

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

In the Matter of )  
)  
)

REALCOMP II LTD., )  
Respondent. )  
)

Docket No. 9320

**ORDER ON RESPONDENT'S MOTION FOR *IN CAMERA* TREATMENT**

**I.**

On May 25, 2007, Respondent Realcomp II Ltd. ("Respondent") filed a motion for *in camera* treatment of documents produced by Realcomp II Ltd. and of deposition testimony of Karen Kage and Realcomp board members. Respondent represents that Complaint Counsel is unopposed to Respondent's request for *in camera* treatment. For the reasons set forth below, Respondent's motion is **GRANTED IN PART, DENIED IN PART, and DENIED WITHOUT PREJUDICE IN PART**, as described below.

**II.**

In Commission proceedings, requests for *in camera* treatment must show that the public disclosure of the documentary evidence will result in a clearly defined, serious injury to the person or corporation whose records are involved. *In re Kaiser Aluminum & Chem. Corp.*, 103 F.T.C. 500, 500 (1984); *In re H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961). That showing can be made by establishing that the documentary evidence is "sufficiently secret and sufficiently material to the applicant's business that disclosure would result in serious competitive injury," and then balancing that factor against the importance of the information in explaining the rationale of Commission decisions. *Kaiser*, 103 F.T.C. at 500; *In re General Foods Corp.*, 95 F.T.C. 352, 355 (1980); *In re Bristol Myers Co.*, 90 F.T.C. 455, 456 (1977).

Indefinite *in camera* treatment is granted only in those "unusual" cases where the competitive sensitivity or the proprietary value of the information will not diminish with the passage of time. *In re Coca-Cola Co.*, 1990 FTC LEXIS 364, at \*6-7 (Oct. 17, 1990). 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). Where *in camera* treatment is granted for ordinary business records, such as business plans, marketing plans, or sales

documents, it is typically extended for two to five years. *E.g., In re E.I. Dupont de Nemours & Co.*, 97 F.T.C. 116, 118 (1981); *In re Int'l Ass. of Conf. Interpreters*, 1996 FTC LEXIS 298, \*13-14 (June 26, 1996).

The Federal Trade Commission strongly favors making available to the public the full record of its adjudicative proceedings to permit public evaluation of the fairness of the Commission's work and to provide guidance to persons affected by its actions. *In re Crown Cork & Seal Co., Inc.*, 71 F.T.C. 1714, 1714-15 (1967); *Hood*, 58 F.T.C. at 1186 (“[T]here is a substantial public interest in holding all aspects of adjudicative proceedings, including the evidence adduced therein, open to all interested persons.”). In addition, there is a presumption that *in camera* treatment will not be provided to information that is three or more years old. *See, e.g., General Foods*, 95 F.T.C. at 353; *Crown Cork & Seal*, 71 F.T.C. at 1715. A heavy burden of showing good cause for withholding documents from the public record rests with the party requesting that documents be placed *in camera*. *Hood*, 58 F.T.C. at 1188.

### III.

Respondent's motion seeks *in camera* treatment for a narrow set of documents. Respondent asserts that the documents for which it seeks *in camera* treatment are documents which contain highly confidential business information, the disclosure of which would irreparably injure Respondent and hinder its standing in the marketplace. It is clear, however, that Respondent seeks to shield from disclosure routine business information which is not entitled to *in camera* protection and must be revealed in order to clearly explain the facts of this case. For example, in its public version of its *in camera* motion, Respondent has redacted even its general description of the documents for which it seeks *in camera* treatment. This is untenable. Most of the documents are documents which Respondent would prefer not to be disclosed, but do not meet the Commission's standard. All of the documents for which Respondent seeks *in camera* treatment are ordinary business records; none merit the higher level necessary for indefinite *in camera* treatment.

Respondent's use of clear, readily defined categories of documents for which it seeks *in camera* treatment is immensely helpful and will be utilized in evaluating the documents.

#### A. Realcomp Testimony and Exhibits

##### 1. CX 9-11: Realcomp Board of Governors Meeting Minutes

CX 9-11 are minutes of Realcomp board meetings that are over four years old and contain information about Realcomp's internal business strategies. Respondent has not demonstrated that disclosure would cause substantial harm and these ordinary business records meet the level of secrecy to merit *in camera* protection. With respect to CX 9-11, *in camera* treatment is **DENIED**.

**2. CX 12: Realcomp MLS/User Committee Minutes**

CX 12 is a copy of minutes from a MLS/User Committee Meeting that is over four years old and contains information about Realcomp's internal policies. Respondent has not demonstrated that disclosure would cause substantial harm and this ordinary business record meets the level of secrecy to merit *in camera* protection. With respect to CX 12, *in camera* treatment is **DENIED**.

