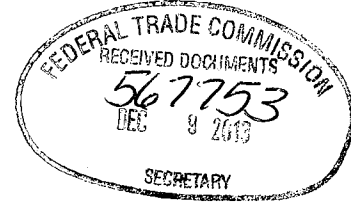


UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES



In the Matter of

ARDAGH GROUP S.A. )  
a public limited liability company, and )  
SAINT-GOBAIN CONTAINERS, INC., )  
a public limited liability company, and )  
COMPAGNIE DE SAINT-GOBAIN, )  
a corporation, )  
Respondents. )

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DOCKET NO. 9356

UNOPPOSED MOTION OF NON-PARTY MOOSEHEAD BREWERIES  
LIMITED FOR IN CAMERA TREATMENT OF PROPOSED EVIDENCE

Moosehead Breweries Limited ("Moosehead"), a non-party to the above styled action, respectfully moves (the "Motion"), pursuant to 16 C.F.R. § 3.45(b), for an order granting *in camera* treatment of certain deposition testimony taken from Andrew G. Oland, President and Chief Executive Officer of Moosehead on August 16, 2013 (the "Oland Deposition") in connection with this adjudicative proceeding by both Complaint counsel and Respondents counsel. Certain excerpts of such deposition testimony have been designated by the parties for introduction in the administrative trial in this matter.

By letter dated November 19, 2013, Complaint Counsel notified Moosehead that it intends to introduce into evidence certain excerpts of the Oland Deposition at the administrative trial. Counsel for Respondent Ardagh Group S.A. has also notified Moosehead by letter dated November 19, 2013 that Respondents intend to introduce into evidence certain excerpts from the transcripts of the Oland Deposition at trial.

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Complaint Counsel and all Respondents Counsel have indicated they will not oppose this Motion.

The Oland Deposition transcript excerpts designated by Complaint Counsel and Respondents for possible introduction contain information whose disclosure will likely result in serious injury to Moosehead and its business. Moreover, other portions of the Oland Deposition that may not have been designated but that could be disclosed also contain information whose disclosure will likely result in serious injury to Moosehead and its business. The Oland Deposition is attached as Exhibit A to the Declaration of Andrew G. Oland in Support of the Unopposed Motion of Non-Party Moosehead Breweries Limited for *In Camera* Treatment of Proposed Evidence (the "Oland Declaration" or "Oland Decl."), which is attached as Exhibit 1 and incorporated herein by reference. The specific excerpts of the Oland Deposition for which Moosehead seeks *in camera* treatment are identified in Exhibit B to the Declaration (collectively, the "Confidential Information"). Moosehead seeks *in camera* treatment of the Confidential Information for a period of five (5) years from the date entry of any order granting this Motion. In addition, Moosehead seeks *in camera* treatment for an indefinite period of that portion of the Confidential Information that Moosehead has additionally identified as trade secrets of Moosehead for which the sensitivity of this information if disclosed would not decrease over time.

The Confidential Information contains competitively sensitive information, confidential business records, and in certain instances trade secrets, including, but not limited to, information related to Moosehead's contract packaging relationships, identification and description of negotiations with suppliers and customers, internal company structure and capacity, pricing information, policies, and strategies, and

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business and/or marketing strategies, and which Moosehead holds in strictest confidence. If publicly disclosed, the Confidential Information would provide Moosehead's competitors with an unfair competitive advantage and would likely result in irreparable harm to Moosehead's efforts to maintain and increase its competitiveness in the marketplace, its contract packaging relationships and Moosehead's efforts to maintain and/or lower its costs of goods sold. Therefore, pursuant to 16 C.F.R. § 3.45(b), Moosehead respectfully moves for in camera treatment of the Confidential Information identified in Exhibit B to the Oland Declaration for a period of five years and, as discussed below, with respect to certain limited excerpts of the Oland Deposition for an indefinite period because such testimony constitutes trade secrets of Moosehead.

### **I. STANDARD FOR *IN CAMERA* TREATMENT**

Information of a non-party produced in an adjudicative proceeding merits *in camera* treatment where public disclosure "will result in a clearly defined, serious injury to the person or corporation whose records are involved." 16 C.F.R. § 3.45(b); *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961). An applicant for *in camera* treatment must show that the information at issue is "sufficiently secret and sufficiently material to [the applicant's] business that disclosure would result in serious competitive injury." *In re Gen. Foods Corp.*, 95 F.T.C. 352, 355 (1980). *See also In re Bristol-Myers Co.*, 90 F.T.C. 455, 456 (1977). The factors typically considered in determining whether this standard has been met include (1) the extent to which the information is known outside of a business; (2) the extent to which it is known by employees and others involved in the business; (3) the extent of measures taken by the business 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 by the business in developing the information; and

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(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. at 456.

A showing of injury may consist of extrinsic evidence or, in certain instances, may be inferred from the nature of the documents themselves. *In re E.I. Dupont de Nemours & Co.*, 97 F.T.C. 116 (1981); *Hood* 58 F.T.C. at 1188. Administrative law judges have broad discretion in applying these factors to determine whether information warrants *in camera* treatment. *See In re Gen. Foods Corp.*, 95 F.T.C. 352. Moreover, the Commission has stated that a request for *in camera* treatment by a non-party company to an FTC proceeding (such as *Moosehead*) should be given “special solicitude.” *In re Crown Cork & Seal Co.*, 71 F.T.C. 1714 (1967) (“[P]etitioner’s plea warrants special solicitude coming as it does from a third party bystander in no way involved in the proceedings whose records, if *in camera* treatment is denied, will be open to the scrutiny of its competitors”); *accord In re Kaiser Aluminum & Chem. Corp.*, 103 F.T.C. 500 (1984) (requests for *in camera* treatment by third parties should be given special solicitude because, as a policy matter, such treatment encourages the third party to cooperate with future adjudicative discovery requests).

The Commission also has recognized that it may be appropriate to provide *in camera* treatment for certain business records and information. *In re Champion Spark Plug Co.*, 1982 FTC LEXIS 85 at \*2 (April 5, 1982); *Hood*, 58 F.T.C. at 1188-89; *In re Kaiser Aluminum*, 103 F.T.C. at 500. Where *in camera* treatment is granted for business information, such as business strategies, marketing plans, pricing policies, sales documents, or contractual relationships, it is typically provided for two to five years. *See, e.g., In re McWaine, Inc.*, 2012 FTC LEXIS 143, at \*4-5, 7-10, 13 (Aug. 17, 2012) (finding documents and deposition testimony comprised of customer data,

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pricing and cost information, business strategies, negotiating strategies, proprietary financial information, sales volumes of certain product items, and financial and sales information should be protected for a period of five years); *In re Union Oil Co. of Cal.*, 2004 FTC LEXIS 223, at \*2 (Nov. 22, 2004); *In re Int'l Ass'n of Conference Interpreters*, 1996 FTC LEXIS 298, at \*13-14 (June 26, 1996); *In re Champion Spark Plug Co.*, 1982 FTC LEXIS 85, at \*4 (Apr. 5, 1982); *In re Champion Spark Plug Co.*, 1982 FTC LEXIS 92, at \*5-6, 9 (Mar. 4, 1982).

In addition, Rule of Practice 3.45(b)(3) permits certain confidential information to be protected for an indefinite period in the unusual case that the need for confidentiality of the material, or portion thereof at issue is not likely to decrease over time. Examples of documents meriting indefinite in camera treatment are trade secrets, such as secret formulas, processes, and other secret technical information, and information that is privileged. *See Hood*, 58 F.T.C. at 1189; *In re R.R. Donnelley & Sons Co.*, 1993 FTC LEXIS 32, at \*3 (Feb. 18, 1993); *In re Textron, Inc.*, 1991 FTC LEXIS 135, at \*1 (Apr. 26, 1991).

## II. PORTIONS OF THE OLAND DEPOSITION MEET THE STANDARD FOR IN CAMERA TREATMENT

Much of the information contained in the Oland Deposition and specifically identified as Confidential Information on Exhibit B to the Oland Declaration is confidential and broad disclosure of this information would cause serious competitive injury to Moosehead, thereby meeting the standard set forth by the Commission for *in camera* treatment. *In re Gen. Foods Corp.*, 95 F.T.C. at 355. As set forth in the Oland Declaration, which is incorporated into this Motion, Moosehead has expended considerable time, effort, and expense in developing and protecting from disclosure the

## PUBLIC

information in the Oland Deposition constituting Confidential Information. (Oland Decl. ¶¶ 2, 3 and 5.) Moosehead is a privately held company and it would be extremely difficult for Moosehead's competitors or customers to obtain the information contained in the Confidential Information. (Oland Decl. ¶¶ 3 and 5.) The Confidential Information would be difficult – if not impossible – for Moosehead's many competitors or other outside persons to access or duplicate. (Oland Decl. ¶ 3.) In addition, the Confidential Information constitutes "Confidential Material" within the definition contained in paragraph 1 of Attachment A to that certain Protective Order Governing Discovery Material dated July 1, 2013 (the "Protective Order") and Complaint Counsel and Respondents Counsel designated the entire transcript of the Oland Deposition as confidential after the deponent's request at the outset of the Oland Deposition. (Oland Decl. ¶ 4.) It is clear that the Confidential Information has been closely guarded, is not disseminated outside of Moosehead, is limited in its internal dissemination, and could not easily be accessed by a competitor given Moosehead is a private company.

Significantly, at the start of the deposition that contains the Confidential Information, and as a condition of Moosehead's CEO and President agreeing to provide testimony about the Confidential Information, Moosehead was assured that none of the testimony would become part of the public record and that the deposition transcript would be marked as confidential. (Oland Decl. ¶4). Moosehead relied on those assurances and that agreement and its President and CEO would not have provided testimony without those assurances of confidentiality.

