

ORIGINAL



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

_____)
In the Matter of _____)
POLYPORE INTERNATIONAL, INC., _____)
Respondent. _____)
_____)

Docket No. 9327

**ORDER ON NON-PARTY MOORE’S MOTIONS FOR *IN CAMERA* TREATMENT AND
NON-PARTY ENTEK’S SUPPLEMENTAL MOTION FOR *IN CAMERA* TREATMENT**

I.

Pursuant to Rule 3.45(b) of the Commission’s Rules of Practice and the October 22, 2008 Scheduling Order in this matter, non-party The Moore Company (“Moore”) submitted on May 4, 2009 a motion for *in camera* treatment for materials that Respondent had identified as proposed trial exhibits, and submitted on May 5, 2009 a motion for *in camera* treatment for materials that Complaint Counsel had identified as proposed trial exhibits. Non-party ENTEK International LLC (“ENTEK”) submitted on May 6, 2009 a supplemental motion for *in camera* treatment of documents that were, ENTEK states, recently identified by Respondent as proposed trial exhibits and not included in ENTEK’s prior motion for *in camera* treatment. Neither Complaint Counsel nor Respondent have filed an opposition to either of Moore’s motions or to ENTEK’s supplemental motion.

An Order on Non-Parties’ Motions for *In Camera* Treatment was entered in this matter on May 6, 2009. The legal standards that apply to motions for *in camera* treatment, including the instant motions, are set forth in that Order.

II.

Each of the non-parties’ motions for *in camera* treatment, as described below, complied with the requirements for seeking *in camera* treatment. Each motion was supported by a declaration of an individual within the company who had reviewed the documents. The declarations supported the applicants’ claims that the documents are sufficiently secret and sufficiently material to their business that disclosure would result in serious competitive injury. That showing was then balanced against the importance of the information in explaining the rationale of decisions at the Commission. Each motion attached the documents for which *in camera* treatment was sought. The specific motions of Moore and of ENTEK are separately addressed below.

A.

Each of Moore's motions for *in camera* treatment provides a Declaration of Guy Dawe ("Dawe Declaration"). Dawe states that he is the Managing Director of Amer-Sil, S.A. ("Amer-Sil"), a wholly-owned subsidiary of Moore. In each of his Declarations, Dawe avers that the public disclosure of the documents for which *in camera* treatment is sought, which contain information that he deems highly confidential, would significantly harm Amer-Sil's commercial and competitive interests. Each Dawe Declaration further avers: that the information in the documents is generally not disclosed outside of Amer-Sil, except insofar as it may be shared confidentially with Amer-Sil's business partners; that the information is distributed within the company only to those who have a specific need for the information; and that the employees who receive the information typically do so only upon entering into confidentiality agreements.

According to the Declaration that Dawe executed on May 1, 2009, the documents that Respondent designated as proposed trial exhibits are organized into three categories. These three categories relate to: (1) Amer-Sil's product development, (2) Amer-Sil's product marketing, customer, and sales strategy, and (3) Amer-Sil's pricing, including its prices for specific products sold to specific customers. According to the Declaration that Dawe executed on May 5, 2009, the four documents that Complaint Counsel designated as proposed trial exhibits, which Dawe discusses individually, relate to product development, strategic marketing and sales plans, customer development, and customer relations.

Moore requests *in camera* treatment for the parties' proposed trial exhibits for a specified period of either three, five, or ten years. Moore also requests *in camera* treatment, for ten years, for each of the Dawe Declarations.

A review of the Dawe Declarations in support of Moore's motions and of the documents reveals that all but one of the materials for which protection is sought meet the standards for *in camera* treatment. *In camera* treatment is DENIED for the Declaration that Dawe executed on May 1, 2009, because that Declaration, unlike the Declaration that he executed on May 5, 2009, does not warrant such treatment under the legal standards set forth in the Order on Non-Parties' Motions for *In Camera* Treatment entered in this matter on May 6, 2009. Moore also has not demonstrated circumstances warranting an extension of *in camera* treatment, either for the documents for which it seeks protection or for the Declaration that Dawe executed on May 5, 2009, beyond the five-year period typically given for business records. Accordingly, Moore's motion is GRANTED in part.

In camera treatment for a period of five years, expiring on June 1, 2014, will be extended to the documents for which Moore requests *in camera* treatment for ten years and to the Declaration that Dawe executed on May 5, 2009, as well as to the documents for which Moore requests *in camera* treatment for five years, in accordance with Section III of this Order.

In camera treatment for a period of three years, expiring on June 1, 2012, will be extended to the documents for which Moore requests *in camera* treatment of such duration, in accordance with Section III of this Order.

B.

Non-party ENTEK states that its supplemental motion for *in camera* treatment is necessitated by Respondent's identification of additional documents as proposed trial exhibits, which ENTEK had not previously addressed in its motion for *in camera* treatment on April 9, 2009. ENTEK supports its supplemental motion with a Declaration from Dan Weerts, Vice President of Sales & Marketing at ENTEK ("Weerts Declaration"). Weerts states that all of the documents for which ENTEK seeks *in camera* treatment contain confidential business information, the disclosure of which would seriously injure ENTEK's ability to compete. Weerts further states that the documents are material to ENTEK's business as core company information and/or important business records. The documents are, according to his Declaration, grouped into six subject matter categories: (1) customer contracts, (2) confidential communications with customers and/or confidential customer information, including ENTEK's strategy for keeping and/or securing additional business, (3) ENTEK's price lists, individual customer pricing, and product costs, (4) ENTEK's sales and/or capacity, (5) ENTEK's products and the testing thereof, and (6) ENTEK's global business plans and strategy. Weerts declares, for the documents in each of these subject matter categories, that the "[d]etails are disclosed only to a select group" of ENTEK employees, and that all ENTEK employees are required to sign a non-disclosure agreement covering all of the kinds of documents included in these categories.

ENTEK requests *in camera* treatment for each of these documents for a specified period of either one, three, or five years.

A review of the Weerts Declaration in support of ENTEK's supplemental motion and of the documents reveals that all of the documents sought to be protected meet the standards for *in camera* treatment. Accordingly, ENTEK's motion is GRANTED.

In camera treatment for a period of five years, expiring on June 1, 2014, will be extended to the documents for which ENTEK requests *in camera* treatment of such duration, in accordance with Section III of this Order.

In camera treatment for a period of three years, expiring on June 1, 2012, will be extended to the documents for which ENTEK requests *in camera* treatment of such duration, in accordance with Section III of this Order.

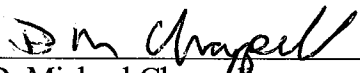
In camera treatment for a period of one year, expiring on June 1, 2010, will be extended to the documents for which ENTEK requests *in camera* treatment of such duration, in accordance with Section III of this Order.

III.

In camera treatment is appropriate only for information that is offered into evidence. The parties shall prepare a joint proposed order, with a signature line for the Administrative Law Judge, that lists by exhibit number the documents that, by this Order, have been granted *in camera* treatment and that sets forth the expiration date of *in camera* treatment for each exhibit.

Each non-party having documents or information for which *in camera* treatment has been granted by this Order shall inform its testifying current or former employees that *in camera* treatment has been extended to the material described in this Order. At the time that any documents that have been granted *in camera* treatment are offered into evidence, or before any of the information contained therein is referred to in court, the parties shall identify such documents and the subject matter therein as *in camera*, inform the court reporter of the trial exhibit number(s) of such documents, and request that the hearing go into an *in camera* session.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: May 13, 2009