**3. CX 22-25: Letter, Fax, and Email Regarding Complaints About a Specific Entity**

CX 22-25 include documentation of complaints made to Realcomp in relation to other entities/persons not complying with Realcomp's rules and procedures. Respondent has not demonstrated that disclosure would cause substantial harm and these ordinary business records meet the level of secrecy to merit *in camera* protection. With respect to CX 22-25, *in camera* treatment is **DENIED**.

**4. CX 48: Realcomp Active Member Subscribing Offices**

CX 48 is a document containing the names, addresses and telephone numbers of Realcomp's active members. *In camera* treatment, for a period of three years, will be **GRANTED** to CX 48.

**5. CX 54: Realcomp Restated Subscription/Service Agreement**

CX 54 is described as a draft restated subscription service agreement between Realcomp and various boards of realtors. The document contains the terms and conditions of participation in a variety of computerized network services related to real estate multiple listing functions. Respondent has not provided sufficient information to determine the confidential nature of this document. *In camera* treatment is **DENIED WITHOUT PREJUDICE** for CX 54.

**6. CX 56, 59, 88: Realcomp Restated Subscription/Service Agreement**

CX 56 is a copy of Realcomp's Restated and Superceding Realcomp Shareholder Agreement. CX 59 is a copy of Realcomp's Fifth Amended Bylaws. CX 88 is a copy of Realcomp's Restated Articles of Incorporation. Respondent has not provided sufficient information to determine the confidential nature of this document. *In camera* treatment is **DENIED WITHOUT PREJUDICE** for CX 56, 59, 88.

**7. CX 91: Realcomp Balance Sheet**

CX 91 is a copy of Realcomp's December 31, 2005 balance sheet. *In camera* treatment,

for a period of three years, will be **GRANTED** to CX 91.

**8. CX 97: Minutes from Board of Governors Meeting**

CX 97 is a copy of minutes from a Board of Governors Meeting that is over four years old and contains information about Realcomp's internal policies. Respondent has not demonstrated that disclosure would cause substantial harm and this ordinary business record meets the level of secrecy to merit *in camera* protection. With respect to CX 97, *in camera* treatment is **DENIED**.

**9. CX 245: Prebilling Register Charge Code of Realcomp IDX Participants**

CX 245 is a copy of Realcomp's Prebilling Register Charge Code of IDX participants. *In camera* treatment, for a period of three years, will be **GRANTED** to CX 245.

**10. CX 264-265: Bills for Advertising Expenses**

CX 264-265 are bills for Realcomp's advertising expenses. *In camera* treatment, for a period of three years, will be **GRANTED** to CX 264-265.

**11. CX 282: CD Containing MLS Data**

CX 282 is a text file CD containing MLS listings. *In camera* treatment, for a period of three years, will be **GRANTED** to CX 282.

**12. Karen Kage Testimony: February 20, 2007 Deposition**

Respondent has narrowly tailored its request by seeking *in camera* treatment for only select pages of Ms. Kage's deposition. However, a review of the pages designated reveals that the testimony includes general information that does not rise to the level of secrecy necessary to merit *in camera* protection.

**(a) Pages 120 to 127**

In order to protect the confidentiality of specifically named individuals, *in camera* treatment, for a period of three years, will be **GRANTED** to the following pages and lines of the February 20, 2007 Kage Deposition:

Page 121	Line 14
Page 126	Lines 5, 12

**(b) Pages 157 to 160**

Respondent's motion inadvertently did not include pages 158-160 of the Kage Deposition. Because these pages could not be reviewed, with respect to pages 158-160, Respondent's motion is **DENIED WITHOUT PREJUDICE**. With respect to page 157, which was provided and reviewed, *in camera* treatment is **DENIED**.

**(c) Pages 167 to 177**

The only information contained in these pages that may be withheld from the public record is the amount spent on advertising. Other information contained in this testimony, such as the number of advertising spots and reasons for such advertising do not meet the Commission's standards. *In camera* treatment, for a period of three years, will be **GRANTED** to the following pages and lines of the February 20, 2007 Kage Deposition:

Page 168	Line 5
Page 171	Line 22-25
Page 172	Line 1-5
Page 173	Line 12-13

**(d) Pages 181 to 184**

The information contained in these pages, including the number of "hits" a website receives does not meet the Commission's standards. For pages 181-184, *in camera* treatment is **DENIED**.

**B. Board Member Testimony and Exhibits**

**1. Douglas Hardy**

Realcomp Board member Douglas Hardy requests *in camera* treatment for portions of his deposition testimony and certain exhibits thereto.

**(a) CX 284 and Deposition Testimony 34-38**

This document and testimony relating to it are a form sales contract between Century 21 and "salesperson." Respondent has not demonstrated that disclosure would cause substantial harm and this ordinary business record meets the level of secrecy to merit *in camera* protection. With respect to CX 284 and Hardy Deposition Testimony pp. 34-38, *in camera* treatment is **DENIED**.

