

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



In the Matter of
Otto Bock HealthCare North America, Inc.,
a corporation

Respondent.

Docket No. 9378

**RESPONDENT’S RENEWED MOTION FOR *IN CAMERA* TREATMENT OF
CERTAIN TRIAL EXHIBITS**

Pursuant to Rule 3.45(b) of the Federal Trade Commission Rules of Practice, 16 C.F.R. § 3.45(b), the January 18, 2018 Scheduling Order¹ (“Scheduling Order”) and the December 20, 2017 Protective Order Governing Confidential Material (“Protective Order”), Respondent Otto Bock HealthCare North America, Inc. (“Ottobock” or “Respondent”), by and through its counsel, seeks *in camera* treatment for *portions* of five trial exhibits. Respondent’s renewed motion for *in camera* treatment is fully supported by the sworn Declaration of Ottobock’s Vice President of Medical Affairs, Government Affairs, and Future Development, Scott Schneider,² attached hereto as Exhibit “A” (the “Schneider Declaration”). Complaint Counsel has indicated that it takes no position regarding the relief sought in this Motion—it cannot join the Motion, but does not plan to file an opposition.

¹ As amended by Order dated April 26, 2018.

² The Declaration in Support of Respondent’s Renewed Motion For *In Camera* Treatment of Certain Trial Exhibits is made by Scott Schneider, who is an executive at Ottobock. The documents for which Respondent seeks partial *in camera* treatment contain highly confidential information belonging to both Freedom and Ottobock. The Schneider Declaration provides an explanation as to how [REDACTED] Mr. Schneider is qualified to explain the confidential nature of the document pursuant to the Scheduling Order, at ¶ 7, dated January 18, 2018.

Since the public filing of Complaint Counsel's Opposition to Respondent's Second Motions for *In Camera* Treatment of Certain Trial Exhibits on July 27, 2018, which attached unredacted versions of certain trial exhibits pursuant to the Court's July 27, 2018 Order on Renewed Motions and Supplemental Motion for *In Camera* Treatment filed by Ottobock and Freedom, Respondent's competitors have had access to [REDACTED]

[REDACTED]³ [REDACTED]
[REDACTED]

³ In its Opposition to Respondent's Second Motions for *In Camera* Treatment, Complaint Counsel "acknowledges that select portions of these documents may in rare instances qualify as competitively sensitive information" – citing to PX01297 and PX01703 as examples of documents with select portions that may contain such sensitive information. See Complaint Counsel's Opposition, July 20, 2018, at p. 6, n.9.

⁴ The Court's July 27, 2018 Order on Renewed Motions and Supplemental Motion for *In Camera* Treatment filed by Ottobock and Freedom held that "In the event Respondent did seek *in camera* treatment for [PX01518], the request is denied for the reasons above." See July 27, 2017 Order at 4. Respondent submits that it is only seeking *in camera* treatment for three pages of PX01518 here, and that each of those three pages contains [REDACTED]

[REDACTED]

[REDACTED] Still, Respondent is only renewing its request for *in camera* treatment of mere *portions* of these documents.

For the foregoing reasons, and those contained in the Schneider Declaration, Respondent respectfully requests that this Court grant five years⁵ of *in camera* protection to portions of the five trial exhibits as follows:

⁵ Documents containing business plans or pricing and cost information have been granted at least five years of *in camera* treatment. *See In the Matter of Tronox Ltd.*, 2018 WL 2336017, at *1 (F.T.C. May 15, 2018) (granting *in camera* treatment for a period of ten years for documents containing respondent’s “business plans” and five years for “aggregated price and volume information”).

Exhibit No.	Pages
PX01068	024-041
PX01297	024-025; 059-061
PX01518	010; 015; 017
PX01524	006-009
PX01703 (same document as PX01297)	009-010; 044-046

Dated: August 14, 2018

Respectfully submitted,

/s/ William Shotzbarger

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PROPOSED ORDER

Upon consideration of Respondent's Renewed Motion for *In Camera* Treatment of Certain Trial Exhibits (the "Motion"), any opposition thereto, any hearing thereon, and the entire record in this proceeding,

IT IS HEREBY ORDERED, that the Motion is GRANTED.

