

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



In the Matter of

Tronox Limited,
a corporation,

National Industrialization Company
(TASNEE),
a corporation,

National Titanium Dioxide Company
Limited (Cristal),
a corporation,

And

Cristal USA Inc.,
a corporation.

Docket No. 9377

**NON-PARTY AMPACET CORPORATION'S
MOTION FOR *IN CAMERA* TREATMENT**

Non-party Ampacet Corporation respectfully moves this Court for *in camera* treatment of various confidential documents and two deposition transcripts and certain transcript exhibits (the “Confidential Documents”). *See* 16 CFR 3.45(b). Ampacet provided the Confidential Documents, among others, in response to a CID and third-party subpoenas. The FTC and Respondents notified Ampacet on April 19, 2018, that they intend to introduce the Confidential Documents into evidence at the administrative trial. Their letters are attached as **Exhibit 1**. In support of this motion, Ampacet relies on the information provided herein and the Declaration of Mr. Richard Santoro (“Decl.”), attached as **Exhibit 2**. Neither the FTC nor Respondents oppose this motion.

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The Confidential Documents include highly sensitive trade secrets, business strategies, and technical and confidential business information, such that if they become public, Ampacet would be harmed significantly in its ability to compete in the plastic coloring and additive industry. (Decl. 4) For those documents reflecting sensitive trade secrets, business strategies, and technical information, Ampacet requests indefinite protection. Ampacet requests at least five years of protection for documents reflecting more ordinary confidential business information.

INTRODUCTION

Ampacet is a private company headquartered in New York. It is a global leader in the production of masterbatch, which refers to resin-based additives used for coloring plastics or imparting specific qualities to plastics. Ampacet produces black, white, and color masterbatches. It operates 24 manufacturing plants in 17 countries, employs more than 2,000 people, and sells products in more than 90 countries. It invests extensively in research and operates four R&D centers. An ingredient in many of its products is titanium dioxide (TiO₂). (Decl. 3)

I. The Documents for which Ampacet Seeks Protection.

Ampacet seeks *in camera* treatment for the following Confidential Documents, copies of which are attached as **Exhibit 3 (Nos. 1 to 13)**.

No.	Exhibit No.	Title/Description	Date	Bates Nos. Beginning	Ending
1	PX4227	Ampacet's CID response	7/20/2017	PX4227-001	-017
2	PX4129	Santoro e-mail to Rudy	8/8/2017	AMPACET-000039	-000042
3	Ex. 5, Santoro Depo.	Ampacet's supplemental CID response	7/24/2017	AMPACET-000053	-000053
4	PX4130	Santoro e-mail to Rudy	7/24/2017	AMPACET-000054	-000054
5	Ex. 4, Santoro Depo.	Ampacet's CID response	7/20/2017	AMPACET-000057	-000073

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6	Ex. 2, Santoro Depo.	Confidential Submission to EC	7/14/2017	AMPACET-000081	-000085
7	Ex. 3, Santoro Depo.	Confidential Submission to EC	2/19/2018	AMPACET-000446	-000451
8	PX4133	Document Prepared by Ampacet in Response to RFP No. 9		AMPACET-000643	-000643
9	PX4134	Document Prepared by Ampacet in Response to RFP No. 10		AMPACET-000644	-000644
10	PX4135	Document Prepared by Ampacet in Response to RFP No. 18		AMPACET-000645; PX4135-001	-000645; -003
11	PX4136	Document Prepared by Ampacet in Response to RFP No. 17		AMPACET-000646	-000646
12	PX7040	Santoro Transcript	3/20/2018	PX7040-001	-074
13	PX7039	Vandooren Transcript	3/20/2018	PX7039-001	-030

II. The Legal Standards.

To receive *in camera* treatment, Ampacet must show that “the public disclosure of the documentary evidence will likely result in a clearly defined, serious injury” to Ampacet. 16 CFR 3.45(b). “Serious injury” requires 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 FTC 352, 355 (1980); *In re Jerk, LLC*, 2015 FTC LEXIS 39, *2 (Feb. 23, 2015). The showing “may consist of extrinsic evidence or, in certain instances, may be inferred from the nature of the documents themselves.” *In re H.P. Hood & Sons, Inc.*, 58 FTC 1184, 1188 (1961). For example, “[t]he likely loss of business advantages is a good example of a ‘clearly defined, serious injury.’” *In re Dura Lube Corp.*, 1999 FTC LEXIS 255, *7 (Dec. 23, 1999). If shown, courts will “attempt to protect confidential business information from unnecessary airing.” *Hood*, 58 FTC at 1188.

