



SGCI. During Complaint Counsel's non-public investigation of Ardagh's proposed acquisition of SGCI, Saint-Gobain produced to Complaint Counsel documents that SBA-CCI provided to SGCI, including the documents now designated DX408, DX386, DX505, PX2423 and PX2386. SBA-CCI now moves for *in camera* treatment of the SBA-CCI documents because if made public, such disclosure would result in a clearly defined, serious competitive injury to SBA-CCI.

II. LEGAL STANDARD FOR *IN CAMERA* TREATMENT

Materials merit *in camera* treatment when their disclosure would "result in a clearly defined, serious injury to the person or corporation whose records are involved." *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961); *see also* 16 C.F.R. § 3.45(b). An applicant for *in camera* treatment can demonstrate serious injury by showing that the information at issue is "sufficiently secret and sufficiently material to the applicant's business that disclosure would result in serious competitive injury." *In re General Foods Corp.*, No. 9085 95 F.T.C. 352, 355, 1980 WL 338997, at *4 (1980); *In re Bristol-Myers Co.*, 90 F.T.C. 455, 456 (1977). "The likely

whether information warrants *in camera* treatment. *General Foods Corp.*, 1980 WL 338997, at *2. Moreover, a non-party requesting *in camera* treatment deserves “special solicitude” for its confidential business information. See *In re Kaiser Aluminum & Chemical Co.*, 103 F.T.C. 500 (1984); *In re Crown Cork & Seal Co.*, 71 F.T.C. 1714 (1967) (“[P]etitioner's plea warrants special solicitude coming as it does from a third-party bystander in no way involved in the proceedings[.]”).

The Commission has recognized that it may be appropriate to provide *in camera* treatment for certain business records. See, e.g., *In re Mc Wane, Inc.*, No. 9351, 2012 WL 3862131, at *2 (F.T.C. Aug. 17, 2012); *In re Champion Spark Plug Co.*, 1982 F.T.C. LEXIS 85, at *2 (Apr. 5, 1982); *Hood*, 58 F.T.C. at 1188-89; *Kaiser Aluminum*, 103 F.T.C. at 500.

And it has recognized that *in camera* treatment may be granted for an indefinite period of time when the competitive sensitivity or the proprietary value of the information will not necessarily diminish over time. *In re Coca Cola Co.*, No. 9207, 1990 WL 10081418, at *3 (F.T.C. Oct. 17, 1990) (quoting 54 Fed. Reg. 49,278-79 (Nov. 30, 1989)).

III. THE SBA-CCI DOCUMENTS SATISFY THE STANDARD FOR *IN CAMERA* TREATMENT

The *Bristol-Myers* factors support granting *in camera* treatment to the SBA-CCI documents.

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trends in the cost of producing specific PET containers, the pricing of those containers, and demand for those containers in different end-uses. But SBA-CCI does not share the information contained in the SBA-CCI documents more broadly, and indeed guards it closely; otherwise SBA-CCI would be out of business. (Maddox Decl. ¶ 2.)

Third, the information in the SBA-CCI documents is extremely valuable to the consulting firms that compete with SBA-CCI, as no other consulting firm has been able to prepare analyses similar to those contained in the SBA-CCI documents. If granted access to the documents, SBA-CCI's competitors would be able to "reverse engineer" the proprietary analytical models constructed by SBA-CCI. This would destroy the value of clients subscribing to SBA-CCI's

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made public, SBA-CCI's potential customers, not to mention competing consulting firms, would be able to obtain the benefit of SBA-CCI's analyses without adequately compensating SBA-CCI for its efforts. (Maddox Decl. ¶ 5.)

IV. IN CAMERA TREATMENT SHOULD EXTEND FOR THE SBA-CCI DOCUMENTS FOR TWENTY YEARS.

SBA-CCI requests *in camera* treatment of twenty years for the SBA-CCI documents because the competitive sensitivity of the information contained therein is unlikely to diminish over time. *See, e.g., McWane, Inc.*, 2012 WL 3862131; *Coca Cola Co.*, 1990 WL 10081418, at *3; *In the Matter of Union Oil Co. of Cal.*, 2004 WL 2458849, at *1 (F.T.C. Oct. 7, 2004) (granting *in camera* treatment for an indefinite period of time when the sensitivity of the information will not diminish with the passage of time). Without access to the SBA-CCI documents, SBA-CCI's competitors are unlikely to derive the proprietary model SBA-CCI uses to analyze the production and consumption of PET packaging. Disclosure of these documents would impose serious competitive harm upon SBA-CCI into the foreseeable future. (Maddox Decl. ¶ 6.) This information should therefore receive *in camera* treatment for a period of twenty years.

V. CONCLUSION

For the foregoing reasons, SBA-CCI respectfully requests that the SBA-CCI documents

CERTIFICATE OF SERVICE

I, Veena Viswanatha, an associate at BuckleySandler LLP, hereby certify that on December 11, 2013, I caused the foregoing document to be filed using the FTC's E-Filing System, which will send notifications of such filing to:

Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-113
Washington, DC 20580

I also certify that I delivered via electronic mail and hand delivery a copy of the foregoing document to:

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580

I further certify that I delivered via electronic mail a copy of the foregoing document to:

Complaint Counsel

U.S. Federal Trade Commission

Edward D. Hassi
Catharine M. Moscatelli
Brendan J. McNamara
Sebastian Lorigo
Victoria Lippincott
Meredith Robinson
Devon Kelly
James Abell
Teresa Martin
Amanda Hamilton

Counsel for Respondent Ardagh Group S.A.

Shearman & Sterling LLP

Alan Goudiss
Wayne Dale Collins
Richard Schwed
Lisl Dunlop
Heather Kafele
Edward G. Timlin
Jason M. Swergold

Counsel for Respondent Saint-Gobain Containers, Inc. & Compagnie de Saint-Gobain
Cravath, Swaine & Moore LLP

Christine A. Varney
Sandra C. Goldstein
Yonatan Even
Rory A. Leraris
Athena N. Cheng
Pierre N. Gemson
Sarah M. Colombo

Counsel for Third Party Arkansas Glass Container Corp

Step toe & Johnson LLP

Chong Park
Nathaniel Brower

Counsel for Third Party Piramal Glass – USA, Inc.

Young Conaway Stargatt & Taylor LLP

Curtis Crowther

December 11, 2013

By: /s/ Veena Viswanatha
Veena Viswanatha

CERTIFICATE FOR ELECTRONIC FILING

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

December 11, 2013

By: /s/ Veena Viswanatha
Veena Viswanatha

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

In the Matter of)

Ardagh Group S.A.,
a public limited liability company, and

REDACTED - IN CAMERA TREATMENT REQUESTED



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

In the Matter of)
)
Ardagh Group S.A.,)
a public limited liability company, and)
)
Saint-Gobain Containers, Inc.,)
a corporation, and)
)
Compagnie de Saint-Gobain, a corporation.)
)
_____)

PUBLIC

Docket No. 9356

[PROPOSED] ORDER GRANTING UNOPPOSED MOTION OF NON-PARTY SBA-CCI, INC. FOR *IN CAMERA* TREATMENT OF PROPOSED TRIAL EXHIBITS

Upon consideration of Unopposed Motion of Non-Party SBA-CCI, Inc. For *In Camera* Treatment of Proposed Trial Exhibits, it is hereby ordered that the Motion is **GRANTED** and *in camera* treatment will be given to the exhibits discussed therein for a period of twenty years.

Dated: December ____, 2013

Honorable D. Michael Chappell
Chief Administrative Law Judge