

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

ORIGINAL



In the Matter of

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

Compagnie de Saint-Gobain, a corporation,  
and

Saint-Gobain Containers, Inc.,  
a corporation

DOCKET NO. 9356

**NON-PARTY VITRO PACKAGING, LLC'S UNOPPOSED MOTION  
FOR *IN CAMERA* TREATMENT OF DEPOSITION TRANSCRIPT**

Vitro Packaging, LLC ("Vitro"), which is not a party to the above-captioned action, respectfully requests an order granting *in camera* protection of portions of the August 26, 2013 deposition testimony of John T. Shaddox in these proceedings. Vitro offered the testimony of Mr. Shaddox, the President and Chief Executive Officer of Vitro, subject to the Protective Order dated July 1, 2013 and Stipulated Side Agreement to the Protective Order entered into in *Federal Trade Commission v. Ardagh Group S.A., et al.*, Case No 13-1021 (D.D.C.) (the "Protective Order"). By letters dated November 19, 2013, Complaint Counsel and counsel for Respondent Ardagh Group S.A. ("Ardagh") notified Vitro that they intend to introduce into evidence portions of Mr. Shaddox' deposition testimony. In particular, Vitro seeks *in camera* treatment for the excerpts of Mr. Shaddox' deposition testimony identified by page and line designations in Exhibit A attached hereto.

Vitro, a non-party to this proceeding, has previously produced documents to the FTC pursuant to a *subpoena duces tecum* served during the FTC's pre-complaint investigation.

Following Vitro's initial production to the FTC, documents were subsequently produced to Ardagh. Vitro also made one of its officers, Mr. John T. Shaddox, available for questioning by the FTC during the pre-complaint investigation. Subsequent to the commencement of the pending litigation, Vitro has also formally produced documents in response to a *subpoena duces tecum* served on Vitro by both the FTC and Ardagh. Mr. Shaddox was also deposed pursuant to a *subpoena ad testificandum*. Vitro has willingly produced the requested documents and deposition testimony subject to the Protective Order.

The information contained in the deposition testimony excerpts contain Vitro's highly confidential and competitively-sensitive business information. Public disclosure of this information is likely to cause direct, serious harm to Vitro's competitive position. As a result, pursuant to 16 C.F.R. §3.45(b), Vitro respectfully requests *in camera* treatment of the excerpts identified in Exhibit A.

**VITRO'S CONFIDENTIAL MATERIALS DESERVE *IN CAMERA* TREATMENT UNDER THE FEDERAL TRADE COMMISSION'S RULES OF PRACTICE**

The deposition testimony described in this motion warrants *in camera* treatment under 16 C.F.R. § 3.45(b). Under §3.45(b), business-related information will be given *in camera* treatment where "its public disclosure will likely result in a clearly defined, serious injury" to the corporation. See 16 C.F.R. § 3.45(b); see also *Kaiser Aluminum & Chem. Corp.*, 103 F.T.C. 500, 1984 FTC LEXIS 60, at \*1 (1984), quoting *H. P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961). A party seeking *in camera* protection must establish that the information is "sufficiently secret and sufficiently material to the applicant's business that disclosure would result in serious competitive injury." *In the Matter of Evanston Northwestern Healthcare Corp.*, 2005 F.T.C. LEXIS 27, at \* 1 (Feb. 9, 2005) (quoting *General Foods Corp.*, 95 F.T.C. 352, 355 (1980)). A showing of injury may be supported by extrinsic evidence, such as an affidavit, or inferred from

the nature of the documents themselves. See *In the Matter of E. I. Dupont de Nemours & Co.*, 97 F.T.C. 116 (1981).

The following factors are to be considered in evaluating whether information is sufficiently secret and material that disclosure would result in serious injury: (1) the extent to which the information is known outside of the applicant's 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 applicant to guard the secrecy of the information; (4) the value of the information to the applicant and its competitors; (5) the amount of effort or money expended by the applicant in developing the information; and (6) the ease or difficulty with which the information could be properly acquired or duplicated by others. *Dura Lube*, 1999 F.T.C. LEXIS 255 at \*6-\*7 (quoting *Bristol-Myers Co.*, 90 F.T.C. 455, 458 (1977)). Third party requests for *in camera* treatment deserve special solitude. *Kaiser*, 103 F.T.C. at 500.