The disclosure of any portion of the Confidential Information can irreparably harm Moosehead's business, provide its competitors with an unfair advantage over Moosehead and will likely lead to the loss of those business advantages over those

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competitors. "The 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). For example, Moosehead discloses information related to the details of Moosehead's contract packaging relationships, product mix, plant capacities, negotiations with key suppliers and strategic decision making and process related to its facilities and supplier relationships that have taken a great deal of time and expense by Moosehead to develop. (Oland Decl. ¶¶ 5, 6, 7 and 8.) If disclosed, such Confidential Information would allow Moosehead's competitors insights that would irreparably harm Moosehead. (Oland Decl. ¶ 5.) In addition, suppliers could use such information to their unfair advantage in subsequent negotiations, giving those competitors an unfair competitive business advantage over Moosehead. (Oland Decl. ¶ 5.)

Similarly, information regarding Moosehead's product mix and product sale percentages, pricing and pricing risks, and costs of goods in the US market are contained in the Confidential Information. Public disclosure of this information could result in irreparable harm to Moosehead's efforts to retain certain business advantages and maintain and/or lower its costs of goods sold. (Oland Decl. ¶ 7.)

The Confidential Information also identifies and/or reveals business strategies, contract details with its suppliers, and describes confidential negotiations with and approaches to contract negotiations with suppliers. (Oland Decl. ¶¶ 6, 7, and 8.) Public disclosure of this information would provide Moosehead's competitors with valuable insight into Moosehead's costs and business strategy, giving those competitors an unfair competitive advantage over Moosehead and this information also could be used by suppliers in future negotiations with Moosehead. *Id.* Further, Disclosure of this

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information could result in irreparable harm to Moosehead's efforts to maintain, negotiate and/or improve its competitiveness in the marketplace. (Oland Decl. ¶ 5.)

Based upon the above facts, and the support demonstrated by the Oland Declaration, Moosehead has adequately demonstrated the secrecy and materiality set forth in *Bristol-Myers*, 90 F.T.C. at 456-57, and, therefore, should be afforded *in camera* status for the portions of the Oland Deposition identified as Confidential Information in Exhibit B to the Oland Declaration.

### **III. *IN CAMERA* TREATMENT OF THE CONFIDENTIAL INFORMATION SHOULD EXTEND FOR NO LESS THAN A FIVE YEAR PERIOD AND INDEFINITELY FOR CERTAIN CONFIDENTIAL INFORMATION**

Moosehead seeks *in camera* treatment for the Confidential Information portions of the Oland Deposition for a period of five years. As a non-party seeking *in camera* treatment for its confidential business information, Moosehead's request should be treated with special solicitude. *In re Kaiser Aluminum & Chem. Corp.*, 103 F.T.C. at 500 (order directing *in camera* treatment for non-party's sales statistics over five years old). Reasonable periods of *in camera* treatment encourage non-parties to cooperate with future discovery requests in adjudicative proceedings. *Id.* At its own expense and the time and resources of its President and CEO, among others, Moosehead voluntarily cooperated with the discovery request of Respondents in appearing for deposition. The testimony has been made available for use by the parties in accordance with terms of the Protective Order and consistent with the basis upon which Mr. Oland agreed to testify at deposition.

The Confidential Information further identified in paragraph 10 of the Oland Declaration warrants lasting protection because this Confidential Information is "sufficiently secret and sufficiently material to [Moosehead's] business and disclosure



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would result in competitive injury.” *In re Gen. Foods Corp.*, 95 F.T.C. at 355; 16 C.F.R. § 3.45(b); Hood, 58 F.T.C. at 1188 (“courts have generally attempted to protect confidential business information from unnecessary airing”). Indefinite *in camera* treatment is granted under certain unusual circumstances, including where the competitive sensitivity or the proprietary value of the information will not diminish over time. *In re Coca Cola Co.*, 190 F.T.C. LEXIS 364 (Oct. 17, 1990). Trade secrets, secret formulas, processes, and other secret technical information and privileged information are examples of information given such indefinite treatment. *Hoeschst Marion Roussel, Inc.*, 2000 FTC LEXIS 157 (Nov. 22, 2000).

In this instance certain portions of the Confidential Information as identified in paragraph 10 of the Oland Declaration, constitute trade secrets. Specifically, such testimony includes fundamental information about certain supply arrangements that impact the whole of Moosehead’s business and any competitive advantage it may enjoy. In addition, such information also includes identification of certain customers that is not publicly known and whose disclosure could result in irreparable harm to the maintenance of such relationship and later negotiations with such customers. Under numerous state laws in the United States and the Uniform Trades Secrets Act generally, this type of information would constitute trade secrets that would not be revealed and for which the negative impact of disclosure does not diminish with the passage of time.<sup>1</sup>

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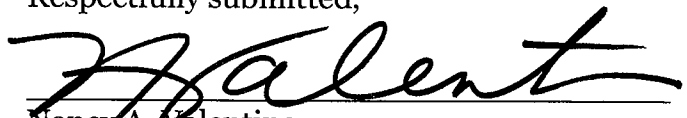
<sup>1</sup> The Uniform Trade Secrets Act (“UTSA”) has been adopted by forty-seven (47) states, the District of Columbia, Puerto Rico and the U.S. Virgin Islands. Under the UTSA, the definition of “trade secret” includes information including a formula, pattern, compilation, program, device method, technique, or process that

(i) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.

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Complaint counsel and all Respondents counsel have indicated they will not oppose this Motion. Disclosing the Confidential Information containing Moosehead's confidential business information will not materially promote the resolution of this matter. Instead, the disclosure will materially harm Moosehead and cause a loss of its business advantages. This Court should protect third parties that agree to permit discovery with the understanding that their confidential information will be preserved and honor the agreements that facilitate that third-party discovery. Therefore, the balance of the public interest with Moosehead's business interests favors *in camera* treatment of the Confidential Information in the Oland Deposition. A proposed Order is attached as Exhibit 2 for the convenience of the Court.

Respectfully submitted,



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And

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(ii) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy." Unif. Trade Secrets Act, §1 (1) (amended 1985). Similarly, Ohio and several other states use a broader definition as follows, in pertinent part, "information, including the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, pattern, compilation, program, device, method, technique, or improvement, **or any business information or plans, financial information**, or listing of names, addresses, or telephone numbers." O.R.C. § 1336.61 (2013) (emphasis added); *see also* 765 ILCS 1065/2 (2013) (including non-technical data, financial data and lists of actual or potential customers or suppliers in definition of trade secrets).

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*Attorneys for Non-Party Moosehead  
Breweries Limited*

**CERTIFICATE OF SERVICE**

I hereby certify that on December 6, 2013, I mailed an original and two copies of the foregoing document along with an electronic copy on CD by FedEx for first A.M. delivery on December 9, 2013 for filing to:

Donald S. Clark, Secretary  
Federal Trade Commission  
600 Pennsylvania Avenue, NW, Room H-113  
Washington, DC 20580

I also certify that a one copy of the foregoing document has been delivered via electronic mail, and by overnight courier (Federal Express) for delivery on December 9, 2013 to:

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

I further certify that a copy of the foregoing document has been delivered via electronic mail to:

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James E. Abell  
Monica Castillo  
Steven A. Dahm  
Joshua Goodman  
Sebastian Lorigo  
Brendan J. McNamara  
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Catharine M. Moscatelli  
Angel Prado  
Kristian Rogers  
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Eric M. Sprague  
Steven L. Wilensky  
Thomas H. Brock  
Michael B. Kades  
Michael A. Franchak  
Amanda Hamilton  
Sean D. Hughto  
Victoria Lippincott  
Meredith Robinson

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Michael Lovinger

U.S. Federal Trade Commission  
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Washington, DC 20580

*Counsel Supporting the Complaint*

I further certify that a copy of the foregoing document has been delivered via electronic mail, and by overnight courier (Federal Express) to the following parties:

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*Counsel for Arkansas Glass Container Corp. (Third-Party)*

December 6, 2013

  
Nancy A. Valentine  
*One of the Attorneys for Moosehead Breweries  
Limited*

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**EXHIBIT 1**





provided this testimony, I am familiar with the information contained within the Confidential Information. Based upon my review of the Confidential Information, my knowledge of Moosehead's business, and my familiarity with the confidential protection afforded to this type of information by Moosehead, it is my belief that the disclosure of the Confidential Information to the public and to Moosehead's competitors would cause serious and irreparable competitive injury to Moosehead.

3. Moosehead has taken substantial measures to guard the Confidential Information by limiting its dissemination and taking every reasonable step to protect its confidentiality. This information is not known outside of Moosehead except to the extent necessary to engage in confidential contract negotiations or other confidential discussions with potential and existing customers, suppliers, and distributors. All of the Moosehead employees with access to this information understand the confidential and competitively-sensitive nature of this information and are not permitted to share it with outsiders, except in the confidential negotiations or discussions noted above. Finally, the information contained in the Confidential Information would be difficult – and in many instances, impossible -- for Moosehead's many competitors or other outside persons to access or duplicate, in part, because Moosehead is a private company.
4. In addition, at the start of my deposition, and as a condition of my agreeing to provide testimony about the Confidential Information, I was assured that none of my testimony would become part of the public record and that the deposition transcript would be marked as confidential. (Ex. A; Dep. at pp. 5-6, ll. 19-25, 1-4;

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- p. 57, l. 10). I relied on those assurances and that agreement and I would not have provided that testimony without those assurances of confidentiality.
5. Moosehead is a private corporation and the information identified in #2 and #3 on Exhibit B is confidential and disclosed only to a limited number of Moosehead employees who have a need to know the information in order to perform their job functions. For example, that testimony reveals, among other things, internal information about Moosehead's facilities and capacity that would not be available anywhere else and could be used by a competitor to the detriment of Moosehead. Public disclosure of this information could result in irreparable harm to Moosehead's efforts to maintain and increase its competitiveness in the marketplace.
  6. The information contained in #1, #4, #6 and #7 reveals details of Moosehead's contract packaging relationships. These relationships have taken a great deal of time and expense to develop. Public disclosure of this information would provide Moosehead's competitors insight into these relationships, giving those competitors an unfair competitive advantage over Moosehead or perhaps provide them with the opportunity to damage or undermine Moosehead's future negotiations. In addition, the parties to those relationships, or other potential packaging contractors could use that information to Moosehead's detriment in their negotiations with Moosehead. Public disclosure of this information could result in irreparable harm to Moosehead's efforts to negotiate, maintain and/or improve its contract packaging relationships.
  7. The information contained in #5 reveals details of Moosehead's packaging mix, pricing and pricing risks, and costs of goods in the U.S. market and public

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disclosure of this information could result in irreparable harm to Moosehead's efforts to retain certain business advantages and maintain and/or lower its costs of goods sold. This business, financial and strategic information would not otherwise be available to competitors and if disclosed, could provide insights or access that those competitors could use against Moosehead.

