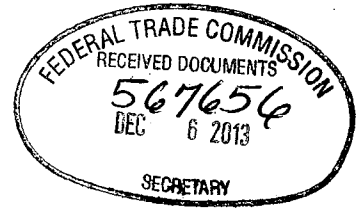


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UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES



In The Matter of)
)
Ardagh Group S.A.,)
a public limited liability company, and)
)
Saint-Gobain Containers, Inc.,)
a corporation, and)
)
Compagnie de Saint-Gobain,)
a corporation,)
Respondents)

DOCKET NO. 9356

**NON-PARTY HEAVEN HILL DISTILLERIES, INC.'S MOTION FOR
IN CAMERA TREATMENT OF PROPOSED EVIDENCE**

Heaven Hill Distilleries, Inc., which is not a party to the above-captioned matter, respectfully requests that this court grant *in camera* treatment of the following documents and deposition testimony that Complaint Counsel and Respondent's Counsel have recently designated for introduction into evidence in the administrative trial in this matter, which is scheduled to commence on December 19, 2012:

<u>Motion Exhibit</u>	<u>Date</u>	<u>Bates Numbers or Deposition</u>	<u>Contained in Trial Exhibit</u>
B	3/15/2012	HeavenHillEmail00001021	PX4735
C	5/22/2012	HeavenHillPaper000028	PX4740
D	2012	HeavenHillPaper000056 Heaven HillPaper000057 Heaven HillPaper000060 Heaven HillPaper000062 HeavenHillPaper000063 HeavenHillPaper000064	PX4741

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<u>Motion Exhibit</u>	<u>Date</u>	<u>Bates Numbers or Deposition</u>	<u>Contained in Trial Exhibit</u>
E	11/18/2011	HeavenHillEmail00000223 through Heaven HillEmail00000224	DX443
F	2/17/2011	HeavenHillEmail00000396	DX364
G	Executed 9/26/2011	HeavenHillPaper000145 through HeavenHillPaper000146	DX388
H	8/26/2013	Deposition of Max L. Shapira, Page 41, line 17 and lines 21 through 24 Page 85, line 16 Page 108, lines 2 through 5	PX 6057

The information contained in these documents and testimony is competitively sensitive and is held in strict confidence by Heaven Hill. Public disclosure of these documents is likely to cause direct, serious harm to Heaven Hill's competitive position. Therefore, pursuant to 16 C.F.R. § 3:45(b), Heaven Hill respectively moves for *in camera* treatment of these documents and testimony for the reasons set out below and in the Declaration of Max L. Shapira which is tendered in support of this Motion and which is attached hereto as Exhibit A.

HEAVEN HILL'S CONFIDENTIAL DOCUMENTS AND MR. SHAPIRA'S CITED TESTIMONY QUALIFY FOR *IN CAMERA* TREATMENT UNDER THE FEDERAL TRADE COMMISSION'S RULES OF PRACTICE

The documents and testimony that are described in this motion warrant *in camera* treatment as provided by 16 C.F.R. § 3:45(b). The code section provides for *in camera* treatment of certain business-related information and personal information. Relating to business issues, under 16 C.F.R. § 3:45(b), requests for *in camera* treatment will be granted where public disclosure of the document in question "will result in a clearly defined, serious injury to the . . . corporation requesting *in camera* treatment." *Id.* That showing can be made by establishing that the document in question is "sufficiently secret and sufficiently material to the applicant's business that disclosure would result in serious competitive injury." *In re Dura Lube Corp.* 1999 F.T.C. LEXIS 255, *6 (Dec. 23, 1999) (quoting *General Foods Corp.*, 95 FTC 352, 355 (1980)).

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In this context, “the courts have generally attempted to protect confidential business information from unnecessary airing.” *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961).

Six factors will be weighed in determining whether the document in question is sufficiently material and sufficiently secret that disclosure would result in serious competitive injury:

(1) the extent to which the information is known outside of the applicant’s business; (2) the extent to which the information is known by employees and others involved in the applicant’s business; (3) the extent of measures taken by the applicant to guard the secrecy of the information; (4) the value of the information to the applicant and its competitors; (5) the amount of effort or money expended by the applicant in developing the information; and (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

Dura Lube Corp. 1999 F.T.C. LEXIS 255 at *6-*7 (quoting *Bristol-Meyers Co.*, 90 F.T.C. 455, 456 (1977)).

