

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

In the Matter of

**Altria Group, Inc.
a corporation,**

and

**Juul Labs, Inc.
a corporation,**

Respondents.

Docket No. 9393

**RESPONDENT JUUL LABS, INC.’S MOTION FOR *IN CAMERA* REVIEW OF
CERTAIN TRIAL EXHIBITS**

Juul Labs, Inc. (“JLI”) respectfully moves under 16 C.F.R. § 3.45 for *in camera* treatment of confidential and competitively sensitive information on the parties’ final proposed exhibit lists. Documents and deposition testimony containing such information are identified in Exhibit 1 and the documents are attached as Exhibit 2. As explained here and in the accompanying declaration of Charles Roberts Robbins, Jr., Chief Growth Officer of JLI (the “Robbins Declaration,” attached as Exhibit 3), the public disclosure of this information “will likely result in a clearly defined, serious injury” to JLI. 16 C.F.R. § 3.45(b).

I. LEGAL STANDARD

Parties to a Rule 3 proceeding may move the Court to “obtain *in camera* treatment for material, or portions thereof, offered into evidence.” 16 C.F.R. § 3.45(b). *In camera* treatment is appropriate if public disclosure of the information is likely to “result in a clearly defined, serious injury to the person, partnership, or corporation requesting *in camera* treatment.” *Id.* “[M]aterial made subject to an *in camera* order will be kept confidential and not placed on the public record of the proceeding in which it was submitted.” 16 C.F.R. § 3.45(a). “Only respondents, their counsel,

authorized Commission personnel, and court personnel concerned with judicial review may have access thereto, provided that the Administrative Law Judge, the Commission and reviewing courts may disclose such *in camera* material to the extent necessary for the proper disposition of the proceeding.” 16 C.F.R. § 3.45(a).

In camera review may be appropriate not just for trade secrets and highly detailed cost data, but also a wide spectrum of ordinary business records “such as customer names, pricing to customers, business costs and profits, as well as business plans, marketing plans, or sales documents.” *In the Matter of 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55, at *5-6 (F.T.C. April 4, 2017). In addition, “sensitive personal information”—like telephone numbers, home addresses, and/or social security numbers—within exhibits warrants *in camera* treatment. *In the Matter of Otto Bock*, 2018 WL 3491602, at *3 (F.T.C. July 2, 2018); 16 C.F.R. § 3.45(b)(3).

II. ARGUMENT

The parties’ final proposed exhibit lists in this case contain voluminous confidential and competitively sensitive material that, if disclosed, would cause serious harm to JLI. Protection is warranted for the documents (or selected portions thereof) in each of the below categories as trade secrets, business records which if disclosed would result in serious competitive injury to JLI, or sensitive personal information. The below chart lists each category of documents for which JLI seeks *in camera* treatment, the paragraph discussing each category in the Robbins Declaration, and the period of time for which JLI requests *in camera* treatment.

Category	Robbins Declaration	Period of Time for <i>In Camera</i> Treatment
Trade Secrets and Product Development	¶ 9	10 years
Financial Data	¶ 10	5 years
Pricing and Pricing Strategy	¶ 11	5 years
Sales and Marketing Strategy	¶ 12	5 years
Regulatory Strategy	¶ 13	5 years
Strategic Initiatives	¶ 14	5 years
Altria Services	¶ 15	5 years
Sensitive Personal Information	¶ 16	Indefinite

A. Trade Secrets and Product Development

The documents in this category meriting *in camera* treatment include information on trade secrets, such as the formulation of JLI's e-liquid or technical specifications of its current and future products. *See In the Matter of 1-800 Contacts*, 2017 FTC LEXIS 55, at *5 ("Examples of trade secrets meriting indefinite *in camera* treatment include secret formulas, processes, other secret technical information, and information that is privileged.")

This category also includes details regarding JLI's product development plans dated from May 1, 2018. This information is competitively sensitive and the disclosure of this otherwise confidential material would allow competitors to copy JLI's technology, develop commercial strategies designed to undermine JLI's current products, or devise commercial strategies to better compete with JLI's future products. Because JLI would experience a clearly defined, serious injury if its trade secrets and product development plans were publicly disclosed, JLI respectfully requests ten years of protection for these documents.

