

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

**In the matter of**

**H&R BLOCK INC.,**  
a corporation,

**HRB DIGITAL LLC,**  
a limited liability company, and

**HRB TAX GROUP, INC.,**  
a corporation.

**DOCKET NO. 9427**

**COMPLAINT COUNSEL'S OPPOSITION TO RESPONDENTS' SECOND  
MOTION FOR IN CAMERA TREATMENT**

Respondents, H&R Block Inc., HRB Digital LLC, and HRB Tax Group, Inc., continue to seek *in camera* treatment for documents that do not meet the necessary standard.

**I. STANDARD**

The Commission recognizes the "substantial public interest in holding all aspects of adjudicative proceedings, including the evidence adduced therein, open to all interested persons." *In the Matter of Altria Grp.*, No. 9393, 2021 WL 2379509, at \*2 (May 26, 2021) (quoting *In re H. P. Hood & Sons*, 1961 FTC LEXIS 368 (Mar. 14, 1961)). Therefore, *in camera* treatment of evidence is only appropriate where the Administrative Law Judge finds "that [their] public disclosure will likely result in clearly defined, serious injury to the person, partnership or corporation requesting *in camera* treatment or after finding that the material constitutes sensitive personal information." 16 C.F.R. § 3.45(b).

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Parties seeking *in camera* treatment must “make a clear showing that the information concerned is sufficiently secret and sufficiently material to their business that disclosure would result in serious competitive injury,” and that the disclosure will result in the “clearly defined, serious injury” asserted. *In re General Foods Corp.*, No. 9085, 1980 FTC LEXIS 99, at \*10 (F.T.C. Mar. 10, 1980); *In re Kaiser Aluminum & Chem. Corp.*, No. 9080, 1984 FTC LEXIS 60 at \*1 n.1 (F.T.C. May 25, 1984). The potential injury to the party seeking *in camera* treatment must be balanced “against the substantial public interest in access to the key facts and background underlying a Commission decision.” *In re Polypore, Int’l Inc.*, No. 9327, 2011 FTC LEXIS 23, at \*2 (F.T.C. Feb. 11, 2011) (quoting *In re Orkin Exterminating Co.*, 108 F.T.C. 147 (1986)).

Further, “[a] designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined” in the Protective Order. Protective Order at para. 5.

## **II. ARGUMENT**

While Complaint Counsel agree that consumer SPI, *current* marketing strategy documents, and information constituting trade secrets should be given *in camera* treatment,<sup>1</sup> as described more fully below Respondents again seek *in camera* treatment for numerous documents that “merely reference or contain general statements derived from confidential documents or that do not reveal information that is sufficiently secret and sufficiently material to Respondents’ business that disclosure would result in serious competitive injury.” Order on Respondents’ Motion for In Camera Treatment, at

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<sup>1</sup> Complaint Counsel have stipulated to *in camera* treatment for a number of exhibits these bases. *See, e.g.*, PX731/RX0079 (source code), RX0195 (containing excerpts and detailed analysis of source code), PX165 (detailed diagram of DIY Online Products’ architecture, RX0071 through RX0078 (various product flow design documents).

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4 (Oct. 11, 2024) (“In Camera Order”). Respondents additionally appear, in part, to seek *in camera* treatment (1) for information that, if made public, may be uncomfortable on its own and/or (2) to push vast portions of hearing testimony into *in camera* sessions so Respondents may put forth arguments which would be discomfiting for them to make in public testimony. *In camera* treatment is not appropriate in these cases.

### **A. Respondents Inappropriately Seek *In Camera* Treatment for Uncomfortable Information**

Respondents seek *in camera* treatment for information that may be embarrassing or uncomfortable for Respondents but are not confidential. Respondents attempt to apply a façade of confidentiality to this information by asserting it is “User Data and Financial Information” or “Business Development Strategy” and that their competitors may benefit from viewing these documents. However, Respondents fail to meet their burden “to demonstrate that the evidence sought to be withheld from the public record is sufficiently secret and sufficiently material to its business that disclosure would result in serious competitive injury.” In Camera Order at 5.

Examples of documents for which Respondents seek *in camera* treatment in this category are:

- PX111, PX112, and PX162 – [REDACTED]  
[REDACTED] :
- Respondents assert “Business Development Strategy” as a reason to shield from public view the unguarded perspective of an insider, an employee in a management position, who questioned and criticized Respondents’ customer-service-contact requirement. Respondents listed this employee as a person with knowledge in their initial disclosures before terminating his employment during fact discovery. Respondents have previously raised a host of objections to PX111, PX112 and PX162, including hearsay, relevance,

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and foundation. But if these exhibits reflect Respondents' "Business Development Strategy" regarding the customer service contact requirement, they must be relevant to Count I and should be admitted as evidence. Nor can respondents seriously argue that their own strategy documents lack foundation or are unreliable.

- RX277 – Amended Expert Report of Ron Schnell: Respondents improperly seek to redact nearly the entirety of their technology expert's amended report, even his most high-level opinions, such as [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] This statement reveals no secrets about how Respondents' DIY Products work. Rather, it is merely a [REDACTED]

[REDACTED]

[REDACTED] This opinion may be embarrassing or uncomfortable for Respondents to rely on, but that discomfort is no basis for confidential treatment.

