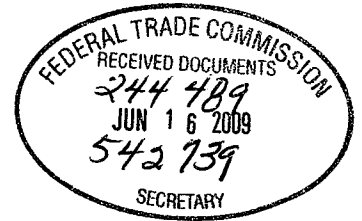


ORIGINAL

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



_____	)	
In the Matter of	)	
	)	
Polypore International, Inc.,	)	Docket No. 9327
a corporation,	)	<u>Public Document</u>
	)	
Respondent.	)	
	)	
_____	)	

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

Pursuant to 16 C.F.R. § 3.45(b) and (g), non-party Hollingsworth & Vose Company (“H&V”) moves for an order providing five-year *in camera* treatment for deposition testimony, identified in Appendix A, that was introduced into evidence by Complaint Counsel on a provisionally *in camera* basis at the hearing on May 27, 2009. H&V was not given sufficient notice in advance of the introduction of this highly confidential testimony to request *in camera* treatment. 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.

2. During the pre-complaint and discovery stages in this matter, H&V produced thousands of pages of documents and made four witnesses available to testify.

3. Prior to the hearing, Complaint Counsel and counsel for Respondent Polypore International, Inc. (“Polypore”) identified H&V documents for the hearing. Polypore also

designated H&V deposition testimony, but Complaint Counsel did not.

4. On April 9, 2009, H&V timely moved for *in camera* treatment of certain portions of documents and testimony that it considered to be especially commercially sensitive. In support of the motion, H&V submitted an affidavit of Thomas A. White, Vice President and General Manager of H&V's Battery Products Business Unit ("April 7 White Aff."). On May 6, 2009, the ALJ granted H&V's motion in part, requiring *in camera* treatment for all portions of documents and testimony identified in H&V's motion, for a period of five years (to expire June 1, 2014).

5. After the commencement of the hearing, on May 26, 2009, Complaint Counsel informed H&V that excerpts from a deposition of Robert Cullen on February 5 and 6, 2009 (collectively designated PX917), and excerpts from a deposition of Kevin Porter on February 4, 2009 (collectively designated PX925) were to be offered into evidence the following day, May 27. This was the first notice to H&V that Complaint Counsel had designated H&V testimony.

6. Because of the late notice afforded to H&V by Complaint Counsel, H&V did not have sufficient time to file a motion for *in camera* treatment with respect to this testimony prior to May 27, 2009. Complaint Counsel informed H&V that provisional *in camera* treatment would be requested for the designated testimony and subsequently represented that the ALJ issued a bench order granting provisional *in camera* treatment on May 27. Accordingly, H&V has timely filed the instant motion pursuant to 16 C.F.R. § 3.45(g) and the Modification of Order Granting Joint Motion to Revise the Scheduling Order (April 14, 2009).

7. Under Commission rules, deposition testimony may be granted *in camera* treatment where its disclosure will "likely result in a clearly defined, serious injury" which can be demonstrated by establishing that the 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." 16 C.F.R. § 3.45(b); *In the Matter of Union Oil Co. of*

*Cal.*, Dkt. No. 9305, 2004 FTC LEXIS 197, at \*1– \*2 (Oct. 7, 2004) (Chappell, J.) (internal citations omitted).

8. H&V has reviewed the testimony designated by Complaint Counsel and selectively identified those portions – not already covered by the May 6, 2009 order granting five-year *in camera* treatment – that contain highly proprietary, commercially-sensitive information maintained in strict confidence by H&V.

9. As discussed in greater depth in the Affidavit of Thomas A. White submitted in support of this Motion (“White Aff.”), as well as Mr. White’s April 7, 2009 Affidavit, H&V seeks five-year *in camera* treatment for the following types of information:

a. Market Strategy and Product Development: Included in this category is testimony concerning high-level strategic planning and product development. This information constitutes the company’s core secrets. Even the internal distribution of this information is limited, often only to senior management. (White Aff. ¶¶ 56; April 7 White Aff. ¶ 5(a)). Chief among this material is 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. (White Aff. ¶ 5; April 7 White Aff. ¶ 5(a)). 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.*) H&V seeks five-year *in camera* treatment for this testimony, consistent with the ALJ’s May 6 Order. 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. Sales Volume and Revenue: As a privately-held company, H&V enjoys

the advantage of maintaining the confidentiality of its financial information. (White Aff. ¶ 7; April 7 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. (April 7 White Aff. ¶ 5(c)). H&V seeks *in camera* treatment, for a period of five years, of testimony discussing current volume or revenue information and testimony 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).

