

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



_____)
In the Matter of)
)
ASPEN TECHNOLOGY, INC.,)
)
Respondent.)
_____)

Docket No. 9310

**ORDER ON RESPONDENT'S MOTION FOR *IN CAMERA* TREATMENT
OF DOCUMENTS LISTED ON PARTIES' EXHIBIT LISTS**

I.

Pursuant to Commission Rule 3.45(b) and the Scheduling Order entered in this litigation, Respondent, on April 23, 2004, filed a motion for *in camera* treatment for materials that the parties have listed on their exhibit lists as materials that might be introduced at trial in this matter. Complaint Counsel filed an opposition to the motion on May 3, 2004. For the reasons set forth below, Respondent's motion is **DENIED WITHOUT PREJUDICE**.

II.

In Commission proceedings, requests for *in camera* treatment must show that the public disclosure of the documentary evidence will result in a clearly defined, serious injury to the person or corporation whose records are involved. *In re Kaiser Aluminum & Chem. Corp.*, 103 F.T.C. 500 (1984); *In re H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961). That showing can be made by establishing that the documentary evidence is "sufficiently secret and sufficiently material to the applicant's business that disclosure would result in serious competitive injury," and then balancing that factor against the importance of the information in explaining the rationale of Commission decisions. *Kaiser*, 103 F.T.C. at 500; *In re General Foods Corp.*, 95 F.T.C. 352, 355 (1980); *In re Bristol Myers Co.*, 90 F.T.C. 455, 456 (1977).

Indefinite *in camera* treatment is granted only in those "unusual" cases where the competitive sensitivity or the proprietary value of the information will not diminish with the passage of time. *In re Coca Cola Co.*, 1990 FTC LEXIS 364 (Oct. 17, 1990). Examples of documents meriting indefinite *in camera* treatment are trade secrets, such as secret formulas, processes, and other secret technical information, and information that is privileged. *See Hood*, 58 F.T.C. at 1189; *In re R.R. Donnelley & Sons Co.*, 1993 FTC LEXIS 32 (Feb. 18, 1993); *In re*

Textron, Inc., 1991 FTC LEXIS 135 (April 26, 1991). Where *in camera* treatment is granted for ordinary business records, such as business plans, marketing plans, or sales documents, it is typically extended for two to five years. *E.g.*, *In re E.I. DuPont de Nemours & Co.*, 97 F.T.C. 116 (1981); *In re International Ass. of Conf. Interpreters*, 1996 FTC LEXIS 298 (June 26, 1996).

The Federal Trade Commission strongly favors making available to the public the full record of its adjudicative proceedings to permit public evaluation of the fairness of the Commission's work and to provide guidance to persons affected by its actions. *In re Crown Cork & Seal Co., Inc.*, 71 F.T.C. 1714, 1714-15 (1967); *Hood*, 58 F.T.C. at 1186 (“[T]here is a substantial public interest in holding all aspects of adjudicative proceedings, including the evidence adduced therein, open to all interested persons.”). A heavy burden of showing good cause for withholding documents from the public record rests with the party requesting that documents be placed *in camera*. *Hood*, 58 F.T.C. at 1188. Further, requests for indefinite *in camera* treatment must include evidence to provide justification as to why the document should be withheld from the public's purview in perpetuity and why the requestor believes the information is likely to remain sensitive or become more sensitive with the passage of time. *See DuPont*, 1990 FTC LEXIS 134 at *2. Thus, in order to sustain the heavy burden for withholding documents from the public record, an affidavit or declaration demonstrating that a document is sufficiently secret and material to the applicant's business that disclosure would result in serious competitive injury is required. Also, requests for *in camera* treatment shall be made only for those pages of documents or of deposition transcripts that contain information that meets the *in camera* standard.

III.

Respondent has failed to meet its burden of demonstrating why *in camera* treatment should be granted to each of the 1,050 documents for which it seeks complete or partial *in camera* status. Rule 3.45(b) and Commission case law require Respondent to demonstrate why public disclosure of the documents sought to be protected would cause serious injury. Respondent has devised six general categories of documents for which it claims *in camera* status is appropriate. While the categories are a helpful device in evaluating *in camera* motions, Respondent has not met its burden of demonstrating that the documents within these categories rise to the level necessary for *in camera* treatment status. In addition, for those documents for which Respondent seeks indefinite *in camera* treatment, Respondent has failed to show that the documents merit extended *in camera* treatment beyond the duration granted to ordinary business records.

Upon a cursory review of the seven boxes of documents provided, it is obvious that some of the documents clearly do not meet the *in camera* standards. For example, CX 4 appears to be a Power Point presentation from a Board of Directors meeting. CX 92 appears to be a Power Point presentation on its marketing strategy. It is not obvious that some of the material for which

AspenTech seeks *in camera* treatment, such as widely disseminated presentations, meet the Commission's stringent standards.


In addition, the declaration attached to the motion for *in camera* treatment does not adequately support the motion. The General Counsel of AspenTech avers that "AspenTech or its counsel has reviewed" the documents for which it seeks *in camera* treatment. In this situation, where AspenTech is a party to the proceeding, a statement that can be read to mean that only outside counsel has reviewed the documents is not sufficient.

IV.

For the above state reasons, AspenTech's motion for *in camera* treatment is **DENIED WITHOUT PREJUDICE**. Respondent is hereby ordered to file a motion for *in camera* treatment that significantly narrows the scope of documents for which it seeks *in camera* treatment. Respondent's request for *in camera* treatment shall be made only for those pages of documents or of deposition transcripts that contain information that meets the *in camera* standard.

Respondent shall have five business days to file its motion. Complaint Counsel shall have three business days to file its opposition.

ORDERED:



Stephen J. McGuire
Chief Administrative Law Judge

Date: May 5, 2004