it about settling litigation? But here we don't have to worry about that. We agree that its about value of the patent.

And then the second legal principle is, Rule 408 says that the settlement negotiations are not admissible for exactly the purpose that Philip Morris wants to use them for; that is, to prove or disprove the validity or amount of a disputed claim, just not admissible for that purpose.

And then that leads to the third legal principle. If you look at the cases that we cited and they cited, there's a general rule that the settlement negotiations are not discoverable. There's not a broad discovery privilege, but there's a general rule that those negotiations are not discoverable unless the

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