



JACKSON WALKER L.L.P.

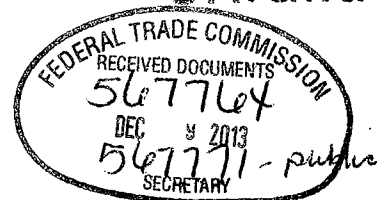


ATTORNEYS & COUNSELORS

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ORIGINAL

December 6, 2013



Via Federal Express

7973 3183 3816

Donald S. Clark
Office of the Secretary
Federal Trade Commission
Room H-113
600 Pennsylvania Avenue, NW
Washington, D.C.

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

Dear Mr. Clark:

Enclosed are the following documents for filing with the Federal Trade Commission in the above-referenced matter:

1. Motion of Non-Party Gambrinus Company for *In Camera* Treatment of Certain Proposed Evidence (*In Camera Version*); and
2. Motion of Non-Party Gambrinus Company for *In Camera* Treatment of Certain Proposed Evidence (*Public Version*).

I have enclosed an original, one copy, and an electronic copy of each. I have also enclosed a self-addressed and stamped envelope so that you can return a file-stamped copy to me. If you have any questions or concerns about this filing, please feel free to contact me at 210-978-7782.

Thank you for your assistance.

Sincerely,

Matthew J. Swantner

December 6, 2013

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MJS:reg
Enclosures

cc: The Honorable D. Michael Chappell
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, NW H-110
Washington, DC 20580
(Via Federal Express 7973 3187 5400)

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Federal Trade Commission
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600 Pennsylvania Ave., NW
Washington, DC 20580
(Via Federal Express 7973 3196 1885)

PUBLIC VERSION

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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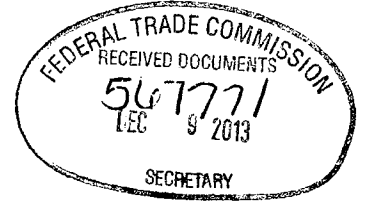
In the Matter of

Ardagh Group S.A.,
a public limited liability company, and

Saint-Gobain Containers, Inc.,
a corporation, and

Compagnie de Saint-Gobain,
a corporation,
Respondents.

DOCKET NO. 9356



MOTION OF NON-PARTY GAMBRINUS COMPANY FOR *IN CAMERA*
TREATMENT OF CERTAIN PROPOSED EVIDENCE

The Gambrinus Company (“Gambrinus”), which is a non-party in the above-captioned matter, respectfully requests this Court to grant *in camera* treatment of several confidential documents and certain confidential testimony designated by the FTC and/or Respondents for introduction into evidence in the administrative trial of this matter and would respectfully show as follows:

I. ARGUMENT & AUTHORITIES

Gambrinus currently operates the Spotezl Brewery in Shiner, Texas, the Bridgeport Brewery in Portland, Oregon, and the Trumer Brauerei in Berkley, California. In response to subpoenas received from the FTC and Respondents, Gambrinus produced 461 pages of commercially sensitive business records related to its brewing and bottling operations. Subsequently, on August 16, 2013, the FTC and Respondents took the deposition of John Horan, who was designated by Gambrinus as a corporate representative to testify about issues related to the above-referenced proceeding. The testimony provided by John Horan and the documents produced by Gambrinus were all designated as confidential pursuant to the Protective Order

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entered in Civil Action No. 13-1021 styled *Federal Trade Commission v. Ardagh Group S.A., et al.*, in the United States District Court for the District of Columbia.

Recently, Gambrinus received notice that the FTC and Respondents intend to use certain confidential documents and testimony in the upcoming administrative trial of this matter. By this Motion, Gambrinus seeks protection of a small number of these confidential documents along with a small portion of this testimony pursuant to 16 CFR §3.45(b), which provides for *in camera* treatment of business information where disclosure “will likely result in clearly defined, serious injury to the person or corporation whose records are involved.” *H.P. Hood and Sons, Inc.*, 58 FTC 1184, 1188 (1961). This showing can be made by establishing the document in question is “sufficiently secret and sufficiently material to the applicant’s business that disclosure would result in serious competitive injury.” *In re Dura Lube Corp.*, 1999 FTC Lexis 255, at *6 (Dec. 23, 1999) (*quoting General Foods Corp.*, 95 FTC 352, 355 (1980)). Under these circumstances “courts generally attempt to protect confidential business information from unnecessary airing.” *H.P. Hood and Sons, Inc.*, 58 FTC at 1188.

The six factors to be weighed in determining whether the documents in question are sufficiently material and secret that disclosure would result in serious competitive injury are:

- (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 applicants to guard the secrecy of the information;
- (4) The value of the information to the applicant and its competitors;

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(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 acquired or duplicated by others.