I. PUBLIC DISCLOSURE OF EXHIBIT B (PX4735) WOULD RESULT IN SERIOUS COMPETITIVE INJURY TO HEAVEN HILL.

Exhibit B to this Motion has been designated by the Commission as Trial Exhibit PX4735, and is identified by “Bates” number HeavenHillEmail 000001021 in the lower right hand corner of the document. The document is an internal Heaven Hill document that contains a [] to Heaven Hill dated March 15, 2012 (Ex. A, Shapira Decl. ¶5). The document reveals Heaven Hill’s [] along with a comparison of [] Decl. at ¶ 5).

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A. Heaven Hill Has Preserved the Confidentiality of Exhibit B and the Information it Contains.

Heaven Hill is an independent privately owned company and so is not subject to any requirement for public reporting of its finances, sales, operations, or plans (Decl. at ¶4). It does not publicly reveal its [_____] nor the [_____] (*Id.*). Such information is only disclosed to Heaven Hill executives who have a need to know the information in order to carry out their job responsibilities (*Id.*). The information is not known outside of Heaven Hill except to the extent necessary to engage in negotiations with [_____], and it would be extremely difficult for Heaven Hill's competitors or other outside persons to access or duplicate the information contained in the document at issue (*Id.*). Heaven Hill has gone through great lengths to preserve the confidentiality of the information contained in Exhibit B.

B. Disclosure of the Information Contained in Exhibit B Would Result in Serious Competitive Injury to Heaven Hill.

Disclosure of the information in Exhibit B could result in serious damage to Heaven Hill's competitive advantage in the marketplace (Decl. at ¶6). The information on [_____] in Exhibit B would enable manufacturers of competing brands to ascertain with some certainty [_____] (*Id.*). This information cannot be ascertained by Heaven Hill's competitors through any proper means (*Id.*). Knowledge of [_____] would be invaluable information for any competitor who is planning, or who might contemplate, [_____]. Public disclosure of this information would enable Heaven Hill's competitors to ascertain Heaven Hill's [_____], [_____] and to thereby anticipate [_____]

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_____] (*Id.*) This would give Heaven Hill's competitors and potential competitors an unfair advantage in formulating their own [_____

_____] (*Id.*) Public disclosure of Exhibit B would also reveal [_____
_____] (Decl. at

¶7). Depending upon the category of spirit [_____] and the bottle size, [_____
_____] that Heaven Hill sells, and as a minimum, [_____] (*Id.*) [_____
_____]

_____ (*Id.*) Knowing Heaven Hill's [_____] would give Heaven Hill's competitors an unfair advantage [_____
_____]

through its negotiated agreements with suppliers (*Id.*) Public disclosure of the information in Exhibit B could also lead to reduced price competition between bottle manufacturers (*Id.*)

C. The Public Interest in Disclosure of Exhibit B is Outweighed by the Likelihood of Serious Competitive Harm to Heaven Hill.

As a non-party to this matter, Heaven Hill deserves "special solicitude" in requesting *in camera* treatment for its confidential business information. *In the Matter of Kaiser Aluminum & Chemical Corp.*, 103 F.T.C. 500, 500 (1984) (order directing *in camera* treatment for five-year-old sales statistics of non-parties). *In camera* treatment of information, for reasonable time periods encourages non-parties to cooperate with future discovery requests in adjudicate proceedings. *Id.* Heaven Hill has cooperated with the discovery demands in this case. Conversely, "public understanding of this proceeding does not depend on access to" Heaven Hill's highly confidential information. *Id.* The balance of interests clearly favors *in camera*

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protection for Exhibit B. See *Bristol*, 90 F.T.C. at 456 (describing six-factor test for determining secrecy and materiality).

D. Protection for Exhibit B Should Extend For 5 Years.

The nature of the highly confidential information contained in Exhibit B warrants lasting protection. Maintaining the confidentiality of the information contained in the document is vital to Heaven Hill's competitive position and business strategy. Accordingly, Heaven Hill respectfully requests that Exhibit B be afforded *in camera* protection for a period of five years.

II. PUBLIC DISCLOSURE OF EXHIBIT C (PX4740) WOULD RESULT IN SERIOUS COMPETITIVE INJURY TO HEAVEN HILL.

Exhibit C to this Motion has been designated as Trial Exhibit PX4740, and is identified by "Bates" numbers HeavenHillPaper 000026 through 000028 in the lower right hand corners of the pages of the document. The last page of the document, bearing Bates label HeavenHillPaper 000028 is a portion of an e-mail from an Anchor glass executive to a Heaven Hill executive explaining and [] (Decl. at ¶8). The confidential information revealed in this document includes 1) the [] in Heaven Hill's contract with Anchor Glass; 2) the []; and 3) a [] Anchor glass with respect to a particular Heaven Hill brand and the [] to Heaven Hill [] (*Id.*).

A. Heaven Hill Has Preserved the Confidentiality of Exhibit C and the Information it Contains.

Heaven Hill is an independent privately owned company and so is not subject to any requirement for public reporting of its finances, sales, operations, or plans. (Decl. at ¶4). Heaven Hill does not publicly reveal the terms of its contracts with its bottle suppliers. (*Id.* at

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¶9). Nor does it publicly reveal any [_____
_____] (*Id.*). Such information is only disclosed to Heaven Hill executives who have a need to know the information in order to carry out their job responsibilities (*Id.*). The information is not known outside of Heaven Hill except to the extent necessary to engage in negotiations with bottle suppliers, and it would be extremely difficult for Heaven Hill's competitors or other outside persons to access or duplicate the information contained in the document at issue (*Id.*). Heaven Hill has gone through great lengths to preserve the confidentiality of the information contained in Exhibit C.

B. Disclosure of the Information Contained in Exhibit C Would Result in Serious Competitive Injury to Heaven Hill.

Disclosure of the information in Exhibit C would result in serious damage to Heaven Hill's competitive advantage in the marketplace (Decl. at ¶10). Public disclosure of the information in Exhibit B would enable bottle manufacturers to coordinate their pricing, thus tending to reduce price competition among those manufacturers (*Id.*). The information in Exhibit C would also enable manufacturers of competing spirits brands to [_____

_____] (*Id.*). [_____
_____] (*Id.*). Depending upon the category of spirit [_____] and the bottle size, the cost of the bottle [_____
_____] that Heaven Hill sells, and as a minimum, the cost of the bottle is [_____] (*Id.*). [_____

_____] (*Id.*). [_____
_____] (*Id.*). Public disclosure of the

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information in Exhibit C would diminish Heaven Hill's [_____]
_____] (*Id.*). Public disclosure of this information would thus aid Heaven Hill's competitors in [_____], giving those competitors an unfair advantage [_____] (*Id.*).

C. The Public Interest in Disclosure of Exhibit C is Outweighed by the Likelihood of Serious Competitive Harm to Heaven Hill.

As a non-party to this matter, Heaven Hill deserves "special solicitude" in requesting *in camera* treatment for its confidential business information. *In the Matter of Kaiser Aluminum & Chemical Corp.*, 103 F.T.C. 500, 500 (1984) (order directing *in camera* treatment for five-year-old sales statistics of non-parties). *In camera* treatment of information, for reasonable time periods encourages non-parties to cooperate with future discovery requests in adjudicate proceedings. *Id.* Heaven Hill has cooperated with the discovery demands in this case. Conversely, "public understanding of this proceeding does not depend on access to" Heaven Hill's highly confidential information. *Id.* The balance of interests clearly favors *in camera* protection for Exhibit C. See *Bristol*, 90 F.T.C. at 456 (describing six-factor test for determining secrecy and materiality).

D. Protection for Exhibit C Should Extend For 5 Years.

The nature of the highly confidential information contained in Exhibit C warrants lasting protection. Maintaining the confidentiality of the information contained in the document is vital to Heaven Hill's competitive position and business strategy. Accordingly, Heaven Hill respectfully requests that Exhibit C be afforded *in camera* protection for a period of five years.

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III. PUBLIC DISCLOSURE OF EXHIBIT D (PX4741) WOULD RESULT IN SERIOUS COMPETITIVE INJURY TO HEAVEN HILL.

Exhibit D to this Motion are pages excerpted from a twenty page Power Point slide presentation that has been designated by the Commission as Trial Exhibit PX4741, and which is identified by "Bates" numbers ranging from HeavenHillPaper 000049 through 000069 in the lower right hand corners of the pages of the document (Decl. at ¶ 11). These excerpted pages of the document contain Heaven Hill's confidential sales figures. The specific pages and confidential information that Heaven Hill seeks to protect are as follows:

HeavenHillPaper 000053 contains a pie chart graphic that shows [_____

_____] (*Id.*).

HeavenHillPaper 000056 contains [_____
_____], a quantification of the sales growth of the product family between 2000 and 2010, and the [_____]. The [_____
_____] and includes one of Heaven Hill's [_____] (*Id.*).

HeavenHillPaper 000057 contains the [_____
_____] (*Id.*).

HeavenHillPaper 000060 contains the [_____
_____] (*Id.*).

