

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

10 02 2018
592412

In the Matter of)	
)	
BENCO DENTAL SUPPLY CO.,)	Docket No. 9379
a corporation,)	
)	
HENRY SCHEIN, INC.,)	
a corporation, and)	
)	
PATTERSON COMPANIES, INC.,)	
a corporation.)	
)	



RESPONDENT BENCO DENTAL SUPPLY CO.'S
MOTION FOR IN CAMERA TREATMENT OF TRIAL EXHIBITS

Respondent Benco Dental Supply Co. (“Benco”), by and through its undersigned counsel, respectfully moves pursuant to 16 C.F.R. § 3.45(b) and the scheduling order in this matter (dated March 14, 2018) for in camera treatment of certain documents designated as trial exhibits by the parties to this case.

Complaint Counsel and Benco (in conjunction with its co-respondents) have submitted their final proposed exhibit lists. Many of the documents produced by Benco that appear on Respondents’ exhibit list or Complaint Counsel’s exhibit list contain confidential, competitively sensitive information. Rule 3.45(b) provides that a party may obtain in camera treatment for materials offered into evidence if “public disclosure will likely result in a clearly defined, serious injury.” Benco, together with its counsel, has carefully reviewed all of the Benco-produced documents that appear on the parties’ final exhibit lists. Benco and its counsel have determined that the public disclosure of documents listed in Exhibit B will cause a clearly defined, serious injury to Benco. For the reasons set forth below and in the Declaration of Rebecca Warren (Exhibit A), Benco seeks in camera treatment for these confidential materials.

I. Legal Standard

An applicant seeking in camera treatment for material offered into evidence must demonstrate that “its public disclosure will likely result in a clearly defined, serious injury.” 16 C.F.R. § 3.45(b). The applicant 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.” *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017) (citation omitted). This tribunal weighs six factors to determine whether the information is sufficiently secret and material to warrant

connection with their job duties, and never with more than a small fraction of Benco's 1500 employees. **See id.**

Third, the documents that are identified in this motion were produced confidentially under the protections of the protective order in this matter and/or under the protections of protective orders entered in other private actions. Benco has taken due care to protect the confidentiality of the information at issue, including by establishing and adhering to policies and practices prohibiting its disclosure, and producing it only pursuant to legal assurances that it would remain confidential. **See id.**

Fourth and most significantly, disclosure of these materials would severely hinder Benco's ability to compete in the marketplace. **See id.** (n)2 (tia).o [(.)-3 c 0.004 Tw 3(e)6 (tp)2 (n003 Tc 0.013 Tku4(S
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The Commission has recognized that competitively sensitive information related to supply products is subject to extraordinary levels of protection. For example, in 1979, Administrative Law Judge Miles J. Brown ordered *in camera* treatment for certain exhibits produced by E.I. Du Pont De Nemours & Co. (“DuPont”) that contained detailed cost and operations data. *In re E.I. DuPont De Nemours & Co* 151 F.T.C. 679 (2011). Since then, DuPont has requested on numerous occasions that those documents remain *in camera* and the Commission has consistently granted those requests. Most recently in 2011, the Commission has extended *in camera* treatment again until 2021. *See id.* Even 30 years after the documents were produced, the Commission agreed that if competitors had “access to such detailed cost and operations information, [they] could ascertain DuPont's current costs through the use of readily available extrapolation techniques . . . [and] gain valuable insight about DuPont’s closely held and proprietary production process.” *Id.* The Commission explained that the documents should remain sealed given “the unusual level of detailed cost and operations data contained in the identified trial exhibits, the existence of precise extrapolation techniques, and the limited amount of technological innovation that has occurred in the titanium dioxide industry.” *Id.* at 680. Those same competitive concerns exist in this case and the Commission’s reasons for granting significant protections to DuPont’s sensitive information should also apply here.

III. Each Type of Confidential Information Should Remain In Camera

As described in the Warren Declaration, the materials at issue fall into at least one of five categories. The following summary chart lists each category of materials, the applicable paragraph discussing the category in the Warren Declaration, and the time period for which Benco requests *in camera* treatment:

Type of Confidential Information	Declaration	Period
Customer-Specific Price and Volume Information	¶ 6	10 Years

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Benco requests this information remain in camera for ten years. See *In the Matter of Impax Labs* 2017 WL 6033193, at *2 (granting in camera treatment for ten years over documents containing “data, methods and models from the National Prescription Audit database and/or the National Sales Perspectives database”).

D. Business Plans

Benco produced business planning documents, including strategic plans, budgets, and other forward-looking business plans. Warren Decl. ¶ 9. The public release of these materials would harm Benco because they reveal Benco’s current and future plans to improve its business and compete in the market, and Benco’s competitors could use them to plan their own competitive activities or unfairly undermine Benco

to be “sensitive personal information” and accorded in camera

Exhibit A

Declaration of Rebecca Warren

1. My name is Rebecca Warren. I am the Interim General Counsel of Benco Dental Supply Co. (“Benco”).
2. I am responsible for supervising all of Benco’s legal functions since my appointment as Interim General Counsel on July 16, 2018. I have been employed by Benco since May 2018.
3. I am familiar with Benco’s policies and procedures regarding the protection of confidential information, and I have personal knowledge of how the disclosure of various types of confidential information would harm Benco.
4. In the ordinary course of business, Benco keeps certain information strictly confidential. This information is disclosed to the public through the company’s website, social media, and other means. I have reviewed and approved the disclosure of this information to the public.

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Zyïïðð	μ•]v •• Wo v•V /v({Œ u š]}v Z P Œ]vP WŒ] r^ šš]vP WŒ} •• •V WŒ]]vP ^šŒ š PÇ /v({Œ u š]}v	î Ç Œ•