

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

RAI STRATEGIC HOLDINGS, INC. and)
R.J. REYNOLDS VAPOR COMPANY,)

Civil No. 1:20-cv-00393-LO-TCB

Plaintiffs,)

v.)

ALTRIA CLIENT SERVICES LLC; PHILIP)
MORRIS USA, INC.; and PHILIP MORRIS)
PRODUCTS S.A.,)

Defendants.)

ALTRIA CLIENT SERVICES LLC; PHILIP)
MORRIS USA, INC.; and PHILIP MORRIS)
PRODUCTS S.A.,)

Counterclaim Plaintiffs,)

v.)

RAI STRATEGIC HOLDINGS, INC. and)
R.J. REYNOLDS VAPOR COMPANY,)

Counterclaim Defendants.)

PLAINTIFFS’ SECOND AMENDED ANSWER TO DEFENDANTS ALTRIA CLIENT SERVICES LLC AND PHILIP MORRIS USA, INC.’S AMENDED COUNTERCLAIMS

Plaintiffs and Counterclaim Defendants RAI Strategic Holdings, Inc. (“RAI”) and R.J. Reynolds Vapor Company (“RJR”) (collectively “Counterclaim Defendants”) answer the counterclaims of Defendants and Counterclaim Plaintiffs Altria Client Services LLC (“ACS”) and Philip Morris USA, Inc. (“PM USA”) (collectively “Counterclaim Plaintiffs”) as follows. Except as expressly stated, Counterclaim Defendants deny each and every allegation in

Counterclaim Plaintiffs' counterclaims. Counterclaim Defendants' specific responses to the numbered allegations are set forth below.¹

NATURE OF THE ACTION

1. Counterclaim Defendants admit that the Counterclaims purport to arise under the patent laws of the United States, 35 U.S.C. §§ 271, et seq., and to be claims for patent infringement and declaratory judgment of non-infringement and invalidity. Counterclaim Defendants deny that they have infringed any valid and enforceable patent claim or that Counterclaim Plaintiffs are entitled to a declaration that Counterclaim Defendants' asserted patents are invalid and not infringed. Counterclaim Defendants deny that Counterclaim Plaintiffs are entitled to any relief.

2. Counterclaim Defendants deny Counterclaim Plaintiffs' allegation that the ACS and PM USA Asserted Patents cover inventions including innovative e-vapor technologies. Except as expressly stated, Counterclaim Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 2 and, on that basis, deny them.

3. RJRV markets and sells electronic nicotine delivery systems under the brand names VUSE Solo, VUSE Ciro, VUSE Vibe, and VUSE Alto. Specifically, RJRV markets and sells the Vuse Solo power unit, which includes a USB charging cable; the Vuse Solo flavor pack, which consists of two cartridges containing e-liquid; the Vuse Ciro power unit, which includes a USB charging cable; the Vuse Ciro flavor pack, which consists of three cartridges containing e-liquid; the Vuse Alto power unit, which includes a USB charging cable; the Vuse Alto flavor pack, which consists of two pods containing e-liquid; the Vuse Vibe power unit, which includes a USB

¹ For convenience only, this Amended Answer includes headings used in Counterclaim Plaintiffs' counterclaims. To the extent that a heading contains any allegation(s) made by Counterclaim Plaintiffs, Counterclaim Defendants deny all such allegations.

charging cable; and the Vuse Vibe flavor pack, which consists of two tanks containing e-liquid. In addition, RJRV sells the Vuse Vibe kit, which includes a Vuse Vibe power unit, a USB charging cable, and one tank containing e-liquid. RJRV specifically denies that it infringes the PMP Asserted Patents. Except as expressly stated, RJRV denies the remaining allegations of Paragraph 3.

4. Counterclaim Defendants admit that they have alleged that Counterclaim Plaintiffs infringe U.S. Patent Nos. 9,814,268 (“the ’268 patent”); 10,492,542 (“the ’542 patent”); 9,839,238 (“the ’238 patent”); 9,901,123 (“the ’123 patent”); and 9,930,915 (“the ’915 patent”). Counterclaim Defendants admit that proceedings regarding the ’238, ’123, and ’915 patents have been stayed pursuant to 28 U.S.C. § 1659. Except as expressly stated, Counterclaim Defendants deny the remaining allegations of Paragraph 4.