8. The information contained in #8 identifies and/or reveals contract details of its suppliers, describes negotiations by Moosehead with suppliers, and approaches to contract negotiations by Moosehead with suppliers. Public disclosure of this information would provide Moosehead's competitors with valuable insight into Moosehead's costs and business strategy, giving those competitors an unfair competitive advantage over Moosehead or perhaps provide them with the opportunity to damage or undermine Moosehead's future negotiations with those suppliers. In addition, those suppliers, or other potential suppliers could use that information to Moosehead's detriment in any future negotiations with Moosehead. Public disclosure of this information could result in irreparable harm to Moosehead's efforts to maintain, negotiate and/or improve its competitiveness in the marketplace.
9. The information contained in #9 and #10 deals with industry information, business strategy information, and/or marketing strategy information confidential to Moosehead. Public disclosure of this information could result in harm to Moosehead in its dealings with these issues and cause it to lose business advantages in favor of its competitors. Were a competitor to know this information, such a competitor could gain a significant business advantage at the expense of Moosehead.

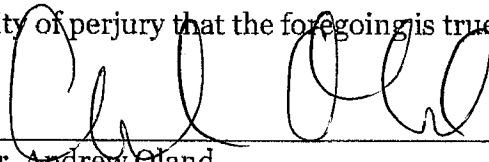
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10. *In camera* treatment of the Confidential Information specifically located in the Oland Deposition at Page 8, line 20 through Page 9, line 3; Page 12, line 16 through line 20; Page 24, line 9 through line 16; Page 18, line 1 through Page 20, line 20; Page 32, line 8 through Page 33, line 8; Page 35, line 24 through Page 36, line 4; Page 36, line 16 through Page 37, line 9; Page 37, line 25 through Page 38, line 8; Page 40, line 2 through line 24; Page 45, line 18 through line 25; Page 48, line 22 through Page 51, line 6; Page 55, line 15 through line 22; and Glossary, Page 4, is particularly important because it is highly sensitive and qualifies as a trade secret that should never be revealed to the public. As for the remaining Confidential Information, *in camera* treatment of that information should be maintained for at least three years to avoid serious injury to Moosehead's overall business and competitive position.

---

[SIGNATURE PAGE FOLLOWS]

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



Mr. Andrew Oland  
President & CEO  
Moosehead Breweries Limited

Signed this 5<sup>th</sup> day of December, 2013.

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**Exhibit "A"**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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FEDERAL TRADE COMMISSION )  
 Plaintiff, )  
 ) Civil Action No.  
 vs. ) 1:13-cv-01021-RMC  
 )  
 ARDAGH GROUP S.A. and )  
 COMPAGNIE DE SAINT-GOBAIN and )  
 SAINT-GOBAIN CONTAINERS, INC., )  
 Defendants. )

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-- CONFIDENTIAL --

DEPOSITION of ANDREW OLAND, President and  
CEO of Moosehead Breweries Limited, held at  
the premises of Moosehead Breweries Limited,  
89 Main Street in the City of Saint John,  
County of St. John, Province of New  
Brunswick, Canada, the Sixteenth day of  
August AD 2013, before court reporter Kathryn  
Burke.

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APPEARANCES

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U.S. Federal Trade Commission, 600 Pennsylvania Avenue,  
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Counsel for the Plaintiff

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Attorneys at Law, Worldwide Plaza, 825 Eighth Avenue  
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Telephone: (212) 474-1521  
Facsimile: (212) 474-3700  
Counsel for the Defendants Compagnie de Saint-Gobain and  
Saint-Gobain Containers

(8:46 a.m.)

ON THIS Sixteenth day of August in the Year of Our  
Lord Two Thousand Thirteen Did Personally Come and Appear  
ANDREW OLAND, Who, having been duly sworn, doth depose  
and say as follows:

EXAMINATION-IN-CHIEF BY MS. VISWANATHA:

Q. Good morning, Mr. Oland. My name is Veena  
Viswanatha. I'm with the law firm Cravath, Swaine & Moore and I  
represent Compagnie de Saint-Gobain and Saint-Gobain Containers  
in this matter. Can you please state your full name for the  
record?

A. Andrew Gwylm Oland, G-W-I-L-Y-M.

Q. Mr. Oland, have you ever been deposed before?

A. I do not believe so.

MS. ROBINSON: And, Veena, I don't want to interrupt,  
but just for the record, I'll introduce myself, too. I'm  
Meredith Robinson, representing the U.S. Federal Trade  
Commission.

MS. VISWANATHA:

Q. Okay, Mr. Oland, I'll be asking you a series of  
questions. If you don't understand a question, please say so  
and I will try to clarify it; and if you don't say otherwise, I  
will assume you understood my question. When you respond to a  
question, please use words rather than gestures so the court

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EXHIBITS

PX2412 E-mail from Bob Shanteau, Verallia, to Andrew Oland, Moosehead Breweries, dated June 3, 2013, enclosing proposed draft letter.	43
PX4227 Letter from Andrew Oland, Moosehead Breweries, to The Honorable Edith Ramirez, Federal Trade Commission, dated June 11, 2013.	44

reporter can --

A. Sure.

Q. -- transcribe your response. And if at any time  
you would like to take a break, just let me know. As Ms.  
Robinson said, she represents the Federal Trade Commission in  
this proceeding. She may at times have objections to my  
questions, but you should still answer the question. Does that  
all make sense?

A. I'm not sure about the last point. Can you  
elaborate?

Q. Sure. So Ms. Robinson may raise objections to my  
questions and that is just to preserve the objection for  
determining whether this evidence is admissible in a court  
proceeding.

A. Okay.

Q. But you should still answer --

A. Sure.

Q. -- regardless of her objection.

A. May I ask a question?

Q. Of course.

A. Can someone explain to me the parameters around  
confidential information of Moosehead Breweries and what -- what  
information would become, or potentially become, part of the  
public record?

Q. So we ask that the transcript from this



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<p>1 proceeding be marked confidential, and so none of this, none of  2 the testimony you will give today will become part of the public  3 record.  4 A. Okay. Thank you.  5 Q. Mr. Oland, who is your current employer?  6 A. Moosehead Breweries Limited.  7 Q. And may I use the term "Moosehead" to refer to --  8 A. Yes.  9 Q. -- Moosehead Breweries Limited? How long have  10 you worked at Moosehead?  11 A. Since 1993.  12 Q. And what is your current title?  13 A. President and CEO.  14 Q. How long have you been president and CEO?  15 A. I've been president for a little over five years  16 and assumed the CEO title in the last year.  17 Q. What are your responsibilities as president and  18 CEO?  19 A. I have overall responsibility for all of  20 Moosehead Breweries Limited and its subsidiary companies.  21 Q. Are you involved in decisions regarding how  22 Moosehead's beer should be packaged, whether it be in cans or  23 kegs or bottles?  24 A. Yes, I would play a role in that decision.  25 Q. Are you involved in decisions regarding which</p>	<p>brew beer for other companies, but do not sell it. And a third  component of our business is we import or sell -- and sell, but  do not brew, beers from other countries.  In terms of the beers that Moosehead produces and  sells itself, what we call our organic portfolio, we have an  extensive lineup of beers under the Moosehead portfolio or brand  name, including Moosehead Lager, Moosehead Light, Moosehead Dry  Ice, Moosehead Pale Ale. We also have brands under the Alpine  portfolio, including Alpine, Alpine Light, Alpine 6.0. Under  the James Ready portfolio: James Ready, James Ready 5.5, James  Ready Ale, James Ready Light.  We have other brands, including a brand called Cracked  Canoe, Boundary Ale, Clancy's Amber Ale. We have a craft  brewery operation which -- under the brand name or the brewery  name of the Hop City Brewing Company, and the brand names  include Barking Squirrel Lager, 8th Sin -- 8 as in the number --  8th Sin Black Lager, Mr. Huff Pilsner, Big Mouth Pale Ale and  Lawn Chair Classic Weisse. That's W-E-I-S-S-E, weisse; it's a  weisse beer.  {  }  }</p>
7	9
<p>1 packaging suppliers to use?  2 A. Yes, I would play a role in those decisions.  3 Q. What positions have you held at Moosehead before  4 becoming president and CEO?  5 A. Would you like my complete career bio?  6 Q. You can just list the titles that you've held.  7 A. Sure, okay. So I started my career as a foreman  8 in our bottle shop; I also spent time in brewing; then after  9 going back to school and completing an MBA, I assumed a series  10 of positions in both the sales and marketing side of our  11 business; and then prior to becoming president, I was -- the  12 title was President of Moosehead Quebec, so I was responsible  13 for our operations in the province of Quebec.  14 Q. And that was the position you held before  15 becoming --  16 A. Yes.  17 Q. -- president and CEO.  18 Q. Yeah.  19 Q. What does Moosehead do?  20 A. Moosehead brews and packages and distributes  21 beer. Moosehead brews and sells beer.  22 Q. What beer does Moosehead brew and sell?  23 A. We have an extensive portfolio of what we call  24 our organic beers, so those are beers which we produce and sell.  25 As well, we -- which I'll go into in a second -- as well, we</p>	<p>{  }  }  Q. So, with regards to the three categories you've  identified -- the organic beers, the beers that you brew but  don't sell, and the beers that you import and sell -- for which  of those categories does Moosehead participate in decisions of  what packaging to put the beer in?  A. That would be the organic as well as the  contract.  Q. With regards to the contract beer, do you package  that beer in bottles or in cans or in kegs?  A. That beer is currently packaged in kegs and in  bottles, and, in the past, we have done a small amount in cans,  but it's predominantly bottles and kegs.  {  }  }  Q. And how do you play a role -- how does Moosehead  play a role in determining whether to package that beer in kegs</p>

