

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

)	
In the Matter of)	
)	
Tapestry, Inc.,)	DOCKET NO. 9429
a corporation,)	
)	
and)	
)	
Capri Holdings Limited,)	
a corporation,)	
)	
Respondents.)	
)	

NON-PARTY COLE HAAN LLC’S MOTION FOR *IN CAMERA* TREATMENT

Pursuant to Rule 3.45 of the Federal Trade Commission’s Rules of Practice, 16 C.F.R. § 3.45(b), non-party Cole Haan LLC (“Cole Haan”) respectfully moves this Court for *in camera* treatment of the Federal Trade Commission’s (“FTC”) proposed exhibit, Ex. No. PX3105, in the above-captioned case. Cole Haan produced the documents that comprise this exhibit in response to a third-party subpoena in *FTC v. Tapestry, Inc., et al.*, No. 1:24-cv-03109-JLR (S.D.N.Y). On August 29, 2024, Cole Haan was notified by the FTC that it intends to offer these documents into evidence in the administrative trial in this matter.

All of the materials for which Cole Haan is seeking *in camera* treatment contain competitively sensitive information such that Cole Haan would be significantly harmed by unfairly advantaging Cole Haan’s competitors if the materials were to become part of the public record. Cole Haan has conferred with counsel for the FTC, Tapestry, Inc., and Capri Holdings Limited regarding this matter, and they have not advised of any objection to Cole Haan’s request for *in camera* treatment of the information at issue. For the reasons discussed in this motion, Cole

Haan requests that this Court grant *in camera* treatment to these documents for at least ten years.

In support of its motion, Cole Haan provides the Affidavit of Tom Linko, attached as Exhibit A.

I. Confidential Materials for which *in camera* treatment is requested.

In camera treatment is requested for the following Confidential Materials for the period of time as set forth below:

Ex. No.	Description	Beginning Bates	Ending Bates	Requested Duration of <i>In Camera</i> Treatment
PX3105	Cole Haan Document: FY 24 Handbag & Backpack Study	Cole Haan 000001	Cole Haan 000037	10 years

The Confidential Materials are attached as Exhibit B.

II. Public disclosure of these Confidential Materials would cause serious injury to Cole Haan.

In camera treatment of material is appropriate when its public disclosure will likely result in a clearly defined, serious injury to the non-party requesting *in camera* treatment. 16 C.F.R. § 3.45(b). Serious competitive injury occurs when the documents are secret and they are material to the business. *In re General Foods Corp.*, 95 F.T.C. 352, 1980 WL 338997, at *4 (1980). The FTC recognizes that the loss of business advantages results in a clearly defined, serious injury. *In re Chicago Bridge & Iron Co. N.V.*, No. 9300, 2002 WL 35651637, at *1 (F.T.C. Nov. 14, 2002). Specifically, “[t]here can be no question that the confidential records of businesses involved in Commission proceedings should be protected insofar as possible.” *In re H.P. Hood & Sons*, 58 F.T.C. 1184, 1961 WL 65882, at *2 (F.T.C. Mar. 14, 1961). Because of this, courts attempt “to protect confidential business information from unnecessary airing.” *Id.* at *4. This is especially true in the case of non-parties, such as Cole Haan, who deserve “special solicitude” in their requests for *in camera* treatment for confidential business information. *See In re Kaiser Aluminum & Chem. Corp.*, 103 FTC 500, 1984 WL 565325, at *1 (F.T.C. May 25, 1984).

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The Court considers whether the information is sufficiently secret and sufficiently material in determining whether disclosure would result in a serious competitive injury. *In re General Foods Corp.*, 95 F.T.C. 352, 1980 WL 338997, at *4 (Mar. 10, 1980); *In re Bristol-Myers Co.*, 90 FTC 455, 1977 WL 189054, at *1-2 (Nov. 11, 1977). The Court considers six factors in determining whether information is sufficiently secret and sufficiently material: (1) the extent to which the information is known outside of movant's business, (2) the extent to which the information is known by employees and others involved in movant's business, (3) the extent of measures taken by movant to guard the secrecy of the information, (4) the value of the information to movant and its competitors, (5) the amount of effort or money expended by movant in developing the information, and (6) the ease or difficulty with which the information could be properly acquired or duplicated by others. *In re Bristol-Myers Co.*, 90 FTC 455, 1977 WL 189054, at *2 (Nov. 11, 1977).

The Confidential Materials are both sufficiently secret and material to Cole Haan as described in detail in the Tom Linko Declaration. Ex. A. The Confidential Materials contain competitively sensitive materials including marketing strategies and analysis used to inform many business decisions including product development, market opportunities where future market and product research is needed, portions of Cole Haan's supply chain, and sales data as recent as May 2024. Ex. A ¶¶ 8-10, 12. Cole Haan does not disclose this information to those outside of Cole Haan. Ex. A ¶ 11. This is highly valuable information, the public disclosure of which would significantly harm Cole Haan and result in the loss of business advantages. Ex. A ¶ 12; *see also In re Chicago Bridge & Iron Co. N.V.*, No. 9300, 2002 WL 35651637, at *1 (F.T.C. Nov. 14, 2002).

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Further, Cole Haan's status as a non-party deserves "special solicitude." *See In re Kaiser Aluminum & Chem. Corp.*, 103 FTC 500, 1984 WL 565325, at *1 (F.T.C. May 25, 1984).

