

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



In the Matter of)
)
Tronox Limited et al.,)
)
)
Respondents)
_____)

PUBLIC
DOCKET NO. 9377

ORIGINAL

**DUNN-EDWARDS REQUEST FOR
IN CAMERA TREATMENT OF
FINANCIAL RECORDS**

NON-PARTY DUNN-EDWARDS' MOTION FOR *IN-CAMERA* TREATMENT

Pursuant to Rule 3.45 of the Federal Trade Commission's Rules of Practice, 16 C.F.R. § 3.45(b), non-party Dunn-Edwards respectfully moves this Court for *in camera* treatment of competitively-sensitive, confidential business documents (the "Confidential Documents"). Dunn-Edwards requests that the in-camera documents only be seen by Respondent's outside counsel and not Respondents.

Dunn-Edwards produced these documents, among others, in response to a third-party subpoena and civil investigative demand in this matter. The Federal Trade Commission ("FTC") has now notified Dunn-Edwards that it intends to introduce nineteen pages of Dunn-Edwards' documents, including the Confidential Documents, into evidence at the administrative trial in this matter. See Letter from the Federal Trade Commission dated April 19, 2018 (Attached as Exhibit 1).

Pages PX4233-005 through and including PX4233-009 and PX4233-11 contain confidential, financial, business information of Dunn-Edwards. The Confidential Documents warrant protection from public disclosure given the sensitive business information and trade secrets they contain. Thus, Dunn-Edwards submits this Motion requesting permanent in camera treatment of these Confidential Documents in their entirety.

All of the materials for which Dunn-Edwards is seeking *in camera* treatment are confidential business documents, such that if they were to become part of the public record, Dunn-Edwards would be significantly harmed. For the reasons discussed in this motion, Dunn-Edwards requests that this Court afford its confidential business documents *in camera* treatment indefinitely. In support of this motion, Dunn-Edwards relies on the Affidavit of Karl Altergott (“Altergott Declaration”), attached as Exhibit 2, which provides additional details on the documents for which Dunn-Edwards is seeking *in camera* treatment with the limitation that the documents can only be seen by Respondents’ outside counsel.

I. The Identified Documents are Secret and Material such that Disclosure Would Result in Serious Injury to Dunn-Edwards

In camera treatment of material is appropriate when its “public disclosure will likely result in a clearly defined, serious injury to the person, partnership, or corporation requesting” such treatment, 16 C.F.R. § 3.45(b). The proponent demonstrates serious competitive injury by showing that the documents are secret and that they are material to the business. *In re General Foods Corp.*, 95 F.T.C. 352, 355 (1980); *In re Dura Lube Corp.*, 1999 F.T.C. LEXIS 255, *5 (1999). In this context, courts generally attempt “to protect confidential business information from unnecessary airing.” *HP. Hood & Sons. Inc.*, 58 F.T.C. 1184, 1188 (1961).

In considering both secrecy and materiality, the Court may consider: (1) the extent to which the information is known outside of the business; (2) the extent to which it is known by employees and others involved in the business; (3) the extent of measures taken to guard the secrecy of the information; (4) the value of the information to the business and its competitors; (5) the amount of effort or money expended in developing the information; and (6) the ease or difficulty with which the information could be acquired or duplicated by others. *In re Bristol-Myers Co.*, 90 F.T.C. 455, 456-457 (1977).

The Confidential Documents are both secret and material to Dunn-Edwards' business as discussed in detail in the Altergott Declaration, the materials at issue contain information of competitive significance to Dunn-Edwards, such as financial data and sales volumes . (Altergott Declaration.) Such information and processes are proprietary to Dunn and not publicly known outside of Dunn-Edwards. *Id.* Because of the highly confidential and proprietary nature of the information and its materiality to Dunn-Edwards business, *in camera* treatment is appropriate.

Further, disclosure of the Confidential Documents will result in the loss of a business advantage to Dunn-Edwards. See *In re Dura Lube Corp.*, 1999 FTC LEXIS 255 at *7 (Dec. 23, 1999) (“The likely loss of business advantages is a good example of a ‘clearly defined, serious injury.’”). Making the documents public would result in a loss of business advantage that Dunn-Edwards has built as the result of its own substantial investments in the development of its proprietary systems and technical processes.

