

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

09 26 2018
592373

In the Matter of

BENCO DENTAL SUPPLY CO.,
a corporation,

HENRY SCHEIN, INC.,
a corporation, and

PATTERSON COMPANIES, INC.,
a corporation.

Docket No. 9379

ORIGINAL

HENRY SCHEIN, INC'S MOTION FOR *IN CAMERA*
TREATMENT OF TRIAL EXHIBITS

Pursuant to Rule 3.45 of the Federal Trade Commission's Rules of Practice, 16 C.F.R. § 3.45(b), Henry Schein, Inc. ("Schein") respectfully moves this Court for treatment of certain documents designated as trial exhibits by the parties to this case.

Complaint Counsel and Respondents have submitted their final proposed exhibit lists. Many of the documents produced by Schein that appear on Respondents' or Complaint Counsel's exhibit lists contain confidential, competitively sensitive information, disclosure of which would harm Schein's business operations. Under Rule 3.45(b), a party may obtain treatment for materials offered into evidence if "public disclosure will likely result in a clearly defined, serious injury." After conducting a careful review of all of the documents produced by Schein that appear on the parties' exhibit lists, Schein and its counsel have determined that public disclosure of the documents listed in Exhibit B will cause a clearly defined, serious injury to Schein. As such, and for the reasons set forth below and in the Declaration of Marjorie Han (Exhibit A), Schein seeks treatment for these confidential and proprietary materials.

I. Legal Standard

treatment is appropriate for materials (1) that constitute sensitive personal information, such as social security or other ID numbers, tax info, bank account info, and sensitive health info, or (2) public disclosure of which will result in serious injury to the party requesting treatment. 16 C.F.R. 3.45; [redacted], 2017 FTC LEXIS 55 (April 4, 2017) ([redacted] treatment appropriate for information that “is sufficiently secret and sufficiently material to their business that disclosure would result in serious competitive injury.”). A proponent of [redacted] treatment may demonstrate the requisite competitive injury by showing that the information is secret and that it is material to the business. [redacted], 95 F.T.C. 352, 355 (1980).

In making [redacted] determinations, factors that the Court may consider include: (1) the extent to which the information is known outside the business; (2) the extent to which it is known by employees and others involved in the business; (3) the extent of measures taken to guard the secrecy of the information; (4) the value of the information to the business and its competitors; (5) the amount of effort or money expended in developing the information; and (6) the ease or difficulty with which the information could be acquired or duplicated. [redacted], 90 FTC LEXIS 455, at *5-6 (Nov. 11, 1977). In general, courts endeavor to “protect confidential business information from unnecessary airing.” [redacted], 58 F.T.C. 1184, 1188 (1961).

II. Schein’s Materials Meet the Standard for *In Camera* Treatment

Schein seeks [redacted] treatment of documents listed in Exhibit B to this motion, all of which contain information that is both secret and material to Schein’s business. This information includes customer contracts; customer-specific pricing, purchasing plans, discounts, rebates and service arrangements; performance information such as sales, costs, profits, margins and market

share; and business plans, strategic initiatives and forward-looking metrics (“Confidential Information”).

The Confidential Information is confidential and propriety, and is known only to

current and future contracts and customer relationships. Schein requests that this information remain [REDACTED] for at least 10 years. [REDACTED], 2018 FTC LEXIS 111, *11 (F.T.C. July 6, 2018) (granting five years of [REDACTED] treatment for distribution agreements); [REDACTED], 2018 FTC LEXIS 77, *2 (F.T.C. May 15, 2018) (granting 10 years of [REDACTED] treatment for customer-specific information).

B. Non-Public Pricing and Service Information

The Confidential Information also includes materials such as price lists, discount schedules, rebate figures and volume purchasing information offered to specific customers on a confidential basis. [REDACTED], CX2371 at 3-5 (pricing and discount information); CX2385 (price, discount and volume purchasing information); CX2389 at 001 (discount and rebate information); CX2508 at 4-11 (price and service proposal); CX2614 (sponsorship outlays for customer events); CX2934 (pricing, warranty and fee figures); RX2511 (purchase level and rebate information); RX2613 (purchase and rebate figures). As noted above, release of information about prices, discounts, or contractual terms—even if several years old—would materially harm Schein’s ability to compete in the marketplace and fairly negotiate. Schein’s price information is customer-specific and non-public, meaning disclosure would provide competitors and customers with the advantage of asymmetrical information. Schein requests that this information remain [REDACTED] for at least 10 years. [REDACTED], 2018 FTC LEXIS 77, *2 (granting 10 years of [REDACTED] treatment for customer-specific prices).

