

JUL 21 1997

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

<p style="text-align: center;">In the Matter of R.J. REYNOLDS TOBACCO COMPANY a corporation.</p>	<p>)))))))</p>	<p>DOCKET NO. D-9285</p>
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PROTECTIVE ORDER
GOVERNING CONFIDENTIAL MATERIAL

In the interest of ensuring that matters raised by this proceeding are open to the public and at the same time to ensure that confidential information submitted, whether by compulsory process or voluntarily, by the respondent or any persons who are not parties to this proceeding ("third parties") is not improperly disclosed, upon joint motion of both parties:

IT IS HEREBY ORDERED THAT:

1. As used in this Order, "confidential material" shall refer to: (a) any document or portion thereof that contains information that is a trade secret or other confidential research, development, or commercial information, as such terms are used in Rule 26(c)(7) of the Federal Rules of Civil Procedure, or Section 6(f) of the Federal Trade Commission Act, as amended, 15 U.S.C. § 46(f), and in the cases so construing them, and in any rules promulgated pursuant to or in implementation of them; (b) any information, regardless of the form in which it appears, that is contained in such document or portion thereof; (c) information, including the identity of third parties, the disclosure of which would be likely to expose a party or person to annoyance, embarrassment or oppression, as such terms are used in Section 3.31(d)(1) of the Rules of

Practice of the Federal Trade Commission (the "Commission" or "FTC"), Fed. R. Civ. P. 26(c), and in the cases so construing them; and (d) any other documents provided in compliance with informal discovery requests or discovery requests pursuant to the Commission's Rules of Practice that are designated "confidential material" in accordance with Paragraph 4 of this Protective Order. For purposes of this Order, "document" shall refer to any item in the possession of a party or a third party encompassed by the term "documents" found in the Commission's Rules of Practice Section 3.34(b), as well as to any such item previously obtained by the Commission during its pre-complaint investigation.

2. As used in this Order, "respondent" shall refer to R.J. Reynolds Tobacco Company, a corporation, its parent company or corporation, and all of its predecessors, divisions, subsidiaries, and affiliates, and all directors, officers and employees; "Administrative Law Judge" shall refer to the Administrative Law Judge hearing the above-captioned matter.

3. Any portion of any document submitted by respondent or a third party during the Commission's pre-complaint investigation that is entitled to confidentiality under the Federal Trade Commission Act, or any regulations, interpretations, or precedents concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the third party submitter has requested such confidential treatment.

4. In complying with informal discovery requests or discovery requests pursuant to the Commission's Rules of Practice, complaint counsel, respondent, and third parties (hereinafter

referred to as "designating party") may designate any document or any portion of any document submitted in response to such discovery requests as "confidential material," including documents obtained pursuant to discovery or as otherwise obtained.

5. In conducting discovery from third parties, complaint counsel and respondent shall provide to each third party a copy of this Order so as to apprise each such party of his, her or its rights herein.

5. A designation of confidentiality shall constitute a representation by counsel for the party or third party making the designation that the document or the transcript, or any portion thereof so designated is not reasonably believed to be already in the public domain and that counsel believes that the material so designated constitutes "confidential material" as defined in Paragraph 1 of this Order.

7. From the date of this Order, the parties and third parties may designate material as confidential by placing on or affixing to the document, file or box containing such confidential material (in such manner as will not interfere with the legibility thereof) the notation "CONFIDENTIAL - FTC, Docket No. 9285," or any other reasonable notice. The party or third party submitting confidential material (the "submitting party") shall timely indicate the document(s) or portion(s) thereof so designated that it considers confidential. The inadvertent failure to designate "confidential information" as "confidential" prior to or at the time of disclosure shall not operate as a waiver of a party's right to designate said information as "confidential" until ten (10) days after the production of the confidential material. In the event that the producing party designates information as "confidential" within such ten-day period, the receiving party shall employ reasonable efforts to ensure that such material is thereafter treated

as "confidential" pursuant to the terms of this protective order.

8. Parties and third parties may provide masked copies of documents where the portions masked contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and that the providing party shall furnish a written statement of the reasons for the deletion that satisfies the requirements of Commission Rule 3.38A.

9. When a transcript is made of a deposition of a party or third party, that party or third party shall receive a copy of the transcript and within ten (10) days of its receipt may designate as confidential material the transcript or any portion of it. Until such a designation has been made or until ten (10) days after the party or third party has received such a transcript, whichever occurs first, all information contained in the transcript shall be treated as confidential material. Nothing in this paragraph shall preclude any party from seeking confidential designation of the transcript or any portion of it within such ten-day period.

10. Confidential material may be disclosed only to:

- (a) the Administrative Law Judge assigned to this proceeding and judges and other court personnel of any other court having jurisdiction over this matter;
- (b) the Commissioners of the FTC;
- (c) complaint counsel, their associated attorneys and other employees, consultants or contractors of the Commission;
- (d) Respondent's counsel, which means all counsel of record for respondent, and any associated attorneys or employees of counsel of record who are

involved in this proceeding:

- (e) experts or other persons who are retained to assist respondent's counsel in preparing for trial or to give testimony at trial and clerical or other personnel assisting respondent's counsel throughout this proceeding;
- (f) experts or other persons who are retained to assist complaint counsel in preparing for trial or to give testimony at trial and clerical or other personnel assisting complaint counsel throughout this proceeding;
- (g) any person who has been identified as an author or recipient of such confidential material;
- (h) qualified court reporters taking testimony and necessary stenographic and clerical personnel thereof.