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Courts have found the following criteria instructive in determining whether both the “secrecy” and “materiality” requirements are met: “(1) the extent to which the information is known outside of [the] business; (2) the extent to which it is known by employees and others involved in [the] 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.” *E.g., In re Bristol-Myers Co.*, 90 FTC 455, 456-57 (1977). Courts also have found these criteria useful in striking the proper balance between “the need for a public understanding of the Commission’s adjudicative actions and the interest of business in avoiding competitive injury from public disclosure.” *General Foods*, 95 FTC at 356.

If *in camera* treatment is warranted, the next questions is how long should the treatment apply. Certain information, because of its sensitive nature, may be afforded longer protection than more ordinary business records. Although indefinite protection is available only “in unusual circumstances,” including where “the need for confidentiality of the material is not likely to decrease over time,” 16 CFR 3.45(b)(3), indefinite protection may be allowed if requestor shows “why the requestor believes the information is likely to remain sensitive or become sensitive with the passage of time.” *In re Union Oil Co. of Cal.*, 2004 FTC LEXIS 223, *3 (Nov. 22, 2004). Secret formulas, processes, other secret technical information, or privileged information are examples of the types of information deserving indefinite protection. *Hood*, 58 FTC at 1188-1189, *General Foods*, 95 FTC at 352.

More ordinary business records, on the other hand, are typically protected from only two to five years. *E.g., Union Oil*, 2004 FTC LEXIS 22, *2; *In re ProMedica Health Sys.*, 2011 FTC

LEXIS 101, *2 (May 25, 2011). The types of ordinary business records usually entitled to some period of *in camera* treatment include customer names, pricing to customers, business costs and profits, as well as business plans, marketing plans, or sales documents. *See Hood*, 58 FTC at 1189; *In re Int'l Ass'n of Conference Interpreters*, 1996 FTC LEXIS 298, *13-14 (Jun. 26, 1996).

III. Ampacet's Confidential Information Deserves Protection.

Ampacet takes its confidential information seriously. Its employees are required to sign non-disclosure agreements. Confidential information is not widely disseminated within Ampacet. For instance, only the R&D department and certain others have access to technical information and product formulas. The same restrictions apply on the procurement side, in that only the procurement department and certain others have access to purchasing information. (Decl. 5)

Ampacet has spent considerable resources through its R&D department and facilities, over many years, in selecting the types of grades to purchase (and which grades to avoid); developing its secret testing and qualification procedures; qualifying suppliers and their products; and developing product formulas designed to meet the needs of specific customers. Ampacet also has spent considerable resources developing its business strategies, methods of doing business, and supplier relationships—which if disclosed would cause Ampacet to suffer serious competitive harm. (Decl. 6)

The Confidential Documents contain this information, and none of it is likely to be already publicly available. It would be incredibly difficult and expensive for a new market entrant, or even a legacy competitor, to replicate this information, and it would be harmful to Ampacet if competitors could free-ride on Ampacet's investments, conduct their operations similarly, and mimic Ampacet's choices. (Decl. 7)

IV. Certain Documents Deserve Indefinite Protection.

Although all of the Confidential Documents deserve *in camera* treatment, **Nos. 6, 7, 8, 9, 10, 11, 13,** and portions of **12** on the table above deserve indefinite protection. The need for secrecy and the information contained in these documents is not likely to diminish with time. (Decl. 8)

For instance, **No. 6** is a memo regarding confidential information Ampacet provided to the EC. The memo describes Ampacet's views on the masterbatch market; Ampacet's use and purchases of certain grades of TiO₂; Ampacet's confidential views regarding the supply and suppliers of TiO₂; and Ampacet's efforts to conduct business with suppliers. The value of this information—particularly the identity of the grades—is not likely to diminish over time because Ampacet will likely still be using the same grades and business practices for the foreseeable future. (Decl. 9) No. 6 should be protected indefinitely.

No. 7 is an e-mail chain forwarding a confidential data submission to the EC. It provides data on Ampacet's purchases (quantity, supplier, grade, and price) from 2015-2017 for Europe. **No. 8** is a document titled "Document Prepared by Ampacet in Response to RFP No. 9." It provides similar purchasing data, but for the entire world. **No. 9** is a document titled "Document Prepared by Ampacet in Response to RFP No. 10." It provides the specific grades Ampacet purchases from each supplier and describes the grades used in certain products. **Nos. 7, 8, and 9** should be protected indefinitely because they show the grades that Ampacet uses and which suppliers Ampacet qualified to provide those grades. This information would be incredibly useful to Ampacet's competitors, and it will likely remain sensitive for the foreseeable future. (Decl. 10)

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No. 10, titled “Document Prepared by Ampacet in Response to RFP No. 18,” is an outline of Ampacet’s secret testing methods to qualify grades and suppliers, to which Ampacet devoted significant resources over many years to develop. It describes the time and expense involved and provides test reports. This information will likely remain sensitive for the foreseeable future. (Decl. 11)

No. 11, titled “Document Prepared by Ampacet in Response to RFP No. 17,” discloses secret product formulas. The formulas were developed at considerable expense, and disclosure would help competitors improve their products or mimic Ampacet’s products. It is vital to Ampacet’s business that this information never be disclosed. (Decl. 12)

No. 13 is Dr. Christian Vandooren’s deposition transcript. He is Ampacet’s Technical VP. He testified about: product formulas; qualification processes and testing and associated burdens and expenses; TiO₂ uses; quality issues; laboratory evaluation reports; and TiO₂ characteristics and substitution issues. (p.10:18-42:10) He described: TiO₂ qualities addressed by Ampacet’s formulas for different product levels; the computer software Ampacet uses with respect to its secret product formulas; and supply issues concerning TiO₂ characteristics and product formulas. (p.43:13-61:5) He also referred to: sourcing practices; improvements observed in some supplier’s TiO₂; and qualification issues concerning some suppliers. (p.64:24 to end) The entire transcript should receive indefinite *in camera* treatment, because the technical aspects of Ampacet’s business are not likely to diminish with time. (Decl. 13)

No. 12 is the deposition transcript of Mr. Richard Santoro, Ampacet’s VP of Global Procurement. He testified about: confidential information and purchasing data provided to the FTC and EC; market conditions (supply and pricing); and Ampacet’s confidential business strategies, supplier arrangements, purchases, and customers’ needs. Although the entire transcript

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deserves *in camera* treatment for at least three to five years, certain portions of it that disclose information not likely to lose competitive value with time deserve indefinite protection. Those portions include:

Page:Line	Sensitive Topics
11:2-28:7	Ampacet's purchasing process, business methods, and supplier requirements; secret supplier innovations; understandings of how suppliers set prices; results from experimenting with suppliers and Ampacet's responses; qualification, testing, practices, and plans regarding specific suppliers; use of different TiO2 types for different products; process for issuing RFPs.
30:6-35:7	Ampacet's ability to react to prices; how Ampacet sources product around the world; views affecting pricing and demand around the world; views about certain supply options.
51:21-53:19	Compatibility of certain TiO2 types with Ampacet's secret product formulas; how suppliers react to competitive prices.
74:16-82:22	Market characteristics and correlations with markets for products containing TiO2, a market index, and other conditions; observations and potential causes of historical trends.
83:15-22	Results of Ampacet's reactions to supplier prices.
85:23-8:21; 93:1-100:25	Supplier agreements; business strategies and the results of those strategies; information regarding the specific grades purchased from specific suppliers.
102:21-104:21	Use of certain business software.
120:4-123:19	Information provided to the FTC about market conditions and Ampacet's strategic positions and needs.
132:8-137:3	Customer demands and how they affect strategic decisions; qualification process regarding a certain supplier; particular grades purchased from certain suppliers; application of qualification and testing process to suppliers.
162:2-169:5	Qualities Ampacet looks for in suppliers.
174:2-185:13	Qualification and testing; opinions and concerns about the future of the market provided to the EC; Ampacet's business practices.
191:25-193:15	Market characteristics; specific customer needs.

Based on the market, the demands of Ampacet's customers, and Ampacet's business practices, those portions of Mr. Santoro's deposition transcript are not likely to lose their competitive value with time. (Decl. 14)

V. Other Documents Deserve At Least Three to Five Years of Protection.

The other documents described in the above table, **Nos. 1, 2, 3, 4, 5**, and certain portions of **12**, also deserve *in camera* treatment, for at least three to five years. The information they

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reflect is confidential and likely to cause Ampacet serious harm if disclosed publicly within the next three to five years. (Decl. 15)

No. 1 is Ampacet's CID response, and No. 5 is the e-mail chain where Ampacet forwarded the response to the FTC. No. 2 is an e-mail forwarding a file Ampacet provided with its response. The response provided data regarding Ampacet's purchases (for each supplier) and pricing. It describes Ampacet's efforts to respond to price increases and the results of those efforts. Ampacet has a competitive interest in keeping its purchases, suppliers, and prices confidential for at least three years. (Decl. 16)

Nos. 3 is a follow-up e-mail chain (including No. 4) between Mr. Santoro and the FTC regarding his forward-looking views on the proposed merger. It discusses various suppliers and their products, the market, and areas causing concern. Ampacet could suffer serious competitive harm if this internal analysis is disclosed in the next five years. (Decl. 17)

