PUBLIC

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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	**PUBLIC** DOCKET NO. 9356

MOTION FOR *IN CAMERA* TREATMENT

Pursuant to Rule 3.45 of the Federal Trade Commission's Rules of Practice, 16 C.F.R. § 3.45(b), non-party Diageo North America, Inc. ("Diageo") respectfully submits this motion for *in camera* treatment of certain competitively-sensitive, confidential business documents. These documents were produced in response to a third-party subpoena in this matter, and the Federal Trade Commission ("FTC") and Ardagh Group S.A. ("Ardagh") have now notified Diageo that they intend to introduce the documents that are the subject of this motion into evidence at the administrative trial in this matter. *See* Letter from FTC dated November 19, 2013 (attached as Exhibit A); Letter from Counsel for Ardagh dated November 19, 2013 (attached as Exhibit B); Email from Counsel for Ardagh dated November 26, 2013 (attached as Exhibit C). After meeting and conferring with counsel for the FTC and Ardagh, neither objects to the relief requested for the documents that are subject to this motion.

All of the materials for which Diageo is seeking *in camera* treatment are confidential business documents, such that if they were to become part of the public record, Diageo would be

seriously harmed in its ability to compete in the production and sales of alcoholic beverages. For the reasons discussed in this motion, Diageo requests that this Court afford its confidential business documents *in camera* treatment for a period of five years, with the exception of Exhibits 4413 and 4414 which include competitively sensitive information relating to a Diageo request for proposal for its glass supply and a detailed presentation on a near-finalized long-term contract with Ardagh for the bulk of Diageo's North American glass material purchasing. Diageo requests that these documents be given *in camera* treatment indefinitely, or in the alternative, for twenty years, to account for the length of the contract and the duration of its competitive sensitivity. In support of this motion, Diageo relies on the Affidavit of Rick Thielen, attached as Exhibit D, which provides additional details on the documents for which Diageo is seeking *in camera* treatment.

I. The Documents for which Protection is Sought

Diageo seeks *in camera* treatment for the following documents, copies of which are attached as Exhibits E-K, respectively.

Ex. No.	PX Exhibit No.	Document Description	Date	Beginning Bates	End Bates
E	PX4404	Spreadsheet: Financial Year 2011	N/A	DNA_FTC_000018	DNA_FTC_000040
F	PX4411	Presentation: FY12 Year End Business Review – Anchor Glass	8/16/2012	DNA_FTC_000219	DNA_FTC_000227
G	PX4412	Diageo Presentation: Amcor F13 H1 Business Review	2/19/2013	DNA_FTC_000244	DNA_FTC_000272
H	PX4413	Diageo NA Glass-Spirits & RTD	N/A	DNA_FTC_000273	DNA_FTC_000283
I	PX4414	Presentation: Diageo Project Bluebird	2/5/2013	DNA_FTC_000286	DNA_FTC_000302

J	PX6062[1]	Deposition Transcript of Rick Thielen	8/20/2013	N/A	N/A
K	N/A[2]	Documents Responsive to FTC Request No. 4	N/A	DNA_FTC_000042	DNA_FTC_000174

II. Diageo's Documents are Secret and Material Such That Disclosure Would Result in Serious Injury

Material may be given *in camera* treatment when its "public disclosure will likely result in a clearly defined, serious injury to the person, partnership, or corporation requesting" such treatment. 16 C.F.R. § 3.45(b). The proponent of *in camera* treatment demonstrates serious injury by showing that the documents are secret and that they are material to the business. *In re General Foods Corp.*, 95 F.T.C. 352, Dkt. No. 9085, 1980 WL 338997, at *3 (Mar. 10, 1980); *In re Bristol-Myers Co.*, 90 F.T.C. 455, Dkt. Nos. 8917, 8918, & 8919, 1977 WL 189054, at *2 (Nov. 11, 1977).

In considering both secrecy and materiality the following factors should be weighed: (1) the extent to which the information is known outside of the business; (2) the extent to which it is known by employees and others involved in the business; (3) the extent of measures taken to guard the secrecy of the information; (4) the value of the information to the business and its competitors; (5) the amount of effort or money expended in developing the information; and (6) the ease or difficulty with which the information could be acquired or duplicated by others. *In re Bristol-Myers Co.*, 1977 WL 189054, at *2 (citing Restatement of Torts § 757, Comment b at 6

[1] Exhibit J includes a list of excerpted pages identified by counsel for the FTC (Exhibit A) and counsel for Ardagh (Exhibits B and C) along with the excerpted pages themselves. It is Diageo's position that the entirety of Mr. Thielen's deposition should be treated *in camera*.

[2] This entry, Exhibit K, from Ardagh counsel subsumes exhibits PX4405, PX4409, and PX4828 listed in the Letter from FTC (Exhibit A), and the third through fifth bullet points of Letter from Ardagh Counsel (Exhibit B).

(1939)). Such a showing may be "inferred from the nature of the documents themselves." *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, Dkt. No. 7709, 1961 WL 65882, at *4 (Mar. 14, 1961).