B. Financial Data

The documents in this category meriting *in camera* treatment contain detailed sales, costs, and margin data dated from May 1, 2018. *See In the Matter of 1-800 Contacts*, 2017 FTC LEXIS 55, at *9 (protecting “financial metrics, customer and supplier data, and market growth indicators.”); *see also In the Matter of McWane Inc.*, 2012 FTC LEXIS 143, at *26-27 (F.T.C. Aug. 17, 2012) (protecting “purchase and sales data”).

This financial data is fundamental to JLI’s operations, and because JLI is a privately held company this information is not publicly disclosed. Disclosure of this data would provide competitors and third parties insight into JLI’s financial and commercial performance, including details regarding its margins and profitability, and could be used by competitors of JLI to obtain a competitive advantage. Competitors also could use this confidential financial data to aid their development of strategies related to sales and marketing. For example, having knowledge of JLI’s margins for a particular product could allow a competitor to target JLI’s sales to particular distributors or customers. In addition, access to this data could undermine JLI’s negotiations with its trade partners. Because JLI would experience a clearly defined, serious injury if the financial data in these documents were publicly disclosed, JLI respectfully requests five years of protection for these documents.

C. Pricing and Pricing Strategy

The documents in this category meriting *in camera* treatment contain detailed information, dated after May 1, 2018, on JLI’s prices to its customers, how those prices are determined, and whether, when, and by how much to change prices. *See In the Matter of 1-800 Contacts*, 2017 FTC LEXIS 55, at *11 (protecting documents containing “pricing ... and internal analyses of customer demographics and buying patterns”); *see also In the Matter of McWane Inc.*, 2012 FTC LEXIS 143,

at *7-8 (protecting documents containing “customer data, pricing and cost information, business strategies, and negotiating strategies”).

This pricing information is competitively sensitive and its disclosure would provide JLI’s competitors with insight into JLI’s pricing methods and policies, causing harm to both JLI and potentially to consumers, as JLI’s competitors would have the very information antitrust laws were designed to keep out of competitors’ hands. Disclosure could also harm JLI’s relationships with its customers and undermine JLI’s negotiating positions, resulting in competitive and commercial harm to JLI. Because JLI would experience a clearly defined, serious injury if the information on pricing and pricing strategy in these documents were publicly disclosed, JLI respectfully requests five years of protection for these documents.

D. Sales and Marketing Strategy

The documents in this category meriting *in camera* treatment contain detailed information, dated after May 1, 2018, regarding JLI’s strategy and considerations related to sales and marketing. *See In the Matter of 1-800 Contacts*, 2017 FTC LEXIS 55, at *11 (protecting documents containing “marketing and bidding strategies”).

By way of example, this category includes documents that provide insight on JLI’s commercial planning related to shelf space and marketing with particular retailers. These materials serve as the basis for the formulation of JLI’s business plans, and disclosure of these confidential materials would provide JLI’s competitors with previously unavailable details regarding JLI’s sales and marketing strategies, which they could use in their own negotiations with retailers or as they consider marketing plans to compete with JLI. Disclosure of this information to JLI’s competitors could also harm consumers, as the antitrust laws are designed to prevent competitors from gaining access to this type of information. Moreover, disclosure could undermine JLI’s relationships and negotiating positions with its customers, resulting in competitive and commercial harm to JLI.

Because JLI would experience a clearly defined, serious injury if the information on sales and market strategy in these documents were publicly disclosed, JLI respectfully requests five years of protection for these documents.

E. Regulatory Strategy

The documents in this category reflect JLI's efforts and analyses related to its PMTA filings with the FDA and its interactions with that agency related to the PMTA filing. The documents also contain details regarding clinical and other studies conducted in connection with the PMTA filing. This information is sensitive because it provides direct insight into JLI's regulatory strategy and deliberative process related to its PMTA filing and its interactions with the FDA, JLI's primary regulator. Disclosure of this information could impact JLI's pending PMTA before the FDA, the granting of which is essential to JLI's ability to continue to operate. In addition, providing competitors with insight into this information may give them an unfair advantage over JLI in the PMTA process, resulting in competitive and commercial harm to JLI. Because JLI would experience a clearly defined, serious injury if the information on regulatory strategy in these documents were publicly disclosed, JLI respectfully requests five years of protection for these documents.

