

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

In the Matter of)
)
Benco Dental Supply Co.,)
a corporation,)
)
Henry Schein, Inc.,)
a corporation, and)
)
Patterson Companies, Inc.,)
a corporation.)
)
Respondents.)

Docket No. 9379

ORDER DENYING NON-PARTY DARBY’S MOTION FOR RECONSIDERATION
OF OCTOBER 11, 2018 ORDER ON *IN CAMERA* TREATMENT

I.

An Order issued on October 11, 2018 resolved motions for *in camera* treatment filed by certain non-parties, including the motions of non-party Darby Dental Supply, LLC (“Darby”)¹ (October 11 Order). The October 11 Order granted Darby’s motions, except with respect to the length of time for which Darby sought *in camera* treatment. Finding that the documents for which Darby sought *in camera* treatment are ordinary business records, not trade secrets, and not entitled to *in camera* treatment for an extended period of time or for an indefinite time period, the October 11 Order granted *in camera* treatment for a period of five years for the documents identified as CX4127, CX4444, CX4452, CX4453, CX4454, CX4455, CX4456, CX4457, CX4458, RX3078, RX3079, RX3080, RX3081, RX3082, RX3083, RX3084, and RX3085.

Darby now seeks reconsideration of the October 11 Order and asks that its documents be granted indefinite *in camera* treatment or *in camera* treatment for a period of ten years (“Motion for Reconsideration”). Complaint Counsel and Respondents stated on the record in court on

¹ Darby filed two motions. The first sought *in camera* treatment for nine documents; the second motion sought *in camera* treatment for eight additional documents. Both motions were addressed as one filing.

October 26, 2018 that they do not oppose the Motion for Reconsideration. For the reasons set forth below, Darby's Motion for Reconsideration is DENIED.

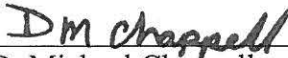
II.

Motions for reconsideration should be granted only where: (1) there has been an intervening change in controlling law; (2) new evidence is available; or (3) there is a need to correct clear error or manifest injustice. *In re Basic Research, LLC*, 2006 FTC LEXIS 18, *10 (February 21, 2006). A motion for reconsideration may not be used to rehash rejected arguments. *In re Daniel Chapter One*, No. 9329, 2009 WL 569722, at *2. Courts have granted motions to reconsider where it appears the court mistakenly overlooked facts or precedent which, had they been considered, might reasonably have altered the result, or where reconsideration is necessary to remedy a clear error or to prevent manifest injustice. *In re McWane, Inc.*, 2012 FTC LEXIS 125, *3 (July 11, 2012).

Darby argues that the documents it seeks to shield from public disclosure are highly confidential and proprietary and are relevant to the industry, and that Darby has a reasonable expectation that its data will continue to be of high value to competitors five years from now. Darby has not pointed to any intervening change in controlling law or new evidence that was not available at the time it filed its initial motions. The October 11 Order considered Darby's arguments regarding the appropriate duration for *in camera* treatment and, applying the legal standards for *in camera* treatment, those arguments were rejected. Darby does not point to any basis for concluding that this ruling is a manifest injustice. Moreover, the October 11 Order ruled on motions for *in camera* treatment filed by twelve non-parties. Without exception, all non-parties' exhibits were granted *in camera* treatment for a period of five years.

Darby's Motion for Reconsideration fails to meet the standards for reconsideration. Accordingly, the Motion for Reconsideration is DENIED.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: October 29, 2018