10	12
<p>1 or bottles or cans?</p> <p>2 A. For our contract partners?</p> <p>3 Q. Yes.</p> <p>4 A. We do not. We are simply the -- we are the</p> <p>5 supplier and we make what they ask us to make.</p> <p>6 Q. So, is it fair to say that Moosehead only is</p> <p>7 involved in decisions about what packaging to use for the beer</p> <p>8 with regards to the organic beers, the beers that --</p> <p>9 A. I think that's --</p> <p>10 Q. -- Moosehead brews itself?</p> <p>11 A. Yes, that's a fair assumption. Yes.</p> <p>12 Q. Where is Moosehead located?</p> <p>13 A. Saint John, New Brunswick, Canada.</p> <p>14 Q. Does Moosehead sell its beer in Canada?</p> <p>15 A. Yes.</p> <p>16 Q. Does it also export its beer to the United</p> <p>17 States?</p> <p>18 A. Yes.</p> <p>19 Q. Which beers does it export to the United States?</p> <p>20 A. Moosehead Lager, Moosehead Light, Moosehead Light</p> <p>21 Lime and Barking Squirrel Lager.</p> <p>22 Q. And where in the United States do you export</p> <p>23 those beers to?</p> <p>24 A. Our organic portfolio goes to all 50 U.S. states.</p> <p>25 Q. Have you heard the term "craft brewer"?</p>	<p>shape, weight, as the industry standard bottle -- we use both</p> <p>the 355 and the 473 ml can, and then we use 20 litre and 50</p> <p>litre kegs.</p> <p>Q. Is each of your beers packaged in each of those</p> <p>containers that you identified?</p> <p>A. Not necessarily, no.</p> <p>Q. Are each of the beers packaged in bottles?</p> <p>A. Yes, all of our beers would be packaged in</p> <p>bottles.</p> <p>Q. Are each of those beers packaged in cans?</p> <p>A. I'm sorry, I need to take a step back. There are</p> <p>three of our -- of our Hop City craft beers which are only</p> <p>packaged in kegs; the rest are packaged in bottles and the rest</p> <p>would all be packaged in either -- in one or both formats of</p> <p>cans, the 355 or 473.</p> <p>{</p> <p>Q. When did Moosehead start packaging its beer in</p> <p>cans? If you know.</p> <p>A. I don't know the year. It would have been sort</p> <p>of many years ago -- 60 or 70 years ago.</p> <p>Q. You mentioned a brand called Cracked Canoe. Is</p> <p>}</p>
11	13
<p>1 A. Yes.</p> <p>2 Q. What do you understand "craft brewer" to mean?</p> <p>3 A. Just give me a second here. Craft brewers are</p> <p>4 brewers who brew a variety of styles of beer with a taste</p> <p>5 profile which is stronger than mainstream brewers' -- than</p> <p>6 mainstream beers.</p> <p>7 Q. Would you consider Moosehead to be a craft</p> <p>8 brewer?</p> <p>9 A. No. No, we have elements of -- no. No, I would</p> <p>10 not.</p> <p>11 Q. Would you consider any of the beers that</p> <p>12 Moosehead brews to be craft beers?</p> <p>13 A. Definitely.</p> <p>14 Q. What beers would you consider to be?</p> <p>15 A. Barking -- the entire Hop City portfolio -- do</p> <p>16 you want me to list those again?</p> <p>17 Q. No.</p> <p>18 A. The entire Hop City portfolio, as well as</p> <p>19 Boundary Ale.</p> <p>20 Q. What packaging does Moosehead use for the beers</p> <p>21 it sells both in Canada and the U.S.?</p> <p>22 A. We use, in Canada, the 341 ml industry standard</p> <p>23 bottle -- we use the brown version, which is the industry</p> <p>24 standard bottle; as well, we have a green version which is</p> <p>25 exclusive to Moosehead but has the same characteristics, size,</p>	<p>that brand more expensive than other Moosehead brands?</p> <p>A. Yes, it is.</p> <p>Q. Is it more of a premium beer than some of the</p> <p>other Moosehead brands?</p> <p>A. Yes. Would you like me to go through our</p> <p>portfolio from the premium perspective, sort of from a pricing</p> <p>perspective? Would that be helpful or not?</p> <p>Q. Let's stick with Cracked Canoe.</p> <p>A. Sure, okay. So Cracked Canoe is -- so, if Alpine</p> <p>or Moose Lager [sic] were priced at what we call the mainstream</p> <p>pricing, Moosehead Lager would be higher than that, and slightly</p> <p>higher than Moosehead Lager would be Cracked Canoe.</p> <p>Q. And is Cracked Canoe packaged in cans?</p> <p>A. Yes, and bottles.</p> <p>Q. Do you consider Cracked Canoe to have a kind of</p> <p>premium image?</p> <p>A. Yes.</p> <p>Q. And that image of Cracked Canoe doesn't change</p> <p>whether you package it in a bottle or in a can?</p> <p>MS. ROBINSON: Objection to form.</p> <p>THE WITNESS: No, the bottle would -- would -- would</p> <p>have a higher image, because the bottle of Cracked Canoe is</p> <p>packaged -- it's a green bottle.</p> <p>MS. VISWANATHA:</p> <p>Q. And in your understanding, do your consumers view</p>

1 Cracked Canoe differently if it's packaged in a bottle or if  
 2 it's packaged in a can?  
 3 MS. ROBINSON: Objection to form.  
 4 THE WITNESS: I would say they view it the same.  
 5 MS. VISWANATHA:  
 6 Q. Is it fair to say that Cracked Canoe still has a  
 7 premium image when it is packaged in a can?  
 8 A. Yes.  
 9 Q. In your understanding, does Moosehead beer taste  
 10 the same whether it's in a bottle or in a can?  
 11 A. Yes, it does.

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	Q. Is it the beer brewers that are promoting cans, in your understanding?
	A. The brewers, but also retailers, ultimately led by the consumers. Cans have a much stronger penetration level in the United States than they do in Canada, and Canadian
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{	consumers are attracted to things which are American. Cans have a number of product benefits to glass in that they are lighter and they're more appropriate in a number of outdoor recreational-type environments, such as boating or golf or something along those lines. They also take up less space in the fridge,
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<p>1 {</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8 MS. VISWANATHA:</p> <p>9 Q. Is it part of your role to understand and analyze</p> <p>10 your customers' buying habits with respect to Moosehead beer?</p> <p>11 A. I would play an oversight in that and would</p> <p>12 certainly be aware of the information or the research results,</p> <p>13 but it's not part of my role to organize or participate in the</p> <p>14 research.</p> <p>15 Q. In your understanding, what is the quality of</p> <p>16 Moosehead's beers?</p> <p>17 A. Exceptional quality.</p> <p>18 Q. And does Moosehead attract customers through that</p> <p>19 exceptional quality?</p> <p>20 A. Yes, it does.</p> <p>21 Q. Does Moosehead also attract customers by pricing</p> <p>22 its beers competitively?</p> <p>23 A. Of course.</p> <p>24 MS. ROBINSON: Objection to form.</p> <p>25 THE WITNESS: Yes, of course.</p>	<p>22</p> <p>24</p> <p>MillerCoors in the United States, all the craft breweries, but</p> <p>we also compete against the wine and spirits industry, and you</p> <p>could make an argument that we compete against coffee shops and</p> <p>other places that individuals gather to have social events,</p> <p>social interactions.</p> <p>But in terms of the beer business, in Canada our</p> <p>principal competitors would be Anheuser-Busch InBev/Labatt,</p> <p>Canadian division, Molson Coors, Sleeman, and then the rest of</p> <p>{</p> <p>Q. You mentioned that Moosehead competes against</p> <p>Labatt in Canada. Is Labatt the name of the brand or the --</p> <p>A. It's Labatt Breweries of Canada, which is a</p> <p>division of Anheuser-Busch InBev. Anheuser-Busch InBev, that's</p> <p>the largest brewer in the world. Labatt Blue and Labatt Lite</p> <p>would be their brands, some of their brands, but relatively</p> <p>small. Their biggest brands would be Budweiser and Bud Light.</p> <p>Q. When a store has a Moosehead beer in a can and,</p> <p>for example, a Labatt beer in a bottle, does the Moosehead in a</p>
<p>23</p> <p>1 MS. VISWANATHA:</p> <p>2 Q. When making a decision as to whether to buy</p> <p>3 Moosehead beer as opposed to another kind of beer, in your</p> <p>4 understanding, do your customers look to the quality and the</p> <p>5 price of the beer?</p> <p>6 MS. ROBINSON: Objection to form and foundation.</p> <p>7 THE WITNESS: Yes.</p> <p>8 MS. VISWANATHA:</p> <p>9 Q. Would you say that your customers care more about</p> <p>10 the quality and the price of the beer than they do the type of</p> <p>11 container it's sold in?</p> <p>12 MS. ROBINSON: Objection to form and foundation.</p> <p>13 THE WITNESS: It depends on the -- it depends on the</p> <p>14 buying circumstances.</p> <p>15 MS. VISWANATHA:</p> <p>16 Q. In general, would you say that your customers</p> <p>17 care more about the quality of the beer than the type of</p> <p>18 container it's sold in?</p> <p>19 MS. ROBINSON: Objection to form and foundation.</p> <p>20 THE WITNESS: Yes, I would, yes.</p> <p>21 MS. VISWANATHA:</p> <p>22 Q. Who are Moosehead's main competitors?</p> <p>23 A. Well, anyone who is -- we compete for share of</p> <p>24 stomachs, so it's not just everyone who's selling beer, whether</p> <p>25 it's Anheuser-Busch InBev, or Molson Coors in Canada, Miller --</p>	<p>25</p> <p>can compete against the Labatt that's in a bottle?</p> <p>A. Definitely.</p> <p>Q. Is Labatt offered in cans?</p> <p>A. Yes.</p> <p>Q. When a store has Labatt in a can and Moosehead in</p> <p>a bottle, is it fair to say that the Labatt in a can competes</p> <p>against the Moosehead in a bottle?</p> <p>A. Yes, it is.</p> <p>Q. Is it fair to say that, as a general matter, your</p> <p>beer -- Moosehead's beer in cans and Labatt's beer in bottles</p> <p>compete against one another regardless of the venue in which the</p> <p>beer is consumed; for instance --</p> <p>A. Oh, yes.</p> <p>Q. -- if your customer is --</p> <p>MS. ROBINSON: Objection.</p> <p>THE WITNESS: Yes.</p> <p>MS. VISWANATHA:</p> <p>Q. -- if your customer is buying a beer to --</p> <p>A. Yes.</p> <p>Q. -- to take home for dinner?</p> <p>MS. ROBINSON: Object to the form.</p> <p>THE WITNESS: Yeah.</p> <p>MS. VISWANATHA:</p> <p>Q. Are you aware that Ardagh Group has entered into</p> <p>an agreement to purchase Saint-Gobain Containers, otherwise</p>

<p>1 known as Verallia North America, which is what we've been 2 referring to it as? 3 A. Yes. 4 Q. Do you anticipate that Moosehead might experience 5 any benefits as a result of the sale if it goes through? 6 A. Yes, I do. 7 Q. What benefits are those? 8 MS. ROBINSON: Objection to the form and foundation. 9 THE WITNESS: I think there are -- hopefully, it will 10 be an opportunity for Verallia to continue to make capital 11 investment decisions which will lead to higher quality and also 12 a lower cost for its customers. Verallia, my understanding, 13 their largest customer is Anheuser-Busch InBev, who are now the 14 world's largest brewer, and they need to somehow become part of 15 a -- Verallia North America needs to become part of a global 16 operation if they are going to continue to meet the needs of 17 Anheuser-Busch InBev. 18 MS. VISWANATHA: 19 Q. In your understanding, is it important for 20 Moosehead to have well-capitalized, strong glass suppliers? 21 MS. ROBINSON: Objection to form. 22 THE WITNESS: Very much so. The challenge -- I'm not 23 sure if you've been in a glass-making facility, but it's similar 24 to the bottling lines that we run; the only difference is you 25 have a furnace at the front end of the process which you can't</p>	<p>26 28 verbal or not. Q. Do you know the substance of the interaction between Patrick and -- A. No, I do not. Q. -- the FTC? Do you know if the FTC asked you to provide a declaration, asked Moosehead to provide a declaration? A. I believe they did. I'm sorry, I'm not sure what you mean by a "declaration". Q. To provide a written affidavit regarding the transaction. A. I wrote a letter. I'm sorry, I don't know what my brother provided to the FTC, if he provided anything to the FTC. MS. VISWANATHA: I have no further questions at this time, but I may have questions after counsel for FTC. MS. ROBINSON: I might have questions. Can we take a 10- or 15-minute break off the record? --- Recess taken 9:48 a.m. --- Upon resuming at 9:55 a.m.:  CROSS-EXAMINATION BY MS. ROBINSON: Q. Good morning, Mr. Oland. A. Good morning. Q. How does Moosehead get its brands to market? A. That would depend on the jurisdiction where those</p>
<p>27 1 turn off, so you have to keep running this operation, so you 2 have to have customers and product to sell. Our biggest quality 3 risk would be some type of glass defect, and the stronger, the 4 better capitalized our glass suppliers are, we believe, the 5 likelihood of a significant glass defect is reduced. 6 Q. Is it fair to say that it's more important for 7 Moosehead to have well-capitalized, strong glass suppliers than 8 it is to have a number of suppliers each of whom are less well 9 capitalized? 10 MS. ROBINSON: Object to form and foundation. 11 THE WITNESS: Yes, definitely. We have to have 12 suppliers that we have complete trust in, particularly for 13 something which is so important to the overall quality and 14 safety of our product, such as glass. 15 MS. VISWANATHA: 16 Q. Prior to today, have you spoken to anyone at the 17 Federal Trade Commission about the proposed sale of Verallia 18 North America to Ardagh Group? 19 A. I don't believe so, no. 20 Q. To your knowledge, has anyone at Moosehead spoken 21 to anyone at the Federal Trade Commission about this proposed 22 sale? 23 A. I believe there was an interaction between my 24 brother Patrick, who is our chief financial officer, and the 25 Federal Trade Commission. I don't know if that interaction was</p>	<p>29 brands are being sold. Each province in Canada is slightly different, but generally, if I was to generalize, in Canada we deal with a provincial liquor board and they would be the retailer and, in some cases, also handle the distribution; in other cases, we would handle the distribution. In the United States there is a three-tier distribution system, so we sell our beer -- we're mandated to sell our beer to a distributor, who then sells it to bars, restaurants and retailers within the geographic area of their distribution rights. And our international beer we sell to importing agencies or entities in those specific countries. Q. Going forward, most of my questions are going to relate to what I believe you referred to as the Moosehead organic brands. A. Sure. Q. If I'm referring to something else, I'll let you know. A. Certainly. Q. Focusing on the U.S. three-tier system, does Moosehead use multiple distributors? A. Yes, we have approximately 400 individual distributors, each of which has a geographic exclusivity for the Moosehead portfolio. Q. Does Moosehead have contract -- does Moosehead have contracts with all these distributors?</p>

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1 A. We would have contracts with them, but in the  
 2 United States there are very stringent state laws which protect  
 3 the rights of the distributing companies, so they would not be  
 4 conventional contracts that you might have in other business  
 5 relationships or other products because of the strength of the  
 6 state laws. In almost all cases, it is next to impossible for  
 7 us to remove our beers from a distributor regardless of how they  
 8 are performing.  
 9 Q. How do you set prices to distributors?  
 10 A. We base our selling price on trying to achieve  
 11 key price points in the market, so we know what the distributor  
 12 markup is and then we know the price point we're trying to hit,  
 13 as well as, obviously, achieve an acceptable level of  
 14 profitability.  
 15 Q. And does Moosehead have any control over the  
 16 prices the distributors sell the product to retailers?  
 17 A. No.  
 18 Q. Are there times when you give distributors  
 19 discounts?  
 20 A. Yes. We would share promotional activity. Yes.  
 21 Q. What do you mean by "share promotional activity"?  
 22 A. So, if we're in a situation where we have jointly  
 23 agreed to reduce -- we call it a limited-time price offer --  
 24 then that reduction would be shared by some type of relationship  
 25 with the distributor.

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1 Q. And in those situations, does the distributor  
 2 then give a discount to the retailer?  
 3 A. Yes.  
 4 Q. How often do these promotional activities take  
 5 place?  
 6 A. Anywhere from three to six times a year. They  
 7 tend to be month-long promotions.  
 8 Q. Do you enter into a contract with the distributor  
 9 or retailer regarding these promotions?  
 10 A. Can you define "contract"?  
 11 Q. Sure. Is there a formal agreement?  
 12 A. No.  
 13 Q. So, is the distributor obligated to pass on the  
 14 discount to the retailer?  
 15 A. No.  
 16 Q. And if a retailer does receive a discount from  
 17 the distributor, is the retailer obligated to pass that on?  
 18 A. They're not, no.  
 19 Q. Is it fair to say that Moosehead doesn't have any  
 20 control over the prices that retailers sell Moosehead brands at?  
 21 A. Definitely.  
 22 Q. And can you take me through the process? The  
 23 distributor has placed orders with Moosehead and then Moosehead  
 24 fills whatever the orders are?  
 25 A. Correct.