Applying these factors, "the courts have generally attempted to protect confidential business information from unnecessary airing." *H.P. Hood & Sons, Inc.*, 58 F.T.C. at 1188-89; see also *Champion Spark Plug Co.*, 1982 FTC LEXIS 85, at \*2 (April 5, 1982); *Kaiser Aluminum*, 103 F.T.C. at 500. For example, the FTC has found that "the likely loss of business advantages is a good example of a clearly defined, serious injury." *Dura Lube Corp.*, 1999 FTC LEXIS 255, at \*7 (1999) (punctuation omitted). *In camera* treatment of sensitive business records such as strategic plans, marketing plans, pricing policies, or sales documents is typically extended for a limited time period. See e.g. *Union Oil Co. of Cal.* 2004 FTC LEXIS 223, at \*2 (Nov. 22, 2004); *Int'l Ass'n of Conference Interpreters*, 1996 FTC LEXIS 298, at \*13-14 (June 26, 1996); *Champion Spark Plug*, 1982 FTC LEXIS 85 at \*2 and 1982 FTC LEXIS 92, at \*2 (March 4, 1982).

**A. Vitro has Preserved the Confidentiality of the Shaddox Deposition Transcript Excerpts**

Vitro has taken substantial measures to protect the confidentiality of the information contained in the Shaddox deposition testimony excerpts listed in Exhibit A.<sup>1</sup> First, with respect to the testimony itself, in addition to seeking *in camera* treatment, Vitro has produced information in these proceedings pursuant to compulsory process and with a request for confidential treatment under the Protective Order. The Protective Order expressly states that it is for the “purposes of protecting the interests of ... third parties ... against improper use and disclosure of confidential information submitted or produced in connection with this matter.” Protective Order, Attachment A at 2.

In addition, Vitro has taken significant steps to protect the secrecy of the information contained in the Shaddox deposition testimony transcript excerpts. For example, Vitro has limited dissemination of the information within Vitro to a subset of high-level management and has taken every reasonable step to protect its confidentiality.<sup>2</sup> Indeed, because of the safeguards taken by Vitro, it would be difficult, if not impossible, for other entities, including Vitro competitors, to access or recreate this information.<sup>3</sup>

**B. Public Disclosure of the Information in the Shaddox Deposition Transcript Excerpts Would Result in Serious Competitive Injury to Vitro**

The deposition testimony transcript excerpts identified in Exhibit A contain highly sensitive competitive information.<sup>4</sup> This information was obtained and developed by Vitro through its own internal business analysis and strategic planning; efforts that Vitro has undertaken to gain a competitive advantage and to enhance its ability to compete in the

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<sup>1</sup> *Id.* at ¶6.

<sup>2</sup> See the Declaration of John T. Shaddox (the “Shaddox Declaration”) in support of Vitro Packaging, LLC’s Motion for In Camera Protection attached hereto as Exhibit B, at ¶6.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at ¶3.

marketplace.<sup>5</sup> The deposition testimony excerpts also reveal details of Vitro's business strategy and its internal operations and principles for competing in the marketplace.<sup>6</sup> If this confidential information were revealed, Vitro's ability to compete in the marketplace would be compromised.<sup>7</sup> Indeed, allowing Vitro's competitors to obtain unfettered access to this information would enable them to understand Vitro's operations in a manner that would significantly disadvantage Vitro in the marketplace.<sup>8</sup>

**C. Any Public Interest in Disclosure is Outweighed by the Likelihood of Serious Competitive Harm to Vitro**

As a non-party requesting *in camera* treatment for its confidential business information, Vitro is deserving of "special solitude." *In re Kaiser Aluminum & Chem. Corp.*, 103 F.T.C. 500, 500 (1984). Granting a reasonable period of *in camera* treatment encourages parties to cooperate with future discovery requests in adjudicative proceedings, just as Vitro has cooperated with the discovery demands in this case. Conversely, disclosing documents containing Vitro's highly confidential information will not promote the resolution of this matter, nor will this information lend measureable public understanding of these proceedings. Thus, the balance of interests clearly favors *in camera* protection for the transcript excerpts listed in Exhibit A.

