

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



In the Matter of)
)
Impax Laboratories, Inc.,)
a corporation,)
)
Respondent.)

DOCKET NO. 9373

**ORDER ON IQVIA'S MOTION
FOR *IN CAMERA* TREATMENT**

I.

Pursuant to Rule 3.45(b) of the Federal Trade Commission's ("FTC") Rules of Practice, non-party IQVIA Inc. ("IQVIA") filed a motion for indefinite *in camera* treatment for four documents that FTC Complaint Counsel listed on its exhibit list as materials that might be introduced at trial in this matter ("Motion"). IQVIA states that neither party opposes its motion.¹ IQVIA's Motion is GRANTED, with modifications, as explained below.

II.

The legal standards governing IQVIA's motion are stated in the Order on Respondent's Motion for *In Camera* Treatment, issued on October 16, 2017. Included in that Order was an explanation of the circumstances where indefinite *in camera* treatment is appropriate, summarized here.

Under Commission Rule 3.45(b)(3), indefinite *in camera* treatment is warranted only "in unusual circumstances," including circumstances in which "the need for confidentiality of the material . . . is not likely to decrease over time. . . ." 16 C.F.R. § 3.45(b)(3). "Applicants seeking indefinite *in camera* treatment must further

¹ Although the deadline for motions for *in camera* treatment was October 10, 2017 and trial concluded on November 14, 2017, given that the parties do not oppose IQVIA's request to shield these documents from the public record, the motion is considered.

demonstrate ‘at the outset that the need for confidentiality of the material is not likely to decrease over time’ 54 Fed. Reg. 49,279 (1989) . . . [and] that the circumstances which presently give rise to this injury are likely to be forever present so as to warrant the issuance of an indefinite *in camera* order rather than one of more limited duration.” *In re E. I. DuPont de Nemours & Co.*, 1990 FTC LEXIS 134, at *2-3 (April 25, 1990). In *DuPont*, the Commission rejected the respondent’s request for indefinite *in camera* treatment, but noting “the highly unusual level of detailed cost data contained in these specific trial exhibit pages, the existence of extrapolation techniques of known precision in an environment of relative economic stability, and the limited amount of technological innovation occurring in the . . . industry,” the Commission extended the duration of the *in camera* treatment for a period of ten years. *Id.* at *5-6.

In determining the length of time for which *in camera* treatment is appropriate, the distinction between trade secrets and ordinary business records is important because ordinary business records are granted less protection than trade secrets. *In re H. P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1189 (Mar. 14, 1961). Examples of trade secrets meriting indefinite *in camera* treatment include secret formulas, processes, other secret technical information, or information that is privileged. *Hood*, 58 F.T.C. at 1189; *In re General Foods Corp.*, 95 F.T.C. 352, 1980 FTC LEXIS 99, at *10 (Mar. 10, 1980); *In re Textron, Inc.*, 1991 FTC LEXIS 135, at *1 (Apr. 26, 1991). In contrast to trade secrets, ordinary business records include information such as customer names, pricing to customers, business costs and profits, as well as business plans, marketing plans, or sales documents. *See Hood*, 1961 FTC LEXIS 368, at *13; *In re McWane, Inc.*, 2012 FTC LEXIS 143 (Aug. 17, 2012); *In re Int’l Ass’n of Conference Interpreters*, 1996 FTC LEXIS 298, at *13-14 (June 26, 1996).

III.


IQVIA supported its Motion with the declaration of its director of product management. The declaration describes in detail the confidential nature of the documents, the competitive harm that IQVIA would suffer if these documents were made publicly available, and the measures that IQVIA takes to ensure that they remain confidential.

IQVIA seeks *in camera* treatment for four documents. Three of these documents (CX3305, CX3306, and CX3307) are Excel spreadsheets that IQVIA generated that contain data, methods and models from the National Prescription Audit database and/or the National Sales Perspectives database. The fourth document for which IQVIA seeks *in camera* treatment consists of charts that contain data generated by IQVIA. These charts are appended to CX5000, the expert report of Roger Noll, Complaint Counsel’s expert witness. IQVIA requests indefinite *in camera* treatment for these documents.

IQVIA has met its burden of demonstrating that the documents merit *in camera* treatment. However, IQVIA has not demonstrated that the documents are entitled to indefinite *in camera* treatment. Accordingly, *in camera* treatment for a period of ten

years, to expire on November 1, 2027, is GRANTED for CX3305, CX3306, CX3307, and for the charts containing IQVIA's data appended to CX5000.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: November 28, 2017

Notice of Electronic Service

I hereby certify that on November 28, 2017, I filed an electronic copy of the foregoing 112817 Order on IQVIA's Motion for In Camera Treatment, with:

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I hereby certify that on November 28, 2017, I served via E-Service an electronic copy of the foregoing 112817 Order on IQVIA's Motion for In Camera Treatment, upon:

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