With respect to No. 12, the rest of Mr. Santoro's transcript (for which indefinite protection is not sought) still deserves *in camera* treatment. For instance, Mr. Santoro described: current pricing of different grades (p.28:8-30:5); pricing trends and current market conditions; Ampacet's evaluations of a supplier; Ampacet's purchases in certain regions; Ampacet's interactions with a supplier; Ampacet's recent use of RFQs, the suppliers that responded, and Ampacet's response; and Ampacet's business arrangements and dealings with suppliers (p.35:8-51:20); Ampacet's internal reactions to certain public information (p.57:9-58:1); purchases in certain geographies (p.84:20-85:22); data regarding purchases from various suppliers and qualification tests with respect to a certain supplier (p.115:2-118:1); interactions and issues with suppliers and current market conditions (p.123:20-132:7); supply sources, opinions regarding the feedstock ore market and the TiO₂ market (p.137:4-150:12); and private views about a particular

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supplier (p.190:8-191:2). As this testimony concerns Ampacet's recent and current operations and internal views and opinions, disclosure could allow competitors and suppliers to use it to Ampacet's detriment in the next five years. (Decl. 18)

CONCLUSION

For the reasons set forth above and in the accompanying Santoro Declaration, Ampacet respectfully requests that this Court grant *in camera* treatment for the Confidential Documents as requested herein.

Dated: April 30, 2018

Respectfully submitted,

/s/ Wm. Parker Sanders

David C. Newman

Wm. Parker Sanders

SMITH, GAMBRELL & RUSSELL, LLP

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Counsel for non-party, Ampacet Corporation

STATEMENT REGARDING MEET AND CONFER

The undersigned certifies that counsel for Ampacet Corporation notified counsel for the FTC via telephone on April 24, 2018, and counsel for Respondents on April 25, 2018, that it would seek *in camera* treatment of the Confidential Documents. Both counsel for the FTC and Respondents indicated that they do not oppose Ampacet's motion.

Dated: April 30, 2018

Respectfully submitted,

/s/ Wm. Parker Sanders

Wm. Parker Sanders

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Counsel for non-party, Ampacet Corporation

CERTIFICATE OF SERVICE

I hereby certify that on April 30, 2018, I filed the foregoing documents electronically using the FTC's E-Filing System, which will send notification of such filing to:

Donald S. Clark
Office of the Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-113
Washington, DC 20580
ElectronicFilings@ftc.gov
secretary@ftc.gov

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

I also certify that I caused the foregoing document to be served via email to:

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SIGNATURE PAGE FOR CERTIFICATE OF SERVICE

Dated: April 30, 2018

Respectfully submitted,

/s/ Wm. Parker Sanders

Wm. Parker Sanders

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Counsel for non-party, Ampacet Corporation

EXHIBIT 1



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UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Bureau of Competition
Mergers II Division

April 19, 2018

VIA EMAIL TRANSMISSION

Ampacet Corporation
c/o Wm. Parker Sanders
Smith, Gambrell & Russell, LLP
1230 Peachtree Street, N.E.
Promenade, Suite 3100
Atlanta, GA 30309-3592
PSANDERS@sgrlaw.com

RE: *In the Matter of Tronox Limited et al.*, Docket No. 9377

Dear Parker:

By this letter we are providing formal notice, pursuant to Rule 3.45(b) of the Commission's Rules of Practice, 16 C.F.R. § 3.45(b), that Complaint Counsel intends to offer the documents and testimony referenced in the enclosed Attachment A into evidence in the administrative trial in the above-captioned matter. For your convenience, a copy of the documents and testimony will be sent to you in a separate email with an FTP link.

The administrative trial is scheduled to begin on May 18, 2018. All exhibits admitted into evidence become part of the public record unless Administrative Law Judge D. Michael Chappell grants *in camera* status (i.e., non-public/confidential).

For documents or testimony that include sensitive or confidential information that you do not want on the public record, you must file a motion seeking *in camera* status or other confidentiality protections pursuant to 16 C.F.R §§ 3.45 and 4.10(g). Judge Chappell may order that materials, whether admitted or rejected as evidence, be placed *in camera* only after finding that their public disclosure will likely result in a clearly-defined, serious injury to the person, partnership, or corporation requesting *in camera* treatment.

Motions for *in camera* treatment for evidence to be introduced at trial must meet the strict standards set forth in 16 C.F.R. § 3.45 and explained in *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *In re Jerk, LLC*, 2015 FTC LEXIS 39 (Feb. 23, 2015); *In re Basic Research, Inc.*, 2006 FTC LEXIS 14 (Jan. 25, 2006). Motions also must be supported by a declaration or affidavit by a person qualified to explain the confidential nature of the material. *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 66 (Apr. 23, 2004). For your convenience, we included, as links in the cover email, an example of a third-party motion (and the accompanying declaration or

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affidavit) for *in camera* treatment that was filed and granted in an FTC administrative proceeding. If you choose to move for *in camera* treatment, you must provide a copy of the document(s) for which you seek such treatment to the Administrative Law Judge. Also, you or your representative will need to file a Notice of Appearance in the administrative proceeding. For more information regarding filing documents in adjudicative proceedings, please see <https://www.ftc.gov/faq/ftc-info/file-documents-adjudicative-proceedings>.

