

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 )  
)  
Saint-Gobain Containers, Inc., )  
a corporation, and )  
)  
Compagnie de Saint-Gobain, a corporation. )  
\_\_\_\_\_)

PUBLIC

Docket No. 9356

**UNOPPOSED MOTION OF NON-PARTY SBA-CCI, INC. FOR *IN CAMERA***  
**TREATMENT OF PROPOSED TRIAL EXHIBITS**

**I. INTRODUCTION**

Non-party SBA-CCI, Inc. (“SBA-CCI”), through its undersigned counsel, respectfully submits this motion pursuant to Rule 3.45(b) of the Federal Trade Commission Rules of Practice, 16 C.F.R. § 3.45(b), and requests that this Court grant *in camera* treatment to exhibits DX408, DX386, DX505, PX2423 and PX2386 (the “SBA-CCI documents”), which Complaint Counsel or Respondents Ardagh Group S.A. (“Ardagh”), Saint-Gobain Containers, Inc. (“SGCI”) and Compagnie de Saint-Gobain (“Saint-Gobain”) have designated for possible introduction into evidence in the above-captioned action.

SBA-CCI is not a party to the above-captioned action. SBA-CCI is a consulting firm that has SGCI as a client. Within the scope of that client relationship, SBA-CCI has in the past provided presentations and reports to SGCI. These documents contain SBA-CCI’s proprietary insights and analyses regarding the production and consumption of polyethylene terephthalate (“PET”) packaging in North America, and were prepared solely for SBA-CCI’s paying client

SGCI. During Complaint Counsel's non-public investigation of Ardagh's proposed acquisition of SGCI, Saint-Gobain produced to Complaint Counsel documents that SBA-CCI provided to SGCI, including the documents now designated DX408, DX386, DX505, PX2423 and PX2386. SBA-CCI now moves for *in camera* treatment of the SBA-CCI documents because if made public, such disclosure would result in a clearly defined, serious competitive injury to SBA-CCI.

## II. LEGAL STANDARD FOR *IN CAMERA* TREATMENT

Materials merit *in camera* treatment when their disclosure would "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); *see also* 16 C.F.R. § 3.45(b). An applicant for *in camera* treatment can demonstrate serious injury by showing that the information at issue is "sufficiently secret and sufficiently material to the applicant's business that disclosure would result in serious competitive injury." *In re General Foods Corp.*, No. 9085 95 F.T.C. 352, 355, 1980 WL 338997, at \*4 (1980); *In re Bristol-Myers Co.*, 90 F.T.C. 455, 456 (1977). "The likely loss of a business advantage is a good example of a clearly defined, serious injury." *In re Dura Lube*, 1999 F.T.C. LEXIS 255, at \*7 (Dec. 23, 1999).

In considering whether to grant *in camera* treatment, the following factors are weighed: (1) the extent to which the information is known outside the applicant's business; (2) the extent to which it is known by employees and others 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 him and to his competitors; (5) the amount of effort or money expended by him in developing the information; and (6) the ease or difficulty with which the information could be properly acquired or duplicated by others. *Bristol-Myers*, 90 F.T.C. at 456-57.

Administrative law judges have broad discretion in applying these factors to determine

whether information warrants *in camera* treatment. *General Foods Corp.*, 1980 WL 338997, at \*2. Moreover, a non-party requesting *in camera* treatment deserves “special solicitude” for its confidential business information. See *In re Kaiser Aluminum & Chemical Co.*, 103 F.T.C. 500 (1984); *In re Crown Cork & Seal Co.*, 71 F.T.C. 1714 (1967) (“[P]etitioner's plea warrants special solicitude coming as it does from a third-party bystander in no way involved in the proceedings[.]”).

The Commission has recognized that it may be appropriate to provide *in camera* treatment for certain business records. See, e.g., *In re Mc Wane, Inc.*, No. 9351, 2012 WL 3862131, at \*2 (F.T.C. Aug. 17, 2012); *In re Champion Spark Plug Co.*, 1982 F.T.C. LEXIS 85, at \*2 (Apr. 5, 1982); *Hood*, 58 F.T.C. at 1188-89; *Kaiser Aluminum*, 103 F.T.C. at 500.

And it has recognized that *in camera* treatment may be granted for an indefinite period of time when the competitive sensitivity or the proprietary value of the information will not necessarily diminish over time. *In re Coca Cola Co.*, No. 9207, 1990 WL 10081418, at \*3 (F.T.C. Oct. 17, 1990) (quoting 54 Fed. Reg. 49,278-79 (Nov. 30, 1989)).

### **III. THE SBA-CCI DOCUMENTS SATISFY THE STANDARD FOR *IN CAMERA* TREATMENT**

The *Bristol-Myers* factors support granting *in camera* treatment to the SBA-CCI documents.