The documents at issue are both secret and material to Diageo's business.[3] The materials at issue contain information of competitive significance to Diageo, such as detailed sales figures and reports on research and development projects, marketing strategies, negotiations with suppliers, and operations strategy. Such information is confidential, not generally available within Diageo and not shared with its competitors or vendors. Diageo's competitors and vendors do not otherwise have the ability to obtain this information. Further, when these documents were produced, Diageo took steps to maintain confidentiality by designating the documents "Confidential." Moreover, the information contained in the documents is material to Diageo's business because it is directly related to Diageo's production and sale of alcoholic beverages. Diageo leverages its relationships with its suppliers and its negotiations with them to remain competitive, and to disclose the nature and terms of those relationships to other vendors and competitors would result in a loss of business advantage to Diageo. Diageo similarly relies on the innovation of its research, procurement, and marketing teams. Because of the confidential nature of the information and its materiality to Diageo's business, *in camera* treatment is appropriate.

Further, disclosure of the materials will likely result in the loss of a business advantage. S*ee 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 Diageo's negotiations with its suppliers and positioning against competitors. Making

[3] For a discussion of each document, see Affidavit of Rick Thielen, attached hereto as Exhibit D.

such documents public will likely result in a loss of any business advantage Diageo has with those suppliers and against those competitors.

Finally, Diageo's status as a third-party is relevant to the treatment of its documents. The Commission has held that "[t]here can be no question that the confidential records of businesses involved in Commission proceedings should be protected insofar as possible." *H.P. Hood & Sons*, 1961 WL 65882, at *2. This is especially so in the case of a third-party, which deserves "special solicitude" in its request for *in camera* treatment for its confidential business information. *See In re Kaiser Aluminum & Chem. Corp.*, 103 F.T.C. 500, 500 (1984) ("As a policy matter, extensions of confidential or *in camera* treatment in appropriate cases involving third party bystanders encourages cooperation with future adjudicative discovery requests."). Diageo's third-party status therefore weighs in favor of granting *in camera* status to its documents.

III. Diageo's Documents Should be Granted *In Camera* Treatment for a Minimum of Five Years

Where *in camera* treatment is granted for ordinary business records such as the Diageo exhibits, it is typically provided for two to five years. *E.g.*, *In re Union Oil Co. of Cal.*, 2004 FTC LEXIS 223, at *2 (Nov. 22, 2004); *In re Int'l Ass'n of Conference Interpreters*, 1996 FTC LEXIS 298, at *13-14 (June 26, 1996); *Champion Spark Plug*, 1982 FTC LEXIS 85 at *2 and 1982 FTC LEXIS 92, at *2 (March 4, 1982). Several of the Diageo documents involve ongoing research projects and negotiations with counterparties and competitively sensitive pricing and cost information that would be relevant for at least five years. For all but exhibits PX4413 and PX4414, Diageo respectfully requests *in camera* treatment for five years.

IV. Exhibits PX4413 and PX4414 Should be Granted *In Camera* Treatment Indefinitely, or, in the Alternative, for Twenty Years

Under Commission Rule 3.45(b)(3), indefinite *in camera* treatment is warranted only in "unusual circumstances," including circumstances in which "the need for confidentiality of the material … is not likely to decrease over time." 16 C.F.R. § 3.45(b)(3). These are such unusual circumstances. Exhibits PX4413 and PX4414 are not "ordinary business records." They concern a nearly-finalized contract between Diageo and Ardagh. Exhibit PX4413 is the request for proposal which led to Exhibit PX4414, a presentation that includes near-finalized terms of a [redacted] The information contained in these exhibits, particularly PX4414, includes critical and proprietary pricing, cost, and production data. The disclosure of such information would result in a competitor or vendor learning large amounts of vital, proprietary information critical to Diageo's business. Diageo and Ardagh have spent considerable resources in negotiating the contract discussed in these exhibits, and disclosure to other vendors and competitors would result in a considerable loss of business advantage to Diageo. Indefinite *in camera* treatment may be granted where the competitive sensitivity or the proprietary value of the information will not diminish with the passage of time. *In re Coca Cola Co.*, 1990 FTC LEXIS 364 (Oct. 17, 1990). Those documents can include "market research [and] strategy planning data" (*Id.* at *2) and "proprietary business practices" (*In re R.R. Donnelly & Sons Co.*, 1993 FTC LEXIS 32 at *2 (Feb. 18, 1993). Because these documents provide a window to the entirety of Diageo's North American glass production needs for the next [redacted] the information in Exhibits No. PX4413 and PX4414 is extremely sensitive and of such enduring and significant proprietary value to Diageo that its disclosure, even well into the future, would allow competitors of Diageo understanding of the entirety of Diageo's glass

production, manufacturing, and pricing. Accordingly, Diageo respectfully requests that such information be granted *in camera* treatment indefinitely, or alternatively, at a minimum for twenty years, which would account for the length of the contract and the duration of its competitive sensitivity.

