

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



_____)
In the matter of _____)
Impax Laboratories, Inc. _____)
_____)

Docket No. 9373

ORIGINAL

NON-PARTY IQVIA’S UNOPPOSED MOTION FOR *IN CAMERA* TREATMENT

Non-party IQVIA Inc., formerly known as Quintiles IMS Incorporated (“IQVIA”), respectfully moves this Court for *in camera* treatment under Rule 3.45 of the Federal Trade Commission’s Rules of Practice, 16 C.F.R § 3.45(b), for competitively sensitive, confidential data provided by IQVIA to the Federal Trade Commission (“FTC”) in 2017 (the “Confidential Documents”). Although it understands that the deadline for this motion has expired, IQVIA only recently learned that the FTC intended to use its Confidential Documents in this proceeding.

IQVIA is a provider of information and technology for the healthcare industry. It offers to its customers in depth analytics on healthcare dynamics, reporting on many aspects of pharmaceuticals and health care in various regions throughout the world. IQVIA tracks and analyzes information relating to all phases of the pharmaceutical product life cycle, helping companies in the pharmaceutical industry with activities ranging from drug development to product management.

In 2017, IQVIA provided the Confidential Documents to the FTC on the condition that they would be treated confidentially and would be subject to the Protective Order entered in this proceeding on January 24, 2017. The Confidential Documents were governed by letter agreements requiring their confidential treatment dated June 29, 2017 and July 7, 2017.

In early November, 2017, the FTC spoke to IQVIA about the use of IQVIA’s confidential data in charts appended to an expert report (the “Initial Noll Report”) at the administrative trial of this matter. IQVIA was informed that the Report already had been designated as confidential by Impax Laboratories, Inc. (“Impax”) and was not told at that time of this Court’s deadline for seeking *in camera* treatment. Subsequently, on November 13, 2017, the FTC notified IQVIA that, in addition to the confidential data appended to the Initial Noll Report, it had designated confidential IQVIA spreadsheets as trial exhibits, although the FTC maintained that there was no public disclosure.

For the reasons herein, IQVIA requests that this Court grant the Confidential Documents *in camera* treatment indefinitely. In support of this motion, IQVIA relies on the Declaration of Jody Fisher, attached as Exhibit A, which provides additional details about the Confidential Documents.

IQVIA understands that neither the FTC nor Impax opposes this request for *in camera* treatment. Indeed, based on its communications with the FTC, IQVIA believes that other non-parties to this proceeding have sought and obtained similar *in camera* treatment.

I. The Confidential Documents

IMS seeks *in camera* treatment for the following Confidential Documents:

Exhibit No.	Document Name	Description
CX-3305	NPA Data for Combined Molecules Oxymorphone, Oxycondone for 2003-08	Excel Spreadsheet
CX-3306	NSP Data for Combined Molecules Oxymorphone, Oxycondone for 2003-08	Excel Spreadsheet
CX-3307	NSP and NPA Data for Oxymorphone for 2009-10	Excel Spreadsheet
CX-5000	Charts attached to Initial Noll Report	Report

Three of the Confidential Documents are Excel spreadsheets that contain data, methods and models from the National Prescription Audit (“NPA”) database (data measuring products prescribed by the physician and dispensed by the pharmacist) and/or the National Sales Perspectives (“NSP”) database (data measuring product movement from manufacture to warehouse for distribution to retail and non-retail outlets) for the molecules Oxymorphone, Oxycondone and Morphine for various years from 2003 through 2010. The final Confidential Document is an expert report appended to which are charts that include IQVIA’s data.

II. The Confidential Documents are Secret and Material Such That Disclosure Would Result in Serious Injury to IQVIA

In camera treatment of materials is appropriate when “public disclosure . . . will likely result in a clearly defined, serious injury to the person or corporation” requesting such treatment. 16 C.F.R. § 3.45(b); *In re Kaiser Aluminum & Chem. Corp.*, 103 F.T.C. 500, 500 (1984). A clear showing of serious competitive injury is established when “the information concerned is sufficiently secret and sufficiently material to [the movant’s] business.” *In re General Foods Corp.*, 95 F.T.C. 352, 1980 WL 338997 at *4 (Mar. 10, 1980).

