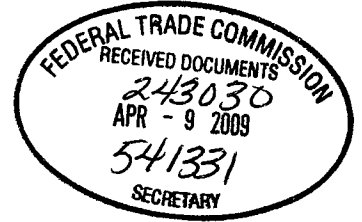


ORIGINAL
UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES



In the Matter of)
)
)
Polypore International, Inc.,) Docket No. 9327
a corporation,) Public Document
)
Respondent.)
)
)

**NON-PARTY HOLLINGSWORTH & VOSE
COMPANY'S MOTION FOR *IN CAMERA* TREATMENT**

Pursuant to 16 C.F.R. § 3.45(b), non-party Hollingsworth & Vose Company (“H&V”) moves for an order requesting *in camera* treatment, at the hearing in this matter, of certain portions of documents and testimony set forth in the attached Appendix A. In support of this Motion, H&V respectfully refers to the accompanying affidavit of Thomas A. White, and further states:

1. H&V is a privately-held, family-owned company founded in 1843. It is a leading manufacturer of specialty papers and nonwoven fabrics for various commercial and industrial applications. H&V’s Battery Products Business Unit manufactures battery separators, including absorptive glass mat (“AGM”) separators for use in valve-regulated lead acid (“VRLA”) batteries. H&V’s AGM separators are sold to battery manufacturers for use in automotive, telecommunications, and uninterruptible power supply applications. The Battery Products Business Unit makes other battery separators, including those for use in alkaline manganese batteries. Separators for alkaline manganese batteries are made of different materials than AGM battery separators and are used for different purposes. Discovery of

H&V in this case has been limited to AGM battery separators.

2. Complaint Counsel and Respondent have made numerous discovery requests of H&V relating to H&V's AGM battery separator business. During the pre-complaint and discovery stages, H&V responded to three subpoenas for documents and made four witnesses available to testify. H&V designated its non-public, commercially-sensitive materials provided during the investigative stage as "Confidential," in accordance with 15 U.S.C. § 46(f) and 16 C.F.R. § 4.10(a)(2). During the course of discovery, H&V submitted materials pursuant to the Protective Order Governing Discovery Material entered in this matter and dated October 23, 2008, and additionally sought and obtained, by consent, a protective order specifically governing H&V's discovery (the "H&V Protective Order")¹ that provided for a "Highly Confidential – Outside Counsel and Expert Only" designation, on the ground that H&V was producing confidential documents the disclosure to Respondent which would have caused competitive harm to H&V. Pursuant to the H&V Protective Order, these materials were not permitted to be shown to anyone at Polypore International, Inc., including to the company's Special In-House Counsel.

3. On March 27 and 30, 2009 respectively, Complaint Counsel and counsel for the Respondent identified documents and testimony provided by H&V that might be introduced into evidence at the hearing commencing on May 12, 2009. H&V now seeks *in camera* protection for the most commercially sensitive of those documents and testimony.

4. Under Commission rules, documents and testimony may be granted *in camera* treatment where their disclosure will "likely result in a clearly defined, serious injury" to the person or corporation whose records are involved. 16 C.F.R. § 3.45(b). "That showing can

¹ The H&V Protective Order is attached hereto at Appendix B.

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.” *In the Matter of Union Oil Co. of Cal.*, Dkt. No. 9305, 2004 FTC LEXIS 197, at *1-*2 (Oct. 7, 2004) (Chappell, J.) (citations omitted).

5. H&V has reviewed the documents and testimony designated for trial and carefully identified those portions containing highly proprietary, commercially-sensitive information, that is maintained in strict confidence by H&V and retains significant market value that will be compromised if disclosed to a competitor.