C. Confidential Performance Metrics

The Confidential Information also includes information about Schein’s sales, costs, margins, financials, and market share. [REDACTED], CX2226 (sales and profit figures); CX2345 (sales and market share information); CX2936 (annualized revenues); CX2956 (regional sales figures and

E. Sensitive Personal Information

The documents in this category are more numerous than any other. Schein produced many documents that contain sensitive personal information such as personal addresses and telephone numbers. Schein requests that sensitive personal information be kept indefinitely because such information “shall be accorded permanent in camera treatment unless disclosure or an expiration date is required or provided by the law.” 16 C.F.R. § 3.45(b)(3).

III. Conclusion

For the foregoing reasons, Schein respectfully move that its motion for treatment be granted.

Dated: September 26, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 26, 2018, I delivered a true and correct copy Henry Schein, Inc.'s Motion for Treatment via electronic mail to:

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Exhibit A

of Marjorie Han

Declaration of

I, Marjorie Han, of the City and County of San Francisco ("San Francisco"), make this declaration in support of Schein's Motion for *In Camera* Treatment of certain confidential documents and information, the "Confidential Information,"

[REDACTED]

support of Schein's Motion for *In Camera* Treatment of certain confidential documents and information, the "Confidential Information."

I am Vice President and Senior Counsel for Litigation. I am responsible for

[REDACTED]

As such, these contracts are generally subject to confidentiality provisions. *E.g.*, CX0294 at 4-5; CX2224 at 7-8; CX2878 at 130-131; CX4091 at 5; CX6602 at 5. If the terms of these current

[REDACTED]

contracts were disclosed, Schein's business operations would be harmed on multiple fronts. First, competitors would gain insight into Schein's offerings and could attempt to unfairly compete for Schein's current and prospective customers, thus harming its current and future business. Furthermore, prospective customers would obtain an upper hand in negotiations, while current customer relations could be jeopardized if certain customers discovered contract terms that they

[REDACTED]

Non-Public Pricing and Service Information

[REDACTED]

unwarranted insight into Schein's business operations, and allow them to deduce how Schein plans strategically and responds to changes in the marketplace, such as new competitive forces or the

[REDACTED]

[REDACTED]

competitors and customers to infer Schein's forward-looking pricing strategies which would be damaging for reasons given in the paragraphs above. Details about costs are particularly sensitive in this regard because of their relation to potential prices. Included in costs are employee

[REDACTED]

11. I reserve the right to modify or supplement this affidavit if I discover new facts that

render it inaccurate or incomplete.

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

Dated: September 26, 2018

Henry
VP
Senior Counsel, Litigation
Inc.

Exhibit B

Exhibit No.	Confidentiality Category	Location of Confidential Information	Duration of <i>In Camera</i> Treatment Requested
CX0057	Sensitive Personal Information	Entire Document	Indefinite
CX0060	Sensitive Personal Information	Entire Document	Indefinite
CX0175	Non-Public Price and Service Information	Pages 005-009	10 years
CX0192	Non-Public Price and Service Information	Pages 002-003	10 years
CX0195	Sensitive Personal Information	Entire Document	Indefinite
CX0196	Sensitive Personal Information	Entire Document	Indefinite
CX0208	Sensitive Personal Information	Entire Document	Indefinite
CX0213	Sensitive Personal Information	Entire Document	Indefinite
CX0249	Customer Contracts	Page 004	10 years
CX0278	Confidential Performance Metrics	Entire Document	5 years
CX0294	Customer Contracts	Entire Document	10 years
CX1015	Non-Public Price and Service Information	Pages 002-003	10 years
CX2142	Confidential Strategic and Business Plans	Entire Document	10 years
CX2146	Non-Public Price and Service Information	Pages 002-003	10 years
CX2165	Non-Public Price and Service Information	Pages 004-027	10 years
CX2187	Customer Contracts	Pages 002-007	10 years
CX2190	Customer Contracts	Entire Document	10 years
CX2191	Customer Contracts	Page 003	10 years
CX2195	Customer Contracts	Entire Document	10 years
CX2197	Non-Public Price and Service Information	Pages 001-002	10 years
CX2199	Customer Contracts	Pages 003-007	10 years
CX2202	Confidential Strategic and Business Plans	Pages 002-019	10 years
CX2203	Confidential Strategic and Business Plans	Pages 002-009	10 years

