

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

ORIGINAL



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In the Matter of )  
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POM WONDERFUL LLC and )  
ROLL GLOBAL LLC, )  
as successor in interest to )  
Roll International Corporation, )  
companies, and )  
)

STEWART A. RESNICK, )  
LYNDA RAE RESNICK, and )  
MATTHEW TUPPER, individually and )  
as officers of the companies. )  
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DOCKET NO. 9344

**ORDER ON RESPONDENTS' RENEWED MOTION  
FOR *IN CAMERA* TREATMENT**

**I.**

Pursuant to the May 9, 2011 Order on Respondents' Motion for *In Camera* Treatment and Rule 3.45(b) of the Commission's Rules of Practice, on May 13, 2011, Respondents filed a Renewed Motion for *In Camera* Treatment ("Renewed Motion"). Complaint Counsel filed a Response on May 17, 2011. As set forth below, the Renewed Motion is GRANTED in part and DENIED in part.

**II.**

Respondents previously filed a motion seeking *in camera* treatment for 244 documents. Complaint Counsel responded with objections to 151 of those documents. The May 9, 2011 Order granted Respondents' motion for *in camera* treatment for the 93 documents to which Complaint Counsel did not object. The May 9, 2011 Order also set forth the standards by which motions for *in camera* treatment are evaluated and directed Respondents to review their requests and to submit a renewed motion for *in camera* treatment for only those documents that meet those standards. Following those directions, Respondents reviewed the disputed exhibits for which they had previously sought *in camera* treatment and identified eleven of those exhibits that Respondents believe must be protected to safeguard them from serious competitive injury. Complaint Counsel's response objects to extending *in*

*camera* treatment to seven of nine documents<sup>1</sup> and to portions of two deposition transcripts.

### III.

Respondents seek *in camera* treatment for documents falling in two categories: 1) confidential financial information; and 2) secret product specifications. For each of these documents, Respondents seek *in camera* treatment for a period of five years. Respondents support their Renewed Motion with the Declaration of Matthew Tupper, President of POM Wonderful, LLC (“POM”).

#### 1) Confidential financial information

A review of the exhibits and the justifications provided reveals that Respondents have met the standards necessary for *in camera* treatment, as set forth in the May 9, 2011 Order, for the following documents: CX0376, CX0393, CX0483, CX1195, PX0335a01, and PX0335a-2.

A review of CX0548 and CX0706 and the justifications provided reveals that Respondents have not met the standards necessary for *in camera* treatment for these two documents. These documents, dated January 2002 and January 2005, respectively, disclose the salary that Respondents paid to a consultant. Considering the presumption that *in camera* treatment will not be accorded to information that is more than three years old, as explained in the May 9, 2011 Order, Respondents have failed to show that the public disclosure of these documents will result in a clearly defined, serious injury.

#### 2) Secret product specifications, processes and manufacturing

A review of the exhibits and the justifications provided reveals that Respondents have met the standards necessary for *in camera* treatment, as set forth in the May 9, 2011 Order, for the following exhibits: CX1019 and CX1404.

#### 3) Deposition excerpts

The only deposition testimony for which Respondents seek *in camera* treatment in its Renewed Motion, on grounds that it contains confidential financial information, is PX0335, a four-page excerpt from the “Confidential Deposition of Person Most Knowledgeable of POM Wonderful LLC.”<sup>2</sup> This excerpt is narrowly tailored to a few pages of that deposition transcript.

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<sup>1</sup> PX0335a01 is Respondents’ version of the same document that Complaint Counsel lists as its exhibit CX1195, and PX0335a-2 is Respondents’ version of the same document that Complaint Counsel lists as its exhibit CX0483. Thus, while Respondents moved for *in camera* treatment of eleven exhibits, only nine documents are at issue.

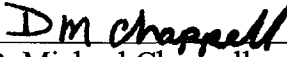
<sup>2</sup> By letter dated May 6, 2011, and not addressed in the May 9, 2011 Order, Respondents clarified their original motion for *in camera* treatment by submitting specific pages of testimony from the depositions of Dr. Harley Liker and Dr. Jean deKernion. Respondents have not included a request for *in camera* treatment for these excerpts in their Renewed Motion. Therefore, whether the excerpts from these depositions referenced in the May 6, 2011 letter meet the standards for *in camera* treatment is not addressed.

A review of PX0335 and the justifications provided reveals that Respondents have met the standards necessary for *in camera* treatment, as set forth in the May 9, 2011 Order, for PX0335.

IV.

Respondents are hereby directed to prepare a proposed order that lists by exhibit number the documents which have been granted *in camera* treatment by the May 9, 2011 Order and this May 19, 2011 Order. For each of these exhibits, *in camera* treatment has been granted for a period of five years, to expire June 1, 2016. Respondents' proposed order shall include the date on which *in camera* treatment will expire.

ORDERED:

  
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D. Michael Chappell  
Chief Administrative Law Judge

Date: May 19, 2011