

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



In the Matter of

BENCO DENTAL SUPPLY CO.,  
a corporation,

HENRY SCHEIN, INC.,  
a corporation, and

PATTERSON COMPANIES, INC.,  
a corporation.

Docket No. 9379

**NON-PARTY BRASSELER USA'S SECOND 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) and in response to Administrative Law Judge Chappell's October 11, 2018 Order on Brasseler's First Motion for *In Camera* Treatment (the "October 11th Order"), Non-Party Brasseler USA ("Brasseler") has specified the portions of the deposition transcript of Ryan Dew for which it seeks *in camera* treatment and files this renewed Second Motion for *In Camera* Treatment (the "Motion").

Under Rule 3.45(b), a party may obtain *in camera* treatment for materials offered into evidence if "public disclosure will likely result in a clearly defined, serious injury." After conducting a careful review of the deposition transcript of Ryan Dew (the "Transcript"), Brasseler USA's Senior Director, Business Operations, which is on Respondents' Exhibit List as RX2955, Brasseler and its counsel have determined that public disclosure of certain portions of the Transcript contain confidential information that will cause a clearly defined, serious injury to Brasseler by harming its ability to compete in the marketplace. As such, and for the reasons set

forth below and in the Declaration of Ryan Dew (“Dew Declaration”), Brasseler substantially reduced its prior request and seeks *in camera* treatment for only a few portions of the Transcript that contain confidential and proprietary information.

### **I. Legal Standard**

*In camera* treatment is appropriate for materials (1) that constitute sensitive personal information, such as social security or other ID numbers, tax info, bank account info, and sensitive health info, or (2) public disclosure of which will result in serious injury to the party requesting *in camera* treatment. See 16 C.F.R. 3.45; see also *In re 1-800-Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017) (*in camera* treatment appropriate for information that “is sufficiently secret and sufficiently material to their business that disclosure would result in serious competitive injury.”). A proponent of *in camera* treatment may demonstrate the requisite competitive injury by showing that the information is secret and that it is material to the business. *In re General Foods Corp.*, 95 F.T.C. 352, 355 (1980).

In making *in camera* determinations, factors that the Court may consider include: (1) the extent to which the information is known outside 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 easy or difficulty with which the information could be acquired or duplicated. *In re Bristol-Myers Co.*, 90 FTC LEXIS 455, at \*5-6 (Nov. 11, 1977). In general, courts endeavor to “protect confidential business information from unnecessary airing.” *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961). Testimony discussing confidential and competitively sensitive information have been granted *in camera* treatment. See *In re Contacts Inc.*, 2017 FTC LEXIS 55 (2017)

(granting in camera treatment for transcripts of deposition of employees which included confidential and competitively sensitive information).

## **II. Brasseler's Materials Meet the Standard for *In Camera* Treatment**

Non-party Brasseler seeks *in camera* treatment of the portions of the Transcript listed in Section III (below), all of which contain information that are both secret and material to Brasseler's business, making *in camera* treatment of such transcript proper. This information includes highly sensitive financial performance information; proprietary business structure and operations; and merger and acquisition activity ("Confidential Information").

The Confidential Information is confidential and propriety, and is not known to individuals outside of Brasseler. It has also established internal policies and practices to prohibit disclosure of this information. Ex. A, Ryan Dew Decl. ¶ 3. As described in more detail below, disclosure of the Confidential Information would result in a decisive loss of business advantage to Brasseler, especially considering Brasseler's substantial investments and years spent refining its own business model. *See In re Dura Lube Corp.*, 1999 FTC LEXIS 255 at \*7 (1999) ("The likely loss of business advantages is a good example of a 'clearly defined, serious injury.'"). If disclosed, competitors would be able to take unfair advantage of this information. It would provide insight into Brasseler's competitive strategies, confidential structuring of its business, and sensitive financial information. Such asymmetrical information vis-à-vis competitors would disadvantage Brasseler and cause substantial injury in the marketplace. Competitors cannot obtain this Confidential Information absent disclosure in this matter because the materials come from Brasseler's confidential business records that are not publicly disseminated. Without insight into Brasseler's confidential practices and operations, this information could not be replicated by an outside party. The risk of such disclosure would severely undermine Brasseler's ability to compete for future business opportunities.