V. Conclusion

For the reasons set forth above and in the Affidavit of Rick Thielen, Diageo respectfully requests that this Court grant *in camera* treatment for a period of five years for Exhibits 4404, 4411, 4412, 6062, Mr. Thielen's deposition, and the Documents Responsive to FTC Request No. 4. For Exhibits 4413 and 4414, Diageo respectfully requests that this Court grant in camera treatment indefinitely, or in the alternative, for twenty years.

Dated: December 9, 2013

Respectfully Submitted,

/s/ Stephen Argeris

Stephen Argeris
Hunton & Williams LLP
2200 Pennsylvania Ave NW
Washington, DC 20037
Phone: (202) 955-1506
sargeris@hunton.com

Counsel for Non-Party Diageo North America, Inc.

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of	)	**PUBLIC**
Ardagh Group S.A., a public limited liability company, and	)	DOCKET NO. 9356
Saint-Gobain Containers, Inc., a corporation, and	)	
Compagnie de Saint-Gobain a corporation, Respondents	)	

[PROPOSED] ORDER

Upon consideration of non-party Diageo North America, Inc.'s Motion for *In Camera* Treatment, it is HEREBY ORDERED that the following documents are to be provided *in camera* treatment for a period of five years from the date of this Order:

Exhibit No.	Document Description	Date	Beginning Bates	End Bates
PX4404	Spreadsheet: Financial Year 2011	N/A	DNA_FTC_000018	DNA_FTC_000040
PX4411	Presentation: FY12 Year End Business Review – Anchor Glass	8/16/2012	DNA_FTC_000219	DNA_FTC_000227
PX4412	Diageo Presentation: Amcor F13 H1 Business Review	2/19/2013	DNA_FTC_000244	DNA_FTC_000272
PX6062	Deposition Transcript of Rick Thielen	8/20/2013	N/A	N/A
N/A	Documents Responsive to FTC Request No. 4	N/A	DNA_FTC_000042	DNA_FTC_000174

It is FURTHER ORDERED that the following documents are to be provided *in camera* treatment indefinitely:

Exhibit No.	Document Description	Date	Beginning Bates	End Bates
PX4413	Diageo NA Glass-Spirits & RTD	N/A	DNA_FTC_000273	DNA_FTC_000283
PX4414	Presentation: Diageo Project Bluebird	2/5/2013	DNA_FTC_000286	DNA_FTC_000302

It is FURTHER ORDERED that only authorized Federal Trade Commission ("FTC") personnel, and court personnel concerned with judicial review may have access to the documents identified in Diageo North America Inc.'s Motion for *In Camera* Treatment, provided that I, the FTC, and reviewing courts may disclose such in camera information to the extent necessary for proper disposition of the proceeding.

ORDERED:

_____
D. Michael Chappell
Chief Administrative Law Judge

_____, 2013

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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	**PUBLIC** DOCKET NO. 9356

CERTIFICATE OF VERIFICATION OF WORD COUNT

I hereby certify that Non-Party Diageo North America, Inc.'s Motion for *In Camera* Treatment does not exceed the 2,500 word count per 16 C.F.R. § 3.22(c).

/s/ Stephen Argeris
Stephen Argeris

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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	**PUBLIC** DOCKET NO. 9356

CERTIFICATE FOR ELECTRONIC FILING

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties or the adjudicator.

/s/ Stephen Argeris
Stephen Argeris

CERTIFICATE OF SERVICE

I hereby certify that on December 9, 2013, I caused the foregoing PUBLIC MOTION FOR *IN CAMERA* TREATMENT and [PROPOSED] ORDER to be electronically using the FTC's E-Filing System, which will send notification of such filing to:

Office of the Secretary
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Room H-113
Washington, D.C. 20580

I also certify that I delivered via electronic mail and overnight delivery a copy of the foregoing document to:

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave. N.W.
Room H-106
Washington, D.C. 20580
oalj@ftc.gov

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Shearman & Sterling LLP
801 Pennsylvania Ave, N.W.
Washington, D.C. 20004
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Michael Franchak, Esq.
Bureau of Competition
U.S. Federal Trade Commission
601 New Jersey Ave, N.W.
Washington, DC 20001
mfranchak@ftc.gov

Catharine M. Moscatelli, Esq.
U.S. Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
Phone: 202-326-2749
cmoscatelli@ftc.gov

By: /s/ Stephen Argeris
Stephen Argeris
Counsel for Non-Party
Diageo North America, Inc.

