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BACKGROUND

On July 24, 2013, Crown was served with a sweeping third-party subpoena by Ardagh in the federal action¹ that requested a wide variety of documents regarding all aspects of Crown's can business. On July 26, 2013, FTC served Crown with a nearly identical subpoena. After significant discussions with the parties focused on both the scope of the subpoena and confidentiality protections, Crown agreed to produce a limited number of documents that had previously been provided to FTC staff during its investigation of the Ardagh/Saint-Gobain transaction. Crown agreed to make this production only after the parties: (1) agreed to allow Crown to redact confidential, non-relevant material in the documents; and (2) agreed to additional confidentiality provisions beyond the protective order already entered in the case.² Crown made its document production on August 9, 2013 and designated all produced documents as confidential.

Crown was subsequently subpoenaed again by the parties to participate in a deposition in the federal action. The deposition, which occurred on August 20, 2013, referred to confidential Crown documents and discussed other confidential, highly sensitive aspects of Crown's business. Accordingly, Crown designated the deposition as confidential.

On November 19 and 20, 2013, Crown was notified by the parties that they intended to introduce certain confidential Crown documents and portions of deposition testimony at their

¹ The term "federal action" refers to *FTC v. Ardagh Group, S.A.*, Civ. Action No. 1:13-cv-01021-RMC (D.D.C.). At the time the subpoenas were issued to Crown, the parties to that case were engaged in discovery in preparation for their upcoming preliminary injunction hearing.

² The additional confidentiality protections were entered in *FTC v. Ardagh Group, S.A.*, Civ. Action No. 1:13-cv-01021-RMC (D.D.C.), entered on August 14, 2013.

upcoming FTC administrative trial. *See* Exs. A & B. Specifically, the correspondence disclosed

the parties' intent to use the following information in their testimony.

REDACTED

REDACTED

- Portions of deposition testimony. The parties have designated numerous portions of the deposition testimony provided by Crown (*see* Exs. B & C for the specific designated portions).

REDACTED

REDACTED

The parties also advised Crown of their right to seek *in camera* treatment of these confidential materials. Accordingly, for the reasons explained below and in the accompanying declaration of Neill Mitchell (Ex. J), Crown requests that the documents and testimony described above be

offered in camera.

ARGUMENT

REDACTED

In short, the documents and testimony reflect highly confidential Crown material known only to certain individuals at Crown. *Id.*

If Crown's confidential documents and testimony were made available to its competitors, customers, and the general public, Crown would suffer significant competitive injury. Crown's competitors and customers could use Crown's confidential information against it and Crown would lose any business advantage it has to those entities. *Id.* ¶¶ 5 & 6. Competitors could use

the Crown confidential information in competitive bidding situations or to adjust to Crown's competitive strategy. *Id.* Customers could use the Crown confidential information to gain an advantage in pricing or other negotiations. *Id.* Accordingly, Crown would be substantially injured by the disclosure of the confidential documents and testimony.

confidentiality and the protections agreed to in the Stipulated Side Agreement to the Protective Order in the federal litigation. While Crown had (and still has) serious questions about the relevance of its materials to the dispute between the parties in this case, Crown was willing to

produce the materials requested because of its obligation to the court.

Crown requests that the court grant its motion for summary judgment.

I hereby certify that on December 9, 2013, I caused the foregoing Unopposed Motion of Non-Party Crown Holdings, Inc. for *In Camera* Treatment of Proposed Trial Exhibits to be filed by hand on the following:

Office of the Secretary
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Room H-135
Washington, D.C. 20580

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

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., N.W.

Washington, D.C. 20580

Sebastian Lorigo, Esq.
Bureau of Competition
Federal Trade Commission

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UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

BUREAU OF COMPETITION
MERGERS II DIVISION

November 19, 2013

Bureau of Competition
Federal Trade Commission
601 New Jersey Ave, N.W.
Washington, DC 20001
(202) 326-3717
slorigo@FTC.gov

Via Federal Express

Justin Pentz, Esq.
Dechert LLP
Cira Centre
2929 Arch Street
Philadelphia, PA 19104

RE: *In the Matter of Ardagh Green S.A. and Saint*

confidentiality protections pursuant to 16 C.F.R §§ 3.45 and 4.10(g). Because counter-designations are not yet due, this includes all passages of deposition testimony that request in-

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

ATTACHMENT A

Exhibit Number	Date	Description	Amount	Remarks
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ATTACHMENT B

Name: Mitchell, Neill
Company: Crown Holdings, Inc.
Date & Type: 8/20/2013 Deposition (PX6046)

7:3 - 5
10:22 - 13:7
25:15 - 17
25:19 - 21
28:18 - 23
28:25 - 29:18
29:21 - 30:8
55:20 - 56:5
56:14 - 16
74:15 - 17
74:19 - 24
75:2 - 4
79:7 - 23
80:16 - 18
80:20 - 81:10
81:12 - 15
103:21 - 105:8
106:24 - 108:7
109:3 - 8
109:12 - 14
110:4 - 7
110:9 - 16
110:19 - 20
~~110:25 - 111:7~~

110:25 - 111:7
111:9 - 16
111:18
111:20 - 21
113:18 - 25
118:3 - 122:2
122:5 - 123:9

OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of

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

Compagnie de Saint-Gobain, a corporation,
and

Saint-Gobain Containers, Inc.,
a corporation.