CX2204	Non-Public Price and Service Information	Pages 002, 004	10 years
CX2217	Confidential Strategic and Business Plans	Entire Document	10 years
CX2223	Confidential Performance Metrics	Pages 002, 013, 024	5 years
CX2224	Customer Contracts	Entire Document	10 years
CX2226	Confidential Performance Metrics	Pages 004, 008-009	5 years
CX2235	Customer Contracts	Entire Document	10 years
CX2237	Confidential Performance Metrics	Page 001	5 years
CX2251	Customer Contracts	Pages 002-009	10 years
CX2257	Confidential Performance Metrics	Pages 002-004	5 years
CX2259	Confidential Strategic and Business Plans	Entire Document	10 years
CX2267	Confidential Strategic and Business Plans	Entire Document	10 years
			10 years
		Entire Document	Indefinite
			5 years

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CX2371	Non-Public Price and Service Information	Page 003-005	10 years
CX2379	Confidential Strategic and Business Plans	Entire Document	10 years
CX2385	Non-Public Price and Service Information	Entire Document	10 years
CX2389	Non-Public Price and Service Information	Page 001	10 years
CX2401	Non-Public Price and Service Information	Entire Document	10 years
CX2404	Customer Contracts	Entire Document	10 years
CX2409	Non-Public Price and Service Information	Entire Document	10 years
CX2410	Sensitive Personal Information	Entire Document	10 years
CX2416	Non-Public Price and Service Information	Entire Document	10 years
CX2428	Customer Contracts	Entire Document	10 years
CX2429	Non-Public Price and Service Information	Entire Document	10 years
CX2433	Customer Contracts	Entire Document	10 years
CX2434	Customer Contracts	Entire Document	10 years
CX2454	Non-Public Price and Service Information	Entire Document	10 years
CX2481	Customer Contracts	Entire Document	10 years
CX2483	Confidential Strategic and Business Plans	Pages 029-032	10 years
CX2484	Sensitive Personal Information	Entire Document	Indefinite
CX2487	Confidential Strategic and Business Plans	Pages 002-005	10 years
CX2489	Sensitive Personal Information	Entire Document	Indefinite
CX2490	Sensitive Personal Information	Entire Document	Indefinite
CX2492	Sensitive Personal Information	Entire Document	Indefinite
CX2493	Customer Contracts	Pages 007-015	10 years
CX2507	Non-Public Price and Service Information	Entire Document	10 years
CX2508	Non-Public Price and Service Information	Pages 004-011	10 years
CX2536	Non-Public Price and Service Information	Pages 006-014	10 years
CX2543	Non-Public Price and Service Information	Pages 002-003	10 years

CX2585	Confidential Strategic and Business Plans	Entire Document	10 years		
CX2592	Customer Contracts	Entire Document	10 years		
CX2596	Confidential Strategic and Business Plans	Entire Document	10 years		
CX2598	Confidential Strategic and Business Plans	Pages 003-005	10 years		
CX2610	Non-Public Price and Service Information	Entire Document	10 years		
CX2613	Non-Public Price and Service Information	Entire Document	10 years		
CX2614	Non-Public Price and Service Information	Entire Document	10 years		
CX2626	Non-Public Price and Service Information	Entire Document	10 years		
CX2632	Confidential Strategic and Business Plans	Entire Document	10 years		
CX2633	Confidential Strategic and Business Plans	Entire Document	10 years		
CX2651	Confidential Strategic and Business Plans	Entire Document	10 years		
CX2663	Confidential Strategic and Business Plans	Entire Document	10 years		
CX2668	Entire	Ev	M	EuE	E

