

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



_____)
In the Matter of)
)
)
McWANE, INC.,)
Respondent.)
_____)

PUBLIC

DOCKET NO. 9351

**COMPLAINT COUNSEL’S UNOPPOSED MOTION FOR IN CAMERA
TREATMENT OF 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 1619, CX 1620, CX 1622, and CX 1623 (“Phone Records”). The Phone Records were admitted into evidence under the Joint Stipulation on Admissibility of Party Exhibits (JX 0002-A) and are attached hereto at Tabs 1 through 4.

BACKGROUND

In response to Complaint Counsel’s April 26, 2012 subpoena *duces tecum*, Verizon Legal Compliance and Verizon Wireless (collectively, “Verizon”) submitted Phone Records of certain employees of McWane, Inc. and Sigma Corporation. Specifically, CX 1619 contains call records for { } and CX 1622 contains call records for { } both of McWane, Inc. CX 1620 contains call records for { } and CX 1623 contains call records for { } both of Sigma Corporation. 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." *McWane Tr.* at 2233 (Sept. 14, 2012).

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 and Sigma, and are thus identifiable by individual. *See* 16 C.F.R. § 3.45(b).

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: December 18, 2012

Respectfully submitted,

s/ Mika Ikeda

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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 December 13, 2022, for the following documents: CX 1619; CX 1620; CX 1622; and CX 1623.

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

Date: December , 2012

CERTIFICATE OF SERVICE

I hereby certify that on December 18, 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.

December 18, 2012

By: s/ Mika Ikeda
Attorney

CONFIDENTIAL - REDACTED IN ENTIRETY

TAB 1

CX 1619

CONFIDENTIAL - REDACTED IN ENTIRETY

TAB 2

CX 1620

CONFIDENTIAL - REDACTED IN ENTIRETY

TAB 3

CX 1622

CONFIDENTIAL - REDACTED IN ENTIRETY

TAB 4

CX 1623