PUBLIC VERSION
Exhibit A

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

BUREAU OF COMPETITION
MERGERS II DIVISION

November 19, 2013

Michael Franchak
Bureau of Competition
Federal Trade Commission
601 New Jersey Ave, N.W.
Washington, DC 20001
(202) 326-3406
mfranchak@FTC.gov

Via Federal Express

Stephen Argeris, Esq.
Hunton & Williams
2200 Pennsylvania Avenue, NW
Washington, DC 20037

RE: *In the Matter of Ardagh Group S.A., and Saint-Gobain Containers, Inc., and Compagnie de Saint Gobain,* Docket No. 9356

Dear Mr. Argeris:

By this letter we are providing formal notice, pursuant to Rule 3.45(b) of the Commission's Rules of Practice, 16 C.F.R. § 3.45(b), that Complaint Counsel intends to offer the documents and testimony referenced in the enclosed Attachments A and B into evidence in the administrative trial in the above-captioned matter. Please note that the list of deposition designations in Attachment B does not include any of Complaint Counsel's counter-designations, if any, which are not due until November 25, 2013.

The administrative trial is scheduled to begin on December 19, 2013. All exhibits admitted into evidence become part of the public record unless Administrative Law Judge D. Michael Chappell grants *in camera* status.

For documents or testimony that include sensitive or confidential information that you do not want on the public record, you must file a motion seeking *in camera* status or other confidentiality protections pursuant to 16 C.F.R §§ 3.45 and 4.10(g). Because counter-

designations are not yet due, this includes all passages of deposition testimony that warrant *in camera* treatment, whether or not Complaint Counsel has designated those passages. Judge Chappell may order that materials, whether admitted or rejected as evidence, be placed *in camera* only after finding that their public disclosure will likely result in a clearly-defined, serious injury to the person, partnership, or corporation requesting *in camera* treatment.

Motions for *in camera* treatment for evidence to be introduced at trial must meet the strict standards set forth in 16 C.F.R. § 3.45 and explained in *In re Dura Lube Corp.*, 1999 FTC LEXIS 255 (Dec. 23, 1999); *In re Hoechst Marion Roussel, Inc.*, 2000 FTC LEXIS 157 (Nov. 22, 2000); and *In re Basic Research, Inc.*, 2006 FTC LEXIS 14 (Jan. 25, 2006). Motions also must be supported by a declaration or affidavit by a person qualified to explain the confidential nature of the material. *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 66 (April 23, 2004).

Please be aware that under the current scheduling order, the deadline for filing motions seeking *in camera* status is November 26, 2013.

Additionally, in lieu of a deposition on the admissibility of the documents listed in Attachment A, we ask that you sign and return the attached declaration regarding the admissibility of these documents. Please return the signed declaration to my attention by December 3, 2013, if possible, as a scanned .pdf attached to an e-mail.

If you have any questions, please feel free to contact me at (202) 326-3406.

Sincerely,

Michael Franchak
Counsel Supporting the Complaint

Attachments

ATTACHMENT A

Exhibit Number	Date	BegBates	EndBates	Document Description
PX4404	N/A	DNA_FTC_000018	DNA_FTC_000040	Spreadsheet: Financial Year 2011
PX4405	N/A	DNA_FTC_000044	DNA_FTC_000044	Presentation: Project Unbreakable
PX4409	N/A	DNA_FTC_000163	DNA_FTC_000173	Captain Morgan Presentation: To Life, Love, and Loot
PX4411	8/16/2012	DNA_FTC_000219	DNA_FTC_000227	Presentation: FY12 Year End Business Review - Anchor Glass
PX4412	2/19/2013	DNA_FTC_000244	DNA_FTC_000272	Diageo Presentation: Amcor F13 H1 Business Review
PX4413	N/A	DNA_FTC_000273	DNA_FTC_000283	Diageo NA Glass- Spirits & RTD
PX4414	2/5/2013	DNA_FTC_000286	DNA_FTC_000302	Presentation: Diageo Project Bluebird
PX4828	N/A	DNA_FTC_000043	DNA_FTC_000043	Presentation: Project Nitro
PX6062	8/20/2013	N/A	N/A	RESERVED for Designated Deposition Transcript of Richard Thielen (Diageo)

ATTACHMENT B

Name: Thielen, Rich
Company: Diageo North America
Date & Type: 8/20/2013 Deposition (PX6062)

5:2 - 5
13:21 - 14:6
14:18 - 16:9
21:15 - 20
22:8 - 12
27:15 - 28:1
30:9 - 22
31:5 - 32:23
39:6 - 25
44:11 - 45:1
46:17 - 47:15
50:24 - 52:19
60:2 - 23
68:10 - 14
68:23 - 69:4
69:15 - 70:5
70:8 - 71:3
72:10 - 73:10
73:16 - 23
74:1 - 4
77:11 - 79:24
80:3 - 12
80:23 - 81:7
81:9 - 17
82:17 - 83:15
83:19 - 84:1
86:14 - 88:9
89:17 - 90:11
91:2 - 4
91:6 - 7
91:10 - 21
92:4 - 21
94:2 - 8
94:15 - 95:11
95:21 - 96:7
96:15 - 18
97:6 - 98:2
98:15 - 20
99:13 - 100:18
101:19 - 102:1
102:4 - 103:3
104:16 - 105:24

ATTACHMENT B

106:2 - 22
108:11 - 109:14
110:2 - 112:2
116:13 - 117:1

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

In the Matter of Ardagh Group S.A., a public limited liability company, and Compagnie de Saint-Gobain, a corporation, and Saint-Gobain Containers, Inc., a corporation.	DOCKET NO. 9356

DECLARATION

I, , pursuant to 28 U.S.C. § 1746, make the following statement:

1. I am an employee of Diageo. I have personal knowledge of the facts set forth in this declaration, and if called as a witness I could and would testify competently under oath to such facts.

