

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

[PROPOSED] ORDER GRANTING DEFENDANTS' MOTION TO SEAL

This matter is before the Court on the motion filed by Defendant Philip Morris Products S.A. ("PMP") to seal an un-redacted version of Defendant PMP's Memorandum in Support of PMP's Opposition to Reynolds' Partial Motion to Stay Injunctive Relief Discovery and Exhibits 2-7 pursuant to Federal Rule of Civil Procedure 5.2(d) and Local Civil Rule 5(C). Because the documents that Defendant seeks to seal contain confidential, proprietary, and competitively sensitive business information of the Plaintiffs RAI Strategic Holdings, Inc., and R.J. Reynolds Vapor Company (collectively, "Plaintiffs"), Plaintiffs filed a memorandum in support of Defendant's sealing request.

Before this Court may seal documents, it must: "(1) provide public notice of the request to seal and allow interested parties a reasonable opportunity to object, (2) consider less drastic alternatives to sealing the documents, and (3) provide specific reasons and factual findings supporting its decision to seal the documents and for rejecting the alternatives." *Ashcraft v. Conoco, Inc.*, 218 F.3d 282, 288 (4th Cir. 2000) (internal citations omitted). Upon consideration

of Defendant's 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. Defendant's sealing motion was publicly docketed in accordance with Local Civil Rule 5. Plaintiffs have filed a memorandum in support of sealing. The "public has had ample opportunity to object" to Defendant's motion and, since "the Court has received no objections," the first requirement under *Ashcraft*, 218 F.3d at 302, 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. Defendant seeks to seal and redact from the public record only information designated by the parties as confidential. Defendant has filed publicly a redacted version of its Memorandum in Support of PMP's Opposition to Reynolds' Partial Motion to Stay Injunctive Relief Discovery and Exhibits 2-7 (Dkt. 663), in addition to a sealed version (Dkt. 666), and has redacted 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. 3:11-cv-272-REP-DWD, 2011 WL 7042224, at *4 (E.D. Va. Dec. 5, 2011) (The "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 Defendant seeks 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. Specifically, the sensitive information that Defendant moves for leave to file under seal, and to redact from a publicly filed version, includes proprietary and commercially sensitive information of Plaintiffs, Defendants, and/or third parties, such as materials falling under the ITC protective order, internal scientific studies and analyses, and internal business presentations.

3. There is support for filing portions of Defendant PMP’s Memorandum in Support of PMP’s Opposition to Reynolds’ Partial Motion to Stay Injunctive Relief Discovery and Exhibits 2-7 under seal, with a publicly filed version containing strictly limited redactions. Defendant PMP’s Memorandum in Support of PMP’s Opposition to Reynolds’ Partial Motion to Stay Injunctive Relief Discovery and Exhibits 2-7 contain materials that fall within the scope of the stipulated protective order. 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-371-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 shown, it is hereby

ORDERED that the motion is **GRANTED**, and Defendant is granted leave to file **REDACTED** version of Defendant PMP’s Memorandum in Support of PMP’s Opposition to Reynolds’ Partial Motion to Stay Injunctive Relief Discovery and Exhibits 2-7.

And to file **UNDER SEAL** an un-redacted version of Defendant PMP's Memorandum in Support of PMP's Opposition to Reynolds' Partial Motion to Stay Injunctive Relief Discovery and Exhibits 2-7.

And **FURTHER ORDERED** that the un-redacted version of Defendant PMP's Memorandum in Support of PMP's Opposition to Reynolds' Partial Motion to Stay Injunctive Relief Discovery and Exhibits 2-7 shall remain **SEALED** until further order of the Court.

ENTERED this ____ day of _____, 2021.

Alexandria, Virginia
