

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



_____))
In the Matter of)) **PUBLIC**
))
McWANE, INC.,)) DOCKET NO. 9351
Respondent.))
_____))

**COMPLAINT COUNSEL’S MOTION FOR IN CAMERA TREATMENT OF
WITNESS TELEPHONE RECORDS**

Pursuant to Rule 3.45(b) of the Commission’s Rules of Practice and the Scheduling Order entered in this matter, Complaint Counsel hereby requests that the Court grant *in camera* treatment of telephone records in evidence at CX 1618-A, CX 1621-A, CX 1624-A, CX 1625-A, CX 1626-A, and CX 1860-A (collectively, “Phone Records”), which are attached hereto at Tabs 1 through 6.¹

BACKGROUND

In response to Complaint Counsel’s April 26, 2012 subpoenas *duces tecum*, Verizon Legal Compliance and Verizon Wireless (collectively, “Verizon”) submitted Phone Records for the business phone numbers of certain employees of McWane, Inc. and Sigma Corp. for the period of January 1, 2007 through May 2, 2012. Complaint Counsel has redacted the attached Phone Records to reflect the call histories, to the extent available, between key executives from McWane, Sigma and Star Pipe Products Ltd. (“Star”). Specifically: CX 1860-A contains the call log for Lawrence Rybacki’s office and assistant’s phone lines; CX 1618-A contains the business cell phone call log for

¹ Complaint Counsel previously marked unredacted versions of these same exhibits as CX 1618, CX 1621, CX 1624, CX 1625, CX 1626, and CX 1860. The “-A” suffix documents attached to this motion and described above redact all irrelevant phone numbers, and are the versions that Complaint Counsel intends to introduce into evidence at these proceedings.

Thomas Brakefield; CX 1621-A contains the business cell phone call log for Larry Rybacki; CX 1624-A contains the business cell phone call log for Mitchell Rona; CX 1625-A contains the business cell phone call log for Matt Minameyer; and, CX 1626-A contains the business cell phone call log for Jerry Jansen. These Phone Records would not be available to the public absent a subpoena.

ARGUMENT

Because the Phone Records contain sensitive personal information under Rule 3.45(b), this Court should grant *in camera* treatment for all Phone Records for a period of ten years. Rule 3.45(b) of the Federal Trade Commission's Rules of Practice explicitly allows for *in camera* treatment of evidence that "constitutes sensitive personal information." 16 C.F.R. § 3.45(b). Sensitive personal information under Rule 3.45(b) includes numbers and records "identifiable by individual." *Id.* On September 14, 2012, this Court "determined that phone records, especially those that are subpoenaed, constitute sensitive personal information under the FTC Rules." Sept. 14, 2012 Rough Tr. at 270.

Under Rule 3.45(b)'s definition, and this Court's September 14, 2012 finding, the Phone Records constitute sensitive personal information eligible for *in camera* treatment. The Phone Records list phone calls to and from specific employees of McWane, Sigma and Star, and are thus identifiable by individual. *See* 16 C.F.R. § 3.45(b). Additionally, this Court's September 14, 2012 finding regarding sensitive personal information explicitly references one of the Phone Records produced pursuant to subpoena in this case and at issue in this motion, CX 1621. *See* Sept. 14, 2012 Rough Tr. at 270

(describing the unredacted exhibit shown to Lawrence Rybacki during his September 7, 2012 testimony).

Because the Phone Records pertain to McWane's and non-parties' currently active telephone numbers, this Court should extend *in camera* treatment for these Phone Records to ten years. While *in camera* treatment generally does not extend beyond three years, the Commission grants longer *in camera* treatment to materials that are not "ordinary business records." See *In re: H. P. Hood & Sons*, 58 F.T.C. 1184, 1189 (1961) (describing customer names, or profit and loss documents as ordinary business documents and distinguishing these from technical secrets). Phone records are not ordinary business records, and the sensitivity of the information that they contain is ongoing, and thus entitled to protection for a period of ten years.

CONCLUSION

For the reasons stated above, Complaint Counsel asks this Court to grant *in camera* treatment to the Phone Records for a period of ten years.

Dated: September 17, 2012

Respectfully submitted,

s/ Edward Hassi

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(Proposed) ORDER

After reviewing Complaint Counsel’s Motion for *In Camera* Treatment for Witness Telephone Records, it is ordered that *in camera* status is hereby GRANTED for a period of 10 years, ending on September 1, 2022, for the following documents: CX 1618-A, CX 1621-A, CX 1624-A, CX 1625-A, CX 1626-A, and CX 1860-A.

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

Date: September 17, 2012

CERTIFICATE OF SERVICE

I hereby certify that on September 17, 2012, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, DC 20580

I also certify that I delivered via electronic mail and hand delivery a copy of the foregoing document to:

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580

I further certify that I delivered via electronic mail a copy of the foregoing document to:

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CERTIFICATE FOR ELECTRONIC FILING

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

September 17, 2012

By: s/ Thomas H. Brock
Attorney

CONFIDENTIAL - REDACTED IN ENTIRETY ^{PUBLIC}

TAB 1

CX 1618-A

CONFIDENTIAL - REDACTED IN ENTIRETY ^{PUBLIC}

TAB 2

CX 1621-A

CONFIDENTIAL - REDACTED IN ENTIRETY ^{PUBLIC}

TAB 3

CX 1624-A

CONFIDENTIAL - REDACTED IN ENTIRETY

TAB 4

CX 1625-A

CONFIDENTIAL - REDACTED IN ENTIRETY ^{PUBLIC}

TAB 5

CX 1626-A

CONFIDENTIAL - REDACTED IN ENTIREY

TAB 6

CX 1860-A