

**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**

**REPLY BRIEF IN SUPPORT OF R.J. REYNOLDS VAPOR COMPANY'S 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

PMP suggests in its Opposition that RJRV's Motion is essentially moot—either because PMP already agreed to provide complete testimony in response to certain topics (it did not, and still does not); or because certain topics are more properly within the ken of RJRV than PMP (not a basis to refuse a witness, particularly when PMP has put forward contentions on the very subject matter at issue); or because the topic is, in PMP's view, irrelevant (wrong as a matter of law and, again, not a proper basis to refuse discovery). Rather than provide straight answers, PMP fills its Opposition with the same artful dodges and qualifiers that led to the necessity of this Motion in the first place.

As an initial matter, RJRV notes that, after this Motion and the cross-motion to compel from Defendants (Dkt. 615) were filed, the Initial Determination regarding Defendants' infringement of Reynolds's patents was issued in the parallel proceeding before the International Trade Commission. The Initial Determination comes after a lengthy hearing before Administrative Law Judge Clark S. Cheney, in which both sides presented numerous fact and expert witnesses, as well as voluminous documents. After considering all of the evidence, exhaustively recounted in his 132-page decision, Judge Cheney found that Defendants' IQOS products infringe [REDACTED] two patents owned by Reynolds, and that those patents are not invalid. Judge Cheney specifically found that Defendants' continued importation and sale of the IQOS products in the United States constitutes a violation of the Tariff Act, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Accordingly, Reynolds will be filing a motion to stay further proceedings on PMP’s claim for injunctive relief, pending decision from the full Commission, which is expected in September 2021. If the Court grants the brief stay, then the present Motion will be moot. If the Court deems that proceedings on the injunctive relief claim should move forward, however, the Court should grant the present Motion.

First, with respect to Topics 68, 70, and 72, these are simple, straightforward topics seeking the bases for PMP’s contentions around the *eBay* factors, as to which PMP unquestionably bears the burden of proof. The record shows that, after weeks of chasing by RJRV, the most that PMP would offer were two witnesses to cover certain sub-issues that PMP unilaterally crafted. These were *not* offered as illustrative or exemplary; they were offered as the sum total of what PMP was willing to designate a witness to address. In its Opposition, PMP now claims that its witnesses will address the full scope of the topics, and thus the present motion is moot. But PMP still laces its concession with hedging language—agreeing that the testimony is “subject to PMP’s objections,” with no explanation what that means, and refusing to designate a witness in a straightforward manner on critical issues like irreparable harm and the public interest. Without clear direction from the Court, PMP is sure to use these carve-outs to later cabin its witnesses’ testimony at deposition based on boundaries of PMP’s unilateral choosing.

Second, PMP is still beating around the bush with respect to Topics 76 and 83—which seek testimony about the factual bases for any contentions PMP intends to make about the drivers of sales for the VUSE products (76), or the harm to RJRV if the injunction is granted (83). PMP

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