11. Disclosure of confidential material to any person described in Paragraph 10 of this Order shall be only for the purposes of the preparation, hearing, and any appeal of this proceeding and any subsequent administrative proceeding and for no other purpose whatsoever. Provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such confidential material, use or disclose such confidential material as provided by (1) its Rules of Practice, Sections 6(f) and 21 of the Federal Trade Commission Act and any cases so construing them, and (2) any other legal obligation imposed upon the Commission. Each person to whom confidential material is disclosed pursuant to Paragraph 10(e) and (f) of this Order shall, before receiving any such confidential material, read this Protective Order and sign an agreement, in the form appended hereto as Attachment A, to be bound by its terms. Any submitting party shall have the right to receive copies of such written undertakings upon request.

12. In the event that any confidential material is contained in any pleading, motion, memorandum, exhibit or other paper (collectively the "papers") filed or to be filed in this proceeding, the Secretary shall be so informed by the party filing such papers, and shall keep such papers under seal until further Order of the Administrative Law Judge; provided, however, that such papers may be furnished to persons to whom confidential material may be disclosed under Paragraph 10 of this Order. As soon as possible after filing any motion, memorandum, or pleading that contains confidential information, the filing party shall give the Secretary a duplicate copy with the confidential information deleted for filing on the public record.

13. During the pendency of this action, should either party seek to use confidential material for any purpose that would involve disclosure of the confidential material on the public record, the party shall provide reasonable notice to the other party to this proceeding and, as applicable, to the third party for purposes of allowing any such party or third party to make a formal application before the Administrative Law Judge hearing this matter for in camera treatment of the confidential material. Except where such an order is granted, all such material shall be part of the public record. Prior notice to parties or third parties shall not be required for in camera use of confidential material.

14. When any person described in Paragraph 10(d) or (e) ceases to participate in this proceeding, all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information, shall be returned by such person to counsel for respondent, who in turn shall, at the conclusion of this proceeding, (a) return all original confidential material in his or her possession, custody, or control, to the submitter; and (b) destroy all remaining non-original

confidential material.

15. When any person described in Paragraph 10(f) ceases to participate in this proceeding, all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information, shall be returned by such person to complaint counsel. At the conclusion of this proceeding, Complaint counsel shall dispose of all documents in accordance with Section 4.12 of the Commission's Rules of Practice.

16. The provisions of this Order insofar as they restrict the communication and use of confidential materials shall, without written permission of the submitting party or further order of the Administrative Law Judge, continue to be binding after the conclusion of this action.

17. Nothing in this Order shall be construed to conflict with the provisions of Sections 6(f) and 21 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 57b-2, or with Sections 3.45 or 4.11(b), (c), (d), or (e) of the FTC Rules of Practice, 16 C.F.R. §§ 3.45 and 4.11(b)-(e) (1992).

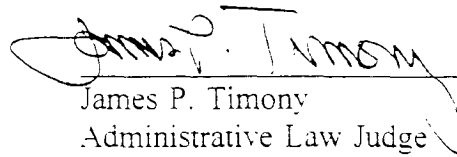
18. Nothing in this Order shall be construed to effect an abrogation, waiver, or limitation of any kind on the right of the parties or third parties to assert any applicable discovery or trial privilege or to apply for further protective orders or for modification of any provision of this Order.

19. This Order shall not apply to the disclosure of the designating party's

The right of the Administrative Law Judge, the Commission, and reviewing courts to disclose in camera data to the extent necessary for proper disposition of the proceeding is specifically reserved pursuant to Section 3.45(a) of the FTC Rules of Practice.

confidential material to its employees, agents, former employees, board members, directors,
and officers.

SO ORDERED:


James P. Timony
Administrative Law Judge

Dated: July 18, 1997

ATTACHMENT A

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of)	
)	
R.J. REYNOLDS TOBACCO COMPANY)	DOCKET NO. D-9285
a corporation.)	
)	

AGREEMENT TO MAINTAIN CONFIDENTIALITY

1. [Statement of Employment]

2. I have read the "Protective Order Governing Confidential Material" ("Order") issued by Administrative Law Judge James P. Timony on . in connection with the above-captioned case, Federal Trade Commission Docket No. 9285. I understand the restrictions on my use of any confidential material (as this term is defined in the Protective Order) in this action and I agree to abide by the Order.

3. I understand that the restrictions on my use of such material include:

(a) that I will use such confidential material only for the purposes of preparing for this proceeding, any hearing(s), and any appeal of this proceeding and for no other purposes whatsoever;

(b) that I will not disclose such confidential material to anyone, except as permitted by the Order; and

(c) that upon the termination of my participation in this proceeding I will promptly

return all copies of documents, or portions thereof, containing confidential material, and all notes, memoranda, or other papers containing confidential material, to complaint counsel or respondent's counsel.

4. I am fully aware that, pursuant to Section 3.42(h) of the Commission's Rules of Practice, 16 C.F.R. § 3.42(h), my failure to comply with the terms of the Order may constitute contempt of the Commission and may subject me to sanctions imposed by the Commission.

5. I understand that the intended beneficiaries of my agreement to be bound by the Order include not only the Commission, but also the parties and third parties who submitted said confidential information, and that therefore I may be liable to such submitters for compensatory and punitive damages resulting from improper disclosure or misappropriation of the information they provided.

[SIGNATURE]

Date: