

December 9, 2013

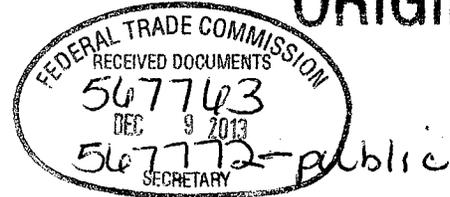
**VIA HAND DELIVERY**

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

**JUSTIN N. PENTZ**

justin.pentz@dechert.com  
+1 215 994 2395 Direct  
+1 215 655 2395 Fax

**ORIGINAL**



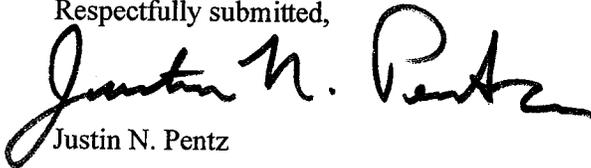
Re: *In the Matter of Ardagh Group, S.A., Compagnie de Saint-Gobain, and Saint-Gobain Containers, Inc.*; Docket No. 9356

To Whom It May Concern:

Please accept for filing the enclosed Unopposed Motion of Non-Party Crown Holdings Inc. for *In Camera* Treatment of Proposed Trial Exhibits. The enclosure contains three copies of an *in camera* version of the filing and three copies of a redacted public version of the filing, as well as a CD containing PDF versions of the *in camera* filing. Each printed copy is stamped either "*In Camera*" or "Public" in the lower-left corner of the document. Pursuant to 16 C.F.R. § 4.2., please handle the CD and printed copies of the "*in camera*" version in the strictest confidence as they contain highly confidential Crown information. If you have any questions regarding these submissions, please do not hesitate to contact me.

Please also kindly stamp and return a copy of the cover letter indicating that Crown's filing has been received.

Respectfully submitted,

  
Justin N. Pentz

ORIGINAL



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF THE 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

**UNOPPOSED MOTION OF NON-PARTY CROWN HOLDINGS INC.  
FOR IN CAMERA TREATMENT OF PROPOSED TRIAL EXHIBITS**

Pursuant to Rule 3.45(b) of the Federal Trade Commission’s Rules of Practice, 16 C.F.R. § 3.45(b), non-party Crown Holdings, Inc. (“Crown”) respectfully submits this Motion seeking *in camera* treatment of competitively sensitive, confidential documents and deposition testimony. The specific documents and portions of deposition testimony that are the subject of this Motion were provided in response to third-party subpoenas served upon Crown. Now, FTC, Ardagh, and Saint-Gobain have notified Crown that they intend to introduce these materials into evidence at the administrative trial in this matter. *See* Nov. 19, 2013 Letter from Lorigo to Pentz (Ex. A); Nov. 20, 2013 letter from Lanpher to Friedman (Ex. B); Nov. 26, 2013 Swergold email to Friedman (Ex. C). Because the documents and deposition testimony are highly confidential and their disclosure would cause great injury to Crown, Crown requests that these materials be afforded *in camera* treatment for a period of five years. Neither the FTC nor Ardagh or Saint-Gobain opposes this Motion.

## BACKGROUND

On July 24, 2013, Crown was served with a sweeping third-party subpoena by Ardagh in the federal action<sup>1</sup> that requested a wide variety of documents regarding all aspects of Crown's can business. On July 26, 2013, FTC served Crown with a nearly identical subpoena. After significant discussions with the parties focused on both the scope of the subpoena and confidentiality protections, Crown agreed to produce a limited number of documents that had previously been provided to FTC staff during its investigation of the Ardagh/Saint-Gobain transaction. Crown agreed to make this production only after the parties: (1) agreed to allow Crown to redact confidential, non-relevant material in the documents; and (2) agreed to additional confidentiality provisions beyond the protective order already entered in the case.<sup>2</sup> Crown made its document production on August 9, 2013 and designated all produced documents as confidential.

Crown was subsequently subpoenaed again by the parties to participate in a deposition in the federal action. The deposition, which occurred on August 20, 2013, referred to confidential Crown documents and discussed other confidential, highly sensitive aspects of Crown's business. Accordingly, Crown designated the deposition as confidential.

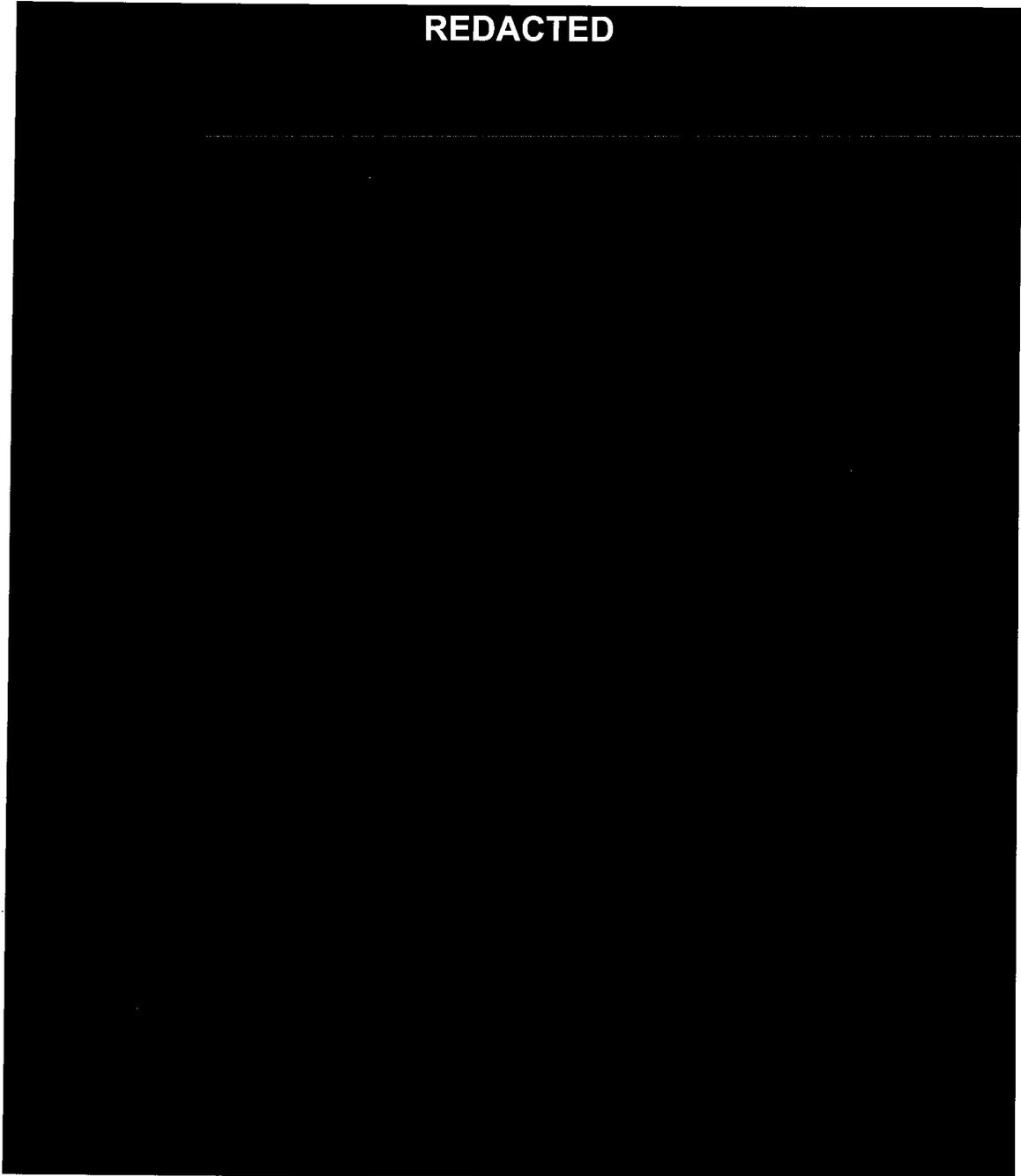
On November 19 and 20, 2013, Crown was notified by the parties that they intended to introduce certain confidential Crown documents and portions of deposition testimony at their

---

<sup>1</sup> The term "federal action" refers to *FTC v. Ardagh Group, S.A.*, Civ. Action No. 1:13-cv-01021-RMC (D.D.C.). At the time the subpoenas were issued to Crown, the parties to that case were engaged in discovery in preparation for their upcoming preliminary injunction hearing.