6. As discussed in greater depth in the Affidavit of Thomas A. White submitted in support of this Motion (“White Aff.”), H&V seeks *in camera* treatment for the following types of information:

a. Market Strategy and Product Development: Included in this category are high-level strategic planning and product development documents and testimony. This information constitutes the company’s core secrets. (White Aff. ¶ 5(a)). Even the internal distribution of these documents is limited, often only to senior management. (*Id.*) Chief among these documents are those identifying H&V’s primary strategic and product development initiative, the existence of which has been maintained confidentially with the exception of those customers who are testing a prototype pursuant to confidentiality agreements. (*Id.*) The disclosure to H&V’s competitors of the nature of its product development efforts, the specific strategies being pursued, the analysis underlying H&V’s strategy, or even the mere existence of this project would harm H&V by allowing competitors to prepare to counteract H&V’s strategies. (*Id.*)

All of the documents in this category are designated “H&V Highly Confidential - Outside Counsel and Experts Only.” (*Id.*) Because these documents reflect the company’s long-term plans, which have been in place and will continue to be implemented over an extended time frame, H&V seeks to protect them for a ten-year period. *See, e.g., In the Matter of Evanston Northwestern Healthcare Corp.*, Dkt. No. 9315, 2005 FTC LEXIS 38, at *19-*21 (Jan. 26, 2005) (granting ten-year *in camera* treatment to non-party’s recent business plans, strategic analyses, marketing recommendations, and capital budget projections).

b. Prices: H&V seeks to protect from public disclosure its pricing information. The H&V products relevant to this matter — AGM battery separators — are largely custom-made. (White Aff. ¶ 5(b)). Pricing for these custom products is negotiated on a customer-by-customer and product-by-product basis. (*Id.*) H&V protects its pricing information by entering non-disclosure agreements with customers so competitors do not have access to H&V’s prices or negotiations. (*Id.*) Documents produced during discovery that contained prices or that contained information permitting a determination of prices were designated “Highly Confidential - Outside Counsel and Expert Only.” (*Id.*) Public disclosure of H&V’s pricing will afford its competitors an unfair advantage in competing for business. (*Id.*) Since H&V’s average pricing levels have remained relatively stable over the past five years and are expected to remain stable for the next five years, H&V seeks to protect its pricing information for a five-year period. *See, e.g., In the Matter of N. Tex. Specialty Physicians*, Dkt. No. 9312, 2004 FTC LEXIS 109, at *16-*18 (Apr. 23, 2004) (Chappell, J.) (granting five-year *in camera* treatment to documents containing fee schedules and contracted

prices).

c. Sales Volume and Revenue: As a privately-held company, H&V enjoys the advantage of maintaining the confidentiality of its financial information. (White Aff. ¶ 5(c)). H&V does not publicly disclose general sales and revenue information, or sales and revenue figures at the business unit, market segment, product or regional level. (*Id.*) H&V's competitors do not have ready access to this information or even to reliable estimates of H&V's U.S. sales or revenues. (*Id.*) Other companies selling AGM battery separators in the United States are located overseas and do not have sufficiently broad exposure to the marketplace to make reliable estimates of H&V's sales or revenue, particularly in the absence of any publicly available source for this information. (*Id.*) Disclosure of this information to H&V's competitors would allow them to identify and target the largest and most profitable segments of H&V's AGM battery separator business. (*Id.*) Documents containing sales volume and revenue produced in discovery were designated "Highly Confidential - Outside Counsel and Expert Only." (*Id.*) H&V's sales volume and revenue trends are expected to remain relatively stable over the next five years. (*Id.*) H&V seeks *in camera* treatment, for a period of five years, of those documents containing current volume or revenue information and documents containing such information for prior years where the information has remained relatively unchanged to the present. *See In the Matter of Champion Spark Plug Co.*, Dkt. No. 9141, 1982 FTC LEXIS 94, at *4-*7 (Mar. 24, 1982) (granting *in camera* treatment, for between 5 and 10 years, to documents revealing non-party's volume of sales to specific customers and annual sales volume, profits, and costs).

d. Market Share: H&V analyzes its share of the battery separator business by various product lines, market segments and geographic territories. (White Aff. ¶ 5(d)). The company's market share analyses are based upon and arise from H&V's *actual sales volume and revenue* in the particular business line, segment or geographic area. (*Id.*) H&V seeks the protection of market share information which reflects H&V's actual volume or revenue. H&V has been careful to select for *in camera* protection only those market share calculations that are current or that have not appreciably changed over time. (*Id.*) Market share information that is dated and no longer reflective of the current marketplace has not been designated for *in camera* treatment. (*Id.*) H&V's documents containing market share analysis were marked "Highly Confidential - Outside Counsel and Expert Only." (*Id.*) H&V requests that these documents be subject to *in camera* treatment for a period of five years, consistent with treatment of its sales and revenue information. *See, e.g., In the Matter of Champion Spark Plug Co.*, Dkt. No. 9141, 1982 FTC LEXIS 85, at *3 (Apr. 5, 1982) (granting five-year *in camera* treatment to documents that "will give competitors a definite picture of [movant's] relative size in a particular product line market which competitors could employ to their advantage").