2. I have reviewed the documents referenced in Attachment A to this Declaration, which have been identified by Complaint Counsel with PX numbers for use as exhibits in the above-captioned matter.

3. I hereby certify that each document referenced in Attachment A herein: (a) was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters; (b) was kept in the course of regularly

conducted activity; and (c) was made by the regularly conducted activity as a regular practice.

Pursuant to 28 U.S.C. § 1746, I declare, under the penalty of perjury, that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on: _____

_____
Name:
Title:

PUBLIC VERSION
Exhibit B

SHEARMAN & STERLING LLP

801 PENNSYLVANIA AVENUE, NW | WASHINGTON, DC | 20004-2634

WWW.SHEARMAN.COM | T +1.202.508.8000 | F +1.202.508.8100

mark.lanpher@shearman.com
202.508.8120

November 19, 2013

CONFIDENTIAL
Via Email and U.S. Mail

Stephen Argeris
Hunton & Williams LLP
2200 Pennsylvania Avenue, N.W.
Washington, D.C. 20037

Re: In the Matter of Ardagh Group S.A. et al., Docket No. 9356 (F.T.C.)

Dear Mr. Argeris,

Pursuant to Paragraph 10 of the Protective Order in the above-referenced matter (enclosed), the Scheduling Order in the above-referenced matter, and 16 C.F.R. § 3.45 (enclosed), this letter is providing notice to Diageo North America that Respondents Ardagh Group S.A., Compagnie de Saint-Gobain, and Saint-Gobain Containers plan to introduce confidential material produced by Diageo North America into evidence at the Commission's hearing in the above-referenced matter, scheduled to commence on December 19, 2013.

Respondents intend to introduce into evidence the following confidential material produced by Diageo North America in the above-referenced matter or *FTC v. Ardagh Group S.A., et al.*, No. 13-cv-1021 (BJR) (D.D.C.):

- Transcript excerpts of the oral deposition of Rick Thielen, taken on August 20, 2013
- Document with bates range DNA_FTC_000042 – DNA_FTC_000174
- Document with bates range DNA_FTC_000043 – DNA_FTC_000043
- Document with bates range DNA_FTC_000045 – DNA_FTC_000063
- Document with bates range DNA_FTC_000105 – DNA_FTC_000135

Pursuant to the Scheduling Order, a party may file a motion for *in camera* treatment of its confidential material with the Administrative Law Judge by November 26, 2013. The strict standard for motions for *in camera* treatment of confidential material is set forth in 16 C.F.R. § 3.45, and is explained in *In re Dura Lube Corp.*, 1999 FTC LEXIS 255 (Dec. 23, 1999); *In re Hoechst Marion Roussel, Inc.*, 2000 FTC LEXIS 157 (Nov. 22, 2000) and 2000 FTC LEXIS 138

SHEARMAN & STERLING LLP IS A LIMITED LIABILITY PARTNERSHIP ORGANIZED IN THE UNITED STATES UNDER THE LAWS OF THE STATE OF DELAWARE, WHICH LAWS LIMIT THE PERSONAL LIABILITY OF PARTNERS.

(Sept. 19, 2000); *In re Basic Research, Inc.*, 2006 FTC LEXIS 14 (Jan 25. 2006). Motions must be supported by a declaration or affidavit by a person qualified to explain the confidential nature of the documents. *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 66 (April 23, 2004). Each party or non-party that files a motion for *in camera* treatment shall provide one copy of the documents for which *in camera* treatment is sought to the Administrative Law Judge.

If you have any questions, please feel free to contact me at 202.508.8120.

Best regards,

/s/ Mark Lanpher
Mark Lanpher

Enclosures: Protective Order for Docket No. 9356 (entered July 1, 2013); 16 C.F.R. § 3.45

PUBLIC VERSION
Exhibit C

From: Jason Swergold <Jason.Swergold@Shearman.com>
Sent: Tuesday, November 26, 2013 2:52 PM
To: Argeris, Stephen; Tindle, Angela S.
Cc: Mark Lanpher
Subject: RE: In the Matter of Ardagh Group - Letter to S. Argeris

Steve,

Pursuant to the scheduling order in this case, yesterday the parties were required to identify any counter-designations of deposition testimony that they may seek to introduce during the hearing. I write to advise you that Respondents have identified the following additional testimony:

98:3-5, 98:7-14, 98:21-99:12, 103:4-15

Best,
Jason

Jason M. Swergold

Shearman & Sterling LLP
599 Lexington Avenue
New York, NY 10022
D +1.212.848.5414 | M +1.516.343.5487
jason.swergold@shearman.com | www.shearman.com

From: Argeris, Stephen [mailto:sargeris@hunton.com]
Sent: Thursday, November 21, 2013 2:56 PM
To: Jason Swergold; Tindle, Angela S.
Cc: Mark Lanpher
Subject: RE: In the Matter of Ardagh Group - Letter to S. Argeris

Jason-

Thanks for the update. We appreciate it. Hope you and Mark both have a great Thanksgiving.

