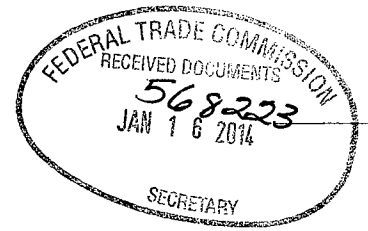


ORIGINAL



UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

_____)
In the Matter of)
)
)
Ardagh Group S.A, a public limited liability)
company,)
)
and)
)
Saint-Gobain Containers, Inc., a corporation,)
)
and)
)
Compagnie de Saint-Gobain, a corporation.)
)
_____)

Docket No. 9356
PUBLIC

GERRESHEIMER GLASS INC.'S MOTION FOR *IN CAMERA*
TREATMENT OF THE DECLARATION OF NORMAN ANGEL

Third party, Gerresheimer Glass Inc. (“Gerresheimer”), hereby moves for *in camera* treatment of certain information in the Complainant’s proposed trial exhibit PX5030, pursuant to 16 C.F.R. §3.45 and 16 C.F.R. § 4.10(g).

In support of this motion, Gerresheimer provides its accompanying memorandum, and Declaration of Dr. Hartmut Schulz.

WHEREFORE, Gerresheimer Glass Inc. respectfully requests that this Court grant *in camera* treatment to the documents designated in the attached memorandum.

Dated: January 16, 2014

Respectfully submitted,

By: /s/ Joel Grosberg

Joel Grosberg
jgrosberg@mwe.com
500 North Capitol St. NW
Washington, D.C. 20001
202.756.8207 (tele.)
202.756.8087 (fax.)
Attorney for Gerresheimer Glass, Inc.

I, Joel Grosberg, hereby certify that I served a true and correct copy of the foregoing Gerresheimer's Motion for *In Camera* Treatment, Public Version, upon the following individuals by Hand Delivery on January 16, 2014.

Hon. D. Michael Chappell
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, NW
Room H110
Washington, DC 20580

Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW
Room 172
Washington, DC 20580

I, Joel Grosberg, hereby certify that I served a true and correct copy of the foregoing Gerresheimer's Motion for *In Camera* Treatment, Public Version, upon the following individuals by electronic mail on January 16, 2014.

Josh Goodman
Attorney
Bureau of Competition
jgoodman@ftc.gov

Edward Hassi
Attorney
Bureau of Competition
ehassi@ftc.gov

/s/ Joel Grosberg

Joel Grosberg
jgrosberg@mwe.com
500 North Capitol St. NW
Washington, D.C. 20001
202.756.8207 (tele.)
202.756.8087 (fax.)

*Attorney for Gerresheimer Glass,
Inc.*

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

_____)
In the Matter of)
)
Ardagh Group S.A, a public limited liability)
company,)
)
and)
)
Saint-Gobain Containers, Inc., a corporation,)
)
and)
)
Compagnie de Saint-Gobain, a corporation.)
_____)

Docket No. 9356
PUBLIC

**GERRESHEIMER GLASS, INC.’S MEMORANDUM IN SUPPORT OF
ITS MOTION FOR *IN CAMERA* TREATMENT OF TRIAL EXHIBIT**

Pursuant to Rule 3.45 and 4.10(g) of the Federal Trade Commission’s Rules of Adjudicative Practice, Third Party Gerresheimer Glass, Inc. (“Gerresheimer”) submits this Memorandum in Support of its Motion for *In Camera* Treatment for certain information in the Declaration of Norman Angel.

I. Introduction

Gerresheimer submitted the Declaration of Norman Angel (“Declaration”) in connection with the Federal Trade Commission’s (“FTC”) investigation of the proposed acquisition of Saint-Gobain Containers, Inc. by Ardaugh Group S.A. The Declaration has been identified as PX5030 by the FTC. *See* Appendix A (Letter from Goodman to Grosberg, Nov. 19, 2013, Attachment A.) The Declaration contains confidential, competitively-sensitive information, which, if disclosed, would result in a clearly defined, serious injury to Gerresheimer. Accordingly, and pursuant to 16 C.F.R. §3.45 and § 4.10(g), Gerresheimer moves for an order granting *in camera* treatment of

certain information in the Declaration. The Declaration is attached as Appendix B. The information for which Gerresheimer requests *in camera* treatment is identified in bold, surrounded by brackets.