<sup>2</sup> The additional confidentiality protections were memorialized in the Stipulated Side Agreement to the Protective Order, which was filed in the federal action on July 31, 2013 [Dkt. 41]. Among other things, the Stipulated Side Agreement provided that the parties should provide Crown with advance notice before using any of its confidential material in open court.

upcoming FTC administrative trial. *See* Exs. A & B. Specifically, the correspondence disclosed the parties' intent to use the following confidential Crown materials:<sup>3</sup>



---

<sup>3</sup> The documents described below are attached at Exhibits D-H. The portions of the deposition are attached at Exhibit I (the designated portions are highlighted in the exhibit).

**REDACTED**

- Portions of deposition testimony. The parties have designated numerous portions of the deposition testimony provided by Crown (*see* Exs. B & C for the specific designated portions).

**REDACTED**

**REDACTED**

The parties also advised Crown of their right to seek *in camera* treatment of these confidential materials. Accordingly, for the reasons explained below and in the accompanying declaration of Neill Mitchell (Ex. J), Crown requests that the documents and testimony described above be afforded *in camera* treatment for a period of five years.

#### ARGUMENT

Confidential materials should be given *in camera* treatment when their “public disclosure will likely result in a clearly defined, serious injury to the person, partnership, or corporation requesting *in camera* treatment.” 16 C.F.R. § 3.45(b). That showing can be made by establishing that the documents and testimony are “sufficiently secret and sufficiently material to the applicant’s business that disclosure would result in serious competitive injury.” *In re General Foods Corp.*, 95 F.T.C. 352, 355 (1980). The following factors should be weighed in considering both secrecy and materiality: (1) the extent to which the information is known

outside of the applicant's business; (2) the extent to which the information 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 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. *In re Bristol-Myers Co.*, 90 F.T.C. 455, 456-57 (1977).<sup>4</sup> Such a showing may be "inferred from the nature of the documents themselves." *In re H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961).

Administrative law judges have broad discretion in applying these factors to determine whether information warrants *in camera* treatment. Furthermore, non-parties (such as Crown here) requesting *in camera* treatment deserve "special solicitude" in requests for *in camera* treatment for their 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.").

Here, the documents and deposition testimony for which Crown seeks *in camera* treatment are "sufficiently secret and sufficiently material" to Crown's business to warrant protection. Each of the documents reflects confidential Crown information that is not known by individuals outside of Crown, and the deposition testimony reflects Crown information not known to others. Mitchell Decl. ¶¶ 4 & 6.<sup>5</sup>

**REDACTED**

<sup>4</sup> With regard to establishing a serious injury, this Court has held that "[t]he likely loss of business advantages is a good example of a 'clearly defined, serious injury.'" *In re Dura Lube Corp.*, 1999 FTC LEXIS 255, at \*7 (Dec. 23, 1999) (quoting *General Foods*, 95 F.T.C. at 355).

<sup>5</sup> The declaration of Neill Mitchell, attached as Exhibit J, explains the confidential nature of the documents and testimony that are the subject of this Motion and the injury that Crown would

REDACTED

In short, the documents and testimony reflect highly confidential Crown material known only to certain individuals at Crown. *Id.*

If Crown's confidential documents and testimony were made available to its competitors, customers, and the general public, Crown would suffer significant competitive injury. Crown's competitors and customers could use Crown's confidential information against it and Crown would lose any business advantage it has to those entities. *Id.* ¶¶ 5 & 6. Competitors could use the Crown confidential information in competitive bidding situations or to adjust to Crown's competitive strategy. *Id.* Customers could use the Crown confidential information to gain an advantage in pricing or other negotiations. *Id.* Accordingly, Crown would be substantially injured by the disclosure of the confidential documents and testimony.

