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

ORAL ARGUMENT REQUESTED

PMI/ALTRIA'S OPPOSITION TO RJR'S MOTIONS IN LIMINE NOS. 4 AND 5



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I. RJR'S MIL #4: RELEVANT EVIDENCE SHOULD NOT BE CATEGORICALLY EXCLUDED MERELY BECAUSE IT OVERLAPS WITH PMP'S CLAIM FOR INJUNCTIVE RELIEF

PMI/Altria told RJR during the meet and confer process that it does not intend to reference Philip Morris Products S.A.'s ("PMP") claim for injunctive relief or present evidence solely relevant to that claim at trial. RJR did not respond¹, yet now seeks to categorically exclude "any evidence or argument relating to" injunctive relief.² Dkt. 832 at 6. That overbroad relief would improperly exclude evidence that is probative of issues the jury will decide, such as damages and willful infringement. It should be denied.

RJR provides no basis supporting its sweeping request to exclude "any evidence or argument" related to injunctive relief. Dkt. 832 at 6. Nor could it. RJR's own cited cases have rejected RJR's overbroad approach.³ Amdocs (Israel) Ltd. v. Openet Telecom, Inc. is instructive. No. 10-cv-910, 2012 WL 12832376, at *1 (E.D. Va. Mar. 30, 2012) (cited by RJR, Dkt. 832 at 4). There, Judge Brinkema precluded references to "the impact of injunctive relief on [defendant's] business" but expressly stated: "This ruling in no respect limits defendant's ability to cross-examine the defendant's damages expert. If reference to injunctive relief is relevant to that cross-examination, it will be permitted." Id. Likewise, in Ultratec, Inc. v. Sorenson Communications, Inc., the court excluded evidence "submitted purely for the purpose of disclosing plaintiffs' requests for injunctive relief" but explained that "some evidence [underlying the claim] may be

³ RJR relies on the Patent Case Management Judicial Guide (Dkt. 839 at 3), which confirms that RJR's motion should be denied because, as it explains, where "the relevance to an issue before the jury is shown," a MIL to "to preclude any evidence or argument to the jury disclosing that the patentee seeks an injunction ... should generally be denied." Ex. G § 7.5.4.4.

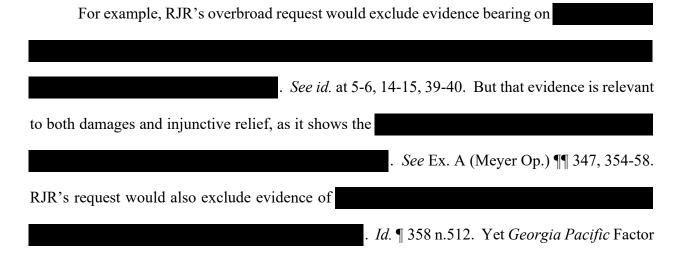


¹ RJR represents that "[t]he parties were unable to reach a resolution on these issues," Dkt. 832 at 3, but fails to inform the Court that RJR never proposed a stipulation or even followed up after PMI/Altria initially confirmed it did not intend to reference PMP's injunctive relief claim at trial.

² All emphasis added, and internal citations and quotation marks omitted, unless otherwise noted.

relevant to other issues in the trial" and, "to the extent such evidence exists, its admissibility must be determined on a case-by-case basis at trial." No. 13-cv-346, 2014 WL 4829173, at *4 (W.D. Wis. Sept. 29, 2014); see also, e.g., MediaTek Inc. v. Freescale Semiconductor, Inc., No. 11-cv-5341, 2014 WL 587098, at *1 (N.D. Cal. Feb. 13, 2014) (bifurcating "evidence related solely to injunctive relief for the impending trial, reserving the option of allowing such evidence to be presented if relevant and necessary"); Saint Lawrence Commc'ns LLC v. ZTE Corp., No. 15-cv-349, 2017 WL 11517123, at *4 (E.D. Tex. Mar. 2, 2017) (precluding "any suggestion that there is something inherently unfair or inappropriate about seeking injunctive relief" but finding that in limine order "does not extend to testimony or argument" relevant to damages).

The Court should follow the same approach here. RJR does not (and cannot) dispute that the jury may properly consider evidence relating to damages and willful infringement at trial. *Exmark Mfg. Co. v. Briggs & Stratton Power Prods. Grp, LLC*, 879 F.3d 1332, 1353 (Fed. Cir. 2018) ("[T]he entire willfulness determination is to be decided by the jury"). That is dispositive because much of the evidence supporting PMP's ultimate claim for injunctive relief overlaps with issues the jury will decide, such as damages and willful infringement. Ex. F (PMP's Supp. Resp. to Interr. No. 23), *passim* (describing the factual basis for PMP's claim for injunctive relief).





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