HeavenHillPaper 000062 contains the [_____
_____] (*Id.*).

HeavenHillPaper 000063 contains the [_____
_____] (*Id.*).

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HeavenHillPaper 000064 contains the [_____] (Id).

A. Heaven Hill Has Preserved the Confidentiality of Exhibit D and the Information it Contains.

Heaven Hill is an independent privately owned company and so is not subject to any requirement for public reporting of its finances, sales, operations, or plans. (Decl. at ¶4). Heaven Hill does not publicly reveal t[_____] that are contained in Exhibit D (Decl. at ¶12). Such information is only disclosed to Heaven Hill executives who have a need to know the information in order to carry out their job responsibilities, or to specific vendors in connection with contract negotiations or contract fulfillment (Id.). In each instance in which the [_____] contained in Exhibit D is disclosed to a vendor [_____]

[_____] (Id.). It would be extremely difficult, if not impossible, for Heaven Hill's competitors or other outside persons to access or duplicate the information contained in the document at issue (Id.). Heaven Hill has gone through great lengths to preserve the confidentiality of the information contained in Exhibit D.

B. Disclosure of the Information Contained in Exhibit D Would Result in Serious Competitive Injury to Heaven Hill.

Disclosure of the information in Exhibit D would result in serious damage to Heaven Hill's competitive advantage in the marketplace (Decl. at ¶13). Heaven Hill's competitors and potential competitors are not able to ascertain [_____] disclosed in Exhibit D through any proper means (Id.). Public disclosure of the information in Exhibit D would enable Heaven Hill's competitors [_____]

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____], giving those competitors an unfair advantage in [_____
_____] (*Id.*). Disclosure of the information in Exhibit D would reveal to Heaven Hill's competitors and potential competitors [_____
_____] (*Id.*). The information in Exhibit D would also reveal to competitors [_____
_____] that Heaven Hill has conducted (*Id.*). This knowledge would enable Heaven Hill's competitors [_____
_____] (*Id.*).

C. The Public Interest in Disclosure of Exhibit D is Outweighed by the Likelihood of Serious Competitive Harm to Heaven Hill.

As a non-party to this matter, Heaven Hill deserves "special solicitude" in requesting *in camera* treatment for its confidential business information. *In the Matter of Kaiser Aluminum & Chemical Corp.*, 103 F.T.C. 500, 500 (1984) (order directing *in camera* treatment for five-year-old sales statistics of non-parties). *In camera* treatment of information, for reasonable time periods encourages non-parties to cooperate with future discovery requests in adjudicate proceedings. *Id.* Heaven Hill has cooperated with the discovery demands in this case. Conversely, "public understanding of this proceeding does not depend on access to" Heaven Hill's highly confidential information. *Id.* The balance of interests clearly favors *in camera* protection for Exhibit D. See *Bristol*, 90 F.T.C. at 456 (describing six-factor test for determining secrecy and materiality).

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D. Protection for Exhibit D Should Extend For 5 Years.

The nature of the highly confidential information contained in Exhibit D warrants lasting protection. Maintaining the confidentiality of the information contained in the document is vital to Heaven Hill's competitive position and business strategy. Accordingly, Heaven Hill respectfully requests that Exhibit D be afforded *in camera* protection for a period of five years.

IV. PUBLIC DISCLOSURE OF EXHIBIT E (DX443) WOULD RESULT IN SERIOUS COMPETITIVE INJURY TO HEAVEN HILL.

Exhibit E to this Motion has been designated by Ardagh as Trial Exhibit DX443. The document is a two-page document identified by "Bates" numbers HeavenHillEmail 00000223 and 00000224 in the lower right hand corners of the pages of the document. The document contains an e-mail [_____] to Millard Sims, Heaven Hill's Operations Manager (Decl. at ¶14). [_____] from different manufacturers (*Id.*). The e-mail at issue contains the terms of a revised proposal by [_____] to Heaven Hill [_____] (*Id.*). The e-mail proposal includes a [_____] (*Id.*).

A. Heaven Hill Has Preserved the Confidentiality of Exhibit E and the Information it Contains.

Heaven Hill is an independent privately owned company and so is not subject to any requirement for public reporting of its finances, sales, operations, or plans (Decl. at ¶4). Heaven Hill does not publicly reveal the [_____] contained in Exhibit E (Decl. at ¶15). Such information is only disclosed to Heaven Hill executives who have a need to know the information in order to carry out their job responsibilities, or to specific vendors in connection

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with contract negotiations or contract fulfillment (*Id.*). In each instance with the sales information contained in Exhibit E is disclosed to a vendor Heaven Hill [_____

_____] (*Id.*). It would be extremely difficult for Heaven Hill's competitors or other outside persons to access or duplicate the information contained in the document at issue (*Id.*). Heaven Hill has gone through great lengths to preserve the confidentiality of the information contained in Exhibit E.