II. **The Clearly Defined, Serious Injury Standard**

An applicant seeking *in camera* protection for material offered into evidence may receive *in camera* treatment when “its public disclosure will likely result in a clearly defined, serious injury.” 16 C.F.R. § 3.45(b). An applicant can meet that standard by establishing that the evidence is “sufficiently secret and sufficiently material to the applicant’s business that disclosure would result in serious competitive injury.” *In re Basic Research, LLC*, 2006 FTC LEXIS 14, at *4-5 (Jan. 25, 2006); *see also, In the Matter of General Foods Corp.*, 1980 FTC LEXIS 99, at *9 (March 10, 1980) (“[S]uch serious injury requires that the information in question is secret and material to the applicant's business.”) (internal citation omitted). In making this determination, administrative courts review six factors to determine secrecy and materiality: (1) the extent to which the information is known outside of the business; (2) the extent to which it is known by employees and others involved in the business; (3) the extent of measures taken to guard the secrecy of the information; (4) the value of the information to the company and to its competitors; (5) the amount of effort or money expended by the company in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others. *See In the Matter of Bristol-Myers Co.*, 1977 FTC LEXIS 25, at *5-6 (Nov. 11, 1977); *see also, In the Matter of Dura Lube Corp.*, 1999 FTC LEXIS 255, at *6-7 (Dec. 23, 1999). Documents that meet this standard have included recent financial audits, business strategy documents and financial and cost data. *See In the Matter of Evanston Northwestern Healthcare Corp.*, 2005 FTC LEXIS 27, at *6 (Feb. 9, 2005); *see also,*

In the Matter of SKF Indus., Inc., 1977 FTC LEXIS 86, at *3 (Oct. 4, 1977). Gerresheimer is seeking *in camera* treatment of the same type of information.

III. Disclosure of Certain, Limited Information in the Declaration Meets the Serious Injury Standard

Gerresheimer requests that information concerning its revenues and units sold for 2012 in the Declaration be given *in camera* treatment. Gerresheimer also requests *in camera* treatment for prospective business strategy information. None of this information is known to the public or generally outside Gerresheimer at this point in time. Appendix C (Declaration of Dr. Hartmut Schulz, at ¶ 5, 9). Gerresheimer has no plans to make this information available to the public prior to the trial scheduled for this case. *Id.* Furthermore, the ALJ may infer, “without a specific showing of how a competitor would use it, that disclosure of allegedly sensitive information would seriously affect the firm’s commercial position. Underlying this analysis is a general concern for the seriousness of injury to a firm’s commercial or competitive position.” *In the Matter of E.I. Dupont de Nemours & Co.*, 97 F.T.C. 116, at *3 (Jan. 21, 1981). The Court has recognized that the public disclosure of financial information may harm a party. *See In the Matter of SKF Indus., Inc.*, 1977 FTC LEXIS at *3.

The materials at issue here pose a strong likelihood of harming Gerresheimer’s competitive position if disclosed to the public. First, these documents are not a matter of public record and have not been disclosed in any public context. App. C at ¶ 5. Second, the confidential information in the Declaration is not generally known to all employees within Gerresheimer. Gerresheimer limits current financial and business strategy data to those within the Gerresheimer Group with specific need for the information, such as the accounting department for financial data, and high-level executives for business strategy information. *Id.* at ¶ 6, 9; *see In the Matter of Polypore Int’l, Inc.*, 2009 FTC LEXIS 124, at *3-4 (June 4, 2009).

Third, Gerresheimer has carefully guarded the secrecy of this information. Gerresheimer provided this information upon request to the FTC, but otherwise it does not share or disclose the confidential information identified in the Declaration with the public, competitors or customers. App. C at ¶ 12. Fourth, competitors, such as Saint-Goban's and Ardaugh, would benefit from gaining access to this information. The materials reflect Gerresheimer's business strategy, future plans, and current financial status, all of which are competitively sensitive and might enable competitors to determine an accurate model of Gerresheimer's current business. App. C. at ¶ 4, 8; see *In the Matter of E.I. Dupont de Nemours & Co.*, 97 F.T.C. at *5. Fifth, Gerresheimer has expended money and effort in compiling and maintaining the confidentiality of its financial and business information. App. C at ¶ 7. It has also spent significant money and effort determining its business strategy in order to best position the company in the industry and among its competitors. App. C at ¶ 10; see *In the Matter of E.I. Dupont de Nemours & Co.*, 97 F.T.C. at *5. Finally, it would be difficult for another party to acquire the information found in the Declaration because it is not disclosed to the public and requires access to documents and information internal to Gerresheimer. App. C at ¶ 11.