**D. Protection for the Shaddox Deposition Transcript Excerpts Should Extend For Five Years**

The highly confidential and competitively sensitive nature of the information contained in the transcript excerpts listed in Exhibit A warrants lasting protection. As discussed above and in Exhibit B, and illustrated by the transcript excerpts themselves, the deposition testimony

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<sup>5</sup> *Id.* at ¶4.

<sup>6</sup> *Id.* at ¶5.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

contains information about Vitro's business plans and strategies that are still in effect. The excerpts also contain information about Vitro's business practices and financial analyses that would allow a Vitro competitor to derive knowledge about Vitro's current financial position and strategic plans that would give a competitor of Vitro an advantage over Vitro. Accordingly, Vitro respectfully requests *in camera* protection for a period of five years from the date of any order granting the Motion for the materials listed in Exhibit A.

CONCLUSION

For these reasons, Vitro requests that the Administrative Law Judge enter an order granting *in camera* treatment of the Shaddox deposition testimony excerpts listed in Exhibit A for a period of not less than five years.

Dated: December 9, 2013.

Respectfully submitted,



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*Attorneys for Non-Party, Vitro  
Packaging LLC*

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the public and confidential versions of the foregoing motion were served on December 9, 2013 via U.S. mail, postage prepaid, upon the parties listed below:

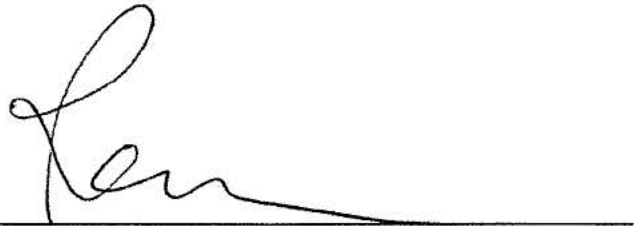
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On this 9th day of December, 2013, I also caused one courtesy copy of the foregoing materials to be delivered via email to:

The Hon. D. Michael Chappell  
Chief Administrative Law Judge  
Federal Trade Commission  
Room H-104  
600 Pennsylvania Avenue, NW  
Washington, DC 20580  
OALJ@ftc.gov



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*Attorney for Non-Party, Vitro Packaging LLC*



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

In the Matter of

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

Compagnie de Saint-Gobain, a corporation,  
and

Saint-Gobain Containers, Inc.,  
a corporation

DOCKET NO. 9356

**ORDER GRANTING VITRO PACKAGING, LLC'S MOTION FOR *IN CAMERA*  
TREATMENT OF DEPOSITION TRANSCRIPT**

On December 9, 2013, Non-Party Vitro Packaging, LLC ("Vitro") filed a motion for *in camera* treatment of confidential business information contained in portions of the deposition testimony of John T. Shaddox in these proceedings, which portions have been identified by the parties as potential evidence at trial.

IT IS HEREBY ORDERED that Vitro's Motion is GRANTED. The information contained in the excerpts identified by page and line designations set forth in Exhibit A to Vitro's Motion and listed below will be subject to *in camera* treatment under 16 C.F.R. § 3.45 and will be kept confidential and not placed on the public record of this proceeding for a period of five years.

