

**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 MOTION *IN LIMINE* NO. 9

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RULES

FED. R. EVID. 403 1

**RJR'S MIL #9: THE JURY SHOULD BE ALLOWED TO CONSIDER [REDACTED]
[REDACTED] REGARDING THE ACCUSED ALTO E-CIGARETTE**

[REDACTED]
[REDACTED]
[REDACTED]
Now, RJR wants to exclude that evidence from trial because certain technical information is supposedly [REDACTED] Mot. at 1. RJR is wrong and its request overbroad.

The Court should deny RJR's motion for three reasons. First, RJR's request is overbroad because it seeks to exclude technical documents that include admittedly [REDACTED]

[REDACTED] A party cannot produce discovery and then seek to exclude it *after* the other side's expert (reasonably) relies on that discovery. Second, the

[REDACTED] Third, RJR's almost throwaway conclusory assertions of confusion and prejudice do not substantially outweigh (or outweigh at all) the highly probative value of its own [REDACTED] FED. R. EVID. 403.

A. [REDACTED] Are Relevant To Infringement

RJR contends that the Court should exclude evidence from [REDACTED] and, according to RJR, thus irrelevant to infringement. Mot. at 4-5. RJR's requested relief is overbroad because these [REDACTED] that RJR produced in discovery. That evidence is relevant to infringement and was (unsurprisingly) [REDACTED].

[REDACTED]
[REDACTED]
[REDACTED] Mot. at 3. [REDACTED]
[REDACTED]
[REDACTED]

See Dkts. 541, 541-1 (RJR stipulating that PX-28 and PX-122, among other documents, are authentic business records). [REDACTED]

[REDACTED] Mot. at 2; *see also* Dkt. 856-2 at 309:7-9, 335:22-338:18. And, contrary to RJR’s unsupported assertion, PMI/Altria’s expert *does rely* [REDACTED] to show infringement. *See* Dkt. 856-4 (Abraham 3/12/2021 Supp. Rpt.) ¶¶ 11-12, 17-18, 22, 25, 31, 38, 40-42 (citing PX-28 (RJREDVA_001450878) and PX-122 (RJRITC_001360053)). The Court should deny RJR’s overbroad request for wholesale exclusion of exhibits that include evidence undisputedly relevant to infringement. *Intelligent Verification Sys., LLC v. Microsoft Corp.*, No. 12-cv-525, 2015 WL 1518099, at *10 (E.D. Va. Mar. 31, 2015) (“Orders *in limine* which exclude broad categories of evidence should rarely be employed.”).

B. [REDACTED] Are Relevant To Damages

Separately, RJR’s motion should be denied because RJR’s [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Ex. A (Ehrlich Op.) ¶¶ 18-40;

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