

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

In the Matter of

**Altria Group, Inc.
a corporation,**

and

**Juul Labs, Inc.
a corporation,**

Respondents.

Docket No. 9393

**RESPONDENT ALTRIA GROUP INC.'S FOURTH MOTION
FOR *IN CAMERA* TREATMENT OF CERTAIN TRIAL EXHIBITS**

Altria Group, Inc. (“Altria”) respectfully moves under 16 C.F.R. § 3.45 for *in camera* treatment of two trial exhibits, RX0944 and RX0950, at the citations listed in Exhibit 1. RX0944 was added by consent to the parties’ joint exhibit list during trial, and further analysis of the document made clear that this motion was necessary to protect sensitive information in both RX0944 and RX0950, which was on the joint exhibit list filed at the outset of trial.

As explained here and in the declaration of Elizabeth A. O’Hara, Director, Litigation Support & Technology, at Altria Client Services, LLC (attached as Exhibit 2), this motion should be granted public disclosure of the information in the selected pages of these two exhibits “will likely result in a clearly defined, serious injury” to Altria. 16 C.F.R. § 3.45(b).

I. LEGAL STANDARD

Parties to a Rule 3 proceeding may move the Court to “obtain *in camera* treatment for material, or portions thereof, offered into evidence.” 16 C.F.R. § 3.45(b). *In camera* treatment is appropriate if public disclosure of the information is likely to “result in a clearly defined, serious injury to the person, partnership, or corporation requesting *in camera* treatment.” *Id.*

“[M]aterial made subject to an *in camera* order will be kept confidential and not placed on the public record of the proceeding in which it was submitted.” 16 C.F.R. § 3.45(a). “Only respondents, their counsel, authorized Commission personnel, and court personnel concerned with judicial review may have access thereto, provided that the Administrative Law Judge, the Commission and reviewing courts may disclose such *in camera* material to the extent necessary for the proper disposition of the proceeding.” 16 C.F.R. § 3.45(a).

In camera review may be appropriate not just for trade secrets and highly detailed cost data, but also a wide spectrum of ordinary business records “such as customer names, pricing to customers, business costs and profits, as well as business plans, marketing plans, or sales documents.” *In the Matter of 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55, at *5-6 (F.T.C. April 4, 2017).

II. ARGUMENT

Altria requests *in camera* treatment for certain passages of two exhibits that were used at trial. As documents reflecting Altria’s regulatory analyses and strategy, including its efforts and analyses related to JLI’s PMTA filings, that would cause serious and clearly defined injury to Altria if made public, protection is warranted for five years for each of the passages of the exhibits listed in Exhibit 1.

The passages concern Altria’s regulatory analyses and strategy, and [REDACTED]. In particular, these passages reflect [REDACTED]. Disclosure of this information would not only reveal Altria’s regulatory strategy and scientific processes, but could also be injurious to JLI, whose PMTA has not yet been granted. The Court granted protection for five years to similar documents in its May 19, 2021 Order. Because Altria would experience a

clearly defined, serious injury if the information on regulatory strategy in these documents were publicly disclosed, Altria respectfully requests that the same protection be granted here.

III. CONCLUSION

Given the risk that public disclosure of these materials would cause serious injury to its business, Altria respectfully requests an *in camera* order to protect the documents or portions thereof from public disclosure for five years.

Dated: June 29, 2021

By: /s/ Jonathan Moses

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[PROPOSED] ORDER

Upon consideration of Altria Group, Inc.'s Fourth Motion for *In Camera* Treatment of Certain Trial Exhibits, it is hereby

ORDERED, that Altria's motion is GRANTED, and it is further

ORDERED, that pursuant to Rule 3.45(b) of the Federal Trade Commission Rules of Practice, 16 C.F.R. § 3.45(b), the documents identified in Exhibit 1 to the motion shall be subject to *in camera* treatment and will be kept confidential and not placed on the public record of this proceeding.

Date: _____

D. Michael Chappell
Chief Administrative Law Judge

EXHIBIT 1

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EX	Description	Date	Family Begin Bates	Family End Bates	Reason for Confidentiality	Citations	Years of Protection
RX0944	Email from W. Gardner to J. Murillo, et al. re: JUUL Follow Up meeting attaching juul baseline plan proposal_april 2019_merged edits_v6.pptx	04/23/2019	ALGFTC0007420369	ALGFTC0007420370	Sensitive information and analysis concerning regulatory strategy	-005 through -010 -014 through -015 -017 through -018 -020 through -021 -023 through -024 -026 through -033 -035 through -036	Five years
RX0950	Email from W. Gardner to J. Murillo re: JUUL deck attaching JUUL PMTA Evaluation_executive summary_v6.pptx	06/03/2019	ALGFTC0007425275	ALGFTC0007425277	Sensitive information and analysis concerning regulatory strategy	-007 through -009 -012 through -013 -015 through -016 -018 through -022	Five years

EXHIBIT 2

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DECLARATION OF ELIZABETH A. O'HARA

I, Elizabeth A. O'Hara, state as follows:

1. I am employed by Altria Client Services LLC ("ALCS"), a service company of Altria Group, Inc. ("Altria Group"). I serve as Director, Litigation Support. In that capacity I focus on providing Altria and its operating companies (referred to within collectively as "Altria") with legal services, including those related to ongoing litigations.

2. I submit this declaration in support of Altria's Fourth Motion for *in camera* Treatment of Certain Trial Exhibits (the "Motion") made in compliance with the Federal Trade Commission Rules of Practice for Adjudicative Proceedings, 16 C.F.R. § 3.45. Altria seeks *in camera* treatment for the trial exhibits and portions of exhibits listed in Exhibit 1.

3. I have personal knowledge of the trial exhibits at issue in the Motion, their competitive significance to Altria, and the level of confidentiality associated with their contents. Based on my review of the materials listed in Exhibit 1, my conversations with the individuals who reviewed the documents at my direction, my knowledge of Altria's business,

and my familiarity with the confidentiality protection afforded this type of information by Altria, I submit that disclosure of the exhibits to the public and/or Altria's competitors and customers would result in serious competitive injury to Altria.

4. In the ordinary course of business, Altria would treat this information as strictly confidential and would limit its disclosure to employees that need to know it to perform their business function. Altria also takes reasonable steps to protect its network and electronically stored information to prevent access by outside parties.

5. The selected portions of the documents reflect [REDACTED]
[REDACTED]. They show [REDACTED]
[REDACTED]. Public disclosure of such information would not only reveal Altria's regulatory strategy and scientific processes, but could also be injurious to JLI, whose PMTA has not yet been granted.

6. None of these selections contain the type of information that Altria would disclose to the public or to its competitors. Disclosure of this information would be a serious injury. I believe this information should remain confidential.

7. Because disclosure of the exhibits described herein is likely to cause clearly defined, serious injury to Altria, Altria respectfully requests that the portions of the exhibits listed in Exhibit 1 be given *in camera* treatment.

PUBLIC

Executed this June 29, 2021 in Richmond, VA.



Elizabeth A. O'Hara

Dated: June 29, 2021

s/ Beth Wilkinson

Beth Wilkinson
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Telephone: (202) 847-4000
Counsel for Altria Group, Inc.

CERTIFICATE OF ELECTRONIC FILING

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

Dated: June 29, 2021

s/ Beth Wilkinson

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