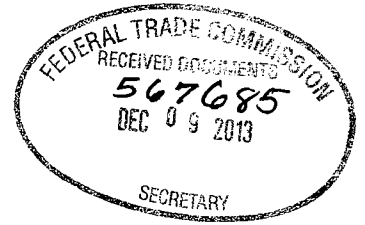


ORIGINAL



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION

\_\_\_\_\_  
In the Matter of )  
 )  
Ardagh Group S.A., )  
a public limited liability company, and )  
 )  
Saint-Gobain Containers, Inc., )  
a corporation, and )  
 )  
Compagnie de Saint-Gobain, )  
a corporation, )  
Respondents. )  
\_\_\_\_\_

DOCKET NO. 9356  
Honorable D. Michael Chappell

**NON-PARTY GLASS PACKAGING INSTITUTE'S MOTION FOR *IN CAMERA*  
TREATMENT OF CERTAIN DESIGNATED HEARING EXHIBITS**

Glass Packaging Institute ("GPI"), which is not a party to the above-captioned action, respectfully requests that the Federal Trade Commission ("Commission") grant *in camera* treatment of a small number of documents and deposition excerpts that Complaint Counsel has designated for possible introduction in the administrative trial in this matter. GPI has conferred with counsel for Ardagh Group S.A., and counsel for both Saint-Gobain Containers, Inc. and Compagnie de Saint-Gobain (hereinafter collectively referred to as "Respondents"), and understands that Respondents do not oppose this motion. By letter dated November 19, 2013, Complaint Counsel notified GPI that it intends to introduce into evidence certain documents produced by GPI in response to a subpoena issued by the Commission, and certain excerpts from the August 19, 2013 and September 18, 2013 depositions of GPI's President, Lynn M. Bragg in this matter (the "Bragg Deposition").

The GPI documents designated by Complaint Counsel for possible introduction into evidence include, among others, the following documents, which are attached as an exhibit to the Declaration of Lynn M. Bragg in support of this motion (the “*Bragg Decl.*,” Exhibit A hereto):

- GPI002341 (Exhibit 1)
- GPI000532 (Exhibit 2)

As evidenced on the face of these documents, GPI marked them as “Confidential” when it produced the documents in response to the above-referenced subpoena.<sup>1</sup>

The Bragg Deposition excerpts designated by Complaint Counsel for possible introduction into evidence include, among others, the following Bragg Deposition excerpts, which are attached as exhibits to the Bragg Declaration:

- 34: 11-17 (Exhibit 3)
- 42: 13-15 (Exhibit 4)

The above documents and Bragg Deposition excerpts contain information that is competitively sensitive for GPI and its member companies and that GPI holds in strict confidence. Public disclosure of these materials is likely to cause direct, serious harm to GPI’s and its member companies’ competitive positions. Therefore, pursuant to 16 C.F.R. § 3.45(b), GPI respectfully moves for *in camera* treatment of the confidential documents and Bragg Deposition excerpts identified in the Bragg Declaration.

**GPI'S CONFIDENTIAL MATERIALS DESERVE  
IN CAMERA TREATMENT UNDER THE FEDERAL TRADE  
COMMISSION'S RULES OF PRACTICE**

The documents and deposition excerpts that are described in this motion warrant *in camera* treatment as provided by 16 C.F.R. § 3.45(b). Under 16 C.F.R. § 3.45(b), requests for *in*

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<sup>1</sup> As the documents are Microsoft Excel files, they had to be produced to the FTC in “native” versions, as Excel spreadsheets, rather than as image files (the majority of the documents produced to FTC were produced as images, rather than native files). Accordingly, the images of GPI-002341 and GPI-000532, which each state that “This Document Produced in Native File Format Only” bears the “CONFIDENTIAL” label, whereas the native Excel versions of the documents do not.

*camera* treatment must show that public disclosure of the document in question "will result in a clearly defined, serious injury to the person or corporation whose records are involved." *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961). That showing can be made by establishing that the document in question is "sufficiently secret and sufficiently material to the applicant's business that disclosure would result in serious competitive injury." *In re General Foods Corp.*, 95 F.T.C. 352, 355 (1980). In this context, "courts have generally attempted to protect confidential business information from unnecessary airing." *Hood*, 58 F.T.C. at 1188.

**A. GPI Has Preserved the Confidentiality of the Documents and Information**

GPI has taken significant steps to protect the confidential nature of these materials, which, either in the case of the GPI documents and the Bragg Deposition, were produced or given under compulsory process in response to subpoenas issued by the FTC. GPI produced its documents expressly subject to the Protective Order Governing Discovery Material issued in this matter on July 9, 2013 (the "Protective Order"). Bragg Decl. at ¶ 4. The express purpose of the Protective Order included "ensur[ing] that...confidential information submitted by...any third party...pursuant to compulsory process...is not improperly disclosed." Protective Order, Preamble.

In addition to these measures, GPI has taken substantial measures to guard the secrecy of the information contained in Exhibits 1 through 4, limiting dissemination of such information and taking every reasonable step to protect its confidentiality. Bragg Decl. at ¶¶ 4 and 8. It would be extremely difficult for GPI's competitor industry associations or other outside persons to access or recreate the information contained in the materials at issue. *Id* at ¶¶ 8 and 9. These efforts demonstrate that GPI has gone to great lengths to preserve the confidentiality of the information contained in Exhibits 1 through 4.

**B. Disclosure of the Information in Exhibits 1 Through 4 Would Result in Serious Competitive Injury Both to GPI and Its Member Companies**

For purposes of this analysis, the disclosure of confidential business information results in "serious injury" when the information in question is both secret and material to the business of the information's owner. *See General Foods*, 95 F.T.C. at 355. In evaluating the secrecy and materiality of a corporation's information, the Commission may consider the following factors, among others: (1) the extent to which the information is known outside of the corporation; (2) the extent to which it is known by the corporation's employees and others involved in the corporation's business; (3) the extent of measures taken by the corporation to guard the secrecy of the information; (4) the value of the information to the corporation and to its competitors; (5) the amount of effort or money expended by the corporation in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others. *See In re Bristol-Myers*, 90 F.T.C. 455, 456 (1977). Each of these factors weighs in favor of *in camera* treatment in this case.

Disclosure of the materials for which GPI seeks *in camera* treatment would result in serious competitive harm both to GPI and its member companies for several reasons. Public disclosure of the highly secretive GPI dues payment amounts (*see* Exhibit 1), in combination with the public disclosure of GPI's dues payment methodology, specifically, the dues multiplier amount, against which member net sales are multiplied to yield how much each member's dues are (*see* Exhibits 3 and 4), would allow anyone to reverse engineer confidential net sales figures of all GPI members. Bragg Decl. at ¶ 8. GPI keeps in strict confidence the information about its membership dues and the manner in which such dues are calculated (*i.e.*, Exhibits 1, 3, and 4). *Id.* Moreover, disclosure of the raw data from the EcoFocus consumer preference survey, for which GPI's members paid a substantial sum of money, would result in serious competitive

injury both to GPI and its member companies, as those competitor associations, and companies who are not members of GPI who did not pay for the EcoFocus data would be able to obtain at no cost and reference for their commercial gain such information. *Id.* at ¶ 9.

It would be very difficult for a GPI member company to obtain net sales information about one of its fellow member companies, just as it would be very difficult for any member of the glass packaging industry, GPI member or otherwise, to obtain such information about one or more of its competitors. *Id.* at ¶ 8. GPI does not share this information or its dues calculation methodology with anyone in the ordinary course of business. *Id.* Similarly, the amount of money expended by GPI members to conduct the EcoFocus survey makes the results of the survey very valuable to GPI, and unless disclosed to the public, would make it difficult for the information to be acquired by others. *Id.* at ¶ 9.

**C. The Public Interest in Disclosure of Exhibits 1 Through 4 is Outweighed by the Likelihood of Serious Competitive Harm to GPI and Its Member Companies**

As a non-party requesting *in camera* treatment of confidential, competitively sensitive business information, GPI deserves "special solicitude" in these proceedings. *In the Matter of Kaiser Aluminum & Chemical Corporation*, 103 F.T.C. 500, 500 (1984) (order directing in camera treatment for sales statistics over five years old). Granting *in camera* treatment of confidential, competitively sensitive information for a reasonable period encourages non-parties to cooperate with future discovery requests in adjudicative proceedings. *Id.* Indeed, GPI has cooperated with the discovery demands in this case.

Conversely, unrestricted disclosure of that information does not add measurably to the public's understanding of these proceedings. Disclosure of GPI's dues calculation methodology in combination with member company dues amounts, as well as of the EcoFocus survey data, however, would severely harm and/or competitively disadvantage GPI and its member

companies. Thus, the balance of interests clearly favors *in camera* protection for Exhibits 1 through 4 in this case.

**D. Protection for Exhibits 1 Through 4 Should Extend For Five Years**

The nature of the highly confidential information contained in Exhibits 1 through 4 warrants lasting protection. GPI's dues calculation methodology and the dues paid by each member (which could lead one to easily calculate the net sales of GPI's members) are vital to the competitive position of each of its members and GPI's strategy. Bragg Decl. at ¶ 8. Additionally, the amount of money expended by GPI members to conduct the EcoFocus survey makes the results of the survey very valuable to GPI, and unless disclosed to the public, would make it difficult for the information to be acquired by others. *Id.* at ¶ 9. Accordingly, GPI respectfully requests that Exhibits 1 through 4 be afforded *in camera* protection for a period of five years.

**CONCLUSION**

For the foregoing reasons, GPI respectfully requests that the Commission grant *in camera* treatment to Exhibits 1 through 4 for a period of five years.

Dated: December 9, 2013

Respectfully Submitted,



Stephen Paul Mahinka (Bar No. 236232)  
Morgan, Lewis & Bockius LLP  
1111 Pennsylvania Avenue, NW  
Washington, DC 20008  
Tel. (202) 739-5205  
Fax (202) 739-3001  
*Counsel for Non-Party Glass Packaging Institute*

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION

In the Matter of )  
)  
)

Ardagh Group S.A., )  
a public limited liability company, and )

DOCKET NO. 9356

Saint-Gobain Containers, Inc., )  
a corporation, and )  
)

Compagnie de Saint-Gobain, )  
a corporation, )  
Respondents. )  
)

**PROPOSED ORDER**

On December 9, 2013, Non-Party Glass Packaging Institute ("GPI") filed a motion for *in camera* treatment of confidential business information contained in two documents and two deposition excerpts that have been identified by Complaint Counsel as potential trial exhibits.

IT IS HEREBY ORDERED that GPI's motion is granted. The information set forth in the documents and deposition excerpts identified below will be subject to *in camera* treatment under 16 C.F.R. § 3.45 and will be kept confidential and not placed in the public record of this proceeding for a period of five (5) years.

**DOCUMENTS PRODUCED BY GLASS PACKAGING INSTITUTE:**

- GPI002341
- GPI000532

**EXCERPTS FROM THE DEPOSITION TRANSCRIPT OF LYNN M. BRAGG (AUGUST 19, 2013):**

- 34: 11-17
- 42: 13-15

IT IS FURTHER ORDERED that only authorized Federal Trade Commission ("Commission") personnel and court personnel concerned with judicial review may have access to the above-referenced information, provided that I, the Commission, and reviewing courts may disclose such *in camera* information to the extent necessary for the proper disposition of the proceeding.