IT IS FURTHER ORDERED, that pursuant to Rule 3.45(b) of the Federal Trade Commission Rules of Practice, 16 C.F.R. § 3.45(b), the following portions of certain trial exhibits, identified in the Motion and attached as Exhibit 1 to the Declaration of Scott Schneider, shall be subject to the requested *in camera* treatment and will be kept confidential and not placed on the public record of this proceeding:

Exhibit No.	Pages
PX01068	024-041
PX01297	024-025; 059-061
PX01518	010; 015; 017
PX01524	006-009
PX01703 (same document as PX01297)	009-010; 044-046

Date: _____

D. Michael Chappell
Administrative Law Judge

UNITED STATES OF AMERICA
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OFFICE OF ADMINISTRATIVE LAW JUDGES

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Docket No. 9378

DECLARATION OF SCOTT SCHNEIDER IN SUPPORT OF RESPONDENT'S
RENEWED MOTION FOR *IN CAMERA* TREATMENT
OF CERTAIN TRIAL EXHIBITS

I, Scott Schneider, make the following declaration under 28 U.S.C. § 1746.

1. I am the Vice President of Medical Affairs, Government Affairs, and Future Development for Otto Bock HealthCare North America, Inc. ("Ottobock" or "Respondent").

2. I submit this declaration in support of Respondent's Renewed Motion for *In Camera* Treatment of Certain Trial Exhibits (the "Motion").

3. I am personally familiar with the content of the documents identified in the Motion, the competitive significance to Ottobock and Freedom Innovations ("Freedom"), and the level of confidentiality associated with the subject matter therein. Based on my review of the documents attached as Exhibit "1", my knowledge of Ottobock's and Freedom's businesses, and my familiarity with the confidentiality protection afforded this type of information by Ottobock and Freedom, I submit that [REDACTED]

[REDACTED]

4. I am aware that exhibits PX01297 and PX01703 were denied *in camera* protection by the Court. I am also aware that Complaint Counsel had subsequently filed a public version of its Opposition to Respondent's Second Motion for *In Camera* Treatment of Certain Trial Exhibits, which attached unredacted copies of PX01297 and PX01703. These exhibits contain [REDACTED]

I believe that the certain pages of PX01297 and PX01703 identified in the Motion deserve *in camera* treatment.

5. PX01524 contains [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

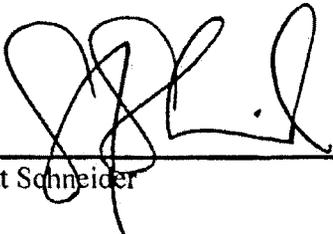
[REDACTED]

PUBLIC

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury, that the foregoing is true and correct.

This 7th day of August, 2018.

WASHINGTON, DC
City, State



Scott Schneider

EXHIBIT 1

REDACTED IN ENTIRETY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 14, 2018, I caused a true and correct copy of the foregoing Respondent's Renewed Motion for *In Camera* Treatment of a Certain Trial Exhibits to be served via FTC E-Filing System and e-mail upon the following:

D. Michael Chappell
Chief Administrative Law Judge
600 Pennsylvania Ave., N.W.
Rm. H-110
Washington, DC, 20580

Donald S. Clark
Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue NW
Washington DC, 20580

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William Cooke
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Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, DC, 20580

/s/ William Shotzbarger
William Shotzbarger

Notice of Electronic Service

I hereby certify that on August 14, 2018, I filed an electronic copy of the foregoing Public - Respondent's Renewed Motion for In Camera Treatment of Certain Trial Exhibits, with:

D. Michael Chappell
Chief Administrative Law Judge
600 Pennsylvania Ave., NW
Suite 110
Washington, DC, 20580

Donald Clark
600 Pennsylvania Ave., NW
Suite 172
Washington, DC, 20580

I hereby certify that on August 14, 2018, I served via E-Service an electronic copy of the foregoing Public - Respondent's Renewed Motion for In Camera Treatment of Certain Trial Exhibits, upon:

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