

ORIGINAL



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

_____)
In the Matter of _____)
POLYPORE INTERNATIONAL, INC., _____)
Respondent. _____)
_____)

Docket No. 9327

ORDER ON RESPONDENT’S SECOND MOTION FOR *IN CAMERA* TREATMENT

I.

Pursuant to Rule 3.45(b) of the Commission’s Rules of Practice and the October 22, 2008 Scheduling Order in this matter, Respondent Polypore International, Inc. (“Polypore”) submitted on May 5, 2009 a second motion for *in camera* treatment (“Second Motion”). Respondent avers in its Second Motion that it removed over 915 exhibits from *in camera* consideration in response to the April 27, 2009 Order on Respondent’s prior motion for *in camera* treatment. On May 8, 2009, Complaint Counsel submitted an opposition to Respondent’s second motion for *in camera* treatment.

II.

An Order on Non-Parties’ Motions for *In Camera* Treatment was entered in this matter on May 6, 2009. The legal standards that apply to motions for *in camera* treatment, including Respondent’s Second Motion, are set forth in that Order. In addition to the case law set forth in that Order, it is noted that under Federal Trade Commission Rule 3.45(a), “the Administrative Law Judge, the Commission and reviewing courts may disclose *in camera* material to the extent necessary for the proper disposition of the proceeding.” 16 C.F.R. § 3.45(a). A ruling on *in camera* treatment, “like other questions relating to the proper, fair, and expeditious conduct of adjudicative hearings[,] is a matter within the sound discretion of the administrative law judge.” *In re Bristol-Myers Co.*, 90 F.T.C. 455, 457 (1977).

In this proceeding, it appears to be “reasonable . . . , as Commission Rule 3.45(a) allows, for the [administrative] law judge to grant *in camera* treatment for information at the time it is offered into evidence subject to a later determination by the [administrative] law judge or the Commission that public disclosure is required in the interests of facilitating public understanding of their subsequent decisions.” *Id.* As the Commission later reaffirmed in another leading case on *in camera* treatment, since “in some instances the ALJ or Commission cannot know that a certain piece of information may be critical to the public understanding of agency action until the Initial Decision or the Opinion of the Commission is issued, the Commission and the ALJs retain

the power to reassess prior *in camera* rulings at the time of publication of decisions.” *In re General Foods Corp.*, 95 F.T.C. 352, 356 n.7 (1980). Thus, “[g]ranted *in camera* treatment . . . [need] not frustrate public understanding of this case.” *In re Int’l Ass’n of Conference Interpreters*, No. 9270, 1996 FTC LEXIS 298, at *7 (June 26, 1996).

III.

Respondent’s Second Motion for *in camera* treatment provides the documents for which *in camera* treatment is sought and complies, except as noted below, with the requirements for *in camera* treatment. Exhibit A to Respondent’s Second Motion is a list by exhibit number of the documents for which Respondent seeks *in camera* treatment. Exhibit B is the Second Declaration of Michael Shor, Special Counsel for Polypore, in support of Respondent’s Second Motion for *in camera* treatment (“Shor Declaration”).

Complaint Counsel argues that Respondent has failed to meet its burden of explaining why this Court should grant *in camera* treatment to each of the 687 documents listed in Exhibit A of Respondent’s Second Motion. Complaint Counsel further argues that the justifications provided in Exhibit B of Respondent’s Second Motion do not define with sufficient specificity the serious injury that would result if the documents were released to the public. In addition, Complaint Counsel notes that several of the documents for which Respondent seeks *in camera* treatment are more than three years old.

In his Declaration in support of Respondent’s Second Motion, Shor describes the documents for which *in camera* treatment is sought and declares that each document contains sensitive and confidential information, the disclosure of which would seriously injure Respondent. Shor further declares that each document has been maintained internally by Respondent in a confidential manner, shared only with those individuals requiring the information contained therein. According to his Declaration, the documents that Respondent designates as proposed trial exhibits are organized into nine categories: (1) business plans and strategies, (2) contract negotiations and customer contracts, (3) intellectual property and proprietary information, (4) market analysis, (5) pricing strategy, (6) customer-specific documents, (7) costing data, (8) sales and financial information, and (9) multiple category documents.

Shor’s Declaration generally supports Respondent’s claims that the documents, including those which are more than three years old, are sufficiently secret and sufficiently material to its business that disclosure would result in serious competitive injury. That showing was then balanced against the importance of the information in explaining the rationale of decisions at the Commission. Respondent requests *in camera* treatment for the proposed trial exhibits for a specified period of either three or five years.

In camera treatment for a period of five years, expiring on June 1, 2014, will be extended to the documents for which Respondent requests *in camera* treatment of that duration, in accordance with Section IV of this Order.

In camera treatment for a period of three years, expiring on June 1, 2012, will be extended to the documents for which Respondent requests *in camera* treatment of such duration, in accordance with Section IV of this Order.

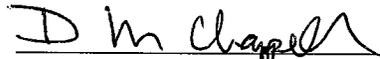
IV.

Upon review of Exhibit A and Exhibit B, it appears that not all of the documents listed in Exhibit A have an explanation in Exhibit B. It also appears that not all of the documents described in Exhibit B are listed in Exhibit A. *In camera* treatment is GRANTED only for documents both listed in Exhibit A and described in Exhibit B. With respect to the documents for which Respondent has failed to provide any explanation for its requested *in camera* treatment, Respondent's Second Motion is DENIED WITHOUT PREJUDICE.

Respondent shall prepare a proposed order, with a signature line for the Administrative Law Judge, that lists by exhibit number the documents that, by this Order, have been granted *in camera* treatment and that sets forth the expiration date of *in camera* treatment for each exhibit.

Respondent shall inform its testifying current or former employees that *in camera* treatment has been extended to the material described in this Order. At the time that any documents that have been granted *in camera* treatment are offered into evidence, or before any of the information contained therein is referred to in court, Respondent shall identify such documents and the subject matter therein as *in camera*, inform the court reporter of the trial exhibit number(s) of such documents, and request that the hearing go into an *in camera* session.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: May 13, 2009