

**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

**MEMORANDUM IN SUPPORT OF REYNOLDS'S MOTIONS *IN LIMINE* NOS. 4 AND
5 TO EXCLUDE EVIDENCE AND ARGUMENT REGARDING ANY REQUEST FOR,
OR ALLEGED ENTITLEMENT TO, ISSUANCE OF AN INJUNCTION, ENHANCED
DAMAGES, OR ATTORNEYS' FEES AND COSTS**

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INTRODUCTION

RAI Strategic Holdings, Inc. and R.J. Reynolds Vapor Company (collectively, “Reynolds”) respectfully move the Court for an order excluding (1) all evidence and argument regarding any request for, or alleged entitlement to, an injunction, and (2) all evidence and argument regarding any request for, or alleged entitlement to, an award of enhanced damages or attorneys’ fees or costs. Because these issues are to be decided solely by the Court, and because all proceedings related to Philip Morris Products S.A.’s (“PMP”) claim for injunctive relief are held in abeyance, it would be improper and unfairly prejudicial for the jury to hear evidence or argument about them.

LEGAL STANDARD

The Court’s authority to issue *in limine* orders comes from its “inherent authority to manage the course of trials.” *Luce v. United States*, 469 U.S. 38, 41 n.4 (1984). Accordingly, preliminarily excluding evidence via *in limine* rulings is proper. *See, e.g., Rolls-Royce PLC v. United Techs. Corp.*, No. 1:10cv457 (LMB/JFA), 2011 WL 1740143, at *2 (E.D. Va. May 4, 2011) (Brinkema, J.).

BACKGROUND

Motion *in Limine* No. 4. Reynolds’s Motion *in Limine* No. 4 relates to PMP’s claim for injunctive relief. PMP added its claim for injunctive relief just weeks before the close of fact discovery. (Dkt. 483 [Order Granting Motion to Amend]; Dkt. 461 [Scheduling Order].) PMP seeks to permanently enjoin Reynolds from “using, making, importing, offering for sale and/or selling” its VUSE line of vaping products if they are determined to infringe the ’265, ’556, or ’911 patents. (Dkt. 473, Ex. A at 83.) PMP’s claim for an injunction rests on the on the idea that PMP will be irreparably harmed if VUSE remains on the market, because the VUSE products will siphon

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