Best,
Steve

From: Jason Swergold [mailto:Jason.Swergold@Shearman.com]
Sent: Thursday, November 21, 2013 2:53 PM
To: Tindle, Angela S.; Argeris, Stephen
Cc: Mark Lanpher
Subject: RE: In the Matter of Ardagh Group - Letter to S. Argeris

Stephen,

This is to advise you that the Administrative Law Judge has granted a motion filed by Ardagh to extend the deadline for motions for in camera treatment of confidential materials. Accordingly, any motion that you may seek to file for in camera treatment is now due on December 9. A copy of the judge's order is attached.

Best,
Jason

Jason M. Swergold

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599 Lexington Avenue
New York, NY 10022
D +1.212.848.5414 | M +1.516.343.5487
jason.swergold@shearman.com | www.shearman.com

From: Tindle, Angela S. [mailto:atindle@hunton.com]
Sent: Wednesday, November 20, 2013 9:09 AM
To: Jason Swergold; Argeris, Stephen
Cc: Mark Lanpher
Subject: RE: In the Matter of Ardagh Group - Letter to S. Argeris

Received, thank you.

From: Jason Swergold [mailto:Jason.Swergold@Shearman.com]
Sent: Wednesday, November 20, 2013 9:08 AM
To: Argeris, Stephen; Tindle, Angela S.
Cc: Mark Lanpher
Subject: RE: In the Matter of Ardagh Group - Letter to S. Argeris

As a follow up to my email last night, these are the excerpts of the deposition that we plan to introduce at the hearing. A copy of the transcript is attached for reference.

5:17-19, 11:8-17:9, 17:12-19:9, 19:13-21:10, 22:8-25:14, 25:24-28:8, 28:12-29:13, 31:5-37:10, 37:15-43:2, 43:7-45:1, 45:11-47:15, 49:8-53:25, 54:3-55:11, 55:19-58:18, 58:25-61:25, 63:23-65:17, 65:21-66:10

Jason M. Swergold

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From: Jason Swergold
Sent: Tuesday, November 19, 2013 7:36 PM
To: 'SArgeris@hunton.com'
Cc: Mark Lanpher
Subject: In the Matter of Ardagh Group - Letter to S. Argeris

Dear Mr. Argeris,

Please see the attached letter. A hard copy of the letter and enclosures will arrive via US mail.

Regards,

Jason M. Swergold

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PUBLIC VERSION
Exhibit D

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of	)	[redacted]
Ardagh Group S.A., a public limited liability company, and	)	DOCKET NO. 9356
Saint-Gobain Containers, Inc., a corporation, and	)	
Compagnie de Saint-Gobain a corporation, Respondents	)	

AFFIDAVIT OF Rick Thielen

BEFORE ME, the undersigned authority, on this day personally appeared Rick Thielen, known to me to be the person whose name is subscribed to the following instrument and, having been by me duly sworn, upon his oath, deposed and states as follows:

1. My name is Rick Thielen. I am over the age of eighteen (18) years, and am otherwise duly competent to make this affidavit. I have personal knowledge of the facts stated in this affidavit, and they are true and correct.

2. I am the Acting Senior Vice President of Procurement for Diageo North America, Inc. ("Diageo"). I am and have been employed by Diageo for 13 years. During my employment at Diageo, I have observed and been involved with Diageo's production and sales of alcoholic beverages operations. I am familiar with the documents that are the subject of this motion and are discussed below. Based on my review of these documents, my knowledge of Diageo's business, and my familiarity with the confidentiality

protection afforded this type of information by Diageo, it is my belief that broad disclosure of these documents would cause serious competitive injury to Diageo.

3. Diageo has spent a significant amount of money and resources in preparing the documents for which it now seeks *in camera* treatment.

4. Diageo has taken considerable measures to protect the secrecy of the information contained in the documents for which it now seeks *in camera* treatment.

5. Each document identified below was labeled "Confidential" pursuant to the Protective Order Governing Discovery Material entered on July 1, 2013.

PX4404 (DNA_FTC_000018 – DNA_FTC_000040)

6. This spreadsheet provides detailed sales data for Diageo brands for the past three years. In particular, the report is broken down by pricing, brand, size, and container type. The spreadsheet includes the standard cost per container, and the actual production and actual demand. This information is confidential, is not shared with Diageo's vendors or competitors, and they do not otherwise have the ability to obtain this information. The information is not generally available within Diageo, and the reports were generated using Diageo's internal SAP system specifically to answer subpoenas from the Federal Trade Commission ("FTC") and Ardagh Group S.A. ("Ardagh"). The information remains current and would only be available for specific business purposes in certain units within Diageo. This information is material to Diageo's business because it allows employees to track costs, demand and volume at a line-item level, all of which is highly confidential information.