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Q. In an order, would a distributor specify how many  
 bottles versus cans they want?  
 A. Definitely.  
 Q. Does Moosehead have the ability to say, No,  
 actually, I'm going to sell you more cans than you requested?  
 A. No. Well, we have the ability to say that, we  
 don't have the ability to . . . No, we do not.  
 Q. Okay. I believe you testified earlier that  
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Q. Are the industry standard bottles the only types  
 of bottles sold in the beer marketplace in Canada?  
 A. No, they are not. So the industry standard

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1 bottle is an agreement between the top four brewers in Canada --  
 2 so Labatt, Molson, Sleeman and Moosehead -- as well as a number  
 3 of other signatories, and those signatories have agreed that any  
 4 bottle production in Canada below 500 millilitre or 600  
 5 millilitre -- I don't know the exact number -- will be in the  
 6 brown industry standard bottle.  
 7 And there are two exceptions to that rule: Moosehead  
 8 has the right to produce Moosehead-branded beers in a green  
 9 version of the industry standard bottle; and Sleeman has the  
 10 right to produce Sleeman-branded beers in a -- they have a clear  
 11 bottle that they use, which again is a refillable bottle.  
 12 Q. That kind of dovetails into my next question.  
 13 Explain exactly what an industry standard bottle is.  
 14 A. An industry standard bottle is a bottle which is  
 15 cleaned and then refilled multiple times as opposed to one-way  
 16 glass, which is discarded after use and is crushed and then  
 17 would be presumably used as cullet to make more bottles, whereas  
 18 the industry standard bottle is a refillable bottle and, on  
 19 average, is used between 12 and 20 times before it is discarded.  
 20 Q. How does that work? Do consumers actually return  
 21 the bottles?  
 22 A. They do, yes. In Canada, which is -- it's -- if  
 23 you think from an environmental perspective, there are very few  
 24 products that you actually re -- the container's refilled. So,  
 25 in Canada, consumers, when they've finished their beer, they put

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Q. For the bottles that you use to sell into the  
 U.S., is it the standard long neck non-returnable?  
 A. Yes, they are one-way glass.  
 Q. And do you use all 12 ounce bottles for the sales  
 in the U.S.?  
 A. We also use some 22 ounce bottles. Sorry. For  
 organic?  
 Q. Yes, sorry, this is organic.  
 A. For organic, we only use a 12 ounce bottle.  
 Q. Okay. Are cans cheaper than the bottles that are  
 -- you use to sell into the U.S.?  
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1 it in -- usually in the case in the garage or in the basement,  
 2 and then a couple of times a year they go to a redemption centre  
 3 and they receive money for those bottles. That's part of  
 4 Canadian culture.  
 5 Q. It's very disciplined. Impressive.  
 6 A. Yeah, it is, yeah.  
 7 Q. And how do those bottles compare to standard  
 8 bottles you see in the United States?  
 9 A. They're essentially the same. There would be two  
 10 big differences. The first is they are a slightly heavier  
 11 bottle, so they use a little bit more glass because of the  
 12 multiple uses. The second difference would be, once the bottle  
 13 has been used multiple times, it does develop small rings around  
 14 the outside of the bottle where the bottles have rubbed against  
 15 each other during the packaging process, so it's quite  
 16 straightforward to notice, from a consumer perspective, an  
 17 industry standard bottle that is brand new versus multiple uses.  
 18 Q. How does the price of an industry standard bottle  
 19 compare to the price of the standard long neck non-returnable  
 20 bottles used in the United States?  
 21 A. It would be higher just because of the increased  
 22 weight, as well as the fact that there's only one producer in  
 23 Canada that's certified to make the industry standard bottle.  
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MS. ROBINSON:  
 Q. Why do you have to promote more with cans?  
 A. Because of the -- because the -- that's the  
 demands of the market.  
 Q. What do you mean by "demands of the market"?  
 A. It would be demands of both retailers and,  
 ultimately, consumers; they're expecting a lower price per unit  
 on cans.  
 Q. Do you have an understanding as to why that is?  
 A. I think, for imported beers such as Moosehead,  
 cans that are sold in the United States are sold more in summer  
 and more associated with sort of -- we'll call it recreation,  
 seasonal activities. But I think the biggest answer is just  
 there's an expectation from U.S. retailers that imported cans  
 are going to be cheaper on a per-unit basis than bottles.  
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A. Next to nothing.

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Q. All right. When was the first time you spoke

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A. Resistance from the market.

Q. By "resistance from the market," what do you mean by that?

A. A lack of promotional activity opportunities at retail, which could include superior shelf space, display activity, opportunity to run promotions.

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Q. Are you aware that Ardagh is a European company?

A. Yes.

Q. Has Moosehead ever purchased any products from Ardagh?

A. Not that I'm aware of.

Q. Do you have any personal knowledge of Ardagh's business operations?

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with anyone from Ardagh or Saint-Gobain about the proposed merger?

MS. VISWANATHA: Objection to form and foundation.

THE WITNESS: I do not know the date, but it would have been within three -- 24 to 48 hours of the proposed merger being announced. I was called by my principal contact with Verallia.

MS. ROBINSON:

Q. Who is your principal contact with Verallia?

A. I'm having a mind blank. Sorry. Can I get -- can I go check in my office or can I --

Q. At the next break, if you want to --

A. Yeah, yeah, I will --

Q. -- check, that's fine. That's --

A. Okay, I just -- yeah.

Q. But someone from Verallia did contact you.

A. Yes. Yes.

Q. Do you remember what the person from Verallia said during that first conversation?

A. Yes. They said that this was good for Verallia's North American operation and it would allow Verallia to grow stronger, and they assured me that the Milford, Massachusetts, facility was part of this new entity's future.

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Q. Is it Bob Shanteau?

A. Yes, Bob Shanteau. Thank you. Don't tell him I said that.

Q. Don't worry, I won't. Have you ever talked to any attorneys representing Saint-Gobain about this merger?

A. Yes.

Q. And who did you speak to?

A. Pierre Ges -- Ges . . . I'll check my notes.

Q. That's okay. Was Pierre with the law firm of Cravath?

A. Yes.

Q. What did you discuss with Pierre?

A. Whether I would be interested in going through this deposition or not.

Q. Clearly, you were very interested.

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e-mailed to me and asked me to review, put on corporate letterhead and then mail accordingly.  
(Discussion held off the record.)  
(Exhibit No. PX4227 marked.)

Q. You've been handed what has been marked as PX4227. Take a moment to review that and let me know when you're done.

A. Okay.

Q. What is this document?

A. This is a letter that I sent to the chairwoman of the Federal Trade Commission on June 11th, 2013, signed by myself.

Q. All right. And if you could also keep PX2412, the draft letter that Mr. Shanteau sent you or provided you.

A. Yes.

Q. Comparing the body of these two letters, do you see that in the draft Mr. Shanteau sent that twice the term "customer name" appears in brackets?

A. Yes.

Q. And do you see that in the letter you sent to the FTC that "customer name" has been replaced with "Moosehead Breweries Limited"?

A. Yes.

Q. Other than that one difference, is the body of these two letters identical?

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A. Well, I'm not sure I would use the words "very interested".

Q. Did you discuss anything else with Pierre?

A. Yes. Pierre asked me why I was in support of the Ardagh-Verallia merger.

Q. Taking a step back, did anyone from Verallia ask you if you would send a letter to the Federal Trade Commission expressing Moosehead's support for the merger?

A. Yes, they did.

Q. And did you send such a letter?

A. Yes, I did.

Q. Were you provided a draft letter from Verallia?

A. Yes, I was.

Q. And did you use the draft letter?

A. I used it as the basis of my letter.  
(Discussion held off the record.)  
(Exhibit No. PX2412 marked.)

Q. Mr. Oland, you've been handed what has been marked as PX2412. Take a minute to review this and let me know when you're done.

A. Yes.

Q. And do you recognize this document?

A. Yes, I do.

Q. What is it?

A. It's the draft of the letter that Bob Shanteau

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A. Correct.

Q. In looking at the letter that you sent, do you see the sentence that reads:  
As a combined entity, Ardagh should be able to offer better prices and better service, including by minimizing shipping distances through an expanded footprint, and as a result will be able to more effectively compete against packaging alternatives such as plastic or metal.

A. Yes.

Q. What is the basis for the statement that you made that the combined entity should be able to offer better prices and better service?

A. The glass business is a highly capital-intensive business with very large customers. Moosehead would not be one of those customers. And so it is my belief that a stronger Verallia would be good, ultimately, for Moosehead.

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{	consistent basis. Q. Did you solicit bids from any Chinese suppliers? A. No. No. Q. Why not? A. The same reason. And for both the Chinese as well as we did contemplate a bid from a Costa Rican -- we did contemplate pursuing a bid from a Costa Rican company. The logistics costs, the shipping costs just -- we didn't feel would have been competitive. Q. What company was that, the Costa Rican plant? A. I'm sorry, I can't . . . Q. Was that through a distributor, do you know? A. No. No, it was . . . Q. When you solicited bids for what ended up being the 2012 contract, did you put out a formal request for a quote? A. Yes, we did. Q. And you issued that to both O-I and Verallia? A. Yes. Q. Did that request for a quote also include a request for a quote on cans? A. No. {
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MS. VISWANATHA: Objection to form. THE WITNESS: My understanding is Ardagh does not have a -- are you talking about European Ardagh? MS. ROBINSON: Ardagh as the current parent company of Anchor. A. Of Anchor? I can't speak to that. I don't know what their capacity situation is where they are. {	}
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Q. You testified earlier that you spoke to Pierre, an attorney at Cravath, and that he asked you if you would be willing to sit for this deposition, and I believe you also said he also asked you why Moosehead was in favour of the merger. Do you remember anything else about your conversation with Pierre?

A. I asked him a number of questions about this process, what we were going to be going through, obviously, and

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we spent time on dates and things of that nature. There was a sense of urgency on Pierre's part, so . . . He also -- and the reason for my ignorance here is my brother Patrick, who is our CFO, and I are sort of passing each other in the night in terms of vacation schedules and things of that nature. He also asked -- I think he spoke to a letter which I believe the FTC sent to my brother Patrick, or some sort of communication which went to my brother Patrick, and I was not aware of that.

Q. Did Pierre discuss anything with you about the potential substance of this deposition?

A. Other than the time limit -- the time length that I should be prepared for, no. No, I don't think -- no, just -- no.

Q. Did you have any other conversations with any attorneys representing Saint-Gobain or Ardagh about this deposition?

A. No. I would have put someone in my office in contact with someone at Cravath's; who to ask for when you get to the lobby and if you need travel assistance and things like that. Nothing beyond that.

MS. ROBINSON: All right. I may be done with my questions, but I need to maybe take a five-minute break to make sure.

THE WITNESS: Sure. Super.

--- Recess taken at 10:41 a.m.

