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

In the matter of:

H&R Block Inc.,
a corporation,

HRB Digital LLC,
a limited liability company, and

HRB Tax Group, Inc.,
a corporation.

Docket No. 9427

**COMPLAINT COUNSEL'S MOTION TO REMOVE REDACTIONS FROM
PARAGRAPHS 29-32 OF THE COMPLAINT**

Complaint Counsel respectfully moves for an order removing all redactions from paragraphs 29-32 of the Complaint because the public interest is best served by having open access to the full Complaint, and Respondents cannot meet their burden of demonstrating that, despite its age, the redacted information remains competitively sensitive and they would face a serious and clearly defined injury if the redactions are removed.

I. FACTUAL BACKGROUND

After the Commission voted to issue the Complaint on February 23, 2024, Complaint Counsel and Respondents' Counsel provisionally redacted the Complaint to ensure Respondents had an opportunity to seek protection from disclosure for materials Respondents designated as confidential during the investigation, pursuant to 16 C.F.R. § 4.10(g)(2). Complaint Counsel and Respondents' Counsel then conferred and reached agreement regarding the removal of most redactions to the Complaint, as set forth in Complaint Counsel's April 2, 2024 Unopposed Motion to Remove Certain Redactions from the Public Complaint. Complaint Counsel now seeks to remove the remaining redactions to paragraphs 29-32.

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II. ARGUMENT

A. The Complaint can only be redacted to protect confidential material.

The Commission has consistently recognized the “substantial public interest in holding all aspects of adjudicative proceedings, including the evidence adduced therein, open to all interested persons.” *In the Matter of Altria Grp.*, No. 9393, 2021 WL 2379509, at *2 (May 26, 2021) (quoting *In re H. P. Hood & Sons*, 1961 FTC LEXIS 368 (Mar. 14, 1961)).

Nevertheless, the FTC’s Rules of Practice protect “parties and third parties against improper use and disclosure of confidential information.” 16 CFR § 3.31(d). The Standard Protective Order defines “confidential material” as “any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information.” Protective Order Governing Confidential Material, Docket 9427-003, Attachment A at 2.

The FTC has also recognized that, among competitively sensitive business records, “trade secrets” are granted more protection from disclosure than “ordinary business records.” *Id.* “‘Trade secrets’ are primarily limited to secret formulas, processes, and other secret technical information,” while “ordinary business records include[] names of customers, prices of certain customers, and costs of doing business and profits.” *In the Matter of Jerk, LLC*, No. 9361, 2015 WL 926508, at *1 (Feb. 23, 2015); *see also Altria*, 2021 WL 2379509 at *3 (“In contrast to trade secrets, ordinary business records include [. . .] business plans, marketing plans, or sales documents.”). “When *in camera* treatment is granted for ordinary business records, it is typically provided for two to five years.” *In the Matter of Tronox Ltd.*, No. 9377, 2018 WL 2336016, at *3 (May 15, 2018).

The redacted information in paragraphs 29-32 is not privileged or sensitive personal information. Therefore, redaction would be appropriate only if Respondents can demonstrate that it is competitively sensitive.

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B. Respondents bear the burden of demonstrating the redactions are necessary to prevent a clearly defined, serious injury.

The party seeking to treat information as confidential material bears the burden of showing good cause for withholding such information from the public record. *Jerk*, 2015 WL 926508, at *1. Specifically, Respondents must show that “public disclosure will likely result in a clearly defined, serious injury.” *See* 16 C.F.R. § 3.45(b). To carry their burden of showing good cause to maintain the Complaint’s redactions, Respondents must submit an affidavit or declaration “demonstrating that a document is sufficiently secret and sufficiently material to [Respondents’] business that disclosure would result in serious competitive injury.” *See Jerk*, 2015 WL 926508, at *2.

Moreover, there is a presumption against *in camera* treatment for information that is more than three years old. *Id.*; *see also In the Matter of La. Real Estate Appraisers Bd.*, No. 9374, 2021 WL 1223991, at *1-2 (Mar. 29, 2021). To overcome this presumption, Respondents must “demonstrate, by affidavit or declaration, that such material *remains* competitively sensitive.” *Jerk*, 2015 WL 926508, at *2 (emphasis added).

C. None of the redacted information is competitively sensitive.

The redacted information relates to Respondents’ business during [REDACTED] [REDACTED] more than five years ago, making it presumptively *not* competitively sensitive. *See id.* The redacted information relates to ordinary business records and not trade secrets. Thus, even if the redacted information was competitively sensitive during [REDACTED] [REDACTED] or at the time of the March 2020 [REDACTED] referenced in paragraphs 29 and 32, we have already reached the outer range of the period for which ordinary business records are typically protected from disclosure. *See Tronox Ltd.*, 2018 WL 2336016, at *3.

Paragraph 29 describes [REDACTED]

[REDACTED] Paragraphs 30-32 describe a [REDACTED]
[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] paragraphs 29-32 do not plausibly reveal information that may warrant confidential treatment even in the short-term, such as business or marketing plans, sales documents, customer names or prices, costs of doing business, or profits. Therefore, this Court should find that none of the redacted information in paragraphs 29-32 is competitively sensitive, and the redactions should be removed.