CX2862	Sensitive Personal Information	Entire Document	Indefinite
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CX2865	Sensitive Personal Information	Entire Document	Indefinite
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CX2872	Sensitive Personal Information	Entire Document	Indefinite
CX2873	Sensitive Personal Information	Entire Document	Indefinite
CX2874	Sensitive Personal Information	Entire Document	Indefinite
CX2876	Confidential Strategic and Business Plans	Entire Document	10 years
CX2878	Customer Contracts	Pages 003-145	10 years
CX2888	Non-Public Price and Service Information	Entire Document	10 years
CX2889	Sensitive Personal Information	Entire Document	Indefinite
CX2920	Customer Contracts	Pages 001, 011-014	10 years
CX2927	Non-Public Price and Service Information	Entire Document	10 years
CX2934	Non-Public Price and Service Information	Pages 001-004	10 years
CX2935	Confidential Performance Metrics	Entire Document	5 years
CX2936	Confidential Performance Metrics	Entire Document	5 years
CX2938	Customer Contracts	Entire Document	10 years
CX2943	Confidential Performance Metrics	Entire Document	5 years
CX2944	Confidential Strategic and Business Plans	Entire Document	10 years
CX2946	Confidential Performance Metrics	Entire Document	5 years

CX2947	Confidential Strategic and Business Plans	Entire Document	10 years
CX2956	Confidential Performance Metrics	Entire Document	5 years
CX2959	Non-Public Price and Service Information	Pages 001-002	10 years
CX2960	Confidential Performance Metrics	Entire Document	5 years
CX2961	Confidential Performance Metrics	Entire Document	5 years
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CX2989	Sensitive Personal Information	Entire Document	Indefinite
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CX6600	Customer Contracts	Entire Document	10 years
CX6601	Customer Contracts	Entire Document	10 years
CX6602	Customer Contracts	Entire Document	10 years
CX6603	Customer Contracts	Entire Document	10 years
CX6604	Customer Contracts	Entire Document	10 years
CX6605	Customer Contracts	Entire Document	10 years
CX6606	Customer Contracts	Pages 002-031	10 years
CX6607	Customer Contracts	Entire Document	10 years
CX7100	Non-Public Price and Service Information	Entire Document	10 years
CX9024	Non-Public Price and Service Information	Entire Document	10 years

CX9055 Non-Public Price and Serv

RX2033 Customer Contracts

RX2184	Sensitive Personal Information	Entire Document	Indefinite
RX2188	Sensitive Personal Information	Entire Document	Indefinite
RX2191	Confidential Strategic and Business Plans	Pages 001-003	10 years
RX2192	Confidential Strategic and Business Plans	Entire Document	10 years
RX2193	Non-Public Price and Service Information	Entire Document	10 years
RX2194	Confidential Strategic and Business Plans	Entire Document	10 years
RX2195	Non-Public Price and Service Information	Entire Document	10 years
RX2196	Customer Contracts	Entire Document	10 years
RX2204	Customer Contracts	Entire Document	10 years
RX2213	Non-Public Price and Service Information	Pages 003-005, 009	10 years
RX2214	Confidential Strategic and Business Plans	Entire Document	10 years
RX2219	Non-Public Price and Service Information	Pages 002-003	10 years
RX2221	Customer Contracts	Entire Document	10 years
RX2229	Customer Contracts	Entire Document	10 years
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RX2234	Non-Public Price and Service Information	Page 005-014	10 years
RX2242	Customer Contracts	Entire Document	10 years
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RX2247	Customer Contracts	Entire Document	10 years
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RX2276	Customer Contracts	Entire Document	10 years
RX2278	Confidential Strategic and Business Plans	Pages 001, 009 - ument	10 years