Therefore, Cole Haan's status weighs in favor of *in camera* treatment.

III. The Confidential Materials contain information that will remain sensitive for at least ten years.

Given the highly sensitive and technical nature of the information contained in the Confidential Materials, Cole Haan requests that they be given *in camera* treatment for at least ten years. *In camera* treatment should be granted for as long as the sensitivity of the information will last. *See In re Impax Lab 'ys, Inc.*, No. 9373, 2017 WL 6033193, at *1-2 (F.T.C. Nov. 28, 2017). The information within the Confidential Materials will remain competitively sensitive for decades. Ex. A ¶¶ 8-9. Thus, the Confidential Materials should be granted *in camera* treatment for at least ten years.

IV. Conclusion

For the reasons set forth above and in the accompanying Tom Linko Declaration, Cole Haan respectfully requests that this Court grant *in camera* treatment for the Confidential Materials for at least 10 years.

Dated: September 9, 2024

Respectfully Submitted,

By: /s/ Stephen J. Grable
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STATEMENT REGARDING CONFERRAL WITH COUNSEL

Pursuant to paragraph 4 of the Scheduling Order, non-party Cole Haan LLC submits this statement representing that Counsel for Cole Haan has conferred with Counsel for the Federal Trade Commission, Tapestry, Inc., and Capri Holdings Limited in a good faith effort to resolve the issues raised by this motion.

/s/ Stephen J. Grable

Stephen J. Grable

CERTIFICATE OF SERVICE

I hereby certify that on September 9, 2024, I filed the foregoing documents electronically using the Federal Trade Commission's e-filing system, which will send notification of such filing to:

April Tabor
Secretary Federal Trade Commission
600 Pennsylvania Avenue, NW, Room H-113
Washington, DC 20580
ElectronicFilings@ftc.gov

The Honorable Dania L. Ayoubi
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, NW, Room H-110
Washington, DC 20580

I also certify that I caused the foregoing documents to be served via email to as of September 9, 2024:

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/s/ Stephen J. Grable

Stephen J. Grable

EXHIBIT A

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**DECLARATION OF TOM LINKO IN SUPPORT OF
NON-PARTY COLE HAAN LLC’S MOTION FOR *IN CAMERA* TREATMENT**

I, Tom Linko, pursuant to 28 U.S.C. § 1746, hereby state and declare as follows under penalty of perjury:

1. I am over the age of eighteen and the statements contained herein are based on my personal knowledge and are true and correct to the best of my knowledge and belief.

2. I currently serve as the Chief Financial Officer of Cole Haan LLC (“Cole Haan”). I make this declaration in support of non-party Cole Haan’s Motion for *In Camera* Treatment. I have personal knowledge of the matters stated herein and, if called upon to do so, could competently testify about them.

3. I have reviewed and am familiar with the documents Cole Haan produced in response to a third-party subpoena in *FTC v. Tapestry, Inc., et al.*, No. 1:24-cv-03109-JLR (S.D.N.Y). Given my position at Cole Haan, I am familiar with the type of information contained in the documents at issue and its competitive significance to Cole Haan. Based on my review of the documents, my knowledge of Cole Haan’s business, and my familiarity with the confidentiality

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protection afforded this type of information by Cole Haan, I submit that the disclosure of these documents to the public and to competitors of Cole Haan would cause serious competitive injury to Cole Haan.

4. The FTC has informed Cole Haan that it intends to offer Ex. No. PX3105 into evidence in the administrative trial in the above-captioned matter. PX3105 contains Cole Haan produced documents Bates labeled Cole Haan 000001 – 000037.

5. Cole Haan 000001 – 000030 is a powerpoint presentation showing marketing strategies and analysis.

6. Cole Haan 000031 – 000035 are snippets from Cole Haan's manufacturing and supply agreements.

7. Cole Haan 000036 – 000037 shows Cole Haan's handbag sales data from January 2019 into May 2024.

8. The marketing strategies and analysis were developed less than one year ago based upon a study performed in October 2023. They are used today and will be used for many years into the future to inform many business decisions including product development. These strategies disclosed within PX3105 will remain sensitive because they will impact the design, development, and sales of products for decades.

9. The marketing analysis also includes areas of market opportunities where future research is needed to further develop marketing strategies and product development. This would give competitors insight today into the directions Cole Haan is moving. This information will remain sensitive because it will influence decades worth of Cole Haan decisions.

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10. Similarly, the sales data includes data as recent as May 2024. This information shows net sales, unit sales, and breaks down both by sales channel. Public disclosure would show Cole Haan's sales strategies, market share, and average sales price.

11. This information included in PX3105 is highly confidential business information that Cole Haan does not share with those outside of Cole Haan in the ordinary course of business because this information informs growth strategies, product development, and marketing decisions.

12. Public disclosure of this information would put Cole Haan at a significant competitive disadvantage because it would disclose Cole Haan's competitive strategies, supply chain, and financial strength. Insight into this information would allow Cole Haan's competitors to change their own competitive strategies, product design, pricing, and messaging to specifically attack Cole Haan's position in the market. This information is highly valuable to Cole Haan and its competitors, which is why Cole Haan keeps this information confidential.

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

Executed on: September 6, 2024.



Tom Linko
Chief Financial Officer
Cole Haan LLC

EXHIBIT B

Confidential – Redacted
in Entirety