

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,)
)
Respondents.)

DOCKET NO. 9377

**SECOND ORDER ON NON-PARTIES' MOTIONS
FOR *IN CAMERA* TREATMENT**

I.

Pursuant to Rule 3.45(b) of the Commission's Rules of Practice and the Scheduling Order entered in this matter, many non-parties filed motions for *in camera* treatment for materials that Federal Trade Commission ("FTC") Complaint Counsel and/or Respondents Tronox Limited, National Industrialization Company, National Titanium Dioxide Company, and Cristal USA Inc. ("Respondents") have listed on their exhibit lists as materials that might be introduced into evidence at the trial in this matter. Most motions were resolved by the May 15, 2018 Order on Non-Parties' Motions for *In Camera* Treatment ("May 15 Order"). This Order resolves subsequently processed motions for *in camera* treatment. Neither Complaint Counsel nor Respondents have filed an opposition to any of these motions. The legal standards governing these motions are set forth in the May 15, 2018 Order.

II.

The non-parties listed below filed separate motions for *in camera* treatment. Each motion included the documents for which *in camera* treatment is sought and was properly supported by a declaration of an individual within the company who had reviewed the documents at issue. These declarations supported the applicants' claims that the documents are sufficiently secret and sufficiently material to their businesses that disclosure would result in serious competitive injury. That showing was then balanced against the importance of the information in explaining the rationale of FTC decisions. The specific motions of each of the non-parties are analyzed using the standards set forth above.

Akzo Nobel Inc. ("AkzoNobel")

Non-party AkzoNobel seeks *in camera* treatment for 21 documents for varying lengths of time. AkzoNobel supports its motion with a declaration from its Global Spend Area Director ("AkzoNobel declaration"). The declaration describes in detail the confidential nature of the documents and the competitive harm that AkzoNobel would suffer if these documents were made publicly available and the measures that AkzoNobel takes to ensure that they remain confidential. The declaration explains that the documents contain competitively sensitive information about AkzoNobel's pricing, volume, and other terms and conditions of sale; AkzoNobel's strategy for procuring titanium dioxide; or AkzoNobel's production processes and strategic decisions regarding titanium dioxide.

AkzoNobel has met its burden of demonstrating that its documents are entitled to *in camera* treatment. The documents for which AkzoNobel seeks *in camera* treatment are ordinary business records, and not trade secrets, and are not entitled to indefinite *in camera* treatment. *In camera* treatment for a period of five years, to expire on June 1, 2023, is GRANTED for the documents listed in paragraph 9 of the AkzoNobel declaration. *In camera* treatment for a period of ten years, to expire on June 1, 2028, is GRANTED for the documents listed in paragraph 10 of the AkzoNobel declaration.

Ashland, LLC ("Ashland")

Non-party Ashland seeks indefinite *in camera* treatment for 9 documents and the deposition transcript of its 30(b)(6) witness. Ashland supports its motion with a declaration from its Senior Group Counsel and Chief Privacy Officer. The declaration describes in detail the confidential nature of the documents and the competitive harm that Ashland would suffer if these documents were made publicly available and the measures that Ashland takes to ensure that they remain confidential. The declaration explains that the documents contain competitively sensitive information revealing Ashland's suppliers, quantities purchased, and production scheduling and pricing.

Ashland has met its burden of demonstrating that these documents are entitled to *in camera* treatment. The documents for which Ashland seeks *in camera* treatment are ordinary

business records, and not trade secrets, and are not entitled to indefinite *in camera* treatment. *In camera* treatment for a period of ten years, to expire on June 1, 2028, is GRANTED for: PX4180, PX4181, PX7051, RX1233, RX1234, RX1235, RX1236, RX1238, RX1240, and RX1241.

Dunn-Edwards (“Dunn-Edwards”)

By Order dated May 15, 2018, non-party Dunn-Edwards was granted *in camera* to the one document for which it sought *in camera* treatment. This Order clarifies that *in camera* treatment for a period of ten years, to expire on June 1, 2028, is GRANTED for PX4233.