Finally, as a non-party to this dispute, Crown deserves "special solicitude" in consideration of its request for *in camera* treatment. Indeed, Crown only agreed to provide the confidential information at issue in this Motion because of the parties' assurances of

---

suffer if its confidential materials were not granted *in camera* treatment. Mitchell Decl. ¶¶ 4 & 6. The declaration also explains Mr. Mitchell's basis for personal knowledge of the documents at issue, their confidential nature, and the potential injury to Crown. *Id.* ¶¶ 2-6.

confidentiality and the protections agreed to in the Stipulated Side Agreement to the Protective Order in the federal litigation. While Crown had (and still has) serious questions about the relevance of its materials to the dispute between the parties in this case, Crown was willing to produce the materials requested because of the parties' confidentiality commitments.

Crown requests that the materials be afforded *in camera* treatment for a period of five years. This time period is necessary to protect Crown from competitive injury and is in accordance with precedent on the appropriate length of *in camera* treatment for materials similar to those at issue in this case. *See, e.g., In re Int'l Ass'n of Conference Interpreters*, 1996 FTC LEXIS 298, at \*13 (granting *in camera* treatment of non-party business plans for five years and noting that "five years' *in camera* treatment has previously been granted to similar documents revealing business plans and pricing strategies").

#### **CONCLUSION**

For the foregoing reasons, Crown requests that the confidential materials at issue in this Motion be afforded *in camera* treatment for a period of five years.

Dated: December 9, 2013

 (JNF)

Paul H. Friedman  
DECHERT LLP  
1900 K Street, N.W.  
Washington, D.C. 20006  
Phone: (202) 261-3398  
paul.friedman@dechert.com

Justin N. Pentz  
DECHERT LLP  
Cira Centre  
2929 Arch Street  
Philadelphia, PA 19104  
Phone: (215) 994-2395  
justin.pentz@dechert.com

*Counsel for Non-Party  
Crown Holdings, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on December 9, 2013, I caused the foregoing Unopposed Motion of Non-Party Crown Holdings, Inc. for *In Camera* Treatment of Proposed Trial Exhibits to be filed by hand on the following:

Office of the Secretary  
Federal Trade Commission  
600 Pennsylvania Ave., N.W.  
Room H-135  
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-110  
Washington, D.C. 20580

Sebastian Lorigo, Esq.  
Bureau of Competition  
Federal Trade Commission  
601 New Jersey Ave., N.W.  
Washington, D.C. 20001

Mark Lanpher, Esq.  
Shearman & Sterling LLP  
801 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004



---

Justin N. Pentz  
*Counsel for Non-Party  
Crown Holdings, Inc.*

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

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

**[PROPOSED] ORDER**

Upon consideration of the Unopposed Motion of Non-Party Crown Holdings, Inc. for *In Camera* Treatment of Proposed Trial Exhibits, it is hereby ORDERED that the Motion is GRANTED. It is further ORDERED that pursuant to Rule 3.45(b) of the Federal Trade Commission Rules of Practice, 16 C.F.R. § 3.45(b), the following documents shall be subject to *in camera* treatment and will be kept confidential and not placed on the public records of this proceeding for five years: CROWN0006927-32, CROWN0006943-49, CROWN0007030-33, CROWN0007034-7034.0023, and CROWN0007621-7621.0016. It is further ORDERED that pursuant to Rule 3.45(b) of the Federal Trade Commission Rules of Practice, 16 C.F.R. § 3.45(b), the deposition excerpts identified in Exhibits A and C, and contained in Exhibit I, shall be subject to *in camera* treatment and will be kept confidential and not placed on the public records of this proceeding for five years.

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

# **EXHIBIT A**



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

BUREAU OF COMPETITION  
MERGERS II DIVISION

November 19, 2013

Sebastian Lorigo  
Bureau of Competition  
Federal Trade Commission  
601 New Jersey Ave, N.W.  
Washington, DC 20001  
(202) 326-3717  
slorigo@FTC.gov

**Via Federal Express**

Justin Pentz, Esq.  
Dechert LLP  
Cira Centre  
2929 Arch Street  
Philadelphia, PA 19104

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

Dear Mr. Pentz:

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) 326-3717.