Dura Lube Corp., 1999 FTC LEXIS 255, at *6-7 (quoting *Bristol Meyers Co.*, 90 FTC 455, 456-57 (1977)). Furthermore, a nonparty requesting *in camera* treatment deserves “special solicitude” for its confidential business information. *In the matter of Kaiser Aluminum and Chemical Corporation*, 103 FTC 500, at *1 (1984) (directing *in camera* treatment for sales statistics over five years old).

A. Gambrinus’ Document Production

For the reasons set forth herein, Gambrinus seeks *in camera* treatment of the following documents attached hereto as Exhibit B which have been identified by the FTC and/or Respondents for use at the administrative trial of this matter:

- Texas Pricing Information at Gambrinus 000005 to Gambrinus 000010;
- Glass Container Supply Agreement at Gambrinus 000352 to 000365;
- “Proposed” Commercial Terms Agreement at Gambrinus 000367 to Gambrinus 000369; and
- Glass Shortage Communications at Gambrinus 000378 and Gambrinus 000415.

Gambrinus has taken substantial measures to guard the highly confidential and commercially sensitive information contained in the documents identified above and attached as Exhibit B in order to prevent serious competitive injury to Gambrinus. (*See Declaration of John Horan at Exhibit A*).

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More specifically, the Texas Pricing Information at Gambrinus 000005 to Gambrinus 000010 details the prices charged to various distributors for Gambrinus' products. Gambrinus purposefully keeps this information confidential given that it competes with other breweries on price. Gambrinus also keeps this information confidential to prevent its competitors from undercutting the prices that Gambrinus charges to its distributors. Accordingly, Gambrinus limits the disclosure of its pricing information to a limited number of Gambrinus employees and the indicated third parties that contract with Gambrinus. Otherwise, this information is unavailable to the public. If the Texas Pricing Information at Gambrinus 000005 to Gambrinus 000010 were disclosed to Gambrinus' competitors and distributors, it could be used to unfairly compete and negotiate against Gambrinus and could cause Gambrinus serious competitive injury. (*See* Declaration of John Horan at Exhibit A).

The highly confidential and commercially sensitive information contained in the Glass Container Supply Agreement at Gambrinus 000352 to Gambrinus 000365 and "Proposed" Commercial Terms Agreement at Gambrinus 000367 to Gambrinus 000369 includes details regarding the purchase and pricing of glass bottles for use in Gambrinus' current and future operations. This information is the result of extensive negotiations between Gambrinus and its glass supplier and is highly confidential and commercially sensitive given that its disclosure would reveal valuable information that Gambrinus' competitors could use in their own negotiations with glass suppliers. It also reveals sensitive information regarding the manner in which Gambrinus structures its contracts with glass suppliers. Gambrinus' negotiation efforts with respect to these documents have allowed it to gain a competitive advantage in the marketplace. This information is not publically available as Gambrinus limits the disclosure of the documents at Gambrinus 000352 to Gambrinus 000365 to a very limited number Gambrinus

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employees and third-parties that Gambrinus contracts with. Additionally, Gambrinus is contractually obligated to maintain the confidentiality of the information contained in both of these documents as indicated in Section 8 of the Glass Container Supply Agreement (*see* Gambrinus 000358 to Gambrinus 000359 at Exhibit B) and Page 3 of the “Proposed” Commercial Terms Agreement (*see* Gambrinus 000369 at Exhibit B). (*See* Declaration of John Horan at Exhibit A).

Also, the highly confidential and commercially sensitive information included in the Glass Shortage Communications at Gambrinus 000378 and Gambrinus 000415 relates to the structure of Gambrinus’ contracts with glass suppliers and includes explicit statements regarding Gambrinus’ long-term strategy for the negotiation of future contracts with glass suppliers. Both of these communications are addressed to specific individuals and were not otherwise disclosed except to senior employees at Gambrinus. The disclosure of the information in the Glass Storage Communications could result in a serious competitive disadvantage to Gambrinus in the marketplace. (*See* Declaration of John Horan at Exhibit A).

B. The John Horan Testimony

Gambrinus also seeks *in camera* treatment of the following testimony included in the documents attached hereto as Exhibit C which has been identified by the FTC and/or Respondents for use at the upcoming administrative trial of this matter (the “John Horan Testimony”):

- John Horan Declaration dated May 17, 2013 at ¶¶ 6-7; and
- John Horan Deposition dated August 16, 2013 at 40:8 to 40:12, 40:20 to 40:22, 74:12 to 74:14, 136:1 to 142:25.

