

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 NON-PARTIES' MOTIONS FOR *IN CAMERA* TREATMENT

I.

Pursuant to Commission Rule 3.45(b) and the Scheduling Order entered in this litigation, several non-parties have filed motions for *in camera* treatment for materials that the parties have listed on their exhibit lists as materials that might be introduced at trial in this matter.

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.

On May 29, 2007, Non-party Move, Inc. (“Move”) filed a motion seeking *in camera* treatment for six documents. Respondent, on June 4, 2007, filed notice that it does not object to the *in camera* treatment that Move seeks.

The motion by Move includes a declaration by Move's Vice President for Litigation and Administration. The declarant avers that the documents are high-level, company-wide business plan and strategy documents that were authored and shared among only Move's senior leadership personnel and that the documents contain highly sensitive and confidential business information of Move, including information about Move's strategic growth plans and important aspects of Move's relations with other businesses. The declarant further avers that disclosure of the exhibits will likely cause serious injury to Move. Move has demonstrated that the documents meet the Commission's standards for *in camera* treatment.

Move's motion is **GRANTED**. *In camera* treatment, for a period of three years, to expire June 1, 2010, is granted to: CX 614, CX 615, CX 618, CX 619, CX 620, and RX 140.

IV.

On May 25, 2007, Non-party Murray Consulting, Inc. (“Murray Consulting”) filed a motion seeking *in camera* treatment for one document conducted by Murray Consulting, titled “The Consumer Tsunami - Waves of Change for the Residential Real Estate Industry, dated August 2006 (“Consumer Tsunami”). Murray Consulting certifies that it conferred with Complaint Counsel and Respondent's Counsel and that neither objects to Murray's motion for *in camera* treatment.

The motion by Murray Consulting includes a declaration by Stephen Murray, the CEO and President. Murray avers that the document is a study that contains proprietary information, research and analysis of Murray Consulting that is not widely available to the general public. The report has been released to its subscribers, but is embargoed from any other use or distribution through December 31, 2007. Murray Consulting asserts it has taken significant steps

to protect the secrecy of the study.

Murray Consulting's motion is **GRANTED**. *In camera* treatment, to expire December 31, 2007, is granted to CX 535.

V.

On May 25, 2007, Non-party National Association of Realtors ("NAR") filed a motion seeking *in camera* treatment for two documents: (1) CX 363, a confidential September 2006 report prepared by a consultant to NAR's Internet Strategy/Technology Working Group; and (2) pp. 82-97 of the deposition of Robert Goldberg, the subject of which is CX 363. NAR states that neither Complaint Counsel nor Respondent's counsel object to NAR's motion for *in camera* treatment.

The motion by NAR includes a declaration by the General Counsel of NAR. The declarant states that CX 363 contains strategic recommendations for specific action which might be implemented. The declarant avers that disclosure of this information would make available to NAR's competitors insights into NAR's potential future business strategies and thereby cause serious competitive injury to NAR.

NAR's motion is **GRANTED**. *In camera* treatment, for a period of three years, to expire June 1, 2010, is granted to: CX 363 and pp. 82-97 of the deposition of Robert Goldberg.

VI.

On May 31, 2007, Non-party South Central Kansas MLS, Inc. ("SCK MLS") filed a motion seeking *in camera* treatment for the information contained in an electronic file entitled "Export.txt."


The motion by SCK MLS includes a declaration by the CEO of SCK MLS. The declarant states that the electronic file contains information maintained by SCK MLS on residential listings for the four year period, ending December 31, 2006. The declarant avers that among the fields included in the electronic file is a field called Private Remarks which includes codes for disarming alarm systems, codes for opening lock boxes containing keys, and other confidential information used by members to access listed properties. The declarant further avers that the electronic file includes actual sales information on property sold, which under Kansas law, is restricted. The declarant affirms that access to this information is restricted.

SCK MLS has demonstrated unusual circumstances where the sensitivity of the information will not diminish with the passage of time. SCK MLS's motion is **GRANTED**. *In camera* treatment, for an indefinite period is granted to the electronic file it produced entitled "export.txt."

VII.

At the time these documents are offered into evidence or before they are referred to in court, the parties shall identify these documents as *in camera*, inform the court reporter of the trial exhibit numbers of these documents, and request that the hearing go into an *in camera* session.

ORDERED:



Stephen J. McGuire
Chief Administrative Law Judge

Date: June 12, 2007