B. Disclosure of the Information Contained in Exhibit E Would Result in Serious Competitive Injury to Heaven Hill.

Disclosure of the information in Exhibit E could result in serious damage to Heaven Hill's competitive advantage in the marketplace (Decl. at ¶16). Depending upon the category of

spirit [_____] and [_____] and as a minimum, [_____] (*Id.*). The prices Heaven Hill pays for bottles are [_____] (*Id.*).

Public disclosure of [_____] would tend to reduce price competition between bottle suppliers (*Id.*). Disclosure of Exhibit E would afford both bottle suppliers and Heaven Hill's competitors [_____] (*Id.*). It could give Heaven Hill's competitors an unfair advantage in [_____]

[_____] (*Id.*). Also included in Exhibit E is proprietary information about Heaven Hill's [_____] (*Id.*).

Public disclosure of this information would afford Heaven Hill's competitors information they could use to [_____]

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_____]. Also included in the document are the [_____]
_____] (*Id.*). Public disclosure of
this information would enable bottle manufacturers [_____
_____], thus tending to reduce competition between bottle manufacturers when bidding
contracts.

**C. The Public Interest in Disclosure of Exhibit E is Outweighed by the
Likelihood of Serious Competitive Harm to Heaven Hill.**

As a non-party to this matter, Heaven Hill deserves “special solicitude” in requesting *in camera* treatment for its confidential business information. *In the Matter of Kaiser Aluminum & Chemical Corp.*, 103 F.T.C. 500, 500 (1984) (order directing *in camera* treatment for five-year-old sales statistics of non-parties). *In camera* treatment of information, for reasonable time periods encourages non-parties to cooperate with future discovery requests in adjudicate proceedings. *Id.* Heaven Hill has cooperated with the discovery demands in this case. Conversely, “public understanding of this proceeding does not depend on access to” Heaven Hill’s highly confidential information. *Id.* The balance of interests clearly favors *in camera* protection for Exhibit E. See *Bristol*, 90 F.T.C. at 456 (describing six-factor test for determining secrecy and materiality).

D. Protection for Exhibit E Should Extend For 5 Years.

The nature of the highly confidential information contained in Exhibit E warrants lasting protection. Maintaining the confidentiality of the information contained in the document is vital to Heaven Hill’s competitive position and business strategy. Accordingly, Heaven Hill respectfully requests that Exhibit E be afforded *in camera* protection for a period of five years.

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V. **PUBLIC DISCLOSURE OF EXHIBIT F (DX364) WOULD RESULT IN SERIOUS COMPETITIVE INJURY TO HEAVEN HILL.**

Exhibit F to this Motion has been designated by Ardagh as Trial Exhibit DX364. The document is an e-mail from Heaven Hill's President, Max Shapira, to Heaven Hill's Vice President of Marketing, Kate Latts, with copies sent to Heaven Hill's Chief Operating Officer, Allan Latts, its Director of Corporate Analysis, Andy Shapira, its Vice President of North American Sales, Steve Feller, and its Vice President and Plant Manager, David Hobbs. Ms. Latts then forwarded Mr. Shapira's e-mail to [_____

_____] (Decl. at ¶17). The document is identified by "Bates" number HeavenHillEmail 00000396 in the lower right hand corner of the document.

The text of Exhibit F reflects [_____]
_____] (*Id.*).

The text of the e-mail reflects [_____]
_____] (*Id.*).

A. **Heaven Hill Has Preserved the Confidentiality of Exhibit F and the Information it Contains.**

Heaven Hill is an independent privately owned company and so is not subject to any requirement for public reporting of its finances, sales, operations, or plans (Decl. at ¶4). Heaven Hill does not publicly reveal the decision making process or the factors that it considers in [_____]
_____] such as those reflected in Exhibit F (Decl. at ¶18). [_____

_____]
_____] (*Id.*). Heaven Hill's internal processes and discussion regarding [_____]
_____] are highly proprietary and are only disclosed to Heaven Hill executives who have a

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need to know the information in order to carry out their job responsibilities (*Id.*). It would be extremely difficult, if not impossible, for Heaven Hill's competitors or other outside persons to access or duplicate the information contained in the document at issue (*Id.*). Heaven Hill has gone through great lengths to preserve the confidentiality of the information contained in Exhibit F.