Sherwin-Williams Company (“SW”)

Non-party SW seeks *in camera* treatment for 14 documents and for portions of 6 documents for varying lengths of time. SW supports its motion with a declaration from its Senior Vice President for Global Procurement and Supply Chain. The declaration describes in detail the confidential nature of the documents and the competitive harm that SW would suffer if these documents were made publicly available and the measures that SW takes to ensure that the information contained therein remains confidential. The declaration explains that the documents for which it seeks *in camera* treatment fall into three categories.

The first category covers documents that disclose SW’s supplier identities, contract terms, and purchasing data. The declaration explains that these documents include detailed purchasing data, information on responses to announced price increases, identities of suppliers, and purchasing volumes. SW has met its burden of demonstrating that these documents are entitled to *in camera* treatment. However, the documents in the first category are ordinary business records, and not trade secrets, and are not entitled to indefinite *in camera* treatment. *In camera* treatment for a period of ten years, to expire on June 1, 2028, is GRANTED for the documents identified as PX4022, SHW003186-3215, PX7020, FTC-PROD-0028885-028863, PX8003, FTC-PROD-0029028-0029036, SHW000166-000210, and any other documents falling in the first category listed on SW’s proposed order, and to the portions of the documents listed in its proposed order for which SW seeks *in camera* treatment for redacted portions.

The second category covers documents that disclose internal SW strategic analyses of its purchases and use of titanium dioxide. The declaration explains that documents in this category contain test results and reveal the interchangeability of specific grades of titanium dioxide within product formulations. Because these documents include secret technical information, SW has met its burden of demonstrating that they are entitled to indefinite *in camera* treatment. Indefinite *in camera* treatment is GRANTED for the documents identified as PX4018, PX4020, PX4027, SHW003168-3185, and SHW003881-3909.

The third category covers documents from another litigation that are subject to protective orders (*Valspar Corp. et al v. Kronos Worldwide, Inc, et al*). SW requests *in camera* treatment of these litigation documents for an indefinite time or for a period in accordance with the protective orders in those litigations. In order to provide a clear expiration date, which

establishes consistency and furthers administrative efficiency,¹ *in camera* treatment for a period of ten years, to expire on June 1, 2028, is GRANTED for the documents identified in the third category.

Westlake Chemical Corporation (“Westlake”)

Non-party Westlake seeks *in camera* treatment for one document and for deposition testimony about that document for a period of five years. Westlake supports its motion with a declaration from its Strategic Sourcing Manager. The declaration describes in detail the confidential nature of the document and the competitive harm that Westlake would suffer if this document was made publicly available and the measures that Westlake takes to ensure that the information contained therein remains confidential. The declaration explains that the document contains competitively sensitive information revealing the identities of titanium dioxide suppliers from whom Westlake has purchased product, the volume of material Westlake has purchased from each supplier, and the pricing Westlake has received from each supplier.

Westlake has met its burden of demonstrating that these documents are entitled to *in camera* treatment. *In camera* treatment for a period of five years, to expire on June 1, 2023, is GRANTED for: PX4029 and PX7034.

III.

Several of the non-parties did not identify the documents for which they seek *in camera* treatment by a PX or RX number. If either party seeks to introduce these documents as exhibits, counsel shall prepare a proposed order indicating that, by this Order, the document has been granted *in camera* treatment, the length of time *in camera* treatment has been extended, and identifying each document by its PX or RX number.

Each non-party whose documents or information has been granted *in camera* treatment by this Order shall inform its testifying current or former employees that *in camera* treatment has been provided for the material described in this Order. At the time that any documents that have been granted *in camera* treatment are offered into evidence, or before any of the information contained therein is disclosed in court, the parties shall identify such documents and the subject matter therein as *in camera*, inform the court reporter of the trial exhibit number(s) of such documents, and request that the hearing go into an *in camera* session. Any testimony regarding documents that have been granted *in camera* treatment may be provided in an *in camera* session.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: May 18, 2018

¹ See *In re ProMedica Health Sys.*, 2011 FTC LEXIS 101, at *20 n.1 (May 25, 2011).