ORDERED: \_\_\_\_\_  
D. Michael Chappell  
Chief Administrative Law Judge

DATED: \_\_\_\_\_



**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION**

In the Matter of	)	
	)	
Ardagh Group S.A.,	)	
a public limited liability company, and	)	DOCKET NO. 9356
	)	
Saint-Gobain Containers, Inc.,	)	
a corporation, and	)	
	)	
Compagnie de Saint-Gobain,	)	
a corporation,	)	
Respondents.	)	
	)	

**DECLARATION OF LYNN M. BRAGG IN SUPPORT OF MOTION OF NON-PARTY  
GLASS PACKAGING INSTITUTE FOR *IN CAMERA* TREATMENT OF PROPOSED  
EVIDENCE**

I, Lynn M. Bragg, hereby declare as follows:

1. I am the President of the Glass Packaging Institute (“GPI”). I make this declaration in support of the Motion of Non-Party GPI for *In Camera* Treatment of Proposed Evidence. I have personal knowledge of the matters stated herein and, if called upon to do so, could competently testify about them.

2. I have held the position of President since March 2011. I have more than 20 years experience in the executive and legislative branches of government and in leading trade associations representing American manufacturing, including a nine-year Presidential appointment as Commissioner and later Chair at the U.S. International Trade Commission and an appointment as the President of the Chocolate Manufacturers Association.

3. I have reviewed the documents and deposition excerpts for which GPI seeks *in*

*camera* treatment. By virtue of my current position at GPI, as described above, and my familiarity with the confidentiality protections afforded by GPI to the type of information contained in these materials, I believe that disclosure of these documents and deposition excerpts to the public, to GPI's competitor industry associations, to GPI's member companies, and/or to members of the glass packaging industry generally would cause serious competitive injury to GPI and its member companies.

4. GPI has taken significant steps to protect the confidential nature of these materials, which, either in the case of the GPI documents or my August 19, 2013 and September 18, 2013 depositions, were produced or given under compulsory process in response to subpoenas issued by the Federal Trade Commission ("FTC"). GPI produced its documents expressly subject to the Protective Order Governing Discovery Material issued in this matter on July 9, 2013 (the "Protective Order").

5. Exhibit 1 hereto is a listing of the quarterly dues paid by each member of GPI from 2010 through 2012. The Exhibit contains the name of each member company, a description of each company's membership type, and the amount of dues paid by each member each quarter of the years stated above.

6. Exhibit 2 hereto contains the results of the consumer preference survey conducted by EcoFocus for GPI. The survey results report, among other things, consumer preference for glass containers for certain types of food and beverage products.

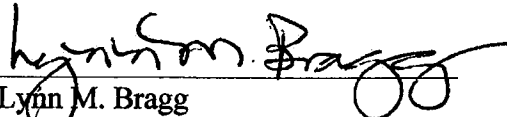
7. Exhibits 3 and 4 hereto are excerpts from my August 19, 2013 deposition related to GPI's dues amount methodology, specifically, the dues multiplier amount, against which member net sales are multiplied to yield how much each member's dues are.

8. The materials for which GPI seeks *in camera* treatment contain important information regarding GPI dues payment amounts (Exhibit 1 hereto) and GPI's dues amount methodology,

specifically, the dues multiplier amount, against which member net sales are multiplied to yield how much each member's dues are (Exhibits 3 and 4 hereto). In short, disclosure of these materials would allow anyone to reverse engineer confidential net sales figures of all GPI members. It would be very difficult for a GPI member company to obtain net sales information about one of its fellow member companies, just as it would be very difficult for any member of the glass packaging industry, GPI member or otherwise, to obtain such information about one or more of its competitors. GPI does not share this information with other parties in the ordinary course of business. GPI keeps in strict confidence the information about its membership dues and the manner in which such dues are calculated (*i.e.*, Exhibits 1, 3, and 4). GPI's dues calculation methodology and the dues paid by each member (which could lead one to easily calculate the net sales of GPI's members) are vital both to the competitive position of each of its members and GPI's strategy.