IV. Expiration Date

Gerresheimer seeks temporary *in camera* treatment of the confidential information identified in the Declaration. Gerresheimer seeks temporary treatment for a period of three years. Administrative courts grant *in camera* treatment for business records for a period of two to five years. See *In the Matter of Evanston Northwestern Healthcare Corp.*, 2005 F.T.C. LEXIS at *2; *In the Matter of E.I. Dupont de Nemours & Co.*, 97 F.T.C. LEXIS at 118 (granting financial data *in camera* treatment for three years). Three years is necessary to protect current

business records with competitively sensitive information and information that contains projections or forecasts impacting future plans and initiatives.

V. Conclusion

Pursuant to 16 C.F.R. §3.45 and § 4.10(g), Gerresheimer respectfully moves for *in camera* treatment of confidential information identified in the Declaration of Normal Angel attached in Appendix B.

Dated: January 16, 2014

Respectfully submitted,

By: /s/ Joel Grosberg

Joel Grosberg

jgrosberg@mwe.com

500 North Capitol St. NW

Washington, D.C. 20001

202.756.8207 (tele.)

202.756.8087 (fax.)

Attorney for Gerresheimer Glass, Inc.

I, Joel Grosberg, hereby certify that I served a true and correct copy of the foregoing Gerresheimer's Memorandum in Support of its Motion for *In Camera* Treatment, Public Version, upon the following individuals by Hand Delivery on January 16, 2014.

Hon. D. Michael Chappell
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, NW
Room H110
Washington, DC 20580

Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW
Room 172
Washington, DC 20580

I, Joel Grosberg, hereby certify that I served a true and correct copy of the foregoing Gerresheimer's Memorandum in Support of its Motion for *In Camera* Treatment, Public Version, upon the following individuals by electronic mail on January 16, 2014.

Josh Goodman
Attorney
Bureau of Competition
jgoodman@ftc.gov

Edward Hassi
Attorney
Bureau of Competition
ehassi@ftc.gov

/s/ Joel Grosberg
Joel Grosberg
jgrosberg@mwe.com
500 North Capitol St. NW
Washington, D.C. 20001
202.756.8207 (tele.)
202.756.8087 (fax.)

*Attorney for Gerresheimer Glass,
Inc.*

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

In the Matter of)
)
Ardagh Group S.A, a public limited liability)
company,)
)
and)
)
Saint-Gobain Containers, Inc., a corporation,)
)
and)
)
Compagnie de Saint-Gobain, a corporation.)
)
_____)

Docket No. 9356
PUBLIC

**[PROPOSED] ORDER GRANTING GERRESHEIMER GLASS INC.'S MOTION FOR
IN CAMERA TREATMENT OF THE DECLARATION OF NORMAN ANGEL**

Upon consideration of Third Party, Gerresheimer Glass, Inc.'s Motion for *In Camera* Treatment of the Declaration of Norman Angel (PX5030), it is hereby ordered that the Motion is **GRANTED** and *in camera* treatment will be given to the information requested for a period of three years.

Dated: January __, 2014.

The Honorable D. Michael Chappell
Chief Administrative Law Judge

APPENDIX A



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

BUREAU OF COMPETITION
MERGERS II DIVISION

November 19, 2013

Josh Goodman
Bureau of Competition
Federal Trade Commission
601 New Jersey Ave, N.W.
Washington, DC 20001
(202) 326-3665
jgoodman@FTC.gov

Via Federal Express

Gerresheimer Glass, Inc.
c/o Joel R. Grosberg, Esq.
McDermott Will & Emery LLP
500 North Capitol Street, NW
Washington, DC 20001

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

Dear Mr. Grosberg:

By this letter we are providing formal notice, pursuant to Rule 3.45(b) of the Commission's Rules of Practice, 16 C.F.R. § 3.45(b), that Complaint Counsel intends to offer the documents referenced in the enclosed Attachment A into evidence in the administrative trial in the above-captioned matter.

The administrative trial is scheduled to begin on December 19, 2013. All exhibits admitted into evidence become part of the public record unless Administrative Law Judge D. Michael Chappell grants *in camera* status.

