

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE ADJUDICATORS

In the Matter of )  
)  
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REALCOMP II LTD., )  
Respondent. )  
\_\_\_\_\_ )

Docket No. 9320

**PROTECTIVE ORDER**  
**GOVERNING DISCOVERY MATERIAL**

For the purpose of protecting the interests of the parties and third parties in the above captioned matter against improper use and disclosure of confidential information submitted or

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential

Material ("Protective Order") shall govern the handling of all

3. "Confidential Discovery Material" means all Discovery Material that is confidential

or proprietary information produced in discovery. These are materials that are referred to in, and protected by, section 6(f) of the Federal Trade Commission Act, 15 U.S.C. § 46(f); section 4.10(a)(2) of the FTC Rules of Practice, 16 C.F.R. § 4.10(a)(2); section 26(c)(7) of the Federal

Rules of Civil Procedure, 28 U.S.C. § 26(c)(7); and section 17(c) of the Federal

6. "Discovery Material" includes deposition testimony, deposition exhibits, interrogatory responses, admissions, affidavits, declarations, Documents produced pursuant to compulsory process or voluntarily in lieu of process, and any other Documents or information produced or given to one Party by another Party or by a Third Party in connection with discovery in this Matter.

7. "Document" means the complete original, or a true, correct, and complete copy, and any non-identical copies, of any written or graphic matter, no matter how produced, recorded, stored, or reproduced, including, but not limited to any writing, letter, envelope, telegram, e-mail, meeting minute, memorandum, statement, affidavit, declaration, book, record, survey, map, study, handwritten note, working paper, chart, index, tabulation, graph, drawing, chart, photograph, tape, phono record, compact disc, video tape, data sheet, data processing card, printout, microfilm, index, computer readable media, or other electronically stored data.

appointment book, diary, diary entry, calendar, organizer, desk pad, telephone message slip, note of interview or communication. "Document" also includes every writing, drawing, or other

10. "Outside Counsel" means the law firms that are counsel of record for Respondent in this Matter and their associated attorneys; or other persons regularly employed by such law firm(s), including, legal assistants, clerical staff, and information management personnel and

provide logistical litigation support with regard to this Matter; provided that any attorney

substantial commercial harm to the Producing Party or to Respondent, in instances where the Producing Party produces information generated by Respondent. It is the intention of the Parties that this particularly restrictive designation should be utilized for only a select number of documents. Such a designation shall constitute a representation by counsel for the Producing Party or for Respondent, in instances where the Producing Party produces information generated

by Respondent that the material is exempt from Discovery. Confidentiality of the material is not intended to be maintained.

this Order.

16 "Third Party" means any natural person, partnership, corporation, association, or

1. Discovery Material, or information derived therefrom, shall be used solely by the Parties for purposes of this Matter, and shall not be used for any other purpose, including without limitation any business or commercial purpose, except that with notice to the Producing Party, a Party may apply to the Administrative Law Judge for approval of the use or disclosure of any Discovery Material, or information derived therefrom, for any other proceeding.

Provided, however, that in the event that the Party seeking to use Discovery Material in any

other proceeding is granted leave to do so by the Administrative Law Judge, it will be assumed

court reporter to denote each page of a transcript containing such Confidential Discovery Material as "Confidential." Such designations shall be made within fourteen days from the initial production or deposition and constitute a good-faith representation by counsel for the Party or Third Party making the designations that the document constitutes or contains "Confidential Discovery Material."

(b) Designation of Documents as "RESTRICTED CONFIDENTIAL - FTC Docket No. 9320."

In order to permit Producing Parties to provide additional protection for a limited number

of documents that contain highly sensitive commercial information, Discovery Material may be designated as Restricted Confidential Discovery Material by Producing Parties (i) by placing on or affixing, in such manner as will not interfere with the legibility thereof, the notation "RESTRICTED CONFIDENTIAL - FTC Docket No. 9320" (or other similar notation containing a reference to this Matter) to each page of a document containing such highly sensitive commercial information; or (ii) for deposition transcripts, by any Party or Third Party instructing the court reporter to denote each page of a transcript containing such highly sensitive

RESTRICTED CONFIDENTIAL - FTC Docket No. 9320

Documents designated Restricted Confidential shall not be disclosed to the individual



have failed, the disclosing Party may make written application to the Administrative Law Judge

does not object to the disclosure of Restricted Confidential Material to the identified individual within five business days, the disclosing Party may disclose the Restricted Confidential Material to the identified individual.

