

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



\_\_\_\_\_)  
In the Matter of \_\_\_\_\_)  
\_\_\_\_\_)  
POM WONDERFUL LLC and \_\_\_\_\_)  
ROLL GLOBAL LLC, \_\_\_\_\_)  
as successor in interest to \_\_\_\_\_)  
Roll International Corporation, \_\_\_\_\_)  
companies, and \_\_\_\_\_)  
\_\_\_\_\_)  
STEWART A. RESNICK, \_\_\_\_\_)  
LYNDA RAE RESNICK, and \_\_\_\_\_)  
MATTHEW TUPPER, individually and \_\_\_\_\_)  
as officers of the companies. \_\_\_\_\_)  
\_\_\_\_\_)

DOCKET NO. 9344

**ORDER ON JOHN HOPKINS UNIVERSITY AND MICHAEL A. CARDUCCI  
M.D.'S MOTION FOR *IN CAMERA* TREATMENT**

**I.**

Pursuant to Rule 3.45(b) of the Commission's Rules of Practice and the October 26, 2010 Scheduling Order entered in this matter, on April 20, 2011, non-parties John Hopkins University ("JHU") and Professor Michael A. Carducci, M.D., ("Dr. Carducci") filed a motion for *in camera* treatment for materials that Complaint Counsel has indicated it intends to introduce at trial ("Motion"). Neither Complaint Counsel nor Respondents has filed an opposition to the Motion. As set forth below, the Motion is GRANTED.

**II.**

Under Rule 3.45(b) of the Federal Trade Commission's Rules of Practice, the Administrative Law Judge may order that material "be placed *in camera* only after finding that its public disclosure will likely result in a clearly defined, serious injury to the person, partnership or corporation requesting *in camera* treatment." 16 C.F.R. § 3.45(b). Accordingly, in proceedings at the Federal Trade Commission, "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), quoting *In re H. P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961). Applicants for *in camera* treatment must "make a clear showing that the information concerned is sufficiently secret and sufficiently material to their business that disclosure would result

in serious competitive injury.” *In re General Foods Corp.*, 95 F.T.C. 352, 355 (1980). If the applicants for *in camera* treatment make this showing, the importance of the information in explaining the rationale of decisions at the Commission is “the principal countervailing consideration weighing in favor of disclosure.” *Id.*

The Federal Trade Commission recognizes the “substantial public interest in holding all aspects of adjudicative proceedings, including the evidence adduced therein, open to all interested persons.” *Hood*, 58 F.T.C. at 1186. A full and open record of the adjudicative proceedings promotes public understanding of decisions at the Commission. *In re Bristol-Myers Co.*, 90 F.T.C. 455, 458 (1977). A full and open record also provides guidance to persons affected by its actions and helps to deter potential violators of the laws the Commission enforces. *Hood*, 58 F.T.C. at 1186. The burden of showing good cause for withholding documents from the public record rests with the party requesting that documents be placed *in camera*. *Id.* at 1188. However, a request for *in camera* treatment by a non-party warrants “special solicitude.” *In re Crown Cork & Seal Co.*, 71 F.T.C. 1714, 1715 (1967). In order to sustain the burden for withholding documents from the public record, an affidavit or declaration demonstrating that a document is sufficiently secret and sufficiently material to the applicant’s business that disclosure would result in serious competitive injury is required. *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 109, at \*2-3 (Apr. 23, 2004).

### III.

Of the 30 documents of JHU and Dr. Carducci that Complaint Counsel indicated it intends to introduce at trial, JHU and Dr. Carducci have narrowed their request for *in camera* treatment to 5 items. JHU and Dr. Carducci have supported their request for *in camera* treatment with an affidavit of Dr. Carducci. (“Carducci Affidavit”). JHU and Dr. Carducci assert in their Motion that the materials for which they seek *in camera* treatment contain confidential and sensitive research-related data and information that if publicly disclosed at this time will compromise the likelihood that research and study results will be accepted for publication in a scientific or medical journal. They further assert that if the research and study results are rendered unpublishable because of public disclosure of sensitive research data, JHU and Dr. Carducci will be seriously injured. JHU and Dr. Carducci request *in camera* treatment for each of these 5 documents for a period of 2 years.

A review of the Carducci Affidavit in support of the Motion and of the documents reveals that the documents for which protection is sought meet the standards for *in camera* treatment. The request for *in camera* treatment, for a period of two years, to expire on June 1, 2013, is granted for the materials described by Dr. Carducci as Items 22, 23, 26, 28 and 30.

### IV.

The materials submitted do not make clear the trial exhibit numbers assigned to the documents defined by Dr. Carducci as Items 22, 23, 26, 28 and 30. Therefore,

Complaint Counsel is instructed to develop a list of these documents that indicates by CX or RX the proposed exhibit numbers for which *in camera* treatment has been granted by this Order. In addition, because *in camera* treatment is appropriate only for information that is offered into evidence, after the conclusion of the final prehearing conference, the parties shall prepare a joint proposed order, with a signature line for the Administrative Law Judge, listing by exhibit number the documents that, by this Order, have been granted *in camera* treatment and setting forth the expiration date of *in camera* treatment for each exhibit.

JHU 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, the parties 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 9, 2011