Sincerely,



Sebastian Lorigo  
Counsel Supporting the Complaint

Attachments

ATTACHMENT A

Exhibit Number	Date	Begin Dates	End Dates	Document Description
PX4335	01/??/2012	CROWN0007621	CROWN0007621	<b>REDACTED</b>
PX6046	8/20/2013	N/A	N/A	RESERVED for Designated Deposition Transcript of Neill Mitchell (Crown Holdings, Inc.)

## ATTACHMENT B

Name: Mitchell, Neill

Company: Crown Holdings, Inc.

Date & Type: 8/20/2013 Deposition (PX6046)

7:3 - 5  
10:22 - 13:7  
25:15 - 17  
25:19 - 21  
28:18 - 23  
28:25 - 29:18  
29:21 - 30:8  
55:20 - 56:5  
56:14 - 16  
74:15 - 17  
74:19 - 24  
75:2 - 4  
79:7 - 23  
80:16 - 18  
80:20 - 81:10  
81:12 - 15  
103:21 - 105:8  
106:24 - 108:7  
109:3 - 8  
109:12 - 14  
110:4 - 7  
110:9 - 16  
110:19 - 20  
110:22 - 23  
110:25 - 111:7  
111:9 - 16  
111:18  
111:20 - 21  
113:18 - 25  
118:3 - 122:2  
122:5 - 123:9

CONFIDENTIAL

**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 Crown Holdings, Inc. 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:

# **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

Paul Friedman  
Dechert LLP  
1900 K Street, N.W.  
Washington, D.C. 20006

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

Dear Mr. Friedman,

Pursuant to Paragraph 10 of the Protective Order in the above-referenced matter (enclosed), the Scheduling Order in the above-referenced matter, Paragraph 7 of the Stipulated Side Agreement to Protective Order between the parties and Crown Holdings, Inc. entered into on July 31, 2013, and 16 C.F.R. § 3.45 (enclosed), this letter is providing notice to Crown Holdings, Inc. that Respondents Ardagh Group S.A., Compagnie de Saint-Gobain, and Saint-Gobain Containers plan to introduce confidential material produced by Crown Holdings, Inc. 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 Crown Holdings, Inc. in the above-referenced matter or *FTC v. Ardagh Group S.A., et al.*, No. 13-cv-1021 (BJR) (D.D.C.):

- Document with bates range CROWN0006927 – CROWN0006932
- Document with bates range CROWN0006943 – CROWN0006949
- Document with bates range CROWN0007030 – CROWN0007033
- Document with bates range CROWN0007034 – CROWN0007034.0023

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*

ABU DHABI | BEIJING | BRUSSELS | FRANKFURT | HONG KONG | LONDON | MILAN | NEW YORK | PALO ALTO  
PARIS | ROME | SAN FRANCISCO | SÃO PAULO | SHANGHAI | SINGAPORE | TOKYO | TORONTO | WASHINGTON, DC

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.

Public

Paul Friedman  
Page 2

November 19, 2013

*Hoechst Marion Roussel, Inc.*, 2000 FTC LEXIS 157 (Nov. 22, 2000) and 2000 FTC LEXIS 138 (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

# EXHIBIT C

**From:** Jason Swergold <[Jason.Swergold@Shearman.com](mailto:Jason.Swergold@Shearman.com)>  
**Date:** November 26, 2013 at 2:52:22 PM EST  
**To:** "Friedman, Paul" <[paul.friedman@dechert.com](mailto:paul.friedman@dechert.com)>  
**Cc:** Mark Lanpher <[Mark.Lanpher@Shearman.com](mailto:Mark.Lanpher@Shearman.com)>  
**Subject:** RE: In the Matter of Ardagh Group - Letter to P. Friedman

Paul,

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:

17:4-6, 17:8-13, 17:25, 18:2-3, 18:6, 18:8-11, 22:11-13,  
22:15-16, 22:18-21, 23:3-8, 23:18-23, 23:25, 24:2-5, 24:7-9,  
24:12-14, 27:17-19, 27:21-22, 30:9-16, 37:3-14, 37:16-17,  
50:3-5, 50:11-13, 50:15, 51:6-8, 51:12-14, 52:24-25, 53:2-5,  
55:13-18, 56:17-24, 57:15-16, 57:20-22, 57:24-25, 58:2,  
63:13-23, 63:25, 64:2-3, 68:21-25, 69:4-6, 69:8-9, 80:7-15,  
129:5-8, 130:10-24, 131:4-5