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<p>1 --- Upon resuming at 11:04 a.m.:</p> <p>2</p> <p>3 REDIRECT EXAMINATION BY MS. VISWANATHA:</p> <p>4 Q. Mr. Oland, can you take a look again at PX4227?</p> <p>5 A. Yes.</p> <p>6 Q. Yes, it's right in front of you. As you sit here</p> <p>7 today, do you agree with everything that is stated in this</p> <p>8 letter?</p> <p>9 A. Yes, I do.</p> <p>10 Q. You testified earlier that it would be difficult</p> <p>11 for Moosehead to raise prices to consumers in the United States</p> <p>12 because Moosehead is not a market leader.</p> <p>13 A. Correct.</p> <p>14 Q. In your understanding, who are the market leaders</p> <p>15 in the United States?</p> <p>16 A. Anheuser-Busch InBev would be the market leader</p> <p>17 and then in the importer the brands Corona and Heineken would be</p> <p>18 market leaders. As well -- yes, Corona and Heineken.</p> <p>19 Q. So, if Anheuser-Busch raised the price on its</p> <p>20 beers in the United States, would Moosehead be able to raise the</p> <p>21 prices on beers it sells in the United States?</p> <p>22 MS. ROBINSON: Objection to form and foundation.</p> <p>23 THE WITNESS: It would make it far easier.</p> <p>24 MS. VISWANATHA:</p> <p>25 Q. You testified earlier that in the United States</p>	<p>54</p> <p>56</p> <p>activities?</p> <p>MS. ROBINSON: Objection to form.</p> <p>THE WITNESS: Oh, definitely. I mean, more beer is</p> <p>sold in cans in the United States than in bottles. Cans are the</p> <p>preferred -- preferred package to glass or to PET, to plastic,</p> <p>and as I said earlier, cans are easier to store, they take up</p> <p>less space in the fridge, they're lighter. And what we're also</p> <p>starting to see in craft beer is craft beer producers moving</p> <p>directly into cans as opposed to bottles, so they go from draft</p> <p>into cans, because the filling equipment for small can lines is</p> <p>far cheaper than it would be for bottle lines.</p> <p>MS. VISWANATHA:</p> <p>Q. Does Moosehead sell any craft beers in the United</p> <p>States?</p> <p>A. Yes, we do.</p> <p>Q. Are you aware of any trends in the United States</p> <p>with respect to packaging for craft beer?</p> <p>A. Craft beer overall continues to grow and craft</p> <p>beer in cans is growing at a higher rate than in bottles, but</p> <p>still the predominant SKU for craft beer would be in bottles.</p> <p>Q. Do you expect that with the cans that Moosehead</p> <p>-- the craft beers that Moosehead sells in the United States, do</p> <p>you expect the volume of cans to grow in line with the industry</p> <p>trend for increasing craft beer in cans that you just</p> <p>identified?</p>
<p>1 distributors tell you how many bottles and cans they would like.</p> <p>2 A. Correct.</p> <p>3 Q. Is the same true in Canada?</p> <p>4 A. Yes.</p> <p>5 Q. And in Canada, in recent years, have beer brewers</p> <p>6 taken steps to promote cans and increase consumer demand for</p> <p>7 cans?</p> <p>8 A. Yes.</p> <p>9 MS. ROBINSON: Objection to form and foundation.</p> <p>10 MS. VISWANATHA:</p> <p>11 Q. And has that affected consumer demand for cans?</p> <p>12 A. Yes, it has.</p> <p>13 MS. ROBINSON: Objection to form and foundation.</p> <p>14 MS. VISWANATHA:</p> <p>15 {</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23 Q. In your understanding, are cans -- strike that.</p> <p>24 In your understanding, do consumers in the United States</p> <p>25 purchase beer in cans for activities other than recreational</p>	<p>55</p> <p>57</p> <p>MS. ROBINSON: Objection to form.</p> <p>THE WITNESS: No, I don't, because I think a lot of</p> <p>the industry trend is coming from small brewers who are</p> <p>packaging only in cans versus bottles because of the cheaper up-</p> <p>front as well as individual unit price of cans versus bottles.</p> <p>MS. VISWANATHA:</p> <p>{</p> <p>MS. VISWANATHA:</p> <p>Q. You testified that in 2012 you did not look at</p> <p>any Mexican suppliers; is that correct?</p> <p>A. (No audible response.)</p> <p>Q. When was the last time you looked at any Mexican</p> <p>suppliers?</p> <p>A. Well, I didn't testify that we didn't look at any</p> <p>Mexican suppliers. We didn't solicit formal quotes from Mexican</p>

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1 suppliers or any other suppliers outside of North America,  
 2 because we had quality concerns with those suppliers. Potential  
 3 quality concerns.  
 4 Q. What were the quality concerns based on?  
 5 A. Our perception, whether it's incorrect or not,  
 6 that we would be at risk to some type of catastrophic incident  
 7 from a supplier outside of North America.  
 8 Q. What is that perception based on?  
 9 A. Our experiences visiting other markets. That  
 10 would be the perception.  
 11 Q. What other markets?  
 12 A. Other markets in Central and South America.  
 13 Q. When did you visit those markets?  
 14 A. Those markets we visited from time to time over  
 15 the last 10 years on almost an annual basis.  
 16 Q. Would the transportation costs of shipping glass  
 17 from Mexico to your breweries also be a concern?  
 18 A. Definitely.  
 19 Q. You also testified that you didn't submit -- or,  
 20 solicit bids from Chinese suppliers in 2012.  
 21 A. Correct. That again would be due to  
 22 transportation as well as just -- and this would be more --  
 23 well, my decision, but just there's been a lot of issues with  
 24 food-related products coming out of China. We all know about  
 25 baby powder and things -- baby milk -- milk powder, I guess it

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1 would be. And this is -- glass and quality of glass is integral  
 2 to our product offering and our quality.  
 3 Q. Has Moosehead evaluated glass -- specifically  
 4 glass suppliers from China?  
 5 A. No, we have not.  
 6 Q. Has Moosehead done any consumer studies in the  
 7 United States with regards to the green bottle?  
 8 A. Yes, we have.  
 9 Q. What studies are those?  
 10 A. Those would be our market research activities  
 11 that we have done over the last 30 years, typically using a  
 12 third party market research company, whether they would be focus  
 13 groups, consumer interviews, those type of sort of standard  
 14 consumer packaged goods marketing research activities.  
 15 Q. Have you seen those studies?  
 16 A. Yes, I have.  
 17 Q. Do those studies also evaluate consumer demand  
 18 for cans in the United States, for Moosehead's beer in cans in  
 19 the United States?  
 20 A. That would not be the principal purpose of the  
 21 studies. From time to time, a study might produce insight, but  
 22 that would not have been the principal purpose of the study.  
 23 Q. You testified earlier that Moosehead put out a  
 24 formal RFP in 2012.  
 25 A. Yes.

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Q. Have you seen that RFP?  
 A. No.  
 Q. Would you be surprised to learn that there was no  
 formal RFP?  
 A. Yes.  
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 MS. VISWANATHA: If we could go off the record.  
 --- Recess taken 11:16 a.m.  
 --- Upon resuming at 11:25 a.m.:  
 RE-CROSS-EXAMINATION BY MS. ROBINSON:  
 Q. Mr. Oland, I believe you testified earlier that  
 there are four major Canadian brewers; is that right?  
 A. (No audible response.)  
 Q. Who are those brewers again?  
 A. Labatt's, which is a division of Anheuser-Busch  
 InBev, Molson Coors, Sleeman, which is a division of Sapporo  
 from Japan, and Moosehead. And Labatt and Molson would be each  
 ten times the size of Sleeman and Moosehead.

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Q. Does Labatt currently sell beer in glass bottles  
 in Canada?  
 A. Yes.  
 Q. How about Molson?  
 A. Yes.  
 Q. And Sleeman?  
 A. Yes.  
 Q. Do you know why they sell glass bottles in  
 Canada?  
 A. Because the consumer's prepared to buy beer in  
 glass bottles in Canada.  
 Q. Have you ever been involved in the packaging mix  
 decisions for Labatt?  
 A. No.  
 Q. How about for Molson?  
 A. No.  
 Q. How about for Sleeman?  
 A. No.  
 Q. Do you know what Labatt's projected glass bottle  
 demand is going forward?  
 A. No.  
 MS. VISWANATHA: Objection. Foundation.  
 MS. ROBINSON:  
 Q. Do you know that for Molson?  
 A. No.

