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.

Civil Action No. 1:20-cv-393

PHILIP MORRIS PRODUCTS S.A.'S OPPOSITION TO REYNOLDS' MOTION FOR RELIEF FROM STIPULATED DEPOSITION DATES

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I. INTRODUCTION

This is the third in a series of motions over the past month in which Reynolds seeks to delay injunction-related discovery, including Dr. Figlar's deposition, without basis. First, Reynolds refused for months to provide a date certain for Dr. Figlar's deposition, forcing PMP to file a motion to compel.[1] Only on the eve of oral argument on PMP's motion to compel did Reynolds agree to provide a date certain for that deposition—June 24. To prevent any further delay and to ensure that PMP and the Court could take Reynolds at its word, PMP insisted that Reynolds enter into an unconditional stipulation setting Dr. Figlar's June 24 deposition date so that the parties could complete injunctive relief discovery in June in an orderly fashion and as the Court had directed.[2] PMP and the Court relied on that May 27 stipulation and Reynolds' word to moot PMP's motion to compel Dr. Figlar's deposition.

Unfortunately, Reynolds has nevertheless persisted in its attempts to delay Dr. Figlar's deposition. First, Reynolds moved to stay the limited remaining fact discovery on injunctive relief (including Dr. Figlar's deposition) in view of the ALJ's initial determination in the ITC investigation between the parties. The Court denied Reynolds' motion to stay as to the remaining fact discovery, only staying expert discovery (which PMP contended was neither necessary nor allowed by the Court's Scheduling Order, Dkt. 666 at 1). Dkt. 702. Consequently, the Court

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[1] The details of Reynolds' several months of delay-upon-delay are described in PMP's motion to compel (Dkt. 620).

[2] Within hours of the email agreement on which the dismissal of PMP's motion to compel was premised, Reynolds sought to back out of its commitment, claiming that the unconditional stipulated deposition date was now conditional and dependent on Reynolds' unilateral view of whether PMP's document production was complete. When PMP so informed the Court, Reynolds misrepresented the black and white agreement it previously made, and only relented the following day when PMP provided the Court with the communications reflecting Reynolds' written commitment. Ex. 1 (5/27/21 D. Maiorana email).

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directed the remaining three depositions—including Dr. Figlar's—to proceed on their stipulated dates in June. *Id.*

Now, unsatisfied with the Court's unequivocal ruling that the parties should promptly complete fact discovery – and unable to derail Dr. Figlar's scheduled June 24 deposition through its motion to stay – Reynolds tries yet again to delay indefinitely Dr. Figlar's deposition and the completion of fact discovery on PMP's offensive claims by filing the instant motion for relief from ***the parties' stipulated deposition schedule***. Reynolds seeks to defy the Court's ruling to complete fact discovery by asserting that it must purportedly seek "complete discovery on PMP's shifting contentions concerning its claim for injunctive relief, including the newly-disclosed VEEV product, before Reynolds's Rule 30(b)(6) designee on injunction-related topics," Dr. Figlar, can be deposed. Dkt. 709 at 5.

Reynolds' continuing effort to evade a Court-approved stipulation that Reynolds entered into to avoid being compelled to produce Dr. Figlar on a date certain, and to end-run this Court's denial of its attempt to stay remaining fact discovery on injunctive relief (including Dr. Figlar's deposition), rises to the level of potential vexatious litigation tactics. Contrary to Reynolds' misstatements, this third attempt to delay Dr. Figlar's deposition and the completion of fact discovery is ***not*** based on any "newly disclosed" facts that were unknown to Reynolds when the parties entered the joint stipulation. Instead, PMP fully disclosed its reliance on its full range of present and future smoke-free products (which, as Reynolds knows, includes VEEV) to support its injunction demand no later than ***April 9,*** in its detailed 36-page interrogatory response. PMP thereafter expressly confirmed its April 9 interrogatory response by identifying VEEV (one of its smoke-free products) by name in its May 26 opposition to Reynolds' Motion to Stay (Dkt. 666).

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