PARTIES

5. RAI admits that it is a North Carolina corporation with its principal place of business located at 401 North Main Street, Winston-Salem, North Carolina 27101. RAI admits that it is an indirect, wholly owned subsidiary of Reynolds American Inc., and that Reynolds American Inc. is an indirect, wholly owned subsidiary of British American Tobacco, p.l.c., a publicly-traded company on the London Stock Exchange headquartered in London, England. Except as expressly stated, RAI denies the remaining allegations of Paragraph 5.

6. RJRV admits that it is a North Carolina corporation with its principal place of business located at 401 North Main Street, Winston-Salem, North Carolina 27101. RJRV admits that it is an indirect, wholly owned subsidiary of Reynolds American Inc., and that Reynolds American Inc. is an indirect, wholly owned subsidiary of British American Tobacco, p.l.c., a publicly-traded company on the London Stock Exchange headquartered in London, England. Except as expressly stated, RJRV denies the remaining allegations of Paragraph 6.

7. Counterclaim Defendants are informed and believe that ACS is a Virginia corporation with its principal place of business located at 6601 West Broad Street, Richmond, Virginia 23230.

8. Counterclaim Defendants are informed and believe that PM USA is a Virginia Corporation with its principal place of business at 6601 West Broad Street, Richmond, Virginia 23230.

JURISDICTION AND VENUE

9. Counterclaim Defendants admits that PMP's counterclaims purportedly arise under the Declaratory Judgment Act, 28 U.S.C. § 2201, et seq., and the patent laws of the United States, Title 35 of the United States Code, and that federal courts have subject matter jurisdiction over such claims pursuant to 28 U.S.C. §§ 1331 and 1338(a). Counterclaim Defendants deny that they have committed any acts that give rise to PMP's causes of action for patent infringement.

10. Denied.

11. Denied. Counterclaim Defendant RJRV has moved to sever and transfer Counterclaim Plaintiffs' infringement counterclaims (nos. I and II) to the Middle District of North Carolina under Fed. R. Civ. P. 21 and 28 U.S.C. § 1404(a).

12. Counterclaim Defendants admit that, in their Amended Complaint, they allege that Counterclaim Plaintiffs infringe Counterclaim Defendants' U.S. Patent Nos. 9,814,268; 10,492,542; 9,839,238; 9,901,123; and 9,930,915. Except as expressly stated, Counterclaim Defendants deny the remaining allegations of Paragraph 12.

THE ACS AND PM USA ASSERTED PATENTS

13. Counterclaim Defendants admit that Exhibit A to Counterclaim Plaintiffs' answer and counterclaims purports to be a copy of U.S. Patent No. 6,803,545, the content of which speaks for itself. Counterclaim Defendants are without knowledge or information sufficient to form a

belief as to the truth of the remaining allegations contained in Paragraph 13 and, on that basis, deny them.

14. Counterclaim Defendants admit that Exhibit B to Counterclaim Plaintiffs' answer and counterclaims purports to be a copy of U.S. Patent No. 10,420,374, the content of which speaks for itself. Counterclaim Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 14 and, on that basis, deny them.

15. The statements in Paragraph 15 set forth Counterclaim Plaintiffs' purported characterization of their alleged claims and rights and, as such, require no response from Counterclaim Defendants. To the extent that Counterclaim Plaintiffs intend to make any allegations against Counterclaim Defendants in Paragraph 15, Counterclaim Defendants deny them.

16. Denied.

COUNTERCLAIM I: INFRINGEMENT OF U.S. PATENT NO. 6,803,545
(AGAINST RJRV)

17. RJRV reasserts and incorporates by reference its responses to Paragraphs 1 to 16.

18. Denied.

19. RJRV admits that Claim 1 of the '545 patent recites an "electrically heated smoking system comprising." RJRV cannot confirm the source, accuracy, or completeness of the images or annotations in Paragraph 19 and thus lacks knowledge or information sufficient to form a belief about the truth of any allegations contained therein and, on that basis, denies them. RJRV further responds that Paragraph 19 contains legal conclusions to which no answer is required. To the extent that an answer is required, RJRV further denies the statements and allegations in Paragraph 19 insofar as they purport to require an application of various terms of the patent claims ("electrically

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