### III. Proposed Transcript Excerpts that Contain Confidential Information

Brasseler seeks to have the below proposed transcript excerpts granted *in camera* treatment for RX2955. The chart below separates the Confidential Information for which Brasseler seeks *in camera* treatment into four categories (Financial Performance Metrics; Proprietary Business & Organizational Structure; and Merger and Acquisition activity and strategy).

<b>Transcript Excerpts - RX2955</b>	<b>Category</b>	<b>Protection Requested</b>
13:4-10	Financial Performance Metrics	5 years
17:18-20	Financial Performance Metrics	5 years
18:15-19:7	Proprietary Business & Organizational Structure	5 years
21:3-5	Proprietary Business & Organizational Structure	5 years
99:21-108:15	Merger and Acquisition Activity and Strategy	5 years

The Confidential Information includes highly sensitive information about Brasseler's current revenue and sales channels, descriptions of Brasseler's proprietary business structure and operations, and sensitive information relating to Brasseler's merger and acquisition activity and ownership structure. Brasseler is a privately held company and information relating to its overall revenue and organizational and ownership structure is not publicly available. Performance information relating to Brasseler's business is highly confidential financial information. If this Confidential Information is disclosed, it could be used by competitors and customers to gain insight into the overall financial health and success of Brasseler's business model. Such information would enable competitors to gain competitive intel otherwise unavailable to them to develop competitive strategies to undermine Brasseler in the marketplace. Moreover, certain

portions of the transcript refer to merger and acquisition activity containing highly sensitive information for which certain exhibits that contain substantially similar or otherwise reveal the content information have already been granted *in camera* treatment. *See e.g.*, October 11th Order granting *in camera* treatment for RX2025; RX2026; RX2027; RX2028; CX4150; CX4151; CX4182; CX4187. If disclosed, the Confidential Information relating to proprietary deal terms would subject Brasseler to significant harm both from competitors and prospective partners and future business opportunities. As such, Brasseler requests that these documents remain protected for at least five years. *See Otto Bock*, 2018 FTC LEXIS 111, \*11 (F.T.C. July 6, 2018) (providing five years of *in camera* treatment for sales and financial data); *In the Matter of Impax Labs., Inc., A Corp.*, 9373, 2017 WL 4948988, at \*1 (F.T.C. Oct. 23, 2017) (granting ten years of *in camera* treatment for “financial and sales projections for future years and pipeline products”).

#### **A. Brasseler is a Third Party**

Brasseler’s status as a third party is also relevant to the treatment of its testimony in this matter. The FTC has held that “[t]here can be no questions that the confidential records of businesses involved in Commission proceedings should be protected insofar as possible.” *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1186 (1961). As a nonparty, Brasseler deserves “special solicitude” in its request for *in camera* treatment for its confidential business information. *See In re Kaiser Aluminum & Chem. Corp.*, 103 FTC 500 (1984) (“As a policy matter, extensions of confidential information or *in camera* treatment in appropriate cases involving third party bystanders encourages cooperation with future adjudicative discovery requests.”). Brasseler’s status as a third party further supports granting *in camera* treatment to the Confidential Information.

**IV. Conclusion**

For the foregoing reasons, Brasseler respectfully moves that its Motion for *in camera* treatment be granted.

Dated: October 19, 2018

Respectfully submitted,

*/s/ Lauren M. Fincher*

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 19, 2018 I delivered a true and correct copy Brasseler USA's Motion for *In Camera* Treatment via electronic mail to:

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/s/ Lauren M. Fincher



**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION  
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**In the Matter of**

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**Docket No. 9379**

**DECLARATION OF RYAN DEW IN SUPPORT OF  
NON-PARTY BRASSELER'S SECOND MOTION FOR *IN CAMERA* TREATMENT**

1. I am Ryan Dew of Brasseler USA ("Brasseler"). I make this declaration in support of Non-Party Brasseler's Second Motion for *In Camera* Treatment of certain confidential information (the "Confidential Information"). I have personal knowledge of the matters stated in this Declaration.