(d) Disputes Concerning Designation or Disclosure of Restricted Confidential Material.

documents during the pre-Complaint investigation and shall notify those Parties and Third Parties that they shall have fifteen days from the effective date of this Protective Order to determine whether their materials qualify for the higher protection of Restricted Confidential and to so designate such documents.

4. Restricted Confidential Designation Material Subject to this Order

disclosed or otherwise provided to anyone except to:

- (a) Complaint Counsel and the Commission, as permitted by the Commission's Rules of Practice;
- (b) Outside Counsel;

(c) Restricted Confidential Designation Material Subject to this Order

(d) the Administrative Law Judge and personnel assisting him

Respondent's counsel shall maintain a file of all such declarations for the duration of the litigation.

6. Confidential Discovery Material, including material designated as "Confidential"

attempt to negotiate changes to any challenged designation. If at the end of five business days of

negotiating the parties have not resolved their differences or if counsel determine in good faith that negotiations have failed, the challenging Party may make written application to the Administrative Law Judge as provided by paragraph 7(b) of this Protective Order. If the Producing Party does not preserve its rights within five business days, the challenging Party may alter the designation as contained in the notice. The challenging Party shall notify the Producing Party and the other Parties to this action of any changes in confidentiality designations.

Regardless of confidential designation, copies of published magazine or newspaper articles, excerpts from published books and public documents filed with the Securities and Exchange Commission or other governmental entity may be used by any Party without reference to the procedures of this subparagraph.

(b) Resolution of Disclosure or Confidentiality Disputes.

If negotiations under subparagraph 7(a) of this Protective Order have failed to resolve the issues, a Party seeking to disclose Confidential Discovery Material or challenging a

8. The Parties shall not be obligated to challenge the propriety of any designation or treatment of information as confidential and the failure to do so promptly shall not preclude any subsequent objection to such designation or treatment, or any motion seeking permission to disclose such material to persons not referred to in paragraphs 4 or 5 of this Protective Order. If

business days before production and shall include a copy of this Protective Order and a copy

11. If any person receives a discovery request in another proceeding that may require the

disclosure of a Producing Party's Confidential Discovery Material, the subject of this

Any Party or Producing Party may move at any time for *in camera* treatment of any Confidential Discovery Material or any portion of the proceedings in this Matter to the extent necessary for proper disposition of the Matter. Motions for *in camera* treatment for evidence to be introduced at trial must meet the strict standards set forth in 16 C.F.R. § 3.45 and explained in *In re Dura Tube Corp.*, 1999 FTC LEXIS 255 (Dec. 23, 1999); *In re Hoechst Marion Roussel*

*In re* 2000 FTC LEXIS 157 (Nov. 22, 2000) and 2000 FTC LEXIS 138 (Sept. 19, 2000); *In re*

