

**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

**MEMORANDUM IN SUPPORT OF REYNOLDS'S MOTION *IN LIMINE* NO. 6 TO
EXCLUDE ARGUMENT, EVIDENCE OR TESTIMONY REGARDING REYNOLDS
NOT OBTAINING OR RELYING ON AN OPINION OF COUNSEL**

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INTRODUCTION

RAI Strategic Holdings, Inc. (“RAI”) and R.J. Reynolds Vapor Company (“RJR”) (collectively “Reynolds”) respectfully move *in limine* to preclude Altria Client Services LLC (“ACS”), Philip Morris USA, Inc. (“PM USA”), and Philip Morris Products S.A. (“PMP”) (collectively, “PM/Altria”) from introducing argument, evidence, or testimony regarding Reynolds not obtaining or relying on an opinion of counsel that the asserted claims are not infringed and invalid. **By statute** (35 U.S.C. § 298), PM/Altria is precluded from relying on the lack of such an opinion to show alleged willful infringement or induced infringement. Given that lack of relevance as a matter of statute, and the lack of relevance to any other issue in the case and the substantial risk of prejudice if nonetheless admitted, all argument, evidence, and testimony regarding Reynolds not obtaining or relying on an opinion of counsel of non-infringement and invalidity should be excluded.

BACKGROUND

Reynolds filed its patent infringement complaint on April 9, 2020, as amended July 13, 2020. (Dkt. Nos. 1, 52.) In response, PM/Altria filed counterclaims of infringement and willful infringement of PM/Altria patents and sought treble damages for the same. (Dkt. Nos. 193, 198, 274, 279, 473, 483.) To determine PM/Altria’s basis for willful infringement, Reynolds served PM/Altria with Interrogatory (“ROG”) No. 12 asking for “each fact, Document, thing, and other evidence that supports [PM/Altria’s] contention, if any, that [Reynolds’s] alleged Infringement is or was deliberate or willful.” Philip Morris Products S.A.’s Supplemental Objections and Responses to Plaintiffs’ Second Set of Interrogatories (No. 12) at 5-6, dated April 12, 2021 (“PMP’s ROG Responses”); Altria Client Services LLC and Philip Morris USA Inc.’s Supplemental Objections and Responses to Plaintiffs’ Second Set of Interrogatories (No. 12) at

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