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The John Horan Testimony includes highly confidential and commercially sensitive information regarding the amount of money that Gambrinus spent on glass bottles and aluminum cans in 2012 and information similar to the Glass Shortage Communications identified above. Information regarding the amount of money that Gambrinus spent on aluminum cans and glass bottles is not made public by Gambrinus because it could be used in conjunction with public information regarding Gambrinus' sales volume to calculate the purchase price for individual glass bottles and aluminum cans used in Gambrinus' operations. Gambrinus maintains the confidentiality of this pricing information, including within Gambrinus itself, because it devotes substantial time and effort to the negotiation of these prices in order to be competitive in its marketplace. If disclosed, this information could be used by Gambrinus' competitors for their own advantage in negotiating similar contracts with aluminum can and glass suppliers to the detriment of Gambrinus. (*See Declaration of John Horan at Exhibit A*).

Also, similar to the Glass Shortage Communications discussed above, the testimony in John Horan's deposition at 136:1 to 142:25 relates to the structure of Gambrinus' contracts with glass suppliers and problems that Gambrinus has had with glass suppliers in the past. The information included in this testimony is not known outside of a limited number of Gambrinus' employees and if disclosed could result in a serious competitive disadvantage to Gambrinus in the marketplace. (*See Declaration of John Horan at Exhibit A*).

II. CONCLUSION

The nature of the highly confidential information contained in Exhibits B and C warrants lasting protection. Information contained in these documents, which includes competitively sensitive contracts, pricing information, and business strategy, is vital to Gambrinus' competitive

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position. Accordingly, Gambrinus respectfully requests that Exhibits B and C be afforded *in camera* protection for a period of five years.

Respectfully submitted,

JACKSON WALKER L.L.P.

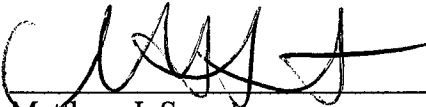
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San Antonio, Texas 78205

(210) 978-7700

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By 
Matthew J. Swantner
Texas Bar No. 24066169

ATTORNEYS FOR THE GAMBRINUS
COMPANY

PUBLIC VERSION

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 6, 2013, the foregoing was served the following in the manner indicated:

VIA FEDERAL EXPRESS

(Original, one copy, and electronic copy)

Donald S. Clark
Office of the Secretary
Federal Trade Commission
Room H-113
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

VIA FEDERAL EXPRESS

(One copy and electronic copy)

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

VIA FEDERAL EXPRESS

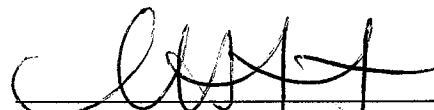
(One copy)

Wayne Dale Collins
Shearman & Sterling LLP
599 Lexington Avenue
New York, NY 10022

VIA FEDERAL EXPRESS

(One Copy)

Edward D. Hassi
Chief Litigation Counsel
Federal Trade Commission
Bureau of Competition
600 Pennsylvania Ave., NW
Washington, DC 20580


Matthew J. Swanner

PUBLIC VERSION

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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,
Respondents.

DOCKET NO. 9356

PROPOSED ORDER

On December 9, 2013, the Gambrinus Company (“Gambrinus”), a non-party, filed its Motion for In Camera Treatment of Certain Proposed Evidence (the “Motion”).

IT IS HEREBY ORDERED that Gambrinus’ Motion is GRANTED. The following information in the documents attached as Exhibit B and Exhibit C to the Motion will be subject to *in camera* treatment under 16 C.F.R. § 3.45 and will be kept confidential for a period of five years: Gambrinus 000005 to Gambrinus 000010; Gambrinus 000352 to 000365; Gambrinus 000367 to Gambrinus 000369; Gambrinus 000378 and Gambrinus 000415; John Horan Declaration dated May 17, 2013 at ¶¶ 6-7; and John Horan Deposition dated August 16, 2013 at 40:8 to 40:12, 40:20 to 40:22, 74:12 to 74:14, 136:1 to 142:25.

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IT IS FURTHER ORDERED that only authorized Federal Trade Commission personnel, and court personnel concerned with judicial review may have access to the above-referenced information.

ORDERED: _____
D. Michael Chappell
Administrative Law Judge

Dated: _____.

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Exhibit A

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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,
Respondents.

DOCKET NO. 9356

**DECLARATION OF JOHN HORAN IN SUPPORT OF MOTION OF NON-PARTY
GAMBRINUS COMPANY FOR *IN CAMERA* TREATMENT OF CERTAIN PROPOSED
EVIDENCE**

I, John Horan, declare and state as follows:

1. I am the Director of Tax and Assistant Treasurer for the Gambrinus Company ("Gambrinus"). My responsibilities include evaluating contracts for the purchase of our packaging materials, such as glass bottles and aluminum cans. Gambrinus was founded in 1986 as the original American importer for Grupo Modelo. Today, Gambrinus operates three breweries in the U.S.: our Spotezl Brewery in Shiner, Texas, the Bridgeport Brewery in Portland, Oregon, and the Trumer Brauerei in Berkley, California. We compete with breweries such as New Belgium, Sam Adams, and Sierra Nevada.