**FTC-Designated Excerpts**

16:11-22  
17:3-18:7  
29:6-9  
29:11-30:3  
30:5-10

31:5-17  
31:19-23  
31:25-32:3  
32:5  
33:4 – 34:10  
35:19 – 36:12  
36:14-24  
37:1-9  
37:15-24  
42:10-12  
46:22-47:3  
48:8-14  
51:20-52:2  
52:7-53:7  
55:20-56:9  
61:9-14  
63:20-64:4  
68:1-17  
69:10-12  
70:2-9  
71:22-24  
72:2-13  
78:10-80:4  
81:3-22  
82:4-6  
82:19-22  
82:24-85:12  
85:14-15  
86:15-87:19  
90:2-4  
90:6-91:1  
91:15-24  
92:19-95:25  
92:19-95:25  
96:5-97:5  
97:22-98:1  
98:6-99:1  
99:15-20  
99:22-100:18  
101:11-15  
103:12-104:22  
108:5-109:1  
109:13-110:1  
112:9-113:17  
113:25-114:19  
115:10-15

115:17-116:16  
118:20-21  
118:23-120:9  
125:25-127:5  
128:20-129:12  
129:23-25  
130:2-133:18  
134:5-135:3  
136:13-138:24  
142:20-144:22  
148:17-149:24  
152:14-153:11  
154:9-155:7  
155:21-156:22  
160:16-161:8

**Ardagh-Designated Excerpts**

17:25-18:14  
29:11-30:3  
30:5-31:17  
31:19-23  
31:25-32:3  
33:4-34:13  
34:15-36:12  
36:14-24  
37:1-14  
37:25-40:12  
43:8-48:17  
51:1-52:2  
53:16-18  
53:20-23  
53:25-54:8  
54:10-24  
55:2-56:19  
60:14-17  
60:23-61:5  
61:8-62:14  
62:17-21  
62:24-63:5  
63:8-63:12  
68:18-20  
68:22-69:4  
69:6-70:9  
73:24-74:23  
93:11-96:23  
102:22-104:15

116:7-117:3  
119:5-120:9  
140:7-17  
148:21-150:13  
152:7-13  
154:18-156:18  
157:11-158:23

**Ardagh-Counter-Designated Excerpts**

18:23-19:2  
19:18-20:10  
32:12-33:2  
42:15-43:7  
53:8-15  
71:16-21  
80:5-81:2  
81:23-82:3  
82:7-10  
82:12-18  
89:23-90:1  
99:2-14  
110:2-7  
113:18-20  
113:22-24  
129:11-12  
133:19-134:4  
144:23-145:2  
145:5-10  
145:13-15  
147:17-148:7  
151:3-13

# EXHIBIT A

## Exhibit A

Exhibit Number	Date	BegBates	EndBates	Document Description
PX6055	8/26/2013	N/A	N/A	RESERVED for Designated Deposition Transcript of John Shaddox (Vtro Packaging)

### Deposition Transcript Excerpts Designated by FTC

16:11-22  
17:3-18:7  
29:6-9  
29:11-30:3  
30:5-10  
31:5-17  
31:19-23  
31:25-32:3  
32:5  
33:4 – 34:10  
35:19 – 36:12  
36:14-24  
37:1-9  
37:15-24  
42:10-12  
46:22-47:3  
48:8-14  
51:20-52:2  
52:7-53:7  
55:20-56:9  
61:9-14  
63:20-64:4  
68:1-17  
69:10-12  
70:2-9  
71:22-24  
72:2-13  
78:10-80:4  
81:3-22  
82:4-6  
82:19-22  
82:24-85:12  
85:14-15  
86:15-87:19  
90:2-4  
90:6-91:1  
91:15-24  
92:19-95:25

92:19-95:25  
96:5-97:5  
97:22-98:1  
98:6-99:1  
99:15-20  
99:22-100:18  
101:11-15  
103:12-104:22  
108:5-109:1  
109:13-110:1  
112:9-113:17  
113:25-114:19  
115:10-15  
115:17-116:16  
118:20-21  
118:23-120:9  
125:25-127:5  
128:20-129:12  
129:23-25  
130:2-133:18  
134:5-135:3  
136:13-138:24  
142:20-144:22  
148:17-149:24  
152:14-153:11  
154:9-155:7  
155:21-156:22  
160:16-161:8

**Deposition Transcript Excerpts Designated by Ardagh**

17:25-18:14  
29:11-30:3  
30:5-31:17  
31:19-23  
31:25-32:3  
33:4-34:13  
34:15-36:12  
36:14-24  
37:1-14  
37:25-40:12  
43:8-48:17  
51:1-52:2  
53:16-18  
53:20-23  
53:25-54:8  
54:10-24