B. Disclosure of the Information Contained in Exhibit F Would Result in Serious Competitive Injury to Heaven Hill.

Disclosure of the information in Exhibit F would result in serious damage to Heaven Hill's competitive advantage in the marketplace (Decl. at ¶19). Exhibit F reveals [_____

_____] (*Id.*) [_____

_____] (*Id.*). Exhibit F reveals

[_____]

_____] (*Id.*). Public disclosure of the information in Exhibit F would reveal Heaven

Hill's internal discussion and consideration of [_____

_____] (*Id.*). Public disclosure of the information in Exhibit F would enable Heaven

Hill's competitors [_____], giving those

competitors an unfair advantage [_____]

(*Id.*). Public disclosure of the information in Exhibit F could therefore [_____

_____] (*Id.*). This could deprive Heaven Hill of the

_____] (*Id.*).

C. The Public Interest in Disclosure of Exhibit F is Outweighed by the Likelihood of Serious Competitive Harm to Heaven Hill.

As a non-party to this matter, Heaven Hill deserves “special solicitude” in requesting *in camera* treatment for its confidential business information. *In the Matter of Kaiser Aluminum & Chemical Corp.*, 103 F.T.C. 500, 500 (1984) (order directing *in camera* treatment for five-year-old sales statistics of non-parties). *In camera* treatment of information, for reasonable time periods encourages non-parties to cooperate with future discovery requests in adjudicate proceedings. *Id.* Heaven Hill has cooperated with the discovery demands in this case. Conversely, “public understanding of this proceeding does not depend on access to” Heaven Hill’s highly confidential information. *Id.* The balance of interests clearly favors *in camera* protection for Exhibit F. See *Bristol*, 90 F.T.C. at 456 (describing six-factor test for determining secrecy and materiality).

D. Protection for Exhibit F Should Extend For 5 Years.

The nature of the highly confidential information contained in Exhibit F warrants lasting protection. Maintaining the confidentiality of the information contained in the document is vital to Heaven Hill’s competitive position and business strategy. Accordingly, Heaven Hill respectfully requests that Exhibit F be afforded *in camera* protection for a period of five years.

VI. PUBLIC DISCLOSURE OF EXHIBIT G (DX388) WOULD RESULT IN SERIOUS COMPETITIVE INJURY TO HEAVEN HILL.

Exhibit G to this Motion has been designated by Ardagh as Trial Exhibit DX388. The document is a copy of Heaven Hill’s current contract with [_____], and is identified by “Bates” numbers HeavenHillPaper 0000145 to 000147 in the lower right hand

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corner of the pages of the document (Decl. at ¶20). Exhibit G reveals [_____

_____ (*Id.*)

A. Heaven Hill Has Preserved the Confidentiality of Exhibit G and the Information it Contains.

Heaven Hill is an independent privately owned company and so is not subject to any requirement for public reporting of its finances, sales, operations, or plans (Decl. at ¶4). Heaven Hill does not publicly reveal the terms of its bottle supply contacts that are reflected in Exhibit G (Decl. at ¶21). Such information is only disclosed to Heaven Hill executives who have a need to know the information in order to carry out their job responsibilities (*Id.*). The information is not known outside of Heaven Hill except to the extent necessary to engage in negotiations with [_____] (*Id.*). It would be extremely difficult for Heaven Hill's competitors or other outside persons to access or duplicate the information contained in the document at issue (*Id.*). Heaven Hill has gone through great lengths to preserve the confidentiality of the information contained in Exhibit G.

B. Disclosure of the Information Contained in Exhibit G Could Result in Serious Competitive Injury to Heaven Hill.

Disclosure of the information in Exhibit G could result in serious damage to Heaven Hill's competitive advantage in the marketplace (Decl. at ¶22). Public disclosure would reveal

[_____]

_____] (*Id.*). If other [_____] learn these terms Heaven Hill will be at a disadvantage when

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[_____] (*Id.*) Similarly, if Heaven Hill's [_____] (*Id.*) Heaven Hill's ability to [_____] (*Id.*) If its ability to [_____] (*Id.*)

C. The Public Interest in Disclosure of Exhibit G is Outweighed by the Likelihood of Serious Competitive Harm to Heaven Hill.