2. Gambrinus has taken substantial measures to guard the highly confidential and commercially sensitive information contained in Exhibits B and C by limiting the dissemination of such information and taking every reasonable step to protect its confidentiality.

3. More specifically, the Texas Pricing Information at Gambrinus 000005 to Gambrinus 000010 details the prices charged to various distributors for Gambrinus' products.

Gambrinus purposefully keeps this information confidential given that its competes with other breweries on price. Gambrinus also keeps this information confidential to prevent its competitors from undercutting the prices that Gambrinus charges to its distributors. Accordingly, Gambrinus limits the disclosure of its pricing information to a limited number of Gambrinus employees and the indicated third parties that contract with Gambrinus. Otherwise, this information is unavailable to the public. If the Texas Pricing Information at Gambrinus 000005 to Gambrinus 000010 were disclosed to Gambrinus' competitors and distributors, it could be used to unfairly compete and negotiate against Gambrinus and could cause Gambrinus serious competitive injury.

4. The highly confidential and commercially sensitive information contained in the Glass Container Supply Agreement at Gambrinus 000352 to Gambrinus 000365 and "Proposed" Commercial Terms Agreement at Gambrinus 000367 to Gambrinus 000369 includes details regarding the purchase and pricing of glass bottles for use in Gambrinus' current and future operations. This information is the result of extensive negotiations between Gambrinus and its glass supplier and is highly confidential and commercially sensitive given that its disclosure would reveal valuable information that Gambrinus' competitors could use in their own negotiations with glass suppliers. It also reveals sensitive information regarding the manner in which Gambrinus structures its contracts with glass suppliers. Gambrinus' negotiation efforts with respect to these documents have allowed it to gain a competitive advantage in the marketplace. This information is not publically available as Gambrinus limits the disclosure of the documents at Gambrinus 000352 to Gambrinus 000365 to a very limited number Gambrinus employees and third-parties that Gambrinus contracts with. Additionally, Gambrinus is contractually obligated to maintain the confidentiality of the information contained in both of

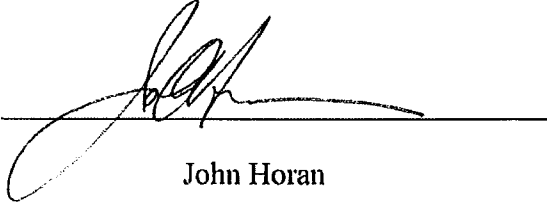
these documents as indicated in Section 8 of the Glass Container Supply Agreement (*see* Gambrinus 000358 to Gambrinus 000359 at Exhibit B) and Page 3 of the "Proposed" Commercial Terms Agreement (*see* Gambrinus 000369 at Exhibit B).

5. Also, the highly confidential and commercially sensitive information included in the Glass Shortage Communications at Gambrinus 000378 and Gambrinus 000415 relates to the structure of Gambrinus' contracts with glass suppliers and includes explicit statements regarding Gambrinus' long-term strategy for the negotiation of future contracts with glass suppliers. Both of these communications are addressed to specific individuals and were not otherwise disclosed except to senior employees at Gambrinus. The disclosure of the information in the Glass Storage Communications could result in a serious competitive disadvantage to Gambrinus in the marketplace.

6. The John Horan Testimony includes highly confidential and commercially sensitive information regarding the amount of money that Gambrinus spent on glass bottles and aluminum cans in 2012 and information similar to the Glass Shortage Communications identified above. Information regarding the amount of money that Gambrinus spent on aluminum cans and glass bottles is not made public by Gambrinus because it could be used in conjunction with public information regarding Gambrinus' sales volume to calculate the purchase price for individual glass bottles and aluminum cans used in Gambrinus' operations. Gambrinus maintains the confidentiality of this pricing information, including within Gambrinus itself, because it devotes substantial time and effort to the negotiation of these prices in order to be competitive in its marketplace. If disclosed, this information could be used by Gambrinus' competitors for their own advantage in negotiating similar contracts with aluminum can and glass suppliers to the detriment of Gambrinus.

7. Also, similar to the Glass Shortage Communications discussed above, the testimony in John Horan's deposition at 136:1 to 142:25 relates to the structure of Gambrinus' contracts with glass suppliers and problems that Gambrinus has had with glass suppliers in the past. The information included in this testimony is not known outside of a limited number of Gambrinus' employees and if disclosed could result in a serious competitive disadvantage to Gambrinus in the marketplace.

I declare under penalty of perjury that the foregoing is true and correct.



John Horan

Signed this 6th day of December 2013.

PUBLIC VERSION

Exhibit B

Gambrinus' Document Production

(REDACTED FROM PUBLIC VERSION)

PUBLIC VERSION

Exhibit C

John Horan Testimony

(REDACTED FROM PUBLIC VERSION)