

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



In the Matter of

Ardagh Group S.A.,
a public limited liability company, and

Saint-Gobain Containers, Inc.,
a corporation, and

Compagnie de Saint-Gobain,
a corporation,
Respondents.

Docket No. 9356

Honorable D. Michael Chappell

PUBLIC

**NON-PARTY ANCHOR HOCKING, LLC'S MOTION FOR IN CAMERA
TREATMENT OF CERTAIN DESIGNATED HEARING EXHIBITS**

Non-Party Anchor Hocking, LLC ("Anchor Hocking") hereby files its Motion for In Camera Treatment of Certain Hearing Exhibits that Ardagh Group S.A., Saint-Gobain Containers, Inc. and Compagnie de Saint Gobain ("Respondents") and the Federal Trade Commission ("FTC") have designated for possible introduction in the administrative trial in this matter. Anchor Hocking respectfully requests that the Administrative Law Judge enter an Order pursuant to Rule 3.45(b) of the Federal Trade Commission Rules of Practice, 16 C.F.R. § 3.45(b), granting in camera treatment for five years, to the documents listed in Exhibit A attached to this Motion and the proposed Order. The documents are secret and material to Anchor Hocking's on-going and future business, and their disclosure would harm Anchor Hocking. In support of this Motion, Anchor Hocking respectfully refers the Court to the accompanying Declaration of Bert Filice attached as Exhibit B and submits as follows:

ARGUMENT

I. Introduction

A description of each document identified by the FTC and Respondents as potential trial exhibits for which Anchor Hocking seeks in camera treatment is attached hereto as Exhibit A. All of the documents were treated as “Confidential Discovery Material” or “Restricted Confidential Discovery Material” under the July 1, 2013 Protective Order Governing Discovery Materials (“Protective Order”) entered by D. Michael Chappell, Chief Administrative Law Judge.¹ The documents contain information that is secret, commercially sensitive, and material to Anchor Hocking’s current and prospective business. Accordingly, Anchor Hocking respectfully requests that the Administrative Law Judge enter an Order pursuant to Section 3.45(b) of the Federal Trade Commission Rules of Practice, 16 C.F.R. § 3.45(b), granting in camera treatment to these documents for a period of no less than five years.

II. Standard for In Camera Treatment

Materials merit in camera treatment when public disclosure of the documents “will result in a clearly defined, serious injury to the person or corporation whose records are involved.” *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961). Such serious injury requires that that information in question is secret and material to the applicant’s business. *In the Matter of Bristol Meyers Co.*, 90 F.T.C. 455, 456 (1977). The following factors should be weighed in considering both secrecy and materiality: (1) the extent to which the information is known outside the applicant’s business; (2) the extent to which the information is known by employees and others

¹ The documents and deposition testimony at issue were either originally produced to the FTC as confidential material in response to its investigative subpoenas and subsequently produced to the Respondents during the discovery proceedings of the above-captioned matter as “Confidential Discovery Material” under the Protective Order, or was produced to the parties during the discovery proceedings of the above-captioned matter and marked as either “Confidential” or “Restricted Confidential-Attorney Eyes Only” in accordance with the terms of the Protective Order.

involved in the applicant's business; (3) the extent of measures taken by the applicant to guard the secrecy of the information; (4) the value of the information to the applicant and its competitors; (5) the amount of effort or money expended by the applicant in developing the information; and (6) the ease or difficulty with which the information could be properly acquired or duplicated by others. *Id.* A showing of injury may consist of extrinsic evidence or, in certain instances, may be inferred from the nature of the documents themselves. *In the Matter of E.I. Dupont de Nemours & Co.*, 97 F.T.C. 116 (1981). Administrative law judges have broad discretion in applying these factors to determine whether information warrants in camera treatment. *See In re General Foods Corp.*, 95 F.T.C. 352 (1980). Third party requests for in camera treatment, in particular, deserve special solicitude. *In the Matter of Kaiser Aluminum & Chem. Corp.*, 103 F.T.C. 500, 500 (1984).