As a non-party to this matter, Heaven Hill deserves “special solicitude” in requesting *in camera* treatment for its confidential business information. *In the Matter of Kaiser Aluminum & Chemical Corp.*, 103 F.T.C. 500, 500 (1984) (order directing *in camera* treatment for five-year-old sales statistics of non-parties). *In camera* treatment of information, for reasonable time periods encourages non-parties to cooperate with future discovery requests in adjudicate proceedings. *Id.* Heaven Hill has cooperated with the discovery demands in this case. Conversely, “public understanding of this proceeding does not depend on access to” Heaven Hill’s highly confidential information. *Id.* The balance of interests clearly favors *in camera* protection for Exhibit H. See *Bristol*, 90 F.T.C. at 456 (describing six-factor test for determining secrecy and materiality).

D. Protection for Exhibit G Should Extend For 5 Years.

The nature of the highly confidential information contained in Exhibit G warrants lasting protection. Maintaining the confidentiality of the information contained in the document is vital to Heaven Hill’s competitive position and business strategy. Accordingly, Heaven Hill respectfully requests that Exhibit G be afforded *in camera* protection for a period of five years.

VII. PUBLIC DISCLOSURE OF EXHIBIT H (PX6057) WOULD RESULT IN SERIOUS COMPETITIVE INJURY TO HEAVEN HILL.

Exhibit H to this Motion are certain portions of the deposition testimony of Max. L. Shapira that have been designated for use at trial by the Commission and Ardagh, and which contain highly confidential proprietary information concerning Heaven Hill (Decl. at ¶23). The designated portions of the transcript of Mr. Shapira's testimony extracts in question have been provisionally identified as Trial Exhibit PX6057. The portions of Mr. Shapira's testimony for which Heaven Hill seeks *in camera* treatment are as follows:

Page 41 line 17, and lines 21 through 24: The testimony appearing in these lines of the transcript reveals _____
_____] (*Id.*).

Page 85 line 16: The testimony appearing in this line of the transcript reveals [_____
_____] (*Id.*).

Page 108 lines 2 through 5: The testimony appearing in these lines of the transcript reveals [_____
_____] (*Id.*).

A. Heaven Hill Has Preserved the Confidentiality of Exhibit H and the Information it Contains.

Heaven Hill is an independent privately owned company and so is not subject to any requirement for public reporting of its finances, sales, operations, or plans (Decl. at ¶4). Heaven Hill does not publicly reveal the terms of its [_____
_____] that are reflected in Exhibit H (Decl. at ¶24). Such information is only disclosed to Heaven Hill executives who have a need to know the information in order to carry out their job

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responsibilities or to vendors with which Heaven Hill has contracted (*Id.*). The information is not known outside of Heaven Hill except to the extent necessary to engage in contract negotiations with [] (*Id.*). It would be extremely difficult for Heaven Hill's competitors or other outside persons to access or duplicate the information contained in the document at issue (*Id.*). Heaven Hill has gone through great lengths to preserve the confidentiality of the information contained in Exhibit H.

B. Disclosure of the Information Contained in Exhibit H Would Result in Serious Competitive Injury to Heaven Hill.

Disclosure of the information in Exhibit H could result in serious damage to Heaven Hill's competitive advantage in the marketplace (Decl. at ¶25). Public disclosure of the information in Exhibit H would inform Heaven Hill's competitors of []

[] (*Id.*). This would []

[] (*Id.*). Public disclosure of this

information would also []

[] (*Id.*). Just as Heaven Hill has an expectation that the []

[] justifiably expect that Heaven Hill will not

disclose to []

[] (*Id.*). Finally, disclosure of the []

[] could give [] an

unfair advantage in []

[] (Decl. at ¶26). It would also tend to induce potential competitors to launch

] (*Id.*).

C. The Public Interest in Disclosure of Exhibit H is Outweighed by the Likelihood of Serious Competitive Harm to Heaven Hill.

As a non-party to this matter, Heaven Hill deserves “special solicitude” in requesting *in camera* treatment for its confidential business information. *In the Matter of Kaiser Aluminum & Chemical Corp.*, 103 F.T.C. 500, 500 (1984) (order directing *in camera* treatment for five-year-old sales statistics of non-parties). *In camera* treatment of information, for reasonable time periods encourages non-parties to cooperate with future discovery requests in adjudicate proceedings. *Id.* Heaven Hill has cooperated with the discovery demands in this case. Conversely, “public understanding of this proceeding does not depend on access to” Heaven Hill’s highly confidential information. *Id.* The balance of interests clearly favors *in camera* protection for Exhibit H. See *Bristol*, 90 F.T.C. at 456 (describing six-factor test for determining secrecy and materiality).