9. The materials for which GPI seeks *in camera* treatment also contain the results of a consumer preference survey conducted by EcoFocus for GPI. The disclosure of the raw data from the EcoFocus consumer preference survey, for which GPI's members paid a substantial sum of money, would result in serious competitive injury both to GPI and its member companies, as those competitor industry associations, and companies who are not members of GPI who did not pay for the EcoFocus data would be able to obtain such information at no cost and reference such information for their commercial gain. The amount of money expended by GPI members to conduct the EcoFocus survey makes the results of the survey very valuable to GPI, and unless disclosed to the public, would make it difficult for the information to be acquired by others.

I declare under penalty of perjury that the foregoing is true and correct. Executed on December 9, 2013.

  
Lynn M. Bragg

# EXHIBIT 1 -- Redacted

# EXHIBIT 2 -- Redacted

# EXHIBIT 3 -- Redacted

# EXHIBIT 4 -- Redacted



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a public version of the foregoing Motion of Non-Party Glass Packaging Institute for *In Camera* Treatment of Proposed Evidence, Declaration of Lynn M. Bragg in support thereof, with Exhibits 1 through 4, and Proposed Order, were served on the following on December 9, 2013:

**Via Hand Delivery:**

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

The undersigned further certifies that both public and non-public versions of the foregoing Motion of Non-Party Glass Packaging Institute for *In Camera* Treatment of Proposed Evidence, Declaration of Lynn M. Bragg in support thereof, with Exhibits 1 through 4, and Proposed Order, were served on the following on December 9, 2013:

**Via Electronic Mail:**

Josh Goodman  
Bureau of Competition  
Federal Trade Commission  
601 New Jersey Ave, NW  
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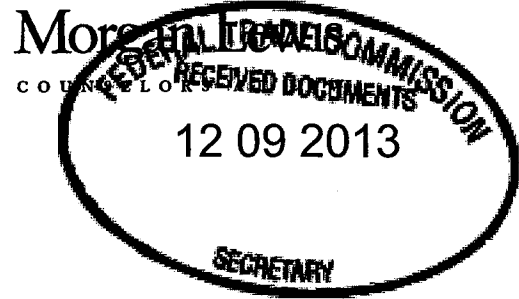
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**Stephen Paul Mahinka**  
Partner  
202.739.5205  
smahinka@morganlewis.com

December 9, 2013

**VIA HAND DELIVERY**

The Hon. Donald S. Clark  
Secretary  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, D.C. 20580

Re: In the Matter of Ardagh Group S.A., Saint-Gobain Containers, Inc., and Compagnie de Saint Gobain- Docket No. 9356

Dear Secretary Clark:

On behalf of non-party Glass Packaging Institute, we submit, under cover of this letter, a public version of the following materials for filing in the above-referenced matter:

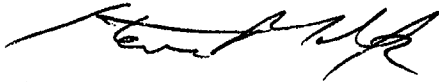
1. Motion of Non-Party Glass Packaging Institute for *In Camera* Treatment of Proposed Evidence;
2. Declaration of Lynn M. Bragg in Support of Motion of Non-Party Glass Packaging Institute for *In Camera* Treatment of Proposed Evidence, with public copies Exhibits 1 through 4; and
3. Proposed Order.

Earlier today, we submitted a public version of this letter and the above-described materials via the Commission's e-filing system. Courtesy copies of these papers and of their non-public exhibits are being hand-delivered today to Chief Administrative Law Judge D. Michael Chappell, and copies of both public and non-public versions of these materials are also being served on Complaint Counsel and counsel for Respondents, Ardagh Group S.A., Saint-Gobain Containers, Inc., and Compagnie de Saint-Gobain.

The Hon. Donald S. Clark  
December 9, 2013  
Page 2

Please acknowledge receipt of these materials by date-stamping the enclosed copy of this letter as "received" and returning it with our courier messenger. Thank you.

Sincerely,



Stephen Paul Mahinka  
Counsel for Glass Packaging Institute

Enclosures

cc: Hon. D. Michael Chappell  
Josh Goodman  
Jason Swergold  
Rory Leraris