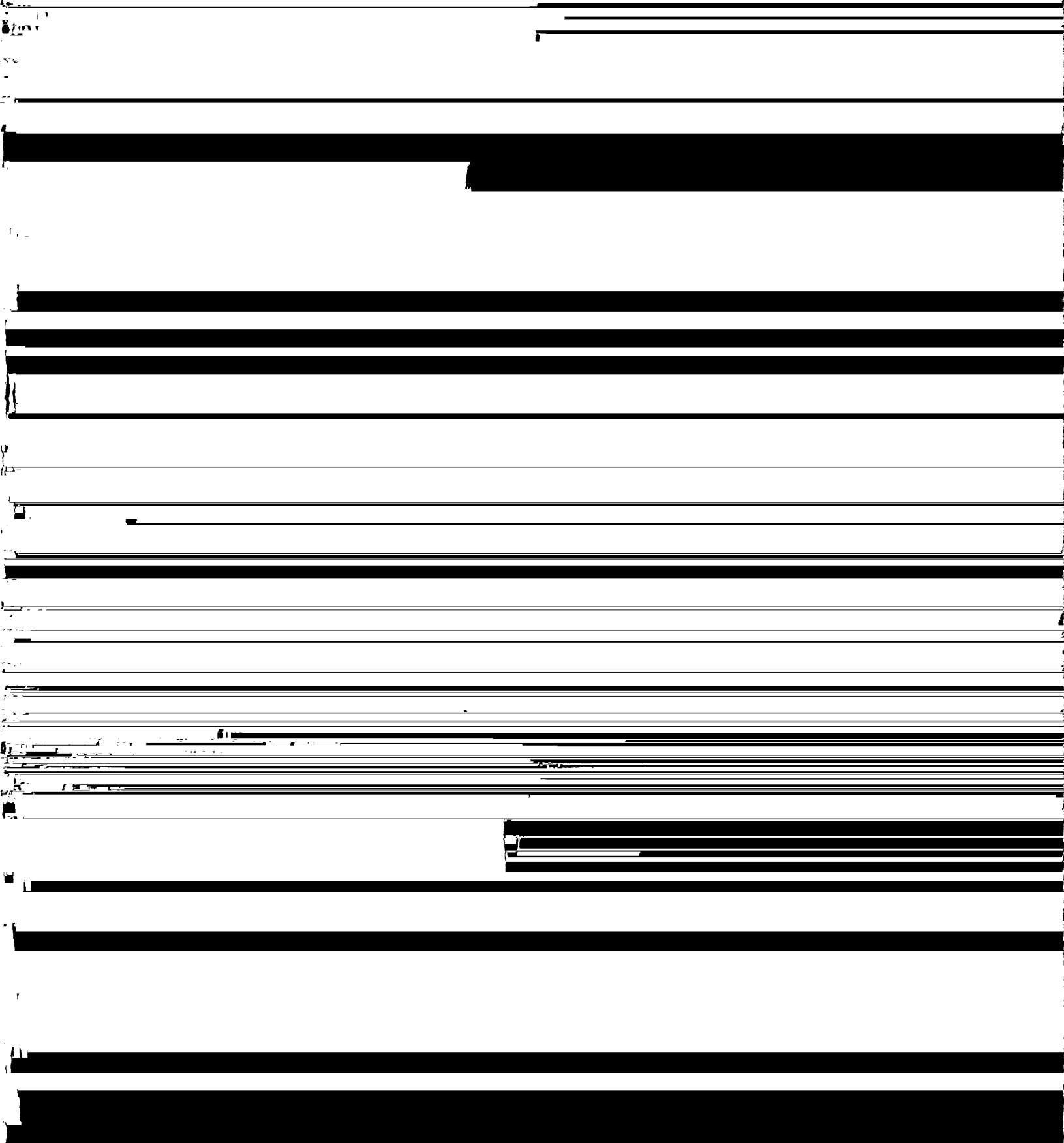
*Basic Research, Inc.*, 2006 FTC LEXIS 14 (Jan. 25, 2006). Motions also must be supported by a declaration or affidavit by a person qualified to explain the confidential nature of the documents. *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 66 (April 23, 2004).

14. At the conclusion of this Matter, Respondent's counsel shall return to the Producing Party, or destroy, all originals and copies of documents and all notes, memoranda, or other papers containing Confidential Discovery Material which have not been made part of the public record in this Matter. Complaint Counsel shall dispose of all documents in accordance with Rule 4.12, 16 C.F.R. § 4.12.

15. The provisions of this Protective Order, insofar as they restrict the communication and use of Confidential Discovery Material shall, without further limitation, apply to all

produced or disclosed because of a privilege will not automatically be deemed to be a waiver of any privilege to which the Producing Party would have been entitled had the privileged

Discovery Material not inadvertently been produced or disclosed. In this case, the Producing Party





(c) Should the Party contesting the request to return the Discovery Material pursuant to this paragraph decline to return the Discovery Material, the Producing Party seeking return of the Discovery Material may thereafter move for an order compelling the return of the D

Material. In any such motion, the Producing Party shall have the burden of showing that the

Discovery Material is withheld and that the party has a right to it.

“Exhibit A”

UNITED STATES OF AMERICA

FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of )  
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REALCOMP II LTD., )  
Respondent. )  
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Docket No. 9320

**DECLARATION CONCERNING PROTECTIVE  
ORDER GOVERNING DISCOVERY MATERIAL**

I, [NAME], hereby declare and certify the following to be true:

1. [Statement of employment]

2. I have read the “Protective Order Governing Discovery Material” (“Protective Order”) issued by Administrative Law Judge Stephen J. McGuire on December 8, 2006, in

~~connection with the above-captioned matter. I understand the restrictions imposed by~~

4. I understand that if I am receiving Confidential Discovery Material as an Expert/Consultant, as that term is defined in this Protective Order, the restrictions on my use of Confidential Discovery Material also include the duty and obligation:

to maintain such Confidential Discovery Material in secure locked

room(s) or locked cabinet(s) when such Confidential Discovery Material is not being reviewed;

- b. to return such Confidential Discovery Material to Complaint Counsel or Respondent's Outside Counsel, as appropriate, upon the conclusion of my assignment or retention; and
- c. to use such Confidential Discovery Material and the information contained therein solely for the purpose of rendering consulting services to

Party to this Matter, including providing testimony in this