

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



ORIGINAL

_____)
In the Matter of)
)
Tronox Limited)
a corporation,)
)
National Industrialization Company)
(TASNEE))
a corporation,)
)
National Titanium Dioxide Company)
Limited (Cristal))
a corporation, and)
)
Cristal USA Inc.)
a corporation,)
)
Respondents.)
_____)

DOCKET NO. 9377

**ORDER ON RESPONDENT CRISTAL'S
MOTION FOR *IN CAMERA* TREATMENT**

I.

Pursuant to Rule 3.45(b) of the Commission's Rules of Practice and the Scheduling Order entered in this matter, Respondent National Industrialization Company (TASNEE), the National Titanium Dioxide Company Limited, and Cristal USA Inc. (collectively, "Cristal") filed a motion for *in camera* treatment for materials that the parties have listed on their exhibit lists as materials that might be introduced at trial in this matter ("Motion"). Federal Trade Commission ("FTC" or "Commission") Complaint Counsel does not oppose Cristal's Motion. Cristal's Motion is GRANTED, as set forth below.

II.

The legal standards governing Cristal's motion for *in camera* treatment are stated in the Order on Non-Parties' Motions for *In Camera* Treatment, issued on May 15, 2018.

Included in that Order was an explanation of the circumstances where indefinite *in camera* treatment is appropriate.

III.

Cristal supported its Motion with the declaration of the General Manager of Mergers and Acquisitions of Cristal USA and attached the documents for which it seeks *in camera* treatment. The declaration describes in detail the confidential nature of the documents, the competitive harm that Cristal would suffer if these documents were made publicly available, and the measures that Cristal takes to ensure that they remain confidential. The declaration explains that the documents fall into eight categories.

The first through fourth categories cover documents that contain Cristal's confidential financial forecasts and information, customer-specific pricing information (details of prices, discounts, and price changes for customers), product-level pricing information (details of prices or price changes), and cost information. With one exception, Cristal requests that documents in these categories be kept *in camera* for five years. Cristal seeks indefinite *in camera* treatment, or in the alternative *in camera* treatment for ten years, for one document: PX2011. Cristal has met its burden of demonstrating that the documents in the first through fourth categories are entitled to *in camera* treatment. *In camera* treatment for a period of five years, to expire on June 1, 2023, is GRANTED for the documents identified in the first through fourth categories. The information contained in PX2011 consists of ordinary business records, not trade secrets, and is not entitled to indefinite *in camera* treatment. *In camera* treatment for a period of ten years, to expire on June 1, 2028, is GRANTED for PX2011.

The fifth category covers documents that consist of information regarding the technical specifications and capabilities of Cristal's manufacturing plants and products. Cristal has met its burden of demonstrating that the documents in the fifth category are entitled to *in camera* treatment. *In camera* treatment for a period of ten years, to expire on June 1, 2028, is GRANTED for the documents identified in the fifth category.

The sixth category covers documents that consist of secret pricing formulas and models underlying Cristal's sales structure. Cristal seeks indefinite *in camera* treatment, or in the alternative *in camera* treatment for ten years, for documents in the sixth category. The information contained in the sixth category consists of ordinary business records, not trade secrets, and is not entitled to indefinite *in camera* treatment. *In camera* treatment for a period of ten years, to expire on June 1, 2028, is GRANTED for the documents identified in the sixth category.

The seventh category covers documents that contain sensitive information about compensation and benefits for specific individuals, and Cristal's plans relating to future potential changes in its work force and compensation/benefits strategy for specific Cristal facilities. Cristal seeks *in camera* treatment for five years for documents in the seventh category. Cristal has met its burden of demonstrating that the documents in the seventh category are entitled to *in camera* treatment. *In camera* treatment for a period of five

years, to expire on June 1, 2023, is GRANTED for the documents identified in the seventh category.

The eighth category covers documents that were originally produced in federal civil litigations pursuant to or subject to protective orders entered in those courts. Cristal requests *in camera* treatment of these litigation documents in accordance with the protective orders in those litigations. In order to provide a clear expiration date, which establishes consistency and furthers administrative efficiency,¹ *in camera* treatment for a period of ten years, to expire on June 1, 2028, is GRANTED for the documents identified in the eighth category.

IV.

Cristal's Motion is GRANTED. Cristal is hereby instructed to prepare a proposed order listing the documents that have been granted *in camera* treatment by expiration date and exhibit number. Cristal shall submit the proposed order in Word format to the Office of Administrative Law Judges by May 22, 2018, and need not file it with the Office of the Secretary.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: May 15, 2018

¹ See *In re ProMedica Health Sys.*, 2011 FTC LEXIS 101, at *20 n.1 (May 25, 2011).

Notice of Electronic Service

I hereby certify that on May 15, 2018, I filed an electronic copy of the foregoing Order on Non-Parties Motion for In Camera Treatment, Order on Respondent Cristal's Motion for In Camera Treatment, Order on Respondent Tronox's Motion for In Camera Treatment, with:

D. Michael Chappell
Chief Administrative Law Judge
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Washington, DC, 20580

Donald Clark
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I hereby certify that on May 15, 2018, I served via E-Service an electronic copy of the foregoing Order on Non-Parties Motion for In Camera Treatment, Order on Respondent Cristal's Motion for In Camera Treatment, Order on Respondent Tronox's Motion for In Camera Treatment, upon:

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