

**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 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
FILED UNDER SEAL**

**R.J. REYNOLDS VAPOR COMPANY'S MEMORANDUM IN SUPPORT OF MOTION TO
COMPEL DEFENDANT PHILIP MORRIS PRODUCTS S.A. TO DESIGNATE RULE 30(b)(6)
WITNESSES RELATING TO PHILIP MORRIS PRODUCTS S.A.'S CLAIM FOR A
PERMANENT INJUNCTION**

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INTRODUCTION

In June 2020, Defendant Philip Morris Products S.A. (“PMP”) lodged counterclaims against Plaintiff R.J. Reynolds Vapor Company (“RJR”), asserting that three of PMP’s patents are infringed by one or more of RJR’s VUSE line of vaping products. Nearly nine months later, PMP sought and (over RJR’s objection) was allowed to add a claim for injunctive relief—seeking to exclude the VUSE products completely from the U.S. market. (Dkt. 463, 483.) This is an extraordinary request that, [REDACTED]

[REDACTED] To justify a permanent injunction, PMP bears the burden to prove that: (i) it has suffered irreparable injury, (ii) remedies available at law, such as monetary damages, are inadequate to compensate for that injury, (iii) considering the balance of hardships between PMP and RJR, a remedy in equity is warranted, and (iv) the public interest would not be disserved by a permanent injunction. *See eBay Inc. v. MercExchange, LLC*, 547 U.S. 388, 291 (2006). Despite the fact that PMP bears the burden on these issues, however, it has inexplicably refused to produce witnesses to testify about the complete factual bases underlying its injunction claim.

Instead, after *weeks* of effort from RJR to get complete answers to its simple discovery requests relating to PMP’s new claim, the most PMP will commit to do is produce witnesses to cover certain limited sub-topics of PMP’s own choosing, leaving *no one* to testify about critical issues like irreparable harm and public interest. For example, and as discussed in more detail below, Topic 68 is a straightforward request asking PMP to designate a witness to testify about its contentions underlying each of the four *eBay* factors. The relevance of this request is beyond question. Nevertheless, PMP has refused. Rather than put forward a witness to testify about the full scope of its injunction-related claims, PMP insists that it will only offer testimony [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] In so doing, PMP has unilaterally redefined the noticed topics into narrow carve-outs that do not cover the full scope of the *eBay* factors PMP must prove, nor the full scope of issues laid out in PMP’s own interrogatory answers.

PMP’s position is indefensible. Having asserted this claim, PMP must allow discovery of it, including by making witnesses available so that RJRV can test PMP’s assertions and secure testimony that will be binding on PMP as a company. For the reasons discussed further below, and pursuant to Fed. R. Civ. P. 37(a)(3)(B) and Local Civil Rule 37, RJRV respectfully requests that this Court enter an Order compelling PMP to designate one or more witnesses to testify regarding the complete subject matter described in Topic Nos. 68-70, 72, 76, and 83 from Plaintiffs’ Second Notice of Rule 30(b)(6) Deposition of PMP.

FACTUAL BACKGROUND

RJRV served its Rule 30(b)(6) notice to PMP on April 7, 2021, and included specific requests for one or more witnesses to testify on behalf of PMP about topics (numbered 68-83) relating to its request for injunctive relief. (Ex. 1 [Apr. 7, 2021, RJRV’s 30(b)(6) Notice].) The topics in dispute are shown in the chart below:

Topic 68	The factual bases underlying PMP’s contention, including PMP’s response to Interrogatory Nos. 23–24, that (i) PMP has suffered irreparable injury, (ii) remedies available at law, such as monetary damages, are inadequate to compensate for that injury, (iii) considering the balance of hardships between PMP and Reynolds, a remedy in equity is warranted, and (iv) the public interest would be properly served by a permanent injunction.
Topic 69	Each fact that PMP alleges supports PMP’s request for a permanent injunction and that was not present and/or known to PMP on or before June 29, 2020, including when each such fact became known to PMP.

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