*First*, the information in the SBA-CCI documents, specifically SBA-CCI’s analyses and insights regarding the production and consumption of PET packaging in North America, is not known outside of SBA-CCI and SBA-CCI’s customers who have entered into a contractual relationship with SBA-CCI and paid for the information.<sup>1</sup> SBA-CCI provides its paying customers with analyses, such as those in the SBA-CCI documents, that concern, for example,

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<sup>1</sup> Note that when Saint-Gobain produced the SBA-CCI documents to Complaint Counsel, it requested that the documents be granted confidential treatment.

trends in the cost of producing specific PET containers, the pricing of those containers, and demand for those containers in different end-uses. But SBA-CCI does not share the information contained in the SBA-CCI documents more broadly, and indeed guards it closely; otherwise SBA-CCI would be out of business. (Maddox Decl. ¶ 2.)

REDACTED - IN CAMERA TREATMENT REQUESTED

*Third*, the information in the SBA-CCI documents is extremely valuable to the consulting firms that compete with SBA-CCI, as no other consulting firm has been able to prepare analyses similar to those contained in the SBA-CCI documents. If granted access to the documents, SBA-CCI's competitors would be able to "reverse engineer" the proprietary analytical models constructed by SBA-CCI. This would destroy the value of clients subscribing to SBA-CCI's modeling and services. (Maddox Decl. ¶ 4)

*Fourth*, SBA-CCI has expended significant time, money and effort in developing the analyses in the SBA-CCI documents. It has expended significant efforts in cultivating relationships with PET resin producers, developing its proprietary analytical model, and preparing the specific analyses reflected in the SBA-CCI documents. If the documents were

made public, SBA-CCI's potential customers, not to mention competing consulting firms, would be able to obtain the benefit of SBA-CCI's analyses without adequately compensating SBA-CCI for its efforts. (Maddox Decl. ¶ 5.)

**IV. IN CAMERA TREATMENT SHOULD EXTEND FOR THE SBA-CCI DOCUMENTS FOR TWENTY YEARS.**

SBA-CCI requests *in camera* treatment of twenty years for the SBA-CCI documents because the competitive sensitivity of the information contained therein is unlikely to diminish over time. *See, e.g., McWane, Inc.*, 2012 WL 3862131; *Coca Cola Co.*, 1990 WL 10081418, at \*3; *In the Matter of Union Oil Co. of Cal.*, 2004 WL 2458849, at \*1 (F.T.C. Oct. 7, 2004) (granting *in camera* treatment for an indefinite period of time when the sensitivity of the information will not diminish with the passage of time). Without access to the SBA-CCI documents, SBA-CCI's competitors are unlikely to derive the proprietary model SBA-CCI uses to analyze the production and consumption of PET packaging. Disclosure of these documents would impose serious competitive harm upon SBA-CCI into the foreseeable future. (Maddox Decl. ¶ 6.) This information should therefore receive *in camera* treatment for a period of twenty years.

**V. CONCLUSION**

For the foregoing reasons, SBA-CCI respectfully requests that the SBA-CCI documents be afforded *in camera* treatment pursuant to Rule 3.45(b) of the Federal Trade Commission Rules of Practice, 16 C.F.R. § 3.45(b).

Dated: December 11, 2013

Respectfully submitted,

BUCKLEYSANDLER LLP

By: /s/ Veena Viswanatha

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*Counsel for Non-Party SBA-CCI, Inc.*

**CERTIFICATE OF SERVICE**

I, Veena Viswanatha, an associate at BuckleySandler LLP, hereby certify that on December 11, 2013, I caused the foregoing document to be filed using the FTC's E-Filing System, which will send notifications of such filing to:

Donald S. Clark  
Secretary  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Rm. H-113  
Washington, DC 20580

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

The Honorable D. Michael Chappell  
Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Rm. H-110  
Washington, DC 20580

I further certify that I delivered via electronic mail a copy of the foregoing document to:

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**U.S. Federal Trade Commission**

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December 11, 2013

By: /s/ Veena Viswanatha  
Veena Viswanatha



**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 and the adjudicator.

December 11, 2013

By: /s/ Veena Viswanatha  
Veena Viswanatha

UNITED STATES OF AMERICA  
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**PUBLIC**

Docket No. 9356

**DECLARATION OF JOHN C. MADDOX IN SUPPORT OF NON-PARTY SBA-CCI,  
INC.’S UNOPPOSED MOTION FOR *IN CAMERA* TREATMENT OF PROPOSED  
TRIAL EXHIBITS**


I, John C. Maddox, declare as follows:

REDACTED - IN CAMERA TREATMENT REQUESTED

REDACTED - IN CAMERA TREATMENT REQUESTED

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

  
John C. Maddox  
President  
SBA-CCI, Inc.

Executed this 11th day of December, 2013

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION  
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**PUBLIC**

Docket No. 9356

**[PROPOSED] ORDER GRANTING UNOPPOSED MOTION OF NON-PARTY SBA-CCI, INC. FOR *IN CAMERA* TREATMENT OF PROPOSED TRIAL EXHIBITS**

Upon consideration of Unopposed Motion of Non-Party SBA-CCI, Inc. For *In Camera* Treatment of Proposed Trial Exhibits, it is hereby ordered that the Motion is **GRANTED** and *in camera* treatment will be given to the exhibits discussed therein for a period of twenty years.

Dated: December \_\_\_\_, 2013

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Honorable D. Michael Chappell  
Chief Administrative Law Judge