In considering secrecy and materiality, the Court may consider the following factors: (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 within the business; (3) the extent of measures taken to protect the information’s secrecy; (4) the value of the information to the business and its competitors; (5) the effort or investment made in developing the information; and (6) the ease or difficulty with which the information could be acquired or duplicated by others. *In re Bristol-Myers Co.*, 90 F.T.C. 455, 456-457 (1977). Each of these factors weighs in favor of granting the Confidential Documents *in camera* treatment.

The Confidential Documents are both secret and not known outside of IQVIA. As set forth in the attached Declaration of Jody Fisher,¹ IQVIA tracks and analyzes information relating to all phases of the pharmaceutical product life cycle and provides information ranging from drug development to product management. IQVIA creates these analytical products using unique data collection techniques, sampling methods and projections. The data is obtained from over 29,000 stores and over 225,000 outlets.

The market for this type of information is highly competitive, and the data and methodologies contained in the Confidential Documents would be extremely valuable to IQVIA's competitors because it could reveal supplier relationships, data collection methods, sampling techniques and proprietary marketing and analytics information. IQVIA's competitors could use the data and methodologies to validate or enhance their competitive offerings and to "free ride" off of IQVIA's substantial investments and years of experience.

IQVIA undertakes significant safeguards to protect the confidential nature of this information. IQVIA's global data center stores the data securely. The data center is guarded with secure card access and security personnel. Access to data and other IQVIA assets are user-defined. All IQVIA employees must sign confidentiality agreements at the inception of employment. Employee policies and training underscore the importance of maintaining confidential treatment of the data. IQVIA does not share data with potential customers and its contracts with its customers contain confidentiality agreements.

The value of the data, collection and synthesis contained in the Confidential Documents will be lost or significantly reduced by public disclosure. The underlying data and methodologies are sensitive, as is the manner in which IQVIA collects, orders and synthesizes

¹ This Declaration provides the evidentiary grounds for the arguments set forth throughout this Motion.

the data. Public disclosure of the Confidential Documents will harm IQVIA because: 1) the collection and analytics of the data is confidential and public disclosure would eliminate or reduce its value to IQVIA and its customers; 2) the data itself is highly sensitive; 3) the disclosure would interfere with IQVIA's carefully cultivated relationships with data suppliers throughout the world; 4) public disclosure could reveal IQVIA's supplier relationships, data collection methods, sampling techniques and proprietary information.

IQVIA's status as a third party in this proceeding also is relevant to the treatment of the Confidential Documents. "There can be no question that the confidential records of businesses involved in Commission proceedings should be protected insofar as possible," *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1186 (1961), and that third parties warrant "special solitude" in requests for *in camera* treatment for confidential materials. *See also In re Kaiser Aluminum & Chem. Corp.*, 103 F.T.C. 500, 500 (1984) ("As a policy matter, extensions of confidential or *in camera* treatment in appropriate cases involving third party bystanders encourages cooperation with future adjudicative discovery requests."). IQVIA's non-party status also counsels in favor of *in camera* treatment.

The Confidential Documents merit indefinite *in camera* treatment because they are secret and material such that their disclosure would cause serious competitive harm to IMS.

III. Because the Confidential Documents Contain Trade Secrets That Will Remain Sensitive Over Time, Permanent *In Camera* Treatment is Justified

An additional reason for indefinite *in camera* treatment for the Confidential Documents is that they contain and constitute IQVIA's trade secrets. The Confidential Documents identified as CX3305-07 are sortable Excel spreadsheets that present the opportunity for "reverse-engineering" or disassembly – meaning that they could disclose IQVIA's confidential methodologies by which the data was obtained, sorted, projected or manipulated. This

information about IQVIA's methodologies would be invaluable to IQVIA's competitors, and for that reason should not be disclosed in a public forum.

The methodologies are likely to remain sensitive or become more sensitive with the passage of time, and thus the need for confidentiality will not diminish with time. *In re Dura Lube Corp.*, 1999 F.T.C. LEXIS 255 at *7-8. As indicated in *In re Dura Lube Corp.*, trade secrets, such as the analytical methodology and models discernable through reverse engineering or disassembly, should be granted greater confidentiality protection than ordinary business documents. These methodologies and models will not become stale or diminish over time. While the data itself may describe past pharmaceutical trends, IQVIA's methodologies continue to be secret and material indefinitely into the future.

