

ORIGINAL



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 COMPLAINT COUNSEL'S
MOTION FOR *IN CAMERA* TREATMENT

I.

On June 27, 2007, Complaint Counsel filed its unopposed motion for *in camera* treatment. For the reasons set forth below, Complaint Counsel's motion is **GRANTED**.

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).

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 June 20, 2007, at trial Complaint Counsel moved, pursuant to 16 C.F.R. § 3.45(g), for provisional *in camera* treatment of RX 154, CX 498-514, CX 517-524, and CX 557-560. On June 25, 2007, at trial Complaint Counsel moved, pursuant to 16 C.F.R. § 3.45(g), for provisional *in camera* treatment of DX 6, and to exclude CX 517-524 from provisional *in camera* treatment. Complaint Counsel now moves for an Order granting final *in camera* treatment to documents produced by Complaint Counsel's expert witnesses which incorporate materials and data previously granted *in camera* treatment.

Complaint Counsel has demonstrated that each of the documents for which *in camera* treatment is sought incorporates material, data or analyses from documents already granted *in camera* status. Respondent and third parties, from whom the information was derived, previously demonstrated, through their own *in camera* motions, that the information for which *in camera* treatment was granted contains confidential information and that the disclosure of such information could cause serious competitive injury. Therefore, Complaint Counsel has demonstrated that the documents for which it seeks *in camera* treatment meet the Commission's standards for *in camera* treatment.


IV.

With respect to CX 498-514, CX 557-559, and DX 6, *in camera* treatment is GRANTED, for a period of three years, to expire June 1, 2010.

With respect to RX 154, *in camera* treatment is GRANTED, to expire December 31, 2007.

With respect to the expert reports, Complaint Counsel shall prepare public versions, with the *in camera* material redacted. Complaint Counsel shall file a motion for admission of the public versions into the record. The public versions shall bear the original exhibit number, followed by "-A." For example, the public version of CX 498 shall be offered at CX 498-A.

ORDERED:


Stephen J. McGuire
Chief Administrative Law Judge

Date: July 10, 2007