Finally, Dunn-Edwards status as a third party is relevant to the treatment of its documents. The FTC has held that “[t]here can be no question that the confidential records of businesses involved in Commission proceedings should be protected insofar as possible.” *H.P. Hood & Sons*, 58 F.T.C. at 1186. This is especially so in the case of a third-party, which deserves “special solicitude” in its request for *in camera* treatment for its confidential business information. See *In re Kaiser Aluminum & Chem. Corp.*, 103 FTC 500, 500 (1984) (“As a policy matter, extensions of confidential or *in camera* treatment in appropriate cases involving third party bystanders encourages cooperation with future adjudicative discovery requests.”). Dunn-Edwards' third-party status therefore weighs in favor of granting *in camera* status to the Confidential Documents.

II. The Confidential Documents Contain Trade Secrets, which will Remain Sensitive Over Time and Thus, Permanent *In Camera* Treatment is Justified

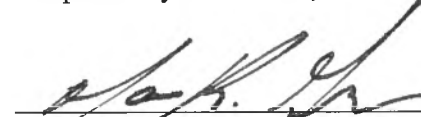
Given the highly sensitive and technical nature of the information contained in the Confidential Documents, Dunn-Edwards requests that they be given *in camera* treatment indefinitely. The trade secret information contained in the Confidential Documents “is likely to remain sensitive or become more sensitive with the passage of time” such that the need for confidentiality is not likely to decrease over time. *In re Dura Lube Corp.*, 1999 FTC LEXIS at *7-8. ‘Trade secrets’ - such as secret formulas and secret technical information - are granted more protection than ordinary business documents. *Id.* at *5. Here, as described in the Altergott Declaration, the Confidential Documents contain business and trade secrets in the form of internal Dunn-Edwards production and sales information. (Altergott Declaration.) The competitive significance of the technical formulas and criteria is unlikely to decrease over time and thus, indefinite protection from public disclosure is appropriate.

III. Conclusion

For the reasons set forth above and in the accompanying Altergott Declaration, Dunn-Edwards respectfully requests that this Court grant permanent *in camera* treatment for the Confidential Documents, PX4233-005 through and including PX4233-009 and PX4233-11, in their entirety and that only Respondents’ outside counsel are permitted to view these documents.

Dated: April 26, 2018

Respectfully submitted,



Marc R. Greenberg

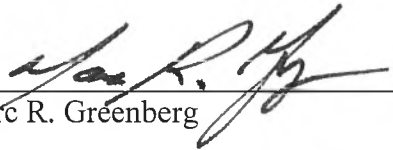
Musick, Peeler & Garrett LLP
One Wilshire Boulevard, Suite 2000
Los Angeles, CA 90017
(213) 629-76000
Counsel for Dunn-Edwards

STATEMENT REGARDING MEET AND CONFER

The undersigned certifies that counsel for Non-party Dunn-Edwards notified counsel for the parties via email on or about April 25, 2018 that it would be seeking *in camera* treatment of the Confidential Documents. Counsel for the Federal Trade Commission, Erick Elmore informed me on April 25, 2018 that the FTC would not object to Dunn-Edwards' motion. Respondents' counsel, Jacob Boyars, also indicated that they have no objection to Dunn-Edwards' motion.

Dated: April 26, 2018

Respectfully submitted,



Marc R. Greenberg

Musick, Peeler & Garrett LLP
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Los Angeles, CA 90017
(213) 629-7600
m.greenberg@musickpeeler.com
Counsel for Dunn-Edwards

DECLARATION OF MARC R. GREENBERG IN SUPPORT OF NON-PARTY DUNN-EDWARDS' MOTION FOR *IN CAMERA* TREATMENT

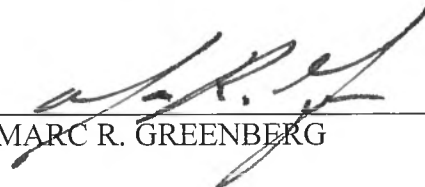
I, Marc R. Greenberg, hereby declare as follows:

1. I am an attorney duly licensed by the State of California and a partner with the law firm of Musick Peeler & Garrett the attorney for Dunn-Edwards. I make this declaration in support of Dunn-Edwards' Motion for *In Camera* Treatment (the "Motion"). I have personal knowledge of the matters stated herein and, if called upon to do so, could competently testify about them.

