

ORIGINAL

PUBLIC

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF THE SECRETARY

AUG 05 2016
Joseph
SECRETARY

In the Matter of)
)
)
1-800 Contacts, Inc.,)
a corporation,)
)
Re: FOIA request.)

DOCKET NO. 15-0073

PROTECTIVE ORDER

Commission Rule 3.31(d) states: "In order to protect the parties and the public against improper use and disclosure of confidential information, the Administrative Law Judge shall issue a protective order under § 3.31(d). Pursuant to Rule 3.31(d), an appendix to that section is attached as Attachment A and is hereby issued."

ORDERED:

D. Michael Chapman
D. Michael Chapman
Chief Administrative Law Judge

Date: August 5, 2016

ATTACHMENT A

For the purpose of protecting attorneys, clients, and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter.

IT IS HEREBY ORDERED THAT this Protective Order governing Confidential Material ("Protective Order") shall govern the handling of all Discoverable Material of the parties hereto.

1. As used in this Order, "confidential material" shall refer to any document thereof that contains privileged, confidential, or otherwise confidential information. "Sensitive Personal Information" shall refer to information concerning an individual, including but not limited to, name, date of birth, sex, race, ethnicity, number, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth, sex, race, ethnicity, health information identifiable by individual, such as an individual's medical records. "Document" shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information of the party or a third party. "Commission" shall refer to the Federal Trade Commission, its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this Protective Order.
2. Any document or portion thereof submitted to a responsive party by the Federal Trade Commission or any of its employees, agents, attorneys, or other persons entitled to confidentiality under the Federal Trade Commission Act or any regulation, interpretation, or precedent concerning the Commission, shall be treated as confidential material for purposes of this Order. Such information shall be treated as confidential material for purposes of this Order where the submitter has requested such confidentiality.
3. The parties and any third parties in compliance with the disclosure requirements, or disclosure of any confidential material, shall not be held liable for any responsive document or portion thereof as confidential material obtained by them from any third party pursuant to discovery or otherwise.
4. The parties, in conducting discovery from any source, shall provide notice to each party a copy of this Order and to inform them of the provisions herein.
5. A designation of confidentiality shall constitute a presumption of confidentiality after a determination of confidentiality has been made and is not reasonably believed to be already in the public domain and that the information is otherwise confidential in nature, and confidential material as defined in Paragraph 1 of this Order.

6. Material may be designated as confidential by placement of a mark on the document containing such material (in such manner as will not interfere with the legibility of the mark) or if an envelope or box of documents is sealed and clearly marked on its exterior or affixed to its folder or box, the designation "CONFIDENTIAL - ETC. Deleted No. 3572" or any other appropriate notice that identifies this proceeding together with an indication of the position or positions of the material considered to be confidential. Confidential information contained in electronic documents may also be designated as confidential by placing the designation "CONFIDENTIAL - ETC. Deleted No. 3572" on the document. Appropriate notice shall identify this proceeding from the medium on which the document is produced. Deleted or otherwise obscured portions of documents may be produced where the portions deleted contain privileged matter, provided that such portions shall indicate in the appropriate medium that portions have been deleted and the reasons therefor.

7. Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, persons assisting the Administrative Law Judge, the Commission and its employees, and persons receiving the information as experts or consultants; (b) persons holding a privilege and/or other competent authority over the matter having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and in-house counsel of any firm(s), provided they are not employees of a respondent; (d) anyone receiving information outside counsel in the preparation, filing or filing process of any appeal, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or document who may have authored or received the information in question.

8. Disclosure of confidential material in this proceeding shall be limited to the Order shall be given for the purposes of the proceeding and its appeal, or for any appeal thereof, and for the purposes of any other proceedings provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such confidential material, disclose such confidential material in accordance with sections 6(f) and 21 of the Federal Trade Commission Act, 15 U.S.C. 45(f) and 45(i), respectively, as imposed upon the Commission.

9. In the event that any confidential materials or information are filed in camera, the exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the party filing the paper. To the extent that such confidential material is filed in camera, the party including the materials in its papers shall be notified by the submitter of such information. Confidential information shall be disclosed in camera, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to paragraph 6 of this Order. Upon or after filing any paper containing confidential material, the filer shall file on the public record a duplicate copy of the paper that does not reveal confidential information. Such protection for any such material by reference to the public record shall not constitute a copy which also contains the formerly protected material.

10. If counsel, along with its associate attorneys, or the party or its attorney, receives or obtains a document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the object party or the party whose purposes or interests that party to seek an order that the document or transcript be granted *in camera* treatment, if that party wishes *in camera* treatment for the document or transcript, by the next business day after the receipt of such document or transcript. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where *in camera* treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom shall be placed on the public record.

11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material obtained by another party or third party, the recipient of the request shall notify the submitter of the request by the next business day after receipt of such request. If the request is mandated by an order of a court, such notification shall be received by the submitter at least 10 business days before production, and shall include a copy of the order and a cover letter that will apprise the submitter of its obligations under the Order. Nothing herein shall be construed as regarding the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties or sanctions, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the application of Rule 4.111(c), of the Rules of Practice, 16-CFR 4.111(c), to discovery requests in any other proceeding that are directed to the Commission.

12. At the time that any consultant or other person retained to assist counsel in the preparation of this action, or any other person participating in the action, shall be required to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information, at the conclusion of the proceedings, including the conclusion of judicial proceedings, the Commission shall be required to return such documents to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.111(c) of the Rules of Practice, 16-CFR 4.111(c).

13. The provisions of this Protective Order, insofar as they concern the maintenance and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.