Please be aware that under the current Second Revised Scheduling Order (revised on February 23, 2018), **the deadline for filing motions seeking *in camera* treatment is May 1, 2018**. A copy of the February 23, 2018 Second Revised Scheduling Order and the December 20, 2017 original Scheduling Order, which contains Additional Provisions, can be found at <https://www.ftc.gov/enforcement/cases-proceedings/171-0085/tronoxcrystal-usa>.

If you have any questions, please feel free to contact me at (202) 326-2199.

Sincerely,

/s/ Sean Hughto
Sean Hughto
Counsel Supporting the Complaint

Attachment

Attachment A

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Confidential Notice
Attachment A

Exhibit No.	Full Name	Date	BegBates	EndBates
PX4129	Email from Richard Santoro to Rudy Zily re: FTC Inquiry re TiO2 w/Attach: NA TiO2 Receipts 2014-Jun 2017 for FTC.xlsx	8/8/2017	AMPACET-000039	AMPACET-000042
PX4130	Email from Richard Santoro to Lil Rudy re: FTC Inquiry re TiO2	7/24/2017	AMPACET-000054	AMPACET-000054
PX4133	Document Prepared by Ampacet in Response to RFP No. 9	TBD	AMPACET-000643	AMPACET-000643
PX4134	Document Prepared by Ampacet in Response to RFP No. 10	TBD	AMPACET-000644	AMPACET-000644
PX4135	Document Prepared by Ampacet in Response to RFP No. 18	TBD	AMPACET-000645	AMPACET-000645
PX4136	Document Prepared by Ampacet in Response to RFP No. 17	TBD	AMPACET-000646	AMPACET-000646
PX4227	Ampacet Corp's Responses to Civil Investigative Demand	7/20/2017	PX4227-001	PX4227-017
PX7039	Deposition Transcript: Christian Vandooren	3/20/2018	PX7039-001	PX7039-030
PX7040	Deposition Transcript: Richard Santoro	3/20/2018	PX7040-001	PX7040-074

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KIRKLAND & ELLIS LLP

AND AFFILIATED PARTNERSHIPS

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April 19, 2018

BY EMAIL AND FEDEX

Wm. Parker Sanders, Esq.
Smith, Gambrell and Russell, LLP
1301 Avenue of the Americas
New York, New York 10019

Re: In re Tronox Limited (FTC Docket No. 9377)

Dear Mr. Sanders:

This letter services as notice, per footnote one of the Second Revised Scheduling Order, entered February 23, 2018, and paragraph ten of the Protective Order Governing Confidential Material, entered December 7, 2017, that Tronox Limited (“Tronox”), National Industrialization Company (TASNEE), National Titanium Dioxide Company Limited (Cristal), and Cristal USA Inc. (collectively “Respondents”) plan to introduce the following documents or transcripts containing confidential material produced by Ampacet Corp. at the hearing before Judge Chappell:

Bates Begin	Bates End
AMPACET-000020	AMPACET-000035
AMPACET-000053	AMPACET-000053
AMPACET-000057	AMPACET-000073
AMPACET-000081	AMPACET-000085
AMPACET-000207	AMPACET-000212
AMPACET-000446	AMPACET-000451
AMPACET-000645	AMPACET-000645

- Deposition Transcripts of Richard Santoro and Christian Vandooren (and accompanying exhibits)

Per paragraph seven of the Scheduling Order, entered December 20, 2017, I inform you “of the strict standards for motions for *in camera* treatment for evidence to be introduced at trial set forth in 16 C.F.R. § 3.45, explained in *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *In re Jerk, LLC*, 2015 FTC LEXIS (Feb. 23, 2015); *In re Basic Research, Inc.*, 2006 FTC

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KIRKLAND & ELLIS LLP

Wm. Parker Sanders, Esq.
April 19, 2018
Page 2

LEXIS 14 (Jan. 25, 2006).¹ Motions also must be supported by a declaration or affidavit by a person qualified to explain the confidential nature of the documents. *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 66 (April 23, 2004). Each party or non-party that files a motion for in camera treatment shall provide one copy of the documents for which in camera treatment is sought to the Administrative Law Judge.”

Sincerely,



Michael DeRita

¹ “Under Rule 3.45(b), the Administrative Law Judge may order that material offered into evidence ‘be placed *in camera* only (a) 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 or (b) after finding that the material constitutes sensitive personal information.” *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *see also In re Jerk, LLC*, 2015 FTC LEXIS (Feb. 23, 2015).