7. Disclosure of this document would result in serious injury to Diageo. The information, particularly regarding cost and pricing, is central to Diageo's business. Its

disclosure would result in Diageo losing a business advantage with both materials and packaging vendors and competitors. If the information contained in this document were revealed to Diageo's vendors, Diageo would lose a business advantage in its negotiations with those vendors, by virtue of the disclosure of the sales figures for Diageo products in various container sizes and materials, relative to each other and in total. Disclosure of such detailed knowledge of Diageo's sales data and cost structure to its competitors would put Diageo at a decided competitive disadvantage in the marketplace, as Diageo's competitors would learn proprietary information regarding Diageo's pricing and cost structure. Competitors could use this data when competing for sales opportunities with Diageo. Competitors and vendors could use the data to negotiate terms more favorable to them than would have been possible without access to this information, eliminating any competitive advantage Diageo enjoyed in the marketplace as a result of its ability to negotiate more favorable terms with vendors than its competitors..

PX4411 (DNA_FTC_000219 – DNA_FTC_000227)

8. This exhibit is a 2012 Diageo review of its relationship with Anchor Glass, since purchased by Ardagh, one of the Respondents in this matter. It contains detailed information regarding Diageo's production and supply of packaging materials by Ardagh, including analyses of production capacity, equipment lifespan and maintenance, and plant efficiency. It offers detailed analysis of Ardagh's performance as a supplier of Diageo, including its performance on metrics Diageo uses to evaluate each of its suppliers. The information is confidential, the analysis is not shared with Diageo's other vendors or its competitors, and they do not otherwise have the ability to obtain this information. The

information is not generally available within Diageo. Information within the document remains current and informs an ongoing vendor relationship.

9. Disclosure of this document would result in serious injury to Diageo. If the information contained in this document were disclosed to Diageo's vendors, Diageo would lose a business advantage in its negotiations with those vendors because those vendors would be aware of information critical to Diageo's assessment of its purchasing needs and negotiating strategy with Ardagh and, by extension, other vendors. Similarly, disclosure of this document containing such important proprietary information to Diageo's competitors would give these competitors knowledge of proprietary aspects of Diageo's cost structure and supply chain. Competitors and vendors could use the data to negotiate terms more favorable to them than would have been possible without access to this information, eliminating any competitive advantage Diageo enjoyed in the marketplace as a result of its ability to negotiate more favorable terms with vendors than its competitors..

PX4412 (DNA_FTC_000244 – DNA_FTC_000272)

10. This exhibit is a 2013 review of Diageo's relationship with Amcor, a materials supplier. The presentation contains detailed information regarding Diageo's production and supply of packaging materials, including analyses of production capacity, equipment lifespan, and information about Diageo's evaluation of Amcor, its proposed new production initiatives, and demand forecasts for 2014. The information is confidential, the analysis is not shared with Diageo's other vendors or competitors, and they do not otherwise have the ability to obtain this information. The information is not generally

available within Diageo. Information within the document remains current and informs an ongoing vendor relationship.

11. Disclosure of this document would result in serious injury to Diageo. If the information contained in this document were disclosed to Diageo's vendors, Diageo would lose a business advantage in its negotiations with those vendors by disclosing confidential information critical to its assessment of its purchasing needs and negotiating strategy. Similarly, disclosure of this document containing such important proprietary information to Diageo's competitors would give those competitors knowledge of proprietary aspects of Diageo's supply chain. Competitors and vendors could use the data to negotiate terms more favorable to them than would have been possible without access to this information, eliminating any competitive advantage Diageo enjoyed in the marketplace as a result of its ability to negotiate more favorable terms with vendors than its competitors.

PX4413 (DNA_FTC_000273 – DNA_FTC_000283)

12. This exhibit is a Diageo request for proposal for sourcing glass materials for its products. It includes detailed information regarding Diageo's costs, pricing, supply needs and current manufacturing locations and volumes, including such granular information as to the type of finish on bottles on a line-item basis. The information is confidential, was shared with a limited number of suppliers, and the analysis was not shared with Diageo's competitors. Competitors and vendors do not otherwise have the ability to obtain this information. The information is current and is not generally available within Diageo, and the document was shared with only select Diageo personnel involved in preparing the proposal.