2. I am Senior Director, Business Operations for Brasseler. As Senior Director, I serve as general counsel and oversee various business functions, including human resources, Information Technology, e-commerce, digital marketing, facilities, and compliance. Specifically I am responsible for overseeing Brasseler's legal matters, including the protection of Brasseler's confidential and proprietary information. I have been employed by Brasseler since April 2012.

3. I have reviewed and am familiar with the Confidential Information testimony Brasseler gave in this matter in response to a third-party subpoena from the Federal Trade Commission ("FTC"). I am familiar with the confidential and proprietary nature of this information from my involvement in Brasseler's contract negotiations, strategic business

development efforts, and company legal matters, including my work in connection with other matters where such information has remained confidential and protected. Given my position at Brasseler, I am familiar with Brasseler's policies and procedures regarding the protection of such confidential and proprietary information—and the competitive significance of such information to Brasseler. Based on my review of the deposition transcript and my substantial knowledge of Brasseler's business, I believe disclosure of the Confidential Information would cause serious competitive injury to Brasseler.

4. Brasseler is a direct seller of dental instrumentation. Brasseler has invested significant time, resources, and effort into careful and strategic negotiations, resulting in highly confidential business agreements and related proprietary pricing tailored to specific Brasseler customers, including some of the buying group customers that are at issue in this proceeding. The public disclosure of Brasseler's confidential financial information, unique deal structures, and other strategic business planning would allow potential competitors to unfairly undermine Brasseler in the marketplace, thereby causing serious competitive injury to Brasseler.

5. Brasseler seeks to have the below transcript excerpts granted *in camera* treatment for RX2955 as they contain highly confidential information that would harm Brasseler if such information is publicly disclosed.

- 13:4-10
- 17:18-20
- 18:15-19:7
- 21:3-5
- 99:21-108:15


6. These transcript excerpts contain Confidential Information relating to Brasseler's current revenue and sales channels, descriptions of Brasseler's proprietary business structure and

operations, and sensitive information relating to Brasseler's ownership structure. Brasseler is a privately held company and information relating to its overall revenue and organizational and ownership structure is not publicly available. Performance information relating to Brasseler's business is highly confidential financial information. If this Confidential Information is disclosed, it could be used by competitors and customers to gain insight into the overall financial health and success of Brasseler's business model. The Confidential Information would enable competitors to gain competitive intel otherwise unavailable to them, which would allow such competitors to develop competitive strategies to undermine Brasseler in the marketplace. Moreover, certain portions of the transcript refer to merger and acquisition activity containing highly sensitive information. If disclosed, the Confidential Information relating to proprietary deal terms would subject Brasseler to significant harm both from competitors and prospective partners and future business opportunities. As such, this information should remain confidential for a period of five years.

7. I reserve the right to modify or supplement this affidavit if I discover new facts that render it inaccurate or incomplete.

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

Dated: 10/18/2018

  
\_\_\_\_\_  
Ryan Dew  
Senior Director, Business Operations  
Brasseler USA

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION  
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In the Matter of

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**[PROPOSED] ORDER GRANTING NON-PARTY BRASSELER USA’S SECOND  
MOTION FOR *IN CAMERA* TREATMENT**

Upon consideration of Non-Party Brasseler USA’s (“Brasseler”) Second Motion for *In Camera* Treatment, it is HEREBY ORDERED that the following portions of RX2955, the transcript of Ryan Dew, are to be provided *in camera* treatment for five years:

<b>RX2955</b>
13:4-10
17:18-20
18:15-19:7
21:3-5
99:21-108:15

Date: \_\_\_\_\_

\_\_\_\_\_  
D. Michael Chappell  
Administrative Law Judge

Notice of Electronic Service

**I hereby certify that on October 19, 2018, I filed an electronic copy of the foregoing Brasseler's Second Motion for In Camera Treatment, with:**

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