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](mailto:jason.swergold@shearman.com) | [www.shearman.com](http://www.shearman.com)

---

**From:** Jason Swergold  
**Sent:** Thursday, November 21, 2013 3:04 PM

**To:** 'paul.friedman@dechert.com'  
**Cc:** Mark Lanpher  
**Subject:** RE: In the Matter of Ardagh Group - Letter to P. Friedman

Paul,

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

---

Shearman & Sterling LLP  
599 Lexington Avenue  
New York, NY 10022  
D +1.212.848.5414 | M +1.516.343.5487  
[jason.swergold@shearman.com](mailto:jason.swergold@shearman.com) | [www.shearman.com](http://www.shearman.com)

---

**From:** Jason Swergold  
**Sent:** Tuesday, November 19, 2013 7:35 PM  
**To:** 'paul.friedman@dechert.com'  
**Cc:** Mark Lanpher  
**Subject:** In the Matter of Ardagh Group - Letter to P. Friedman

Dear Mr. Friedman,

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

Regards,

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](mailto:jason.swergold@shearman.com) | [www.shearman.com](http://www.shearman.com)

**IRS Circular 230 Disclosure**

Any tax advice contained in this communication is not intended or written to be used, and cannot be used, for the purpose of avoiding tax penalties and is not intended to be used or referred to in promoting, marketing or recommending a partnership or other entity, investment plan or arrangement.

\*\*\*\*\*

This communication and any attachments may be privileged or confidential. If you are not the intended recipient, you have received this in error and any review, distribution or copying of this communication is strictly prohibited. In such an event, please notify us immediately by reply email or by phone (collect at 212-848-4000) and immediately delete this message and all attachments.

# **EXHIBITS D-I**

**Redacted in Full**

# **EXHIBIT J**

**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF THE 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 OF NEILL MITCHELL**

1. My name is Neill Mitchell. I am over the age of 21, have never been convicted of a felony or a crime involving moral turpitude, and am otherwise competent to make this Declaration. Each and every statement contained in this Declaration is true and correct based on my personal knowledge.

2. I am currently employed by Crown Holdings, Inc. ("Crown") as Vice President of Marketing and Strategic Development for Crown's beverage can division in the United States and Canada. REDACTED

Before this position, I worked for Crown as Regional Vice President of Sales in the Southwestern United States. I have also worked for Crown as a director of marketing. In total, I have been employed by Crown in various roles for 12 years.

3. I understand that the FTC, Ardagh, and Saint-Gobain have indicated that they may use certain Crown documents at the administrative trial in this matter, including CROWN0006927-32, CROWN0006943-49, CROWN0007030-33, CROWN0007034-

7034.0023, and CROWN0007621-7621.0016. I have personal knowledge regarding all of these documents [REDACTED]

4. Each of these documents reflects Crown confidential information that is not known by individuals outside of Crown. [REDACTED]

[REDACTED] All of this information is confidential to Crown and is known only by certain individuals within Crown. Crown has expended resources to develop this information and to keep it confidential.

5. Crown would suffer significant injury if these documents were disclosed to Crown's competitors or made publicly available. Crown's competitors and customers would have access to Crown's most sensitive business information and could use that information to take advantage of Crown. Competitors could use the information in competitive bidding situations or to adjust to Crown's competitive strategy. Customers could use the information to gain an advantage in pricing or other negotiations. Competitors and customers – who could not

obtain this Crown sensitive information elsewhere – would be able to put the confidential materials to great use. Crown would incur substantial damage.

6. I further understand that certain portions of my deposition have been designated for possible use in the administrative trial in this matter. I have reviewed those portions of the deposition. Like the documents discussed above, these deposition portions reflect confidential Crown information not otherwise known to Crown's competitors, customers, or the general public.

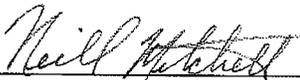
**REDACTED**

**REDACTED**

For the same reasons as discussed above with regard to documents, the disclosure of these deposition portions would cause significant injury to Crown.

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

Dated: December 9, 2013

  
\_\_\_\_\_  
Neill Mitchell