

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



_____)
In the Matter of)
)
1-800 Contacts, Inc.,)
a corporation,)
)
Respondent.)
_____)

DOCKET NO. 9372

**ORDER ON RESPONDENT'S MOTION
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, Respondent 1-800 Contacts, Inc. ("Respondent" or "1-800 Contacts") filed a motion for *in camera* treatment for materials that the parties have listed on their exhibit lists as materials that might be introduced at trial in this matter ("Motion"). Federal Trade Commission ("FTC" or "Commission") Complaint Counsel has not filed an opposition. For the reasons set forth below, Respondent's Motion is GRANTED.

II.

The legal standards governing Respondent's Motion are set forth in the Order on Non-Parties' Motions for *In Camera* Treatment, issued on April 4, 2017. Of the 2,100 proposed trial exhibits, Respondent has tailored its request to 86 documents, each of which were created between 2014 and 2017, and each of which, Respondent asserts, contains competitively sensitive business records that, if publicly disclosed, would significantly harm Respondent's competitive position. Respondent requests *in camera* treatment for a period of five years.

To support its Motion, Respondent provides the declaration of the Vice President of Finance and Treasurer of 1-800 Contacts, Brett Gappmayer. The Gappmayer declaration explains that he reviewed the documents at issue and that the documents fall into five categories: (1) documents reflecting 1-800 Contacts' confidential pricing strategies; (2) documents reflecting 1-800 Contacts' confidential marketing strategies; (3) documents reflecting 1-800 Contacts' non-public analyses and due diligence of

contemplated mergers and acquisitions; (4) presentations given to 1-800 Contacts' board of directors containing confidential financial and strategic information; and (5) documents reflecting confidential keywords that 1-800 Contacts bids on, and the amount of 1-800 Contacts' maximum bid for these keywords.

The Gappmayer declaration avers that each of these documents is a confidential business record that 1-800 Contacts has maintained as secret and has not disclosed publicly, and that if these documents were made public, 1-800 Contacts' competitive position would be significantly harmed. The Gappmayer declaration further avers that, due to the sensitivity of the information contained in these documents, 1-800 Contacts has maintained the secrecy and confidentiality of the documents and restricted access within the company.

III.

Respondent has met its burden of demonstrating that the materials for which it seeks *in camera* treatment should be given such protection. Accordingly, *in camera* treatment, for a period of five years, to expire on April 1, 2022, is GRANTED for the documents identified as:

CX94, CX295, CX296, CX428, CX430/RX429, CX547, CX549, CX605, CX648, CX954, CX1160, CX1162/RX444, CX1334, CX1335/RX1116, CX1336, CX1346, CX1391, CX1446, CX1447/RX1117, CX1449/RX447/RX1122, CX1546, CX1743, CX1783/RX451, RX425, RX953, RX983, RX958, RX959, RX1046, RX1047, RX1048, RX1049, RX1050, RX1051, RX1053, RX1061, RX1062, RX1063, RX1064, RX1067, RX1068, RX1069, RX1070, RX1079, RX1080, RX1081, RX1082, RX1083, RX1084, RX1085, RX1086, RX1087, RX1088, RX1089, RX1090, RX1091, RX1092, RX1093, RX1094, RX1095, RX1096, RX1097, RX1098, RX1099, RX1100, RX1101, RX1102, RX1103, RX1104, RX1105, RX1106, RX1107, RX1109, RX1111, RX1112, RX1113, RX1114, RX1115, RX1118, RX1119, RX1120, RX1121, RX1131 and RX1141.

IV.

Respondent shall inform its testifying current or former employees and experts 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 referred to 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.

It is apparent from the Motion that Complaint Counsel and Respondent seek to introduce duplicative copies of the same underlying documents. For example, according to Respondent, CX430 and RX429 are duplicates of the same document. The parties are

reminded of their obligation, pursuant to the Scheduling Order, to confer and eliminate duplicative exhibits in advance of the final prehearing conference.

ORDERED:

DM Chappell
D. Michael Chappell
Chief Administrative Law Judge

Date: April 4, 2017