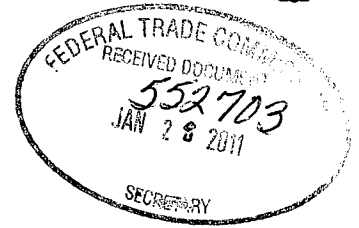


UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

ORIGINAL



In the Matter of)

LABORATORY CORPORATION)
OF AMERICA)

and)

LABORATORY CORPORATION)
OF AMERICA HOLDINGS,)
Respondents.)

DOCKET NO. 9345

**ORDER DENYING SUN CLINICAL'S MOTION
FOR BROADER PROTECTIVE ORDER**

I.

A Protective Order Governing Discovery Material ("Protective Order") was issued in this matter on December 1, 2010, pursuant to Commission Rule 3.31(d). 16 C.F.R. § 3.31(d). On January 18, 2011, third party Sun Clinical Laboratories ("Sun Clinical") filed a Motion for Additional Broader Protective Order. ("Motion"). On January 24, 2011, Complaint Counsel filed an Opposition to Sun Clinical's Motion. Respondents also filed an Opposition to Sun Clinical's Motion on January 24, 2011. For the reasons set forth below, Sun Clinical's Motion is DENIED.

II.

Sun Clinical states that it operates in direct competition with other clinical laboratory services, including Respondents Laboratory Corporation of America and Laboratory Corporation Holdings (collectively, "LabCorp"). Sun Clinical further states that during the Federal Trade Commission's ("FTC") investigation of the merger between LabCorp and Westcliff, Sun Clinical provided, in confidence, information and documents to FTC investigators.

In its Motion, Sun Clinical seeks the entry of a broad and full protective order preventing the disclosure or use of its proprietary and confidential information. Sun Clinical asserts that the Protective Order issued in this matter is insufficient to protect the interests of Sun Clinical because it allows for the dissemination and disclosure of Sun Clinical's confidential information to LabCorp's outside counsel. Sun Clinical argues

that dissemination and disclosure of its confidential and proprietary information could be used by LabCorp or other competitors to gain a business advantage, resulting in irreparable harm to Sun Clinical. Sun Clinical also argues that if the information provided by Sun Clinical is admitted as evidence, Sun Clinical is sure to suffer irreparable harm. As relief, Sun Clinical urges the issuance of a broad protective order that all documents and information provided by Sun Clinical to the FTC shall “not be produced, disclosed, disseminated, or admitted as evidence in this action.”

Both Complaint Counsel and Respondents assert that the Protective Order issued in this case prevents the disclosure of Sun Clinical’s confidential or proprietary information to anyone beyond LabCorp’s outside counsel, and thus protects the interests that Sun Clinical has identified. Complaint Counsel and Respondents also assert that information provided by Sun Clinical is highly relevant to multiple issues in this proceeding.

Respondents further assert that disclosure of Sun Clinical’s documents to LabCorp’s outside counsel pursuant to the Protective Order would not harm Sun Clinical and that courts allow the disclosure of confidential information on an outside-counsel-only basis in order to safeguard competitors’ interests. Finally, Respondents assert that preventing LabCorp from obtaining documents and information that the FTC has already reviewed and relied upon in bringing its enforcement action would unduly prejudice Respondents.

III.

The Protective Order entered in this case pursuant to Commission Rule 3.31(d) adequately protects the materials that Sun Clinical seeks to protect. The Protective Order provides that any document that was provided by any third party to the FTC during the FTC’s investigation shall be designated as “confidential” and may be disclosed only to Respondents’ outside counsel. Protective Order ¶¶ 1, 2, 7. Outside counsel may only use confidential material “for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever.” *Id.* ¶ 8. Courts routinely issue protective orders which allow disclosure of confidential information, restricted to outside counsel only. *E.g., Presidio Components, Inc. v. Am. Tech. Ceramics Corp.*, 546 F. Supp. 2d 951, 954 (S.D. Cal. 2008); *Biovail Labs., Inc. v. Anchen Pharm., Inc.*, 463 F. Supp. 2d 1073, 1076 (C.D. Cal. 2006); *see also ODS Techs., L.P. v. Magna Entm’t Corp.*, 583 F. Supp. 2d 1141, 1142 (C.D. Cal. 2008). Thus, Sun Clinical’s plea that its confidential information not be produced or disclosed to Respondents is denied.

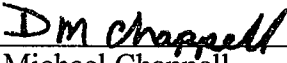
Sun Clinical’s request that its confidential information not be admitted as evidence in this action is also denied. The FTC’s Rules of Practice and the Protective Order and Scheduling Order entered in this case provide safeguards for confidential information. Under the Protective Order and the Scheduling Order, the parties are required to provide advance notice to the other party or third party if they intend to introduce into evidence at trial any document or transcript containing confidential

information produced by another party or by a third party. Protective Order ¶ 10. Upon receipt of such notice, Sun Clinical may file a motion for *in camera* treatment (by April 8, 2011 under the Scheduling Order) seeking an order for *in camera* treatment for material which a party intends to offer into evidence. Sun Clinical is directed to Additional Provision 6 of the Scheduling Order for standards for filing motions for *in camera* treatment. Material made subject to an *in camera* order will be kept confidential and not placed on the public record of the proceeding in which it was submitted. 16 C.F.R. § 3.45. If a party wishes to disclose confidential material from Sun Clinical that has been granted *in camera* status, the court will go into an *in camera* session and the hearing room will be cleared of all individuals who are not authorized under the Protective Order to review confidential information. Thus, mechanisms are in place to protect Sun Clinical's confidential information and the broader protective order sought by Sun Clinical is not necessary.

IV.

For the above stated reasons, Sun Clinical's motion is DENIED.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: January 28, 2011