RX2383	Customer Contracts	Entire Document	10 years
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RX2394	Customer Contracts	Entire Document	10 years
RX2403	Non-Public Price and Service Information	Entire Document	10 years
RX2413	Non-Public Price and Service Information	Page 002	10 years
RX2420	Non-Public Price and Service Information	Pages 004-006, 010	10 years
RX2428	Customer Contracts	Entire Document	10 years
RX2430	Non-Public Price and Service Information	Entire Document	10 years
RX2433	Non-Public Price and Service Information	Pages 003-011	10 years
RX2434	Non-Public Price and Service Information	Pages 007-017	10 years
RX2435	Confidential Strategic and Business Plans	Entire Document	10 years
RX2436	Non-Public Price and Service Information	Entire Document	10 years
RX2438	Confidential Performance Metrics	Entire Document	5 years
RX2441	Confidential Strategic and Business Plans	Entire Document	10 years
RX2445	Confidential Performance Metrics	Entire Document	5 years
RX2446	Non-Public Price and Service Information	Pages 001-004	10 years
RX2448	Confidential Strategic and Business Plans	Entire Document	10 years
RX2452	Customer Contracts	Entire Document	10 years
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RX2535	Customer Contracts	Entire Document	10 years
RX2537	Customer Contracts	Entire Document	10 years
RX2539	Non-Public Price and Service Information	Entire Document	10 years
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RX2541	Customer Contracts	Entire Document	10 years
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RX2546	Customer Contracts	Entire Document	10 years
RX2547	Customer Contracts	Entire Document	10 years
RX2593	Customer Contracts	Entire Document	10 years
RX2612	Non-Public Price and Service Information	Pages 009-010, 013-017	10 years
RX2613	Non-Public Price and Service Information	Entire Document	10 years
RX2622	Confidential Performance Metrics	Entire Document	5 years
RX2624	Confidential Performance Metrics	Entire Document	5 years
RX2627	Confidential Strategic and Business Plans	Entire Document	10 years
RX2628	Customer Contracts	Entire Document	10 years
RX2641	Confidential Strategic and Business Plans	Entire Document	10 years
RX2644	Customer Contracts	Entire Document	10 years
RX2646	Non-Public Price and Service Information	Entire Document	10 years
RX2647	Non-Public Price and Service Information	Page 003	10 years
RX2652	Customer Contracts	Entire Document	10 years
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RX2699	Customer Contracts	Entire Document	10 years
RX2700	Customer Contracts	Pages 002-007	10 years
RX2701	Non-Public Price and Service Information	Entire Document	10 years
RX2704	Confidential Performance Metrics	Entire Document	5 years
RX2705	Customer Contracts	Entire Document	10 years
RX2707	Customer Contracts	Entire Document	10 years
RX2709	Customer Contracts	Entire Document	10 years
RX2710	Customer Contracts	Entire Document	10 years
RX2711	Non-Public Price and Service Information	Entire Document	10 years
RX2716	Confidential Performance Metrics	Entire Document	5 years
RX2721	Confidential Performance Metrics	Entire Document	5 years
RX2722	Confidential Performance Metrics	Entire Document	5 years
RX2723	Customer Contracts	Entire Document	10 years
RX2724	Customer Contracts	Entire Document	10 years
RX2726	Non-Public Price and Service Information	Entire Document	10 years
RX2729	Customer Contracts	Entire Document	10 years
RX2730	Customer Contracts	Entire Document	10 years
RX2733	Non-Public Price and Service Information	Entire Document	10 years
RX2735	Confidential Performance Metrics	Entire Document	5 years
RX2736	Customer Contracts	Entire Document	10 years
RX2737	Customer Contracts	Entire Document	10 years
RX2740	Customer Contracts	Entire Document	10 years
RX2741	Non-Public Price and Service Information	Entire Document	10 years
RX2745	Confidential Performance Metrics	Entire Document	5 years
RX2746	Confidential Performance Metrics	Entire Document	5 years
RX2748	Confidential Performance Metrics	Entire Document	5 years

RX2750	Confidential Performance Metrics	Entire Document	5 years
RX2751	Customer Contracts	Entire Document	10 years
RX2754	Customer Contracts	Entire Document	10 years

Notice of Electronic Service

I hereby certify that on September 28, 2018, I filed an electronic copy of the foregoing Henry Schein, Inc's Motion for in Camera Treatment of Trial Exhibits, with:

D. Michael Chappell
Chief Administrative Law Judge
600 Pennsylvania Ave., NW
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Washington, DC, 20580

Donald Clark
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I hereby certify that on September 28, 2018, I served via E-Service an electronic copy of the foregoing Henry Schein, Inc's Motion for in Camera Treatment of Trial Exhibits, upon:

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