55:2-56:19  
60:14-17  
60:23-61:5  
61:8-62:14  
62:17-21  
62:24-63:5  
63:8-63:12  
68:18-20  
68:22-69:4  
69:6-70:9  
73:24-74:23  
93:11-96:23  
102:22-104:15  
116:7-117:3  
119:5-120:9  
140:7-17  
148:21-150:13  
152:7-13  
154:18-156:18  
157:11-158:23

**Deposition Transcript Excerpts Counter-Designated by Ardagh**

18:23-19:2  
19:18-20:10  
32:12-33:2  
42:15-43:7  
53:8-15  
71:16-21  
80:5-81:2  
81:23-82:3  
82:7-10  
82:12-18  
89:23-90:1  
99:2-14  
110:2-7  
113:18-20  
113:22-24  
129:11-12  
133:19-134:4  
144:23-145:2  
145:5-10  
145:13-15  
147:17-148:7  
151:3-13



# EXHIBIT B

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

In the Matter of

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

Compagnie de Saint-Gobain, a corporation,  
and

Saint-Gobain Containers, Inc.,  
a corporation

DOCKET NO. 9356

DECLARATION OF JOHN T. SHADDOX IN SUPPORT OF  
VITRO PACKAGING, LLC'S MOTION FOR IN CAMERA  
PROTECTION OF DEPOSITION TRANSCRIPT

I, John T. Shaddox, depose and state:

1. I am the President and Chief Executive Officer of Vitro Packaging LLC ("Vitro") and I hereby submit this declaration in support of *Vitro Packaging, LLC's Unopposed Motion for In Camera Protection of Deposition Transcript* (the "Motion").

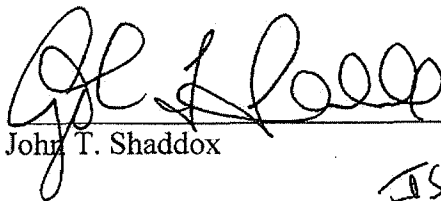
2. Except as otherwise indicated, all facts set forth in this declaration are based upon my personal knowledge, experience and information or upon information provided to me by employees working under my direct supervision or control. If called to testify, I would testify competently to the facts set forth in this declaration.

3. It is my opinion that the documents and deposition testimony identified on Exhibit A to the Motion contain highly sensitive competitive information.

4. This information was obtained and developed by Vitro through its own internal business analysis and strategic planning; efforts that Vitro has undertaken to gain a competitive advantage and to enhance its ability to compete in the marketplace.

5. The documents and deposition testimony also reveal details of Vitro's business strategy and its internal operations and principles for competing in the marketplace. If this confidential information were revealed, Vitro's ability to compete in the marketplace would be compromised.

6. Vitro has taken various steps to protect the confidentiality of the information captured by the documents and testimony. It has limited dissemination of such information within Vitro to a subset of high-level management and has taken every reasonable step to protect its confidentiality. Indeed, because of the safeguards taken by Vitro, it would be difficult, if not impossible, for other entities, including Vitro competitors, to access or recreate this information

By:   
John T. Shaddox JS

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the public and confidential versions of the foregoing motion were served on December 9, 2013 via U.S. mail, postage prepaid, upon the parties listed below:

Jason M. Swergold  
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Bureau of Competition  
Federal Trade Commission  
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On this 9<sup>th</sup> day of December, 2013, I also caused one original, two hard copies, and an electronic copy on CD, of the foregoing materials to be delivered via hand delivery to:

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

On this 9th day of December, 2013, I also caused one courtesy copy of the foregoing materials to be delivered via email to:

The Hon. D. Michael Chappell  
Chief Administrative Law Judge  
Federal Trade Commission  
Room H-104  
600 Pennsylvania Avenue, NW  
Washington, DC 20580  
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Ryan E. Manns  
*Attorney for Non-Party, Vitro Packaging LLC*