DOCKET NO. 9356

DECLARATION

I, _____, pursuant to 28 U.S.C. § 1746, make the following
statement:

1. I am an employee of Crown Holdings, Inc. I have personal knowledge of the facts set forth

conducted activity; and (c) was made by the regularly conducted activity as a regular practice.

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

Executed on: _____

Name: _____

Title:

EXHIBIT B

SHEARMAN & STERLING LLP

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mark.lanpher@shearman.com
202.508.8120

November 19, 2013

CONFIDENTIAL
Via Email and U.S. Mail

Paul Friedman
Dechert LLP
1900 K Street, N.W.
Washington, D.C. 20006

Re: In the Matter of Ardagh Group S.A. et al., Docket No. 9356 (F.T.C.)

Dear Mr. Friedman,

Pursuant to Paragraph 10 of the Protective Order in the above-referenced matter (enclosed), the Scheduling Order in the above-referenced matter, Paragraph 7 of the Stipulated Side Agreement to Protective Order between the parties and Crown Holdings, Inc. entered into on July 31, 2013, and 16 C.F.R. § 3.45 (enclosed), this letter is providing notice to Crown Holdings, Inc. that Respondents Ardagh Group S.A., Compagnie de Saint-Gobain, and Saint-Gobain Containers plan to introduce confidential material produced by Crown Holdings, Inc. into evidence at the Commission's hearing in the above-referenced matter, scheduled to commence on December 19, 2013.

Paul Friedman
Page 2

November 19, 2013

Hoechst Marion Roussel, Inc., 2000 FTC LEXIS 157 (Nov. 22, 2000) and 2000 FTC LEXIS 138 (Sent 19 2000); *In re Basic Research, Inc.*, 2006 FTC LEXIS 14 (Jan 25, 2006). Motions 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). Each party or non-party that files a motion for *in camera* treatment shall provide one copy of the documents for which *in camera* treatment is sought to the Administrative Law Judge.

If you have any questions, please feel free to contact me at 202.508.8120.

Best regards,

/s/ Mark Lanpher
Mark Lanpher

EXHIBIT C

Pentz, Justin

From: Jason Swergold <Jason.Swergold@Shearman.com>

Date: November 26, 2013 at 2:52:22 PM EST

To: "Friedman, Paul" <paul.friedman@dechert.com>

Subject: RE: In the Matter of Ardagh Group - Letter to P. Friedman

Paul,

Pursuant to the scheduling order in this case, yesterday the parties were required to identify
~~any counter designations of depositions testimony that the~~

To: 'paul.friedman@dechert.com'

cc: Mark [redacted]

Subject: RE: In the Matter of Ardagh Group - Letter to P. Friedman

Paul,

This is to advise you that the Administrative Law Judge has granted a motion filed by

EXHIBITS D-I

Redacted in Full

EXHIBIT J

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

In the Matter of)

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

Compagnie de Saint-Gobain,)
a corporation, and)

Saint-Gobain Containers, Inc.,)
a corporation)
_____)

DOCKET NO. 9356

DECLARATION OF NEILL MITCHELL

1. My name is Neill Mitchell. I am over the age of 21, have never been convicted of a felony or a crime involving moral turpitude, and am otherwise competent to make this Declaration. Each and every statement contained in this Declaration is true and correct based on my personal knowledge.

2. I am currently employed by Crown Holdings, Inc. ("Crown") as Vice President of Marketing and Strategic Development for Crown's beverage can division in the United States and Canada. [REDACTED]

[REDACTED] Before this position, I worked for Crown as Regional Vice President of Sales in the Southwestern United States. I have also worked for Crown as a director of marketing. In total, I have been employed by Crown in various roles for 12 years.

3. I understand that the FTC, Ardagh, and Saint-Gobain have indicated that they may use certain Crown documents at the administrative trial in this matter including

7034.0023, and CROWN0007621-7621.0016. I have personal knowledge regarding all of these documents [REDACTED]

REDACTED

4. Each of these documents reflects Crown confidential information that is not [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED] All of this information is confidential to Crown and is known only by certain individuals within Crown. Crown has expended resources to develop this

obtain this Crown sensitive information elsewhere – would be able to put the confidential

materials to [redacted]

6. I further understand that certain portions of my deposition have been designated

for possible use in the administrative trial in this [redacted]