F. Strategic Initiatives

The documents in this category meriting *in camera* treatment contain information on strategic initiatives under consideration by JLI since May 1, 2018. *See In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55, at *9 (protecting documents including "evaluations of market factors, market risks, company advantages, company disadvantages, and company risks, and which also review future strategic plans"); *see also In the Matter of McWane Inc.*, 2012 FTC LEXIS 143, at *7-8 (protecting documents "which contain . . . business strategies, and negotiating strategies").

These documents reflect consideration by the JLI Board of Directors of potential transactions, consideration of financing options and timing, other strategic initiatives, and contain confidential information regarding the company's strategic direction. Disclosure of this information could result in serious injury to JLI because it would reveal JLI's internal analyses of its business and provide direct insight into the company's deliberative process with respect to strategic initiatives. Moreover, disclosure of this information could undermine JLI's position in future corporate transactions or financing efforts. Because JLI would experience a clearly defined, serious injury if the information on strategic initiatives in these documents were publicly disclosed, JLI respectfully requests five years of protection for these documents.

G. Altria Services

The documents in this category contain detailed pricing and cost information related to commercial services provided to JLI by Altria in connection with Altria's investment in JLI and merit *in camera* treatment. For example, the documents discuss the cost to JLI of the distribution and warehousing services Altria provided and that reduced JLI's distribution costs. This is confidential information regarding JLI's costs, and it would be harmful to JLI's negotiations with other service providers if this information became public. Because JLI would experience a clearly defined, serious injury if the pricing and cost information related to commercial services provided to JLI by Altria in these documents were publicly disclosed, JLI respectfully requests five years of protection for these documents.

H. Sensitive Personal Information

The documents in this category provide details regarding named individuals' compensation, their job performance, or their personal phone numbers. *See In re Otto Bock*, 2018 WL 3491602, at *3; 16 C.F.R. § 3.45(b)(3). Information regarding compensation and job performance is particularly sensitive and its disclosure within JLI is limited to the named individual and those who

need it to perform their job. Disclosure of this material could have the effect of embarrassing the named individuals or impacting their careers, and personal phone numbers need not be disclosed to the public in connection with this case. JLI respectfully requests indefinite protection for these documents.

III. CONCLUSION

Given the serious risk that public disclosure of these materials would cause serious injury to JLI's business or reveal personal identifying information, JLI respectfully requests an *in camera* order to protect the documents from public disclosure.

Dated: May 7, 2021

By: s/ David I. Gelfand

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

In the Matter of

**Altria Group, Inc.
a corporation,**

and

**Juul Labs, Inc.
a corporation,**

Respondents.

Docket No. 9393

[PROPOSED] ORDER

Upon consideration of Respondent Juul Labs, Inc.'s ("JLI") Motion for *In Camera* Review of Certain Trial Exhibits, it is hereby

ORDERED, that JLI's motion is GRANTED, and it is further

ORDERED, that pursuant to Rule 3.45(b) of the Federal Trade Commission Rules of Practice, 16 C.F.R. § 3.45(b), the documents identified in Exhibit 1 to the Motion, and any related trial testimony, shall be subject to *in camera* treatment and will be kept confidential and not placed on the public record of this proceeding.

Date: _____

D. Michael Chappell
Chief Administrative Law Judge

EXHIBIT 1

REDACTED IN ENTIRETY

EXHIBIT 2

REDACTED IN ENTIRETY

In the Matter of

Altria Group, Inc. UNITED STATES OF AMERICA
 a corporation FEDERAL TRADE COMMISSION
 and OFFICE OF THE ADMINISTRATIVE LAW JUDGES
Juul Labs, Inc.
 a corporation,

Respondents.