Thus, the Confidential Documents merit indefinite *in camera* treatment.

IV. Conclusion

For the reasons set forth herein and in the accompanying declaration, IQVIA requests that the Court grant the Confidential Documents indefinite *in camera* treatment.

Dated: November 28, 2017

Respectfully submitted,

/s/ Charlotte E. Thomas

Dana B. Klinges

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*Counsel for non-party IQVIA, Inc.,
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STATEMENT REGARDING MEET AND CONFER

The undersigned certifies that on November 15, 2017 she spoke with counsel for the FTC about the foregoing motion. She was advised that neither the FTC nor Impax Laboratories, Inc. opposes IQVIA's motion seeking *in camera* treatment of the Confidential Documents.

Dated: November 28, 2017

Respectfully submitted,

/s/ Charlotte E. Thomas

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Notice of Electronic Service

I hereby certify that on November 28, 2017, I filed an electronic copy of the foregoing Non-Party IQVIA's Unopposed Motion for *In Camera* Treatment, Exhibit A, Proposed Order, with:

D. Michael Chappell
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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 November 28, 2017, I served via E-Service an electronic copy of the foregoing Non-Party IQVIA's Unopposed Motion for *In Camera* Treatment, Exhibit A, Proposed Order, upon:

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I hereby certify that on November 28, 2017, I served via other means, as provided in 4.4(b) of the foregoing Non-Party IQVIA's Motion for *In Camera* Treatment, upon:

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Charlotte E. Thomas
Attorney

EXHIBIT A

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

_____)
In the matter of)
)
Impax Laboratories, Inc.) **Docket No. 9353**
)
_____)

**DECLARATION OF JODY FISHER IN SUPPORT OF
NON-PARTY IQVIA'S MOTION FOR IN CAMERA TREATMENT**

I, Jody Fisher, hereby do declare and state:

1. I am the Director, Product Management, U.S. at IQVIA, Inc. ("IQVIA"). I submit this declaration in support of Non-Party IQVIA's Unopposed Motion for *In Camera* Treatment. Through my work at IQVIA, I am familiar with the documents and information discussed in this Declaration.

2. IQVIA formerly was known as "Quintiles IMS Incorporated."

3. IQVIA is a leading provider of information, research and analysis to the health care industry throughout the world. It collects data and reports on health care-related activities in more than 100 countries and has a long-standing reputation for the responsible handling of data.

4. In that capacity, IQVIA tracks and analyzes information relating to all phases of pharmaceutical product life cycle and provides information ranging from drug development to product management. A broad range of IQVIA customers use this data, including pharmaceutical manufacturers, biotechnology firms, financial analysts, researchers and educators.

5. IQVIA's business products incorporate highly sensitive business information and trade secrets. These products are created using unique data collection techniques, sampling methods and projections.

6. In 2017, IQVIA provided certain Confidential Documents to the Federal Trade Commission (the “FTC”). Two letter agreements dated June 29, 2017 and July 7, 2017 govern the use and confidential treatment of the Confidential Documents. The Confidential Documents also are subject to the Protective Order entered in this proceeding on January 24, 2017.

7. I understand that in early November, 2017, the FTC spoke to IQVIA about the use of IQVIA’s confidential data in charts appended to the Initial Noll Report at the administrative trial of this matter.

8. I further understand that later, on November 13, 2017, the FTC notified IQVIA that, in addition to the confidential data appended to the Initial Noll Report, it also had designated confidential IQVIA spreadsheets as trial exhibits, although there was no public disclosure.

9. These Confidential Documents are:

- a. CX-3305 – NPA Data for Combined Molecules Oxymorphone, Oxycondone for 2003-08;
- b. CX-3306 – NSP Data for Combined Molecules Oxymorphone, Oxycondone for 2003-08;
- c. CX-3307 – NSP and NPA Data for Oxymorphone for 2009-10; and
- d. CX-5000 – Charts attached to Noll Initial Report.