The Anchor Hocking documents identified in Exhibit A attached to this Motion meet the above standards for in camera treatment.

III. The Anchor Hocking Documents Meet the Standard for In Camera Treatment

The documents and deposition testimony for which Anchor Hocking seeks in camera treatment are both secret and material to Anchor Hocking's business. The materials at issue contain information of competitive significance to Anchor Hocking, including production capacity, production costs, quotes, capital investment in infrastructure, customer specific sales information, detailed sales revenue, quantities sold by Anchor Hocking. Such information is not widely known outside of the business. Further, when they were produced, Anchor Hocking took steps to maintain confidentiality by designating the documents "Confidential." Moreover, the information contained in the documents is material to Anchor Hocking's business and directly related to and details Anchor Hocking's sales of wine and spirits bottles and identifies customers

and each customer's volume of sales. Because of the confidential nature of the information and its materiality to Anchor Hocking's business, *in camera* treatment is appropriate.

Further, disclosure of the competitively sensitive materials will likely result in the loss of a business advantage. See *In re Dura Lube Corp.*, Dkt. No. 9292, 1999 FTC LEXIS 255, at *7 (Dec. 23, 1999) ("The likely loss of business advantages is a good example of a 'clearly defined, serious injury.'") (citing *In re General Foods Corp.*, 1980 WL 338997, at *3). The documents at issue are material to Anchor Hocking's quotes and sales with its customers. Making such documents public will likely result in a loss of any business advantage Anchor Hocking has with both the customers and competitors.

IV. In Camera Treatment for the Documents Listed in Attached Exhibit A Should Extend for a Period of Five Years

As a non-party seeking *in camera* treatment for its confidential business information, Anchor Hocking's request should be treated with "special solicitude." *Kaiser Aluminum*, 103 F.T.C. at 500. Reasonable periods of *in camera* treatment encourage non-parties to cooperate with future discovery requests in adjudicative proceedings. *Id.* Anchor Hocking has cooperated with the discovery demands of both parties to this case including a 30(b)(6) deposition. The subject documents and deposition testimony have been made available for use by Complaint counsel and Respondents in accordance with the terms of the Protective Order, and their disclosure will not materially promote the resolution of this matter nor lend measurable public understanding of these proceedings. See *In re Bristol-Myers*, 90 F.T.C. at 456.

Anchor Hocking requests *in camera* treatment for a period of five years for the documents identified herein.

V. Conclusion

As set out above, disclosure of these materials would result in a clearly defined serious injury to Anchor Hocking, severely undercutting Anchor Hocking's efforts in a competitive industry. For these reasons, and for those set out in the declaration of Bert Filice, Anchor Hocking respectfully requests that this Court grant its motion directing in camera treatment for the subject documents.

Dated: December 6, 2013

Respectfully submitted,



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**ORDER GRANTING NON-PARTY ANCHOR HOCKING, LLC'S MOTION FOR
MOTION FOR IN CAMERA TREATMENT OF CERTAIN DESIGNATED HEARING
EXHIBITS**

Upon consideration of Non-Party Anchor Hocking, LLC's ("Anchor Hocking's") Motion for In Camera Treatment of Certain Designated Hearing Exhibits and the Declaration in support thereof, it is hereby ORDERED that Anchor Hocking's motion is GRANTED. It is further ordered that the documents identified in Exhibit A of Anchor Hocking's Motion for In Camera Treatment of Certain Designated Documents are afforded in camera treatment for five years.

Dated:

The Honorable D. Michael Chappell
Chief Administrative Law Judge

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served by regular U.S.

Mail, postage prepaid, this 6th day of December, 2013, upon the following:

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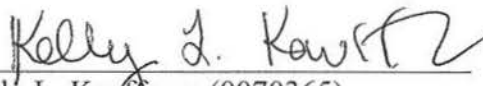
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