Docket No. 9393

**DECLARATION OF CHARLES ROBERTS ROBBINS, JR. IN SUPPORT OF
 RESPONDENT JUUL LABS, INC.'S MOTION FOR *IN CAMERA* REVIEW OF
CERTAIN TRIAL EXHIBITS**

I, Charles Roberts Robbins, Jr., declare as follows:

1. I am Chief Growth Officer for Juul Labs, Inc. ("JLI" or "Respondent").
2. I submit this declaration in support of Respondent JLI's Motion for *In Camera* Treatment of Certain Trial Exhibits (the "Motion") made in compliance with the Federal Trade Commission Rules of Practice for Adjudicative Proceedings, 16 C.F.R. § 3.45. JLI seeks *in camera* treatment for the trial exhibits and portions of exhibits identified in Exhibit 1.
3. I have personal knowledge of the competitive significance to JLI of the categories of documents described further below and the level of confidentiality associated with their contents. Based on my review of Exhibit 1, my conversations with the individuals who reviewed the documents at my direction, my knowledge of JLI's business, and my familiarity with the confidentiality protection afforded this type of information by JLI, I submit that disclosure of the exhibits listed in Exhibit 1 to the public and JLI's competitors would either result in clearly defined, serious injury to JLI or reveal sensitive personal information.
4. In the ordinary course of business, JLI would treat this information as strictly confidential and would limit its disclosure to employees that need to know it to perform their business function. JLI also takes reasonable steps to protect its network and electronically stored information to prevent access by outside parties.
5. Each exhibit identified in Exhibit 1 was designated as "Confidential Material" pursuant to the Protective Order entered on April 2, 2020.
6. The Motion is narrowly tailored to protect JLI's confidential information. JLI counsel carefully reviewed the exhibits and provided me with the exhibits identified in Exhibit 1. I reviewed Exhibit 1, and JLI counsel described to me the approach used to select the exhibits listed on Exhibit 1 and the categories of confidential information that appear in the listed exhibits.
7. For ease of reference, JLI has grouped the exhibits identified in Exhibit 1 into the following categories:
 - a. Trade secrets and product development
 - b. Financial data
 - c. Pricing and pricing strategy
 - d. Sales and marketing strategy
 - e. Regulatory strategy
 - f. Strategic initiatives
 - g. Altria services
 - h. Sensitive personal information
8. Each category describes materials that either (a) disclose confidential and competitively sensitive financial and business information, including proprietary business information, confidential pricing terms and structures, and information regarding margins and financial arrangements, or (b) reveal sensitive personal information. Competitors and third parties with access to this information would either gain a significant business advantage at the

expense of JLI or obtain sensitive personal information to the detriment of the individual whose information is revealed. For each document, Exhibit 1 identifies the exhibit number, the Bates range of the exhibit, a brief description, a description of the relevant category of confidential information, and the duration of *in camera* treatment sought.

9. Trade secrets and product development: The documents in this category include information on trade secrets, such as the formulation of JLI's e-liquid or technical specifications of its current and future products. This category also includes details regarding JLI's product development plans dated from May 1, 2018. This information is competitively sensitive and the disclosure of this otherwise confidential material would allow competitors to copy JLI's technology, develop commercial strategies designed to undermine JLI's current products, or devise commercial strategies to better compete with JLI's future products. Because JLI would experience a clearly defined, serious injury if its trade secrets and product development plans were publicly disclosed, this information should remain confidential for ten years.

10. Financial data: The documents in this category contain detailed sales, costs, and margin data dated from May 1, 2018. This financial data is fundamental to JLI's operations, and because JLI is a privately held company this information is not publicly disclosed. Disclosure of this data would provide competitors and third parties insight into JLI's financial and commercial performance, including details regarding its margins and profitability, and could be used by competitors of JLI to obtain a competitive advantage. Competitors also could use this confidential financial data to aid their development of strategies related to sales and marketing. For example, having knowledge of JLI's margins for a particular product could allow a competitor to target JLI's sales to particular distributors or customers. In addition, access to this data could undermine JLI's negotiations with its trade partners. Because JLI would experience a clearly defined, serious injury if the financial data in these documents were publicly disclosed, this information should remain confidential for five years.

11. Pricing and pricing strategy: The documents in this category contain detailed information, dated after May 1, 2018, on JLI's prices to its customers, how those prices are determined, and whether, when, and by how much to change prices. This pricing information is competitively sensitive and its disclosure would provide JLI's competitors with insight into JLI's pricing methods and policies, causing harm to both JLI and potentially to consumers. Disclosure could also harm JLI's relationships with its customers and undermine JLI's negotiating positions, resulting in competitive and commercial harm to JLI. Because JLI would experience a clearly defined, serious injury if the information on pricing and pricing strategy in these documents were publicly disclosed, this information should remain confidential for five years.