EXHIBIT 2

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

In the Matter of

**Tronox Limited,
 a corporation,**

**National Industrialization Company
 (TASNEE),
 a corporation,**

**National Titanium Dioxide Company
 Limited (Cristal),
 a corporation,**

And

**Cristal USA Inc.,
 a corporation.**

Docket No. 9377

DECLARATION OF RICHARD SANTORO

1. My name is Richard Santoro. I am more than twenty-one years of age, and I am competent to testify. I am the VP of Global Procurement of Ampacet Corporation.

2. I provide this Declaration in support of Ampacet's motion for *in camera* treatment of the "Confidential Documents" described in that motion, *viz.*:

No.	Exhibit No.	Title/Description	Date	Bates Nos. Beginning	Ending
1	PX4227	Ampacet's CID response	7/20/2017	PX4227-001	-017
2	PX4129	Santoro e-mail to Rudy	8/8/2017	AMPACET-000039	-000042
3	Ex. 5, Santoro Depo.	Ampacet's supplemental CID response	7/24/2017	AMPACET-000053	-000053
4	PX4130	Santoro e-mail to Rudy	7/24/2017	AMPACET-000054	-000054

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5	Ex. 4, Santoro Depo.	Ampacet's CID response	7/20/2017	AMPACET- 000057	-000073
6	Ex. 2, Santoro Depo.	Confidential Submission to EC	7/14/2017	AMPACET- 000081	-000085
7	Ex. 3, Santoro Depo.	Confidential Submission to EC	2/19/2018	AMPACET- 000446	-000451
8	PX4133	Document Prepared by Ampacet in Response to RFP No. 9		AMPACET- 000643	-000643
9	PX4134	Document Prepared by Ampacet in Response to RFP No. 10		AMPACET- 000644	-000644
10	PX4135	Document Prepared by Ampacet in Response to RFP No. 18		AMPACET- 000645; PX4135-001	-000645; - 003
11	PX4136	Document Prepared by Ampacet in Response to RFP No. 17		AMPACET- 000646	-000646
12	PX7040	Santoro Transcript	3/20/2018	PX7040-001	-074
13	PX7039	Vandooren Transcript	3/20/2018	PX7039-001	-030

3. Ampacet is a private company headquartered in New York. It is a global leader in the production of masterbatch, which refers to resin-based additives used for coloring plastics or imparting specific qualities to plastics. Ampacet produces black, white, and color masterbatches. It operates 24 manufacturing plants in 17 countries, employs more than 2,000 people, and sells products in more than 90 countries. It invests extensively in research and operates four R&D centers. An ingredient in many of its products is titanium dioxide (TiO₂).

4. The Confidential Documents include highly sensitive trade secrets, business strategies, and technical information and confidential business information, such that if they become public, Ampacet would be harmed significantly in its ability to compete in the plastic coloring and additive industry.

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5. Ampacet takes its confidential information seriously. Its employees are required to sign non-disclosure agreements. Confidential information is not widely disseminated within Ampacet. For instance, only the R&D department and certain others have access to technical information and product formulas. The same restrictions apply on the procurement side, in that only the procurement department and certain others have access to purchasing information.

6. Ampacet has spent considerable resources through its R&D department and facilities, over many years, in selecting the types of grades to purchase (and which grades to avoid); developing its secret testing and qualification procedures; qualifying suppliers and their products; and developing product formulas designed to meet the needs of specific customers. Ampacet also has spent considerable resources developing its business strategies, methods of doing business, and supplier relationships—which if disclosed would cause Ampacet to suffer serious competitive harm.

7. The Confidential Documents contain this type of information, and none of it is likely to be already publicly available. It also would be incredibly difficult and expensive for a new market entrant, or even a legacy competitor, to replicate this information, and it would be harmful to Ampacet if competitors could free-ride on Ampacet's investments, conduct their operations similarly, and mimic Ampacet's choices

8. Although all of the Confidential Documents deserve *in camera* treatment, Nos. 6, 7, 8, 9, 10, 11, 13, and portions of 12 on the table above deserve indefinite protection. The need for secrecy and the information contained in these documents is not likely to diminish with time.

9. For instance, No. 6 is a memo regarding confidential information Ampacet provided to the EC. The memo describes Ampacet's views on the masterbatch market; Ampacet's use and purchases of certain grades of TiO₂; Ampacet's confidential views regarding

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the supply and suppliers of TiO₂; and Ampacet's efforts to conduct business with suppliers. The value of this information—particularly the identity of the grades—is not likely to diminish over time because Ampacet will likely still be using the same grades and business practices for the foreseeable future.