For documents that include sensitive or confidential information that you do not want on the public record, you must file a motion seeking *in camera* status or other confidentiality protections pursuant to 16 C.F.R. §§ 3.45 and 4.10(g). Judge Chappell may order that materials, whether admitted or rejected as evidence, be placed *in camera* only after finding that their public

disclosure will likely result in a clearly-defined, serious injury to the person, partnership, or corporation requesting *in camera* treatment.

Motions for *in camera* treatment for evidence to be introduced at trial must meet the strict standards set forth in 16 C.F.R. § 3.45 and explained in *In re Dura Lube Corp.*, 1999 FTC LEXIS 255 (Dec. 23, 1999); *In re Hoechst Marion Roussel, Inc.*, 2000 FTC LEXIS 157 (Nov. 22, 2000); and *In re Basic Research, Inc.*, 2006 FTC LEXIS 14 (Jan. 25, 2006). Motions also must be supported by a declaration or affidavit by a person qualified to explain the confidential nature of the material. *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 66 (April 23, 2004).

Please be aware that under the current scheduling order, the deadline for filing motions seeking *in camera* status is November 26, 2013.

If you have any questions, please feel free to contact me at (202) 326-3665.

Sincerely,



Josh Goodman
Counsel Supporting the Complaint

Attachments

ATTACHMENT A

Exhibit Number	Date	BegBates	EndBates	Document Description
PX5030	6/25/2013	N/A	N/A	Declaration: Norman Angel (Gerresheimer Glass, Inc.)

APPENDIX B
(REDACTED)

APPENDIX C

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

In the Matter of)
)
Ardagh Group S.A, a public limited liability)
company,)
)
and)
)
Saint-Gobain Containers, Inc., a corporation,)
)
and)
)
Compagnie de Saint-Gobain, a corporation.)
)
)

Docket No. 9356
PUBLIC

**DECLARATION OF DR. HARTMUT SCHULZ IN SUPPORT OF GERRESHEIMER
GLASS INC.'S MOTION FOR *IN CAMERA* TREATMENT OF A TRIAL EXHIBIT**


I, Dr. Hartmut Schulz declare as follows:

1. I provide this declaration, pursuant to Federal Trade Commission Rules of Practice for Adjudicative Proceedings §3.45 and §4.10(g), in support of Gerresheimer Glass Inc.'s ("Gerresheimer") Motion for *In Camera* Treatment of Petitioner's Trial Exhibit PX5030.
2. I have been employed as the General Counsel for Gerresheimer's ultimate parent company, Gerresheimer AG, Germany, since 2002 and had acted as General Counsel for another German corporation since 1993. In my role at Gerresheimer, I have personal knowledge regarding the matters set forth in this declaration. Specifically, I am familiar with the Declaration of Norman Angel ("Declaration") and the level of confidentiality associated with the subject matter(s) contained therein.
3. I have reviewed the Declaration for which Gerresheimer makes its motion for *in camera* treatment, and have determined that public disclosure of the particular information identified in bold surrounded by brackets would cause a clearly defined, serious competitive injury to Gerresheimer.
4. Specifically, public disclosure of the 2012 revenue and 2012 units sold identified in paragraph six of the Declaration would give competitors insight or competitive advantage if they gained access to this information.
5. The 2012 revenue and 2012 units sold are not available to the public at this time and Gerresheimer has no plans to make this information available to the public.

6. The 2012 revenue and 2012 units sold are only available to a limited set of individuals or groups within the Gerresheimer Group with a specific need for this information.
7. Gerresheimer has spent time and effort to compile and maintain the confidentiality of the 2012 revenue and 2012 units sold.
8. Public disclosure of the business strategy information identified in paragraph nine would also give competitors insight or competitive advantage if they gained access to this information.
9. The business strategy identified in paragraph nine is only available to limited individuals or groups within the Gerresheimer Group with a specific need for this information.
10. Gerresheimer has spent time and effort to develop its business strategy identified in paragraph nine and maintain its confidentiality.
11. Without access to certain internal Gerresheimer documents and systems, such as its accounting system, plant management system, or Director and Officer presentations and meeting minutes, another party could not find or replicate the information disclosed in paragraphs six and nine of the Declaration.
12. Gerresheimer provided the information in paragraph six and nine of the Declaration at the request of the FTC staff. Gerresheimer would not otherwise disclose this type of confidential information.

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

Dated: January 16, 2014



Dr. Hartmut Schulz