12. Sales and marketing strategy: The documents in this category contain detailed information, dated after May 1, 2018, regarding JLI's strategy and considerations related to sales and marketing. By way of example, this category includes documents that provide insight on JLI's commercial planning related to shelf space and marketing with particular retailers. These materials serve as the basis for the formulation of JLI's business plans, and disclosure of these confidential materials would provide JLI's competitors with previously unavailable details regarding JLI's sales and marketing strategies, which they could use in their own negotiations with retailers or as they consider marketing plans to compete with JLI. Disclosure of this information to JLI's competitors could also harm consumers. Moreover, disclosure could undermine JLI's relationships and negotiating positions with its customers, resulting in competitive and commercial harm to JLI. Because JLI would experience a clearly defined, serious injury if the information on sales and market strategy in these documents were publicly disclosed, this information should remain confidential for five years.

13. Regulatory strategy: The documents in this category reflect JLI's efforts and analyses related to its PMTA filings with the FDA and its interactions with that agency. The documents also contain details regarding clinical and other studies conducted in connection with the PMTA filing. This information is sensitive because it provides direct insight into JLI's regulatory strategy and deliberative process related to its PMTA filing and its interactions with the FDA, JLI's primary regulator. Disclosure of this information could impact JLI's pending PMTA before the FDA, the granting of which is essential to JLI's ability to continue to operate. In addition, providing competitors with insight into this information may give them an unfair advantage over JLI in the PMTA process, resulting in competitive and commercial harm to JLI. Because JLI would experience a clearly defined, serious injury if the information on regulatory strategy in these documents were publicly disclosed, this information should remain confidential for five years.

14. Strategic initiatives: The documents in this category contain information on strategic initiatives under consideration by JLI since May 1, 2018. These documents reflect consideration by the JLI Board of Directors of potential transactions, consideration of financing options and timing, other strategic initiatives, and contain confidential information regarding the company's strategic direction. Disclosure of this information could result in serious injury to JLI because it would reveal JLI's internal analyses of its business and provide direct insight into the company's deliberative process with respect to strategic initiatives. Moreover, disclosure of this information could undermine JLI's position in future corporate transactions or financing efforts. Because JLI would experience a clearly defined, serious injury if the information on strategic

initiatives in these documents were publicly disclosed, this information should remain confidential for five years.

PUBLIC

15. **Altria services:** The documents in this category contain detailed pricing and cost information related to commercial services provided to JLI by Altria in connection with Altria's investment in JLI and merit *in camera* treatment. For example, the documents discuss the cost to JLI of the distribution and warehousing services Altria provided and that reduced JLI's distribution costs. This is confidential information regarding JLI's costs, and it would be harmful to JLI's negotiations with other service providers if this information became public. Because JLI would experience a clearly defined, serious injury if the pricing and cost information related to commercial services provided to JLI by Altria in these documents were publicly disclosed, this information should remain confidential for five years.

16. **Sensitive personal information:** The documents in this category provide details regarding a named individuals' compensation, their job performance, or their personal phone numbers. Information regarding compensation and job performance is particularly sensitive and its disclosure within JLI is limited to the named individual and those who need it to perform their job. Disclosure of this material could have the effect of embarrassing the named individuals or impacting their careers, and personal phone numbers need not be disclosed to the public in connection with this case. As a result, this information should remain confidential indefinitely.

17. Because disclosure of the exhibits described herein is likely to either reveal sensitive personal information or cause clearly defined, serious injury to JLI's financial and competitive position, JLI respectfully requests that the exhibits listed in Exhibit 1 be given *in camera* treatment.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this ___ day of May, 2021 in _____

By:



Charles Roberts Robbins, Jr.

Chief Growth Officer

Juul Labs, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on May 7, 2021, I caused a true and correct copy of the foregoing Motion for In Camera Review of Certain Trial Exhibits to be filed electronically using the FTC's electronic filing System, which will send notification of such filing to:

April Tabor
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Federal Trade Commission
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ElectronicFilings@ftc.gov

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-110
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I also certify that I caused the foregoing document to be served via email to:

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Peggy Bayer Femenella
Erik Herron
Joonsuk Lee
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/s/ Linden Bernhardt

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