10. No. 7 is an e-mail chain forwarding a confidential data submission to the EC. It provides data on Ampacet's purchases (quantity, supplier, grade, and price) from 2015-2017 for Europe. No. 8 is a document titled "Document Prepared by Ampacet in Response to RFP No. 9." It provides similar purchasing data, but for the entire world. No. 9 is a document titled "Document Prepared by Ampacet in Response to RFP No. 10." It provides the specific grades Ampacet purchases from each supplier and describes the grades used in certain products. Nos. 7, 8, and 9 should be protected indefinitely because they show the grades that Ampacet uses and which suppliers Ampacet qualified to provide those grades, to which Ampacet devoted significant resources over many years to develop. This information would be incredibly useful to Ampacet's competitors, and it will likely remain sensitive for the foreseeable future.

11. No. 10, titled "Document Prepared by Ampacet in Response to RFP No. 18," is an outline of Ampacet's secret testing methods to qualify grades and suppliers. It describes the time and expense involved and provides test reports. This information will likely remain sensitive for the foreseeable future.

12. No. 11, titled "Document Prepared by Ampacet in Response to RFP No. 17," discloses a few secret product formulas. The formulas were developed at considerable expense, and disclosure would help competitors improve their products or mimic Ampacet's products. It is vital to Ampacet's business that this information never be disclosed.

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13. **No. 13** is Dr. Christian Vandooren’s deposition transcript. He is Ampacet’s Technical VP. He testified about product formulas; qualification processes and testing and associated burdens and expenses; TiO2 uses; quality issues; laboratory evaluation reports; and TiO2 characteristics and substitution issues (p.10:18-42:10). He described TiO2 qualities addressed by Ampacet’s formulas for different product levels; the computer software Ampacet uses with respect to its secret product formulas; and supply issues concerning TiO2 characteristics and product formulas. (p.43:13-61:5) He mentioned sourcing practices; improvements observed in some supplier’s TiO2; and qualification issues concerning some suppliers. (p.64:24 to end) The entire transcript should receive indefinite *in camera* treatment, because the technical aspects of Ampacet’s business are not likely to diminish with time.

14. **No. 12** is the transcript of my deposition. I testified about confidential information and purchasing data provided to the FTC and EC; market conditions (supply and pricing); and Ampacet’s confidential business strategies, supplier arrangements, purchases, and customers’ needs. Although the entire transcript deserves *in camera* treatment for at least five years, certain portions of it that disclose information not likely to lose competitive value with time deserve indefinite protection. Those portions include:

Page:Line	Sensitive Topics
11:2-28:7	Ampacet’s purchasing process, business methods, and supplier requirements; secret supplier innovations; understandings of how suppliers set prices; results from experimenting with suppliers and Ampacet’s responses; qualification, testing, practices, and plans regarding specific suppliers; use of different TiO2 types for different products; process for issuing RFPs.
30:6-35:7	Ampacet’s ability to react to prices; how Ampacet sources product around the world; views affecting pricing and demand around the world; views about certain supply options.
51:21-53:19	Compatibility of certain TiO2 types with secret product formulas; how suppliers react to competitive prices.
74:16-82:22	Market characteristics and correlations with markets for products containing TiO2, a market index, and other conditions; observations and potential causes of historical trends.

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83:15-22	Results of Ampacet's reactions to supplier prices.
85:23-8:21; 93:1-100:25	Supplier agreements; business strategies and the results of those strategies; information regarding the specific grades purchased from specific suppliers.
102:21-104:21	Use of certain business software.
120:4-123:19	Information provided to the FTC about market conditions and Ampacet's strategic positions and needs.
132:8-137:3	Customer demands and how they affect strategic decisions; qualification process regarding a certain supplier; particular grades purchased from certain suppliers; application of qualification and testing process to suppliers.
162:2-169:5	Qualities Ampacet wants in suppliers.
174:2-185:13	Qualification and testing; opinions and concerns about the future of the market provided to the EC; Ampacet's business practices.
191:25-193:15	Market characteristics; specific customer needs.

Based on the market, the demands of Ampacet's customers, and Ampacet's business practices, those portions of my deposition transcript are not likely to lose their competitive value with time.

15. The other documents described in the above table, **Nos. 1, 2, 3, 4, 5** and certain portions of **12**, also deserve *in camera* treatment, for at least three to five years. The information they reflect is confidential and likely to cause Ampacet serious harm if disclosed publicly within the next three to five years.

16. **No. 1** is Ampacet's CID response, and **No. 5** is the e-mail chain where Ampacet forwarded the response to the FTC. **No. 2** is an e-mail forwarding a file Ampacet provided with its response. The response provided data regarding Ampacet's purchases (for each supplier) and pricing. It describes Ampacet's efforts to respond to price increases and the results of those efforts. Ampacet has a competitive interest in keeping its purchases, suppliers, and prices confidential for at least three years.

17. **Nos. 3** is a follow-up e-mail chain (including **No. 4**) between the FTC and me regarding my forward-looking views on the proposed merger. It discusses various suppliers and their products, the market, and areas causing concern. Ampacet could suffer serious competitive harm if my internal analysis is disclosed in the next five years.