e. Customer Information: H&V enters confidentiality agreements with customers and otherwise maintains a policy of preserving the confidentiality of sales and contractual terms, sales volumes and purchasing history of its customers. (White Aff. ¶ 5(e)). During discovery and with the consent of Respondent and Complaint Counsel, customer names were redacted from documents; however, some documents identified by the parties as potential trial exhibits were produced during the

investigative portion of this case and did contain customer names. (*Id.*) Disclosure of this information will harm H&V by revealing the nature and scope of its customer relationships, allowing competitors to compete more effectively with respect to these customers. (*Id.*) H&V seeks *in camera* treatment for a period of five years for documents identifying a particular customer's sales volume, purchasing history, or sales or contractual terms. See *Champion Spark Plug Co.*, Dkt. No. 9141, 1982 FTC LEXIS 94, at *4-*5 (granting 5-year *in camera* treatment to document showing sales to specific customers).

f. Alkaline battery separator business: Several documents designated for trial contain information on H&V's market strategy and sales of battery separators for alkaline (as opposed to VRLA) batteries. The information contained in these documents concerning alkaline battery separators is maintained with strict confidentiality. (White Aff. ¶ 5(f)). H&V understands that alkaline batteries and alkaline battery separators are not a subject of this proceeding. H&V seeks *in camera* protection for a term of five years for this information on the grounds that it is not relevant to the proceeding. See *In the Matter of Int'l Tel. & Tel. Corp.*, Dkt. No. 9000, 1978 FTC LEXIS 99, at *1-*2 (Nov. 16, 1978) (*in camera* status granted to portions of documents "not relevant to any viable issue in this proceeding").

7. In addition to the documents and testimony discussed above, Mr. White's Affidavit supporting this Motion discusses, in considerable detail, the specific information from the documents and testimony that H&V considers to be deserving of *in camera* treatment. In particular, Mr. White describes the nature of the company's confidential strategic plans and product development efforts. (See, e.g., White Aff. ¶¶ 5(a), 7, 8, 11). Accordingly, H&V

seeks *in camera* protection of Mr. White's Affidavit and the accompanying exhibits for a period of ten years (i.e, the period of time for which *in camera* treatment is sought for strategic and product development documents).

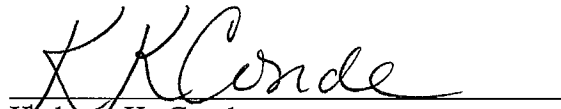
WHEREFORE, non-party Hollingsworth & Vose Company respectfully requests that (i) *in camera* status be granted for those portions of documents and testimony identified in the attached Appendix A; and (ii) *in camera* treatment be granted for a period of ten years to the accompanying Affidavit of Thomas A. White and its exhibits.

Dated: April 8, 2009

Respectfully submitted,

HOLLINGSWORTH & VOSE COMPANY

By its attorneys,



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CERTIFICATE OF SERVICE

I hereby certify that on April 8, 2009, I filed via overnight delivery and electronic mail delivery an original and two copies of the foregoing Non-Party Hollingsworth & Vose Company's Motion for *In Camera* Treatment and that the electronic copy is a true and correct copy of the paper original and that a paper copy with an original signature is being filed with:

Donald S. Clark, Secretary
Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW, Rm. H-135
Washington, DC 20580
secretary@ftc.gov

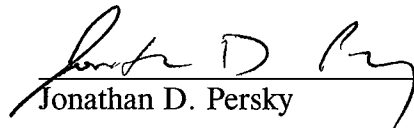
I hereby certify that on April 8, 2009, I caused to be served one copy via electronic delivery and two copies via overnight mail delivery a copy of the foregoing Non-Party Hollingsworth & Vose Company's Motion for *In Camera* Treatment upon:

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
oalj@ftc.gov

I hereby certify that on April 8, 2009, I caused to be served via electronic delivery and first-class mail delivery a copy of the foregoing Non-Party Hollingsworth & Vose Company's Motion for *In Camera* Treatment on:

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Jonathan D. Persky

APPENDIX A

Documents and Testimony for Which *In Camera* Treatment is Sought

Exhibit / Deposition	Pages / Line Numbers	Length of <i>In Camera</i> Treatment Requested
RX95	HV002474	10 years
	HV002476-HV002477	10 years
	HV002487-HV002491	10 years
	HV002497	10 years
	HV002501-HV002506	10 years
	HV002509-HV002511	10 years
	HV002513-HV002520	10 years
RX97	HV002376-HV002377	10 years
	HV002379-HV002380	10 years
	HV002388-HV002392	10 years
	HV002395-HV002398	10 years
	HV002400-HV002417	10 years
	HV002419-HV002424	10 years
	HV002432-HV002434	10 years
	HV002438	10 years
	HV002440-HV002452	10 years
	HV002454	10 years
	HV002458-HV002460	10 years
	HV002462-HV002466	10 years
RX96	HV002525-HV002533	5 years
RX94	HV003220-HV003226	10 years
RX93	HV002546-HV002549	10 years
RX98	HV003812-HV003826	10 years
	HV003828-HV003862	10 years
	HV003864-HV003868	10 years
RX382	HV003208-HV003219	5 years
RX104	HV003435-HV003437	5 years
RX105	HV004076-HV004101	5 years
RX102	HV004072-HV004075	5 years
RX106	HV003424-HV003430	5 years
	HV003434	5 years
RX107	HV003464	5 years
RX103	HV003727.1-HV003727.5	5 years
	HV003727.11	5 years
	HV003727.13	5 years
RX363	HV000206-HV000208	5 years
RX364	HV000212-HV000214	5 years
RX365	HV000219-HV000221	5 years
RX381	HV003133-HV003137	5 years
Robert Cullen Feb. 6, 2009 (Vol. II)	p. 205, line 9-p. 206, line 7	10 years
	p. 225, line 18-p. 226, line 24	10 years
	p. 227, line 22-p. 228, line 1	10 years
	p. 228, lines 11-23	10 years
	p. 230, lines 18-20	5 years
	p. 233, lines 3-13	10 years
	p. 234, line 20-p. 235, line 16	10 years
p. 241, line 10-p. 242, line 17	5 years	
p. 244, line 1-p. 245, line 5	10 years	

Exhibit / Deposition	Pages / Line Numbers	Length of <i>In Camera</i> Treatment Requested
	p. 249, line 9-p. 251, line 4 p. 258, lines 7-23 p. 271, lines 3-10 p. 275, lines 12-17 p. 286, line 2-p. 287, line 12	10 years 10 years 10 years 10 years 5 years
Jeffrey Jordan July 30, 2008	p. 24, line 19-p. 25, line 1	5 years
Kevin Porter Feb. 4, 2009	p. 135, lines 3-25 p. 138, line 18-p. 140, line 3 p. 145, lines 12-23 p. 147, lines 1-17 p. 149, line 16-p. 151, line 16 p. 153, lines 22-24 p. 168, lines 7-13	10 years 10 years 10 years 10 years 10 years 10 years 10 years
Thomas White Feb. 6, 2009	p. 52, line 23-p. 53, line 25 p. 54, lines 13-25	10 years 10 years

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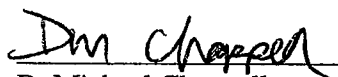
hereto as Exhibit A.

3. All deposition transcripts shall be treated as Confidential Material in accordance with the October 23 Protective Order, unless the testimony concerns a document marked H&V Highly Confidential or unless counsel designates testimony as H&V Highly Confidential on the record, in which case such testimony and any information contained in such testimony shall be treated as H&V Highly Confidential, in accordance with the terms of this Protective Order Governing Discovery from Hollingsworth & Vose Company.

4. Except as provided otherwise herein, all H&V Highly Confidential Material shall be treated in accordance with the terms of the October 23 Protective Order governing Confidential Material.

5. Except as provided otherwise herein, the provisions of the October 23 Protective Order shall remain unaltered.

ORDERED:



D. Michael Chappell
Administrative Law Judge

Date: February 4, 2009