13. Disclosure of this document would result in serious injury to Diageo. The document offers a window to the entirety of Diageo's North American glass production needs. The data contained in this exhibit led to the long-term contract negotiated between Diageo and Ardagh referenced by Exhibit PX4414; and disclosure of data of the level and breadth of detail in the exhibit to Diageo's competitors would put Diageo at a competitive disadvantage with both its competitors and ultimately its vendors. Competitors would have the ability to adjust their own proposal and negotiation strategy based on proprietary Diageo information. This could enable them to negotiate terms more favorable to them than would have been possible without access to this information, eliminating any competitive advantage Diageo enjoyed in the marketplace as a result of its superior negotiating ability. Moreover, disclosure of this information to glass vendors not bidding on this late round of the request for proposal could put Diageo at a competitive disadvantage in ongoing negotiations. This is because detailed information about Diageo's glass production needs would be available to glass vendors Diageo explicitly chose to exclude from receiving this information, as well as to glass vendors that did not attempt to enter a bid for the request for proposal. Release of this document would provide critical proprietary information to non-glass suppliers that would erode a business advantage for Diageo in those negotiations. The information contained in this document is of such detail, scope, and relevance that its disclosure would erode a business advantage for Diageo until, at a minimum, its next glass bidding cycle, which is more than a decade in the future.

PX4414 (DNA_FTC_000286 – DNA_FTC_000302)

14. This exhibit is a 2013 presentation by Ardagh to Diageo regarding a long-term glass supply contract which is anticipated to go into effect in [redacted] It includes detailed information related to Diageo's expected materials needs and cost structure, as well as Diageo's competitive strategy. The information is confidential, the analysis is not shared with Diageo's vendors or competitors, and they do not otherwise have the ability to obtain this information. The information is available to a very limited number of personnel within Diageo, and the document itself was shared within Diageo only with personnel preparing the presentation or in attendance at the meeting.

15. Disclosure of this document would result in serious injury to Diageo. The contract negotiation discussion in the document covers the bulk of Diageo's glass materials supply needs until [redacted] Access to this document would grant competitors a comprehensive understanding of Diageo's operations that would put Diageo at a decided disadvantage in the marketplace. If the information contained in this document were disclosed to Diageo's vendors, Diageo would lose a business advantage in its negotiations with those vendors by disclosing information critical to its assessment of its purchasing needs and revealing its negotiating strategy. Similarly, disclosure of this document containing such important proprietary information to Diageo's competitors could lead to information being shared with vendors and competitors gaining knowledge of proprietary aspects of Diageo's supply chain and cost structure.

Deposition Transcript of Rick Thielen

16. My deposition was given on August 20th, 2013, in Chicago. I provided testimony on behalf of Diageo as its designated Rule 30(b)(6) deponent. My testimony included detailed information regarding Diageo's supply chain, glass and plastic materials

production and purchasing, descriptions of its relationships and negotiation strategy with various suppliers, its evaluation of various materials, research and development projects, packaging options for its brands, and manufacturing plants' capacity, among other topics. That information was confidential, current, competitively sensitive, and known only to certain personnel within Diageo. It is not shared with Diageo's competitors or vendors. They do not otherwise have the ability to obtain this information.

17. Disclosure of this transcript would result in serious injury to Diageo. If the information contained in this testimony were disclosed to Diageo's vendors, Diageo would lose a business advantage in its negotiations with those vendors by disclosing information critical to its assessment of its purchasing needs and reveal its negotiating strategy. Similarly, disclosure of this testimony containing such important proprietary information to Diageo's competitors could lead to information being shared with vendors and competitors gaining knowledge of proprietary aspects of Diageo's supply chain.

Documents Responsive to FTC Request No. 4

18. The documents in this exhibit contain the following: internal Diageo research and development project updates; an internal Diageo strategic assessment of its plastic materials needs from 2014 forward containing detailed sales, price, and cost information; internal procurement strategy planning presentations; internal production needs assessments; and internal brand strategy documents. All of these documents are confidential, current, and not shared with Diageo's vendors or competitors. They are available within Diageo to a limited number of personnel.

19. Disclosure of these documents would result in serious injury to Diageo. If the information contained in these documents were disclosed to Diageo's vendors, Diageo

would lose a business advantage in its negotiations with those vendors by disclosing information critical to its assessment of its purchasing needs and reveal its negotiating strategy. Similarly, disclosure of this document containing such important proprietary information to Diageo's competitors could lead to information being shared with vendors and competitors gaining knowledge of proprietary aspects of Diageo's supply chain. Disclosure of the information within the document would allow competitors and vendors to understand and undermine business advantages gained through proprietary Diageo research and marketing initiatives.

Rick Thielen

Sworn to and subscribed before me, the undersigned Notary Public on this 5 day of December, 2013.

Notary Public, State of [Illinois]

Official Seal
Dianna L Lorraine
Notary Public State of Illinois
My Commission Expires 10/28/2014

[Redacted for Public Version]

Exhibit E
PX4404

[Redacted for Public Version]

Exhibit F
PX4411

[Redacted for Public Version]

Exhibit G
PX4412

[Redacted for Public Version]

Exhibit H
PX4413

[Redacted for Public Version]

Exhibit I
PX4414

[Redacted for Public Version]

Exhibit J
PX6062

[Redacted for Public Version]

Exhibit K
PX4405, PX4409, PX4828