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18. With respect to No. 12, the rest of my deposition (for which indefinite protection is not sought) still deserves *in camera* treatment. For instance, I described current pricing of different grades (p.28:8-30:5); pricing trends and current market conditions; Ampacet's evaluations of a supplier; Ampacet's purchases in certain regions; Ampacet's interactions with a supplier; Ampacet's recent use of RFQs, the suppliers that responded, and Ampacet's response; and Ampacet's business arrangements and dealings with suppliers (p.35:8-51:20); Ampacet's internal reactions to certain public information (p.57:9-58:1); purchases in certain geographies (p.84:20-85:22); data regarding purchases from various suppliers and qualification tests with respect to a certain supplier (p.115:2-118:1); interactions and issues with suppliers and current market conditions (p.123:20-132:7); supply sources, opinions regarding the feedstock ore market and the TiO₂ market (p.137:4-150:12); and private views about a particular supplier (p.190:8-191:2). As most of my testimony concerns Ampacet's recent and current operations and internal views and opinions, disclosure could allow competitors and suppliers to use it to Ampacet's detriment in the next five years.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on April 30, 2018


Richard Santoro

EXHIBIT 3

Nos. 1 - 13

REDACTED

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

In the Matter of

Tronox Limited,
a corporation,

National Industrialization Company
(TASNEE),
a corporation,

National Titanium Dioxide Company
Limited (Cristal),
a corporation,

And

Cristal USA Inc.,
a corporation.

Docket No. 9377

[PROPOSED] ORDER

Upon consideration of Non-Party Ampacet Corporation's Motion for *In Camera* Treatment, it is HEREBY ORDERED that the following documents shown on the table below are to be provided *in camera* treatment.

No.	Exhibit No.	Title/Description	Date	Bates Nos. Beginning	Ending
1	PX4227	Ampacet's CID response	7/20/2017	PX4227-001	-017
2	PX4129	Santoro e-mail to Rudy	8/8/2017	AMPACET-000039	-000042
3	Ex. 5, Santoro Depo.	Ampacet's supplemental CID response	7/24/2017	AMPACET-000053	-000053
4	PX4130	Santoro e-mail to Rudy	7/24/2017	AMPACET-000054	-000054
5	Ex. 4, Santoro Depo.	Ampacet's CID response	7/20/2017	AMPACET-000057	-000073

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6	Ex. 2, Santoro Depo.	Confidential Submission to EC	7/14/2017	AMPACET-000081	-000085
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8	PX4133	Document Prepared by Ampacet in Response to RFP No. 9		AMPACET-000643	-000643
9	PX4134	Document Prepared by Ampacet in Response to RFP No. 10		AMPACET-000644	-000644
10	PX4135	Document Prepared by Ampacet in Response to RFP No. 18		AMPACET-000645; PX4135-001	-000645; -003
11	PX4136	Document Prepared by Ampacet in Response to RFP No. 17		AMPACET-000646	-000646
12	PX7040	Santoro Transcript & exhibits	3/20/2018	PX7040-001	-074
13	PX7039	Vandooren Transcript & exhibits	3/20/2018	PX7039-001	-030

The documents identified in the table by **Nos. 6, 7, 8, 9, 10, 11, 13**, and the portions of **12** included in pages 11:2-28:7, 30:6-35:7, 51:21-53:19, 74:16-82:22, 83:15-22, 85:23-8:21; 93:1-100:25, 102:21-104:21, 120:4-123:19, 132:8-137:3, 162:2-169:5, 174:2-185:13, and 191:25-193:15, shall, because the competitive value of the information reflected by these documents is not likely to diminish with time, receive indefinite *in camera* treatment.

The documents identified in the table by **Nos. 3, 4, 5**, and those remaining portions of **12** (not entitled to indefinite protection) shall receive *in camera* treatment for five years, and **Nos. 1** and **2** shall receive *in camera* treatment for three years.

ORDERED:

Respectfully submitted,

Date:

D. Michael Chappell
Chief Administrative Law Judge

Notice of Electronic Service

I hereby certify that on April 30, 2018, I filed an electronic copy of the foregoing Non-Party Ampacet Corporation's Motion for In Camera Treatment, with:

D. Michael Chappell
Chief Administrative Law Judge
600 Pennsylvania Ave., NW
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Washington, DC, 20580

Donald Clark
600 Pennsylvania Ave., NW
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Washington, DC, 20580

I hereby certify that on April 30, 2018, I served via E-Service an electronic copy of the foregoing Non-Party Ampacet Corporation's Motion for In Camera Treatment, upon:

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I hereby certify that on April 30, 2018, I served via other means, as provided in 4.4(b) of the foregoing Non-Party Ampacet Corporation's Motion for In Camera Treatment, upon:

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