2. I have reviewed and am familiar with the documents Dunn-Edwards produced in the above-captioned matter in response to a subpoena and civil investigative demand from the Federal Trade Commission. I have reviewed the materials with the President of Dunn-Edwards, Karl Altergott, and I believe that the information contained in pages PX4233-005 through and including PX4233-009 and PX4233-11, is confidential and proprietary to Dunn-Edwards. Further, that Dunn-Edwards has contractual obligations to maintain the confidentiality of the information contained in these documents.

3. Attached as Exhibit 1 is a true and correct copy of the April 19, 2018 letter Dunn-Edwards received from the Federal Trade Commission.

I declare under penalty of perjury, under the laws of the United States, that the foregoing is true and correct. Executed April 25, 2018, in Los Angeles, California.



MARC R. GREENBERG

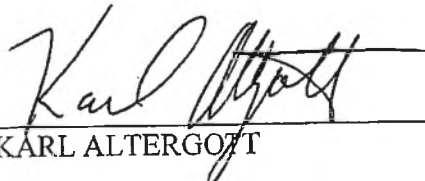
DECLARATION OF KARL ALTERGOTT IN SUPPORT OF NON-PARTY DUNN-EDWARDS' MOTION FOR *IN CAMERA* TREATMENT

I, Karl Altergott, hereby declare as follows:

1. I am President and CEO of Dunn-Edwards. I have held this position since 2009. I make this declaration in support of Dunn-Edwards' Motion for *In Camera* Treatment (the "Motion"). I have personal knowledge of the matters stated herein and, if called upon to do so, could competently testify about them.
2. Given my position at Dunn-Edwards, I am familiar with the type of information contained in the documents at issue and its competitive significance to Dunn-Edwards. Based on my review of the documents, my knowledge of Dunn-Edwards' business, and my familiarity with the confidentiality protection afforded this type of information by Dunn-Edwards, I submit that the disclosure of these documents to the public and to competitors of Dunn-Edwards would cause serious competitive injury to Dunn-Edwards.
3. The FTC has informed Dunn-Edwards that it intends to use the documents that Dunn-Edwards produced in response to a subpoena at the administrative hearing in this matter. Documents PX4233-005 through and including PX4233-009 and PX4233-11 contain particularly sensitive and confidential business information and trade secrets. Even the identification of our suppliers is confidential and proprietary. As described in the Motion, Dunn-Edwards seeks permanent *in camera* protection of these documents.
4. Documents PX4233-005 through and including PX4233-009 and PX4233-11 are a snapshot of Dunn-Edwards sales internal calculation of sales information by product quoted in dollars and in pounds for the years 2014 through 2017, and discloses the identity of Dunn-Edwards' suppliers. Dunn-Edwards does not make this type of information available to its

competitors or customers and Dunn-Edwards does not share this information with non-Dunn-Edwards personnel in the ordinary course of business.

I declare under penalty of perjury, under the laws of the United States, that the foregoing is true and correct. Executed April 26, 2018 in LOS ANGELES, CA.


KARL ALTERGOTT

DECLARATION OF MARC R. GREENBERG IN SUPPORT OF NON-PARTY DUNN-EDWARDS' MOTION FOR *IN CAMERA* TREATMENT

I, Marc R. Greenberg, hereby declare as follows:

1. I am an attorney duly licensed by the State of California and a partner with the law firm of Musick Peeler & Garrett the attorney for Dunn-Edwards. I make this declaration in support of Dunn-Edwards' Motion for *In Camera* Treatment (the "Motion"). I have personal knowledge of the matters stated herein and, if called upon to do so, could competently testify about them.

2. I have reviewed and am familiar with the documents Dunn-Edwards produced in the above-captioned matter in response to a subpoena and civil investigative demand from the Federal Trade Commission. I have reviewed the materials with the President of Dunn-Edwards, Karl Altergott, and I believe that the information contained in pages PX4233-005 through and including PX4233-009 and PX4233-11, is confidential and proprietary to Dunn-Edwards. Further, that Dunn-Edwards has contractual obligations to maintain the confidentiality of the information contained in these documents.