10. The Confidential Documents identified as CX-3305-07 are excel spreadsheets containing data, methods and models from the National Prescription Audit (“NPA”)(data measuring what is prescribed by the physician and what is dispensed by the pharmacist) and National Sales Perspectives (“NSP”)(data measuring product movement from manufacture to warehouse for distribution to retail and non-retail outlets).

11. The data contained in the Confidential Documents identified as CX-3305-07 relates to the molecules Oxymorphone, Oxycodone and Morphine for the years 2003 through 2010.

12. The charts attached to CX-5000 contain extrapolations of data provided by IQVIA to the FTC.

13. These Confidential Documents contain IQVIA's confidential and proprietary data. Moreover, it is possible to reverse engineer or disassemble the data contained in CX-3305-07 to reveal IQVIA's methodologies by which the data was obtained, sorted, projected or manipulated. These methodologies are IQVIA's trade secrets.

14. IQVIA creates its analytical products –including those contained in CX-3305-07, and the data contained in the charts attached to CX-5000 – through the careful cultivation of in excess of 29,000 stores and over 225,000 outlets.

15. The market for this type of data is highly competitive. The data and methodologies contained in, and that could be revealed from, the Confidential Documents are highly confidential. Public disclosure would be invaluable to IQVIA's competitors because it may reveal supplier relationships, data collection methods, sampling techniques and proprietary marketing information. IQVIA's competitors could use the information contained in the Confidential Documents to validate or enhance competitive offerings.

16. The public disclosure of the Confidential Documents would harm IQVIA because its business model is premised on customers paying for its data compilations. If portions of the data are made public, the value of the data is eliminated or diminished.

17. The public disclosure of the Confidential Documents during an administrative trial or thereafter, including any award issued thereon, would cause IQVIA significant harm by eliminating or reducing the value of a confidential product, exposing data processes and methodologies, exposing data sources and data sites, exposing trade secrets and diminishing the value of the security systems designed by IQVIA to secure its data and methodologies.

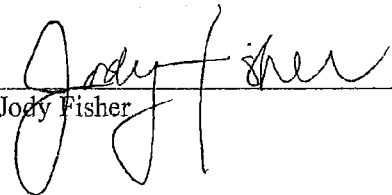
18. The data, methodology and models in the Confidential Documents is not otherwise publicly available. To the contrary, IQVIA takes significant steps to maintain the confidentiality of this information, which it believes is the "lifeblood" of its business.

19. IQVIA does not share data with potential customers and its contracts with its customers contain confidentiality agreements.

20. Because of the highly sensitive nature of the data and methodologies, IQVIA takes steps to guard against its disclosure in the course of business. Not only is IQVIA's global data center guarded with secure card access and security personnel, access to data and other IQVIA assets are user-defined. All IQVIA employees must sign confidentiality agreements at the inception of employment, and employee policies and training protect against disclosure of its confidential information.

I declare under penalty of perjury that the foregoing is true and correct.

Executed 11/22/17 in PLYMOUTH MEETING, Pennsylvania.



Jody Fisher

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

_____)
In the matter of)
)
Impax Laboratories, Inc.) **Docket No. 9373**
)
_____)

ORDER

Upon consideration of IQVIA’s Unopposed Motion for In Camera Treatment, it is
HEREBY ORDERED that the following documents are to be provided permanent *in camera*
treatment from the date of this Order in their entirety.

Exhibit No.	Document Name	Description
CX-3305	NPA Data for Combined Molecules Oxymorphone, Oxycondone for 2003-08	Excel Spreadsheet
CX-3306	NSP Data for Combined Molecules Oxymorphone, Oxycondone for 2003-08	Excel Spreadsheet
CX-3307	NSP and NPA Data for Oxymorphone for 2009-10	Excel Spreadsheet
CX-5000	Charts Attached to Noll Initial Report	Report

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

Date: _____

Notice of Electronic Service

I hereby certify that on November 28, 2017, I filed an electronic copy of the foregoing Non-Party IQVIA's Unopposed Motion for In Camera Treatment, with:

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I hereby certify that on November 28, 2017, I served via other means, as provided in 4.4(b) of the foregoing Non-Party IQVIA's Unopposed Motion for In Camera Treatment, upon:

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