### **B. Respondents Again Improperly Seek *In Camera* Treatment for Non-Confidential or Publicly Available Information**

Respondents continue to seek *in camera* treatment for publicly available information as well as non-confidential information. While Respondent' Attachment A indicates that they seek to redact various documents, rather than seek *in camera* treatment for the entirety of the documents, a limited review (given the short window for responding to Respondents' motion) of the proposed redactions reveals that, yet again, Respondents paint with too broad a brush and without undertaking the careful

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consideration of each document for which they seek *in camera* treatment, as required by the Protective Order. Protective Order at para. 5. For example:

- PX716/RX0194 – Expert Report of Rick Watts: Respondents designate for redaction generally known statements about software architecture and design (Section 7) and publicly available information (Sections 8.1.1-8.1.2). This information should not be given *in camera* treatment. This report also includes general statements derived from confidential documents which Respondents have marked for redaction as requiring *in camera* treatment for which it does not qualify, as discussed further below.
- PX720/RX0200 – [REDACTED]: Respondents again assert “Trade Secret and Product Development” as the basis for *in camera* treatment and indicate this document should be redacted. However, as explained in Complaint Counsel’s first Opposition, this document was compiled by Complaint Counsel expert Rick Watts and associates tax forms to the DIY Online Product in which they are available. This information is all publicly available in other formats on hrblock.com and, while Respondents indicate in their Attachment A that it should be redacted, no proposed redactions were provided in the version produced with Respondents’ current Motion.
- RX0277 – Amended Expert Report of Ron Schnell: Respondents assert “Trade Secret and Product Development” as the basis for redacting non-confidential information such as parts of the Table of Contents and the statement, [REDACTED]  
[REDACTED]  
[REDACTED] (para. 12) and other non-confidential statements and general statements derived from confidential documents in this report.

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- PX147 - [REDACTED] Respondents designate as “Business Development Strategy” website traffic information – including the number of unique visits and visitors – to various webpages related to hrblock.com. The top 2 most visited webpages since 2021 are described in Respondents’ publicly filed Motion *in Limine* to Exclude Survey and Expert Testimony of Sarah Butler, Exhibit B (Expert Report of Sarah Butler) at ¶ 58, fn.70, ¶ 60, fn.73.
- PX157, PX158,<sup>2</sup> PX159, PX161, PX515 – Respondents assert “Business Development Strategy” and/or “Sales and Marketing Strategy” as the basis for *in camera* treatment of exhibits that are more rear-view mirror assessments of marketing and product performance than forward-looking strategy and analysis. Respondents’ attempt to conceal from the public [REDACTED] [REDACTED] and [REDACTED] [REDACTED] is improper. Rather than being competitively sensitive, such information corroborates Complaint Counsel’s arguments regarding the impact on consumers of Respondents’ advertising for the Free Online product. Moreover, descriptions of PX158 and PX159, including quotes and performance metrics, are contained in PX704, the Expert Report of Sarah Butler, at ¶ 50, fns.59-60, for which *in camera* treatment has not been requested.

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<sup>2</sup> PX158, CC-001719 contains identical information to PX160, which Respondents also designate as confidential based upon “Sales and Marketing Strategy.”

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**C. Respondents Improperly Seek *In Camera* Treatment of Material that “Merely References or Contain General Statements Derived from Confidential Documents”**

As noted above, in the In Camera Order the Court advised that *in camera* treatment is not appropriate for documents or information that themselves “merely reference or contain general statements derived from confidential documents.” In Camera Order at 4. Nonetheless, Respondents continue to seek *in camera* treatment for just such documents and statements in an attempt to shield from public view the scope of the injury its downgrading practices cause to consumers.

Respondents argue that if data on downgraders is made public, competitors might, for example, [REDACTED]

[REDACTED] The fact that Respondents’ competitors may also benefit from knowing how much Respondents’ downgrading practices injure consumers does not obviate the public’s right to know the same. Allowing Respondents to withhold from the public record evidence of their allegedly unlawful conduct would impair consumers’ ability to protect themselves from allegedly unfair practices, and it would be antithetical to the Commission’s long-recognized principle of “holding all aspects of adjudicative proceedings, including the evidence adduced therein, open to all interested persons.” *Altria Grp.*, 2021 WL 2379509, at \*2 (quotation omitted). For example:

- PX664 & PX721<sup>3</sup> – Reports of Complaint Counsel Expert Youssef Benzarti:

Respondents list the “User Data and Financial Information” and “Trade

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<sup>3</sup> Respondents even seek to redact Dr. Benzarti’s rebuttal to Dr. Simonson’s report, for which Respondents do not seek in camera treatment. They also seek redaction of nearly the entirety of Dr. Benzarti’s deposition (RX0227), including discussions of one of his published articles, apparently claiming the deposition as “Trade Secret and Production Development” and “Internal User Data and Financial Information.” Such redactions are unjustifiable and speak to Respondents’ continued carelessness in confidentiality designations.

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Secret and Product Development” as the reasons for seeking near total redaction of these documents. Neither of these documents refer to any trade secrets or product development materials and they are critical pieces of evidence of the substantial injury Respondents’ downgrading practices cause to consumers.

- PX042 – [REDACTED]: Respondents seek complete in camera treatment of this document under the justification of “User Data and Financial Information” and “Business Development Strategy.” This document simply summarizes Respondents’ data on downgraders and is a critical piece of evidence of the substantial injury Respondents’ downgrading practices cause to consumers.

### III. CONCLUSION

For the reasons above, Respondents’ Motion for *In Camera* Treatment should be denied except for those documents listed supra, n.1, or, at a minimum, for those documents specified supra Sections II.A-C.

Dated: October 17, 2024

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 17, 2024, I filed the foregoing Complaint  
Counsel's Opposition to Respondents' Second Motion for *In Camera* Treatment  
electronically using the FTC's E-Filing system, and I caused courtesy copies to be sent  
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*Administrative Law Judge*

I further certify that on October 17, 2024, I caused the foregoing document to be  
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