1 Q. How about for Sleeman?  
 2 A. No.  
 3 Q. A few moments ago, I believe that you said that  
 4 cans are the preferred packaging type in the U.S. over glass and  
 5 PET. Was the basis for that statement the fact that cans  
 6 outsell glass and PET in the United States?  
 7 A. Yes.  
 8 Q. Have you seen consumer studies in the U.S.  
 9 regarding consumer preference for cans versus glass bottles?  
 10 A. No, I have not.  
 11 Q. In your understanding, does consumer preference  
 12 for bottle versus can depend in part on the situation in which  
 13 the consumer's drinking?  
 14 A. Definitely.  
 15 Q. What do you mean by that?  
 16 A. For example, you see far more bottles on-premise,  
 17 which would be bars and restaurants and nightclubs, than you do  
 18 cans. As I spoke to, recreational environments, airplanes, et  
 19 cetera, would have a preference for cans.  
 20 Q. Based on your experience in the beer industry,  
 21 why is it that you see far more bottles on-premise?  
 22 A. I think many consumers associate bottles as a --  
 23 as more premium than cans.  
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reason for this is that canning lines are cheaper than bottling  
 lines; is that right?  
 A. Correct.  
 Q. Do you think the fact that small craft brewers  
 are entering with cans necessarily reflects any sort of change  
 in consumer demand in the craft segment for bottles versus cans?  
 A. I think there's a far greater acceptance amongst  
 craft consumers for cans. The craft brewers have done a good  
 job of conveying some of the attributes or product benefits that  
 a can has over a bottle and they're quite vocal in communicating  
 those.  
 Q. And do you know what percentage of the craft  
 segment is in bottles versus cans?  
 A. I do not know, but I would say 80-plus per cent  
 of the craft segment would be in bottles, would be my estimate.  
 Q. So, is it fair to say that the predominant  
 packaging type in the craft segment is glass bottles?  
 MS. VISWANATHA: Objection to form.  
 THE WITNESS: Yes.  
 MS. ROBINSON: I do not have any further questions.  
 MS. VISWANATHA: We can go off the record. Just one  
 minute.  
 --- Recess taken 11:32 a.m.  
 --- Upon resuming at 11:35 a.m.:

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 9 Q. Okay. Would you say that the green bottle in the  
 10 U.S. is part of Moosehead's brand image?  
 11 A. Definitely.  
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 20 MS. ROBINSON:  
 21 Q. And you testified earlier that some of the small  
 22 craft brewers in the U.S. are entering with canning lines,  
 23 correct?  
 24 A. (No audible response.)  
 25 Q. And I believe you testified that you believe the

RE-REDIRECT EXAMINATION BY MS. VISWANATHA:  
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 Q. You testified earlier that Moosehead's volume --  
 the volume of beer that Moosehead sells in cans has increased in  
 past years.  
 MS. ROBINSON: Objection to form.  
 THE WITNESS: Yes.  
 MS. VISWANATHA:  
 Q. And Moosehead expects it to increase in the  
 future.  
 A. Correct.  
 MS. ROBINSON: Objection to form.  
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 MS. VISWANATHA:  
 Q. You mentioned earlier that in the United States a

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lot of smaller craft brewers are packaging in cans.  
A. A number. I wouldn't say a lot, but a number of -- yes.  
Q. A number of craft brewers.  
A. Yes.  
Q. The cans that those craft brewers use don't convey a low quality image, do they?  
MS. ROBINSON: Objection to form and foundation.  
THE WITNESS: The craft brewers have done a very good job of elevating the image of craft beer in cans.  
MS. VISWANATHA:  
Q. Is it fair to say that some of those craft brewers that sell in cans have a high quality image?  
A. Yes, it is.  
MS. VISWANATHA: I have no further questions.  
MS. ROBINSON: I actually have one or two additional questions. We can stay on the record.  
  
RE-RE-CROSS-EXAMINATION BY MS. ROBINSON:  
Q. Mr. Oland, you testified earlier that Moosehead sales into the U.S. -- with respect to Moosehead sales into the U.S. that you expect the mix of glass bottles versus cans to stay roughly the same; is that correct?  
A. Yes, correct.  
Q. And with respect to craft brewers that have added

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

FEDERAL TRADE COMMISSION )  
Plaintiff, )  
 ) Civil Action No.  
vs. ) 1:13-cv-01021-RMC  
 )  
ARDAGH GROUP S.A. and )  
COMPAGNIE DE SAINT-GOBAIN and )  
SAINT-GOBAIN CONTAINERS, INC., )  
Defendants. )

CERTIFICATE

I, Kathryn A. Burke, do hereby certify:  
THAT I am a court reporter and commissioner of oaths duly appointed by the Department of Justice in and for the Province of New Brunswick under the Recording of Evidence by Sound Recording Machine Act;  
THAT Andrew Oland, the witness whose examination is hereinbefore set forth, was duly sworn and that the within transcript is a true record of the testimony given by such witness;  
AND THAT I have no personal interest in this action or any party thereto.  
IN WITNESS WHEREOF I have signed  
at the City of Fredericton, County of York,  
Province of New Brunswick, this 17th day  
of August AD 2013.  
  
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Kathryn A. Burke

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cans, were you personally involved in any of their decisions to add cans?  
A. No.  
Q. For the craft brewers that have added cans, do you know what percentage of their sales remain in glass bottles?  
A. My understanding is that there are a number of craft brewers that have gone exclusively into cans --  
Q. And there's -- sorry.  
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Q. And those craft brewers that you're referencing who are exclusively in cans, are they generally smaller craft brewers?  
A. Yes.  
Q. And for the craft brewers that offer both bottles and cans, do you know what the craft brewers' packaging mixes are?  
A. No, I do not.  
MS. VISWANATHA: Objection.  
MS. ROBINSON: All right, I have no further questions.  
MS. VISWANATHA: None for me.  
(And further deponent saith naught.)  
(Discovery adjourned 11:39 a.m.)

ACKNOWLEDGMENT OF DEPONENT

I, ANDREW OLAND, do hereby certify that I have read the foregoing transcript of my testimony, and further certify that it is a true and accurate record of my testimony (with the exception of the corrections listed below):

Page	Line	Correction

\_\_\_\_\_  
ANDREW OLAND

SUBSCRIBED AND SWORN TO BEFORE ME  
THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

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(NOTARY PUBLIC) MY COMMISSION EXPIRES:



**CONFIDENTIAL**

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**Exhibit "B"**

**CONFIDENTIAL INFORMATION  
SEEKING *IN CAMERA* TREATMENT**

- #1 Page 8, lines 20-25  
Page 9, lines 1-3 & lines 16-23  
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- #2 Page 12, lines 16-20  
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- #6 Page 22, lines 1-7  
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- #8 Page 14, line 12 – Page 16, line 16  
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Page 24, lines 9-16  
Page 40, lines 2-24  
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Page 51  
Page 52, 1 – 17  
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- #9 Page 57, lines 7-17  
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- #10 Page 67, lines 9-12

**EXHIBIT 2**

PUBLIC

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

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In the Matter of

ARDAGH GROUP S.A.  
a public limited liability company, and

SAINT-GOBAIN CONTAINERS, INC.,  
a public limited liability company, and

COMPAGNIE DE SAINT-GOBAIN,  
a corporation,

Respondents.

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PUBLIC

DOCKET NO. 9356

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**ORDER ON UNOPPOSED MOTION OF NON-PARTY MOOSEHEAD  
BREWERIES LIMITED FOR *IN CAMERA* TREATMENT OF PROPOSED  
EVIDENCE**

Pursuant to Rule 3.45(b) of the Commission's Rules of Practice, non-party Moosehead Breweries Limited ("Moosehead"), on December 9, 2013, filed a motion for *in camera* treatment of certain deposition testimony taken from Andrew G. Oland, President and Chief Executive Officer of Moosehead on August 16, 2013 (the "Oland Deposition") in connection with this adjudicative proceeding by both Complaint counsel and Respondents counsel. Certain excerpts of the Oland Deposition have been designated by the parties for introduction in the administrative trial in this matter. Moosehead states that it has conferred with Complaint Counsel and Respondent's counsel, and that neither party opposes Moosehead's request. As set forth below, Moosehead's Motion is GRANTED.

The Federal Trade Commission recognizes the “substantial public interest in holding all aspects of adjudicative proceedings, including the evidence adduced therein, open to all interested persons.” *Hood*, 58 F.T.C. at 1186. A full and open record of the adjudicative proceedings promotes public understanding of decisions at the Commission. *In re Bristol-Myers Co.*, 90 F.T.C. 455, 458 (1977). A full and open record also provides guidance to persons affected by its actions and helps to deter potential violators of the laws the Commission enforces. *Hood*, 58 F.T.C. at 1186. The burden of showing good cause for withholding documents from the public record rests with the party requesting that documents be placed *in camera*. *Id.* At 1188. Moreover, there is a presumption that *in camera* treatment will not be granted for information that is more than three years old. *Conference Interpreters*, 1996 FTC LEXIS 298, at \*15 (citing *Gen. Foods*, 95 F.T.C. at 353; *Crown Cork*, 71 F.T.C. at 1715). However, a request for *in camera* treatment by a non-party warrants “special solicitude.” *In re Crown Cork & Seal Co.*, 71 F.T.C. 1714, 1715 (1967).

Under Commission Rule 3.45(b)(3), indefinite *in camera* treatment is warranted only “in unusual circumstances,” including circumstances in which “the need for confidentiality of the material . . . is not likely to decrease over time.” 16 C.F.R. §3.45(b)(3). The Commission has nonetheless recognized that “in some unusual cases ‘the competitive sensitivity or the proprietary value of the information for which *in camera* treatment is requested will not necessarily diminish, and may actually increase, with the passage of time’” *In re Coca-Cola Co.*, 1990 FTC LEXIS 364, at \*7 (Oct. 17, 1990) (quoting Commission comments on amendments to the Rule). In determining the length of time for which *in camera* treatment is appropriate, the distinction between

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trade secrets and ordinary business records is important since ordinary business records are granted less protection than trade secrets. *See Hood*, 58 F.T.C. at 1189.

Moosehead's Motion, filed December 9, 2013, is GRANTED. *In camera* treatment of the Confidential Information is granted for a period of five (5) years from the date entry of this order, to expire on December \_\_\_\_, 2018 and *in camera* treatment for an indefinite period of time is granted for excerpts of the Oland Deposition identified as follows: Page 8, line 20 through Page 9, line 3; Page 12, line 16 through line 20; Page 24, line 9 through line 16; Page 18, line 1 through Page 20, line 20; Page 32, line 8 through Page 33, line 8; Page 35, line 24 through Page 36, line 4; Page 36, line 16 through Page 37, line 9; Page 37, line 25 through Page 38, line 8; Page 40, line 2 through line 24; Page 45, line 18 through line 25; Page 48, line 22 through Page 51, line 6; Page 55, line 15 through line 22; and Glossary, Page 4, for that portion of the Confidential Information that Moosehead has additionally identified as trade secrets of Moosehead for which the sensitivity of this information if disclosed would not decrease over time.

ORDERED:

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

Date: December \_\_\_\_, 2013