**(b) CX 285 and Deposition Testimony 57-62**

This document and testimony relating to it are a form Exclusive Right to Sell Contract of Century 21. Respondent has not demonstrated that disclosure would cause substantial harm and this ordinary business record meets the level of secrecy to merit *in camera* protection. With respect to CX 285 and Hardy Deposition Testimony pp. 57-62, *in camera* treatment is **DENIED**.

**(c) CX 286 and Deposition Testimony 63-73**

This exhibit and testimony relating to it are twenty listings of residential transactions. The documents reveal gross commissions, royalty fees paid, and company dollars paid on each transaction. Respondent has not demonstrated that disclosure would cause substantial harm and this ordinary business record meets the level of secrecy to merit *in camera* protection. With respect to CX 286 and Hardy Deposition Testimony pp. 63-73, *in camera* treatment is **DENIED**.

**(d) Deposition Testimony 81-82**

This testimony relates to the use of search engines. Respondent has not demonstrated that disclosure would cause substantial harm and this information meets the level of secrecy to merit *in camera* protection. With respect to Hardy Deposition Testimony pp. 81-82, *in camera* treatment is **DENIED**.

**(e) CX 298 and Deposition Testimony 133-135**

This exhibit and testimony relating to it reveal commission and fees. Respondent has not demonstrated that disclosure would cause substantial harm and this information meets the level of secrecy to merit *in camera* protection. With respect to CX 298 and Hardy Deposition Testimony pp. 133-135, *in camera* treatment is **DENIED**.

**(f) CX 299 and Deposition Testimony 135-138**

This exhibit and testimony relating to it reveal terms and conditions of Move Sales, Inc. showcase. For most of this information, Respondent has not demonstrated that disclosure would cause substantial harm and that this information meets the level of secrecy to merit *in camera* treatment. *In camera* treatment, for a period of three years, is **GRANTED** only to pages DH00047-48 of CX 299. With respect to the remainder of CX 299 and Hardy Deposition Testimony pp. 135-138, *in camera* treatment is **DENIED**.

**2. Robert Gleason**

Realcomp Board member Robert Gleason requests *in camera* treatment for portions of his deposition testimony and certain exhibits thereto. These exhibits and testimony relating to them reveal form contracts and terms and conditions of Move Sales, Inc. Company Showcase. For

most of this information, Respondent has not demonstrated that disclosure would cause substantial harm and that this information meets the level of secrecy to merit *in camera* treatment. *In camera* treatment, for a period of three years, is **GRANTED** only to page RG00052 of CX 333 and to Gleason Deposition Testimony p. 81, Line 13. With respect to the remainder of CX 333, all of CX 329 and CX 331, and Gleason Deposition Testimony pp. 37-39 and 70-80, *in camera* treatment is **DENIED**.

### 3. Douglas Whitehouse

Realcomp Board member Douglas Whitehouse requests *in camera* treatment for portions of his deposition testimony and certain exhibits thereto. These exhibits and testimony relating to them reveal his firm's internal business procedures, dealings and marketing. For most of this information, Respondent has not demonstrated that disclosure would cause substantial harm and that this information meets the level of secrecy to merit *in camera* treatment. *In camera* treatment, for a period of three years, is **GRANTED** to CX 323 and CX 324 and to Whitehouse Deposition Testimony pp. 98 to 100. With respect to CX 301, CX 310, CX 311, CX 325, and Whitehouse Deposition Testimony pp. 15-18, 59-82, and 101-103, *in camera* treatment is **DENIED**.

### 4. Gerald Burke

Realcomp Board member Gerald Burke requests *in camera* treatment for portions of his deposition testimony. This testimony reveals commission ranges and internal processes and strategies. Respondent has not demonstrated that disclosure would cause substantial harm and that this information meets the level of secrecy to merit *in camera* treatment. *In camera* treatment is **DENIED** as to Burke Deposition Testimony pp. 25-31 and 48-49.

### 5. Robert Taylor


Realcomp Board member Robert Taylor requests *in camera* treatment for portions of his deposition testimony and certain exhibits thereto. These exhibits and testimony relating to them reveal his firm's internal business procedures and commissions. For most of this information, Respondent has not demonstrated that disclosure would cause substantial harm and that this information meets the level of secrecy to merit *in camera* treatment. *In camera* treatment is **DENIED** as to CX 378 and Taylor Deposition Testimony pp. 51-67. *In camera* treatment, for a period of three years, is **GRANTED in part** as to CX 379. CX 379 will be withheld from the public record. However, at trial, only the figures reflecting yearly amounts spent on internet advertising and internet web site must be withheld from the public record. Figures in CX 379 reflecting sales prices and commissions may be disclosed on the public record.

IV.

With respect to documents for which *in camera* treatment was granted or granted in part, *in camera* treatment shall be extended for a period of three years, to expire June 1, 2010.

With respect to documents for which *in camera* treatment was denied without prejudice, Respondent shall have until June 13, 2007 to file a motion for *in camera* treatment for those documents.

ORDERED:

  
Stephen J. McGuire  
Chief Administrative Law Judge

Date: June 7, 2007