D. Protection for Exhibit H Should Extend For 5 Years.

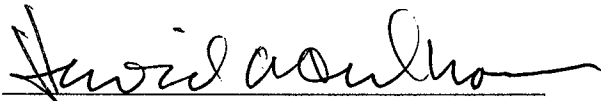
The nature of the highly confidential information contained in Exhibit H warrants lasting protection. Maintaining the confidentiality of the information contained in the document is vital to Heaven Hill’s competitive position and business strategy. Accordingly, Heaven Hill respectfully requests that Exhibit H be afforded *in camera* protection for a period of five years.

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VIII. PERSON WHO SHOULD BE NOTIFIED OF THE COMMISSION'S INTENT TO DISCLOSE ANY OF THE *IN CAMERA* INFORMATION IN EXHIBITS B THROUGH H.

In the event that the Commission intends to disclose any of the *in camera* information in Exhibits B through H in a final decision, the Commission should notify the undersigned counsel for non-party Heaven Hill Distilleries at the below indicated address.

Respectfully submitted,



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Counsel for Non-Party Heaven Hill Distilleries, Inc.

PUBLIC

CERTIFICATE OF SERVICE

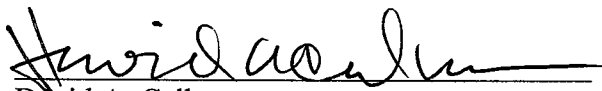
This is to certify that a true and correct copy of the foregoing has been served upon the following, on this the 5th day of December, 2013:

Donald S. Clark, Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-113
Washington, DC 20580
Via Overnight Delivery

Monica Castilo
Amanda Hamilton
U.S. Federal Trade Commission
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Washington, DC 20580
Complaint Counsel

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David A. Calhoun
Counsel for Non-Party Heaven Hill Distilleries, Inc.

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

In The Matter of)	
)	
Ardagh Group S.A.,)	
a public limited liability company, and)	
)	
Saint-Gobain Containers, Inc.,)	
a corporation, and)	
)	
Compagnie de Saint-Gobain,)	
a corporation,)	
Respondents)	
)	
)	

DOCKET NO. 9356

PROPOSED ORDER

Non-Party Heaven Hill Distilleries, Inc., filed a motion for *in camera* treatment of confidential business information contained in certain documents and deposition testimony that has been identified by counsel for the parties as a potential trial exhibits. After consideration of the motion and the documents and testimony at issue,

IT IS HEREBY ORDERED that Heaven Hill's motion is GRANTED. The information set forth in the documents and testimony listed in the table below will be subject to *in camera* treatment under 16 C.F.R. § 3:45(b) and will be kept confidential and not placed on the public record of this proceeding for a period of five years.

<u>Motion Exhibit</u>	<u>Date</u>	<u>Bates Numbers or Deposition</u>	<u>Contained in Trial Exhibit</u>
B	3/15/2012	HeavenHillEmail00001021	PX4735
C	5/22/2012	HeavenHillPaper000028	PX4740

<u>Motion Exhibit</u>	<u>Date</u>	<u>Bates Numbers or Deposition</u>	<u>Contained in Trial Exhibit</u>
D	2012	HeavenHillPaper000056 Heaven HillPaper000057 Heaven HillPaper000060 Heaven HillPaper000062 HeavenHillPaper000063 HeavenHillPaper000064	PX4741
E	11/18/2011	HeavenHillEmail00000223 through Heaven HillEmail00000224	DX443
F	2/17/2011	HeavenHillEmail00000396	DX364
G	Executed 9/26/2011	HeavenHillPaper000145 through HeavenHillPaper000146	DX388
H	8/26/2013	Deposition of Max L. Shapira, Page 41, line 17 and lines 21 through 24 Page 85, line 16 Page 108, lines 2 through 5	PX 6057

IT IS FURTHER ORDERED that only authorized Federal Trade Commission personnel, and court personnel concerned with judicial review may have access to the above-referenced information, provided that I, the commission, and reviewing courts may disclose such *in camera* information to the extent necessary for the proper disposition of the proceeding.

If the Commission intends to disclose any of the above listed documents or testimony in a final decision then the Commission shall first give written notice to:

David A. Calhoun
Wyatt, Tarrant & Combs, LLP
500 W. Jefferson Street, Suite 2800
Louisville, Kentucky 40202
dcalhoun@wyattfirm.com
(502) 562-7350

ORDERED: _____

Administrative Law Judge

DATED: _____