

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 PM/ALTRIA’S MOTION TO SEAL

This matter is before the Court on the motion (Dkt. 899) filed by Philip Morris Products S.A., Phillip Morris USA Inc., and Altria Client Services, LLC (collectively, “PM/Altria”) to seal un-redacted versions of PM/Altria’s Brief in Support of PM/Altria’s Omnibus Motion *in Limine* and Exhibits 2-5, 8-9, 12-15, 17-18, 20-29 and 35 pursuant to Federal Rule of Civil Procedure 5.2(d) and Local Civil Rule 5(C). Because the documents that PM/Altria seeks to seal contain confidential, proprietary, and competitively sensitive business, financial, and design information of the RAI Strategic Holdings, Inc., and R.J. Reynolds Vapor Company (collectively, “Reynolds”), Reynolds filed a memorandum in support of PM/Altria’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 288, 302 (4th Cir. 2000) (internal citations omitted). Upon consideration of PM/Altria’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. PM/Altria’s sealing motion was publicly docketed in accordance with Local Civil Rule 5. Reynolds has filed a memorandum in support of sealing. The “public has had ample opportunity to object” to PM/Altria’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. 1:09CV123 (JCC), 2009 WL 1248114, at *9 (E.D. Va. Apr. 30, 2009); *United States ex rel. Carter v. Halliburton Co.*, No. 1:10CV864 (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. PM/Altria seeks to seal and redact from the public record only information designated by the parties as confidential. PM/Altria has filed publicly a redacted version of its Brief in Support of PM/Altria’s Omnibus Motion in Limine and Exhibits 2-5, 8-9, 12-15, 17-18, 20-29 and 35 (Dkt. 895), in addition to a sealed version (Dkt. 901), 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. 3:11CV272-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 PM/Altria and

Reynolds. *Id.* (“[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 PM/Altria seeks to seal includes confidential, proprietary, and competitively sensitive business information of PM/Altria, Reynolds, and/or third parties, each of which could face harm if such information were to be released publicly. Specifically, the sensitive information that PM/Altria move for leave to file under seal, and to redact from a publicly filed version, includes proprietary and commercially sensitive business, financial, and design information of PM/Altria, Reynolds, and/or third parties:

- PM/Altria’s Brief in Support of PM/Altria’s Omnibus Motion *in Limine*;
- Exhibit 2, which are excerpts from the confidential opening expert report of Paul Meyer;
- Exhibit 3, which are excerpts from the confidential rebuttal expert report of Ryan Sullivan;
- Exhibit 4, which are excerpts from the confidential deposition transcript of Ryan Sullivan;
- Exhibit 5, which are excerpts from Reynolds confidential interrogatory responses (November 25, 2020);
- Exhibit 8, which are excerpts from the confidential opening expert report of Travis Blalock;
- Exhibit 9, which are excerpts from the confidential opening expert report of Kelly Kodama regarding U.S. Patent No. 10,555,556;
- Exhibit 12, which are excerpts from Reynolds’s confidential interrogatory responses (April 12, 2021);

- Exhibit 13, which are excerpts from the confidential rebuttal expert report of Travis Blalock;
- Exhibit 14, which are excerpts from the confidential rebuttal expert report of Jeffrey Suhling;
- Exhibit 15, which are excerpts from Reynolds's confidential interrogatory responses (November 3, 2020);
- Exhibit 17, which are excerpts from PM/Altria's confidential interrogatory responses (April 28, 2021);
- Exhibit 18, which are excerpts from the confidential deposition transcript of James Figlar (June 24, 2021);
- Exhibit 20, which are excerpts from the confidential ITC rebuttal expert report of Stacy Ehrlich;
- Exhibit 21, which are excerpts from the confidential opening expert report of Stacy Ehrlich;
- Exhibit 22, which are excerpts from the confidential rebuttal expert report of David Clissold;
- Exhibit 23, which are excerpts from a confidential settlement and license agreement;
- Exhibit 24, which are excerpts from a confidential settlement and license agreement;
- Exhibit 25, which are excerpts from Reynolds's confidential interrogatory responses (March 29, 2021);

- Exhibit 26, which are excerpts from the confidential deposition transcript of Nicholas Ray Gilley;
- Exhibit 27, which is confidential correspondence from Jennifer Koh (March 19, 2021);
- Exhibit 28, which is confidential correspondence from Jennifer Koh (March 6, 2021);
- Exhibit 29, which is confidential correspondence from Jennifer Koh (November 10, 2020); and
- Exhibit 35, which are excerpts from the confidential rebuttal expert report of Kelly Kodama regarding U.S. Patent No. 10,555,556.

3. There is support for filing portions of PM/Altria's Brief in Support of PM/Altria's Omnibus Motion *in Limine* and Exhibits 2-5, 8-9, 12-15, 17-18, 20-29 and 35 under seal, with publicly filed versions containing strictly limited redactions. PM/Altria's Brief in Support of PM/Altria's Omnibus Motion *in Limine* and Exhibits 2-5, 8-9, 12-15, 17-18, 20-29 and 35 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. 1:08CV371 (JCC), 2008 WL 4924711, at *1 (E.D. Va. Nov. 13, 2008); *United States ex rel. Carter*, 2011 WL 2077799, at *3.

Therefore, based on the findings above, for good cause shown, it is hereby

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.