D. Disclosure of the redacted information will not cause a clearly defined, serious competitive injury to Respondents.

Given the age and nature of the redacted information, Respondents will face neither a clearly defined nor serious competitive injury if it is made public. Any reputational harm that Respondents may argue would result from the disclosure of the redacted information cannot be distinguished from the harm they may have already incurred from the publication of the redacted Complaint. The redacted Complaint clearly alleges that Respondents make downgrading difficult for consumers, causing many consumers to lose time or overpay. The redacted information reveals [REDACTED]

[REDACTED] Such facts merely lend specificity to more general Complaint allegations and offer context for Respondents' decision to keep downgrading difficult. Although Respondents may contend such allegations cast them in an unfavorable light, this does not support a claim of confidentiality.

Additionally, to the extent Respondents allege that revelation of paragraphs 29 through 32 will cause their competitors to [REDACTED]

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██████████ thereby increasing competitive pressure¹ on Respondents, such an argument fails. If Respondents' competitors do ██████████, they would presumably do so because they are reviewing their own downgrading practices in light of this action, not because Respondents ██████████. Given this obvious and more plausible rationale for competitors to ██████████, Respondents cannot establish a causal link between the removal of redactions to paragraphs 29-32 and any hypothetical future increase in competitive pressure. Because the causal link is necessary to show good cause to maintain the redactions, this Court should order the removal of the redactions.

III. CONCLUSION

Because Respondents cannot show good cause for withholding the redacted information from the public record, and there is a strong public interest in a full and open record, the Court should grant this motion and Complaint Counsel's Unopposed Motion to Remove Certain Redactions from the Public Complaint and place a fully unredacted version of the Complaint on the public record.

Respectfully submitted,

Dated: April 22, 2024

/s/ Simon Barth
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¹ Complaint Counsel do not concede that increasing competitive pressure ██████████ would amount to a competitive injury even if Respondents could establish such pressure would result from the removal of redactions to paragraphs 29-32.

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**Counsel Supporting the Complaint
Federal Trade Commission**

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

In the matter of:

H&R Block Inc.,
a corporation,

HRB Digital LLC,
a limited liability company, and

HRB Tax Group, Inc.,
Respondents.

Docket No. 9427

[Proposed]
ORDER GRANTING COMPLAINT COUNSEL'S UNOPPOSED MOTION TO REMOVE CERTAIN REDACTIONS FROM THE PUBLIC COMPLAINT AND MOTION TO REMOVE REDACTIONS FROM PARAGRAPHS 29-32 OF THE COMPLAINT

On April 2, 2024, Complaint Counsel filed an Unopposed Motion to Remove Certain Redactions from the Public Complaint, which sought to remove redactions from all but select portions of paragraphs 29-32. Complaint Counsel represented that Respondents either consented or did not oppose the removal of those redactions.

On April 22, 2024, Complaint Counsel filed a Motion to Remove Redactions from Paragraphs 29-32 of the Complaint. Because there is a substantial public interest in having open access to the full Complaint and none of the redacted information in the Complaint is competitively sensitive, Complaint Counsel's Unopposed Motion to Remove Certain Redactions from the Public Complaint and their Motion to Remove Certain Redactions from the Public Complaint are **GRANTED**.

SO ORDERED.

Dated:

Jay L. Himes
Administrative Law Judge

Exhibit A

Pursuant to 16 C.F.R. § 3.45(e), the following pages from Complaint Counsel's Motion to Remove Redactions from Paragraphs 29-32 of the Complaint contain redacted information currently protected by the February 26, 2024 Protective Order Governing Confidential Material.

Should the Commission intend to disclose in a final decision any of the redacted information in this document, please contact:

Antonio F. Dias
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600 Brickell Avenue, Suite 3300
Miami, FL 33131
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Exhibit A

Filed Under Seal

Public

Exhibit A

Filed Under Seal

Public

Exhibit A

Filed Under Seal

Exhibit B

Pursuant to the April 5, 2024 Order on Unopposed Motion to Remove Certain Redactions from the Public Complaint, requiring counsel filing motions seeking to remove redactions to “attach to the motion a complete copy of the relevant paper, conspicuously marking redactions to be removed by, for example, highlighting or underscoring[,]” the following is a copy of the nonpublic Complaint. The passages Complaint Counsel seeks to make public are highlighted in yellow.

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Exhibit B

Filed Under Seal

Public

Exhibit B

Filed Under Seal

Public

Exhibit B

Filed Under Seal

Public

Exhibit B

Filed Under Seal

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Exhibit B

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Exhibit B

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CONFERENCE STATEMENT

Counsel for the moving party has conferred with opposing counsel in an effort in good faith to resolve by agreement the issues raised by the motion and has been unable to reach such an agreement.

/s/ Simon Barth
Simon Barth

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CERTIFICATE OF SERVICE

I hereby certify that on April 22, 2024, I filed the foregoing Motion to Remove Redactions from Paragraphs 29-32 of the Complaint electronically using the FTC's E-Filing system, and I caused courtesy copies to be sent via email to:

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*Secretary of the Commission
Clerk of the Court*

Hon. Jay L. Himes
Administrative Law Judge
Federal Trade Commission
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Washington, DC 20580

Administrative Law Judge

I further certify that on April 22, 2024, I caused the foregoing document to be served via email on:

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