3. Attached as Exhibit 1 is a true and correct copy of the April 19, 2018 letter Dunn-Edwards received from the Federal Trade Commission.

I declare under penalty of perjury, under the laws of the United States, that the foregoing is true and correct. Executed April 25, 2018, in Los Angeles, California.



MARC R. GREENBERG

EXHIBIT A



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

WASHINGTON, D.C. 20580

Bureau of Competition
Mergers II Division

April 19, 2018

VIA EMAIL TRANSMISSION

Dunn-Edwards Corporation
c/o Karl Altergott, CEO
4885 E. 52nd Place
Los Angeles, CA 90058
Karl.altergott@dunedwards.com

RE: *In the Matter of Tronox Limited et al.*, Docket No. 9377

Dear Karl:

By this letter we are providing formal notice, pursuant to Rule 3.45(b) of the Commission's Rules of Practice, 16 C.F.R. § 3.45(b), that Complaint Counsel intends to offer the documents referenced in the enclosed Attachment A into evidence in the administrative trial in the above-captioned matter. For your convenience, a copy of the documents and testimony will be sent to you in a separate email with an FTP link.

The administrative trial is scheduled to begin on May 18, 2018. All exhibits admitted into evidence become part of the public record unless Administrative Law Judge D. Michael Chappell grants *in camera* status (i.e., non-public/confidential).

For documents or testimony that include sensitive or confidential information that you do not want on the public record, you must file a motion seeking *in camera* status or other confidentiality protections pursuant to 16 C.F.R. §§ 3.45 and 4.10(g). Judge Chappell may order that materials, whether admitted or rejected as evidence, be placed *in camera* only after finding that their public disclosure will likely result in a clearly-defined, serious injury to the person, partnership, or corporation requesting *in camera* treatment.

Motions for *in camera* treatment for evidence to be introduced at trial must meet the strict standards set forth in 16 C.F.R. § 3.45 and explained in *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *In re Jerk, LLC*, 2015 FTC LEXIS 39 (Feb. 23, 2015); *In re Basic Research, Inc.*, 2006 FTC LEXIS 14 (Jan. 25, 2006). Motions also must be supported by a declaration or affidavit by a person qualified to explain the confidential nature of the material. *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 66 (Apr. 23, 2004). For your convenience, we included, as links in the cover email, an example of a third-party motion (and the accompanying declaration or affidavit) for *in camera* treatment that was filed and granted in an FTC administrative

proceeding. If you choose to move for *in camera* treatment, you must provide a copy of the document(s) for which you seek such treatment to the Administrative Law Judge. Also, you or your representative will need to file a Notice of Appearance in the administrative proceeding. For more information regarding filing documents in adjudicative proceedings, please see <https://www.ftc.gov/faq/ftc-info/file-documents-adjudicative-proceedings>.

Please be aware that under the current Second Revised Scheduling Order (revised on February 23, 2018), **the deadline for filing motions seeking *in camera* treatment is May 1, 2018**. A copy of the February 23, 2018 Second Revised Scheduling Order and the December 20, 2017 original Scheduling Order, which contains Additional Provisions, can be found at <https://www.ftc.gov/enforcement/cases-proceedings/171-0085/tronoxcrystal-usa>.

If you have any questions, please feel free to contact me at (202) 326-3109.

Sincerely,

/s/ Eric Elmore
Eric Elmore
Counsel Supporting the Complaint

Attachment

Attachment A

Exhibit No.	Full Name	Date	BegBates	EndBates
PX4233	Dunn Edwards Corp's Responses to Civil Investigative Demand	7/17/2017	PX4233-001	PX4233-019

Notice of Electronic Service

I hereby certify that on April 26, 2018, I filed an electronic copy of the foregoing NON-PARTY DUNN EDWARDS' MOTION FOR IN-CAMERA TREATMENT, with:

D. Michael Chappell
Chief Administrative Law Judge
600 Pennsylvania Ave., NW
Suite 110
Washington, DC, 20580

Donald Clark
600 Pennsylvania Ave., NW
Suite 172
Washington, DC, 20580

I hereby certify that on April 26, 2018, I served via E-Service an electronic copy of the foregoing NON-PARTY DUNN EDWARDS' MOTION FOR IN-CAMERA TREATMENT, upon:

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