c. Market Share: H&V analyzes its share of the battery separator business by various product lines, market segments and geographic territories. (April 7 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.*; White Aff. ¶ 8). H&V seeks the protection of market share information which reflects H&V's actual volume or revenue. H&V has selected for *in camera* protection only those market share calculations that are current or that have not appreciably changed over time. (April 7 White Aff. ¶ 5(d)). H&V requests that this testimony 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”).

d. 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. ¶ 9; April 7 White Aff. ¶ 5(e)). 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 testimony 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).

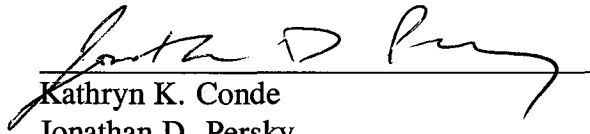
WHEREFORE, non-party Hollingsworth & Vose Company respectfully requests that *in camera* status, to expire no earlier than June 1, 2014, be granted for the testimony identified in the attached Appendix A.

Dated: June 15, 2009

Respectfully submitted,

HOLLINGSWORTH & VOSE COMPANY

By its attorneys,

A handwritten signature in black ink, appearing to read "Jonathan D. Persky", is written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that on June 15, 2009, I filed via overnight delivery and electronic mail delivery an original and two copies of the foregoing Non-Party Hollingsworth & Vose Company's Supplemental 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*

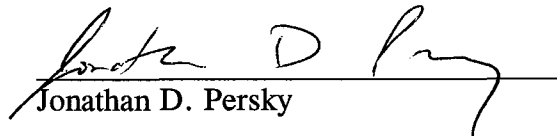
I hereby certify that on June 15, 2009, I caused to be served one copy via electronic delivery and two copies via overnight mail delivery a copy of the foregoing Non-Party Hollingsworth & Vose Company's Supplemental Motion for *In Camera* Treatment upon:

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 June 15, 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 Supplemental Motion for *In Camera* Treatment on:

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Jonathan D. Persky

**APPENDIX A**

**Documents and Testimony for Which Supplemental *In Camera* Treatment is Sought<sup>1</sup>**

<b>Exhibit / Deposition</b>	<b>Pages / Line Numbers</b>	<b>Exhibit Reference</b>
Robert Cullen Feb. 5, 2009 (Vol. I)	p. 152, lines 5-18 p. 152, line 23 – p. 153, line 10 p. 155, line 25 – p. 156, line 5 p. 156, lines 12-19 p. 156, line 24 – p. 157, line 1 p. 157, lines 11-14 p. 157, lines 22-25 p. 158, lines 23-24	PX0917-036 to -037 PX0917-037 PX0917-037 PX0917-037 PX0917-037 PX0917-038 PX0917-038 PX0917-038
Robert Cullen Feb. 6, 2009 (Vol. II)	p. 197, lines 12-18 p. 197, line 24 – p. 198, line 23 p. 226, line 25 – p. 227, line 21 p. 231, line 7 – p. 232, line 24 p. 233, line 14 – p. 234, line 6 p. 236, lines 7-11 p. 237, lines 6-13 p. 238, lines 3-6 p. 238, lines 18-20 p. 239, lines 5-7 p. 239, lines 11-13 p. 239, lines 17-19 p. 257, lines 22-25 p. 259, lines 2-15 p. 280, line 19 – p. 281, line 7 p. 287, lines 13-18 p. 294, lines 13-20 p. 299, line 16 – p. 301, line 4 p. 302, lines 15-24 p. 303, line 22 – p. 304, line 10 p. 305, lines 1-6 p. 307, line 11 – p. 308, line 2	PX0917-045 PX0917-045 to -046 PX0917-053 to -054 PX0917-055 PX0917-055 PX0917-056 PX0917-056 PX0917-056 PX0917-057 PX0917-057 PX0917-057 PX0917-057 PX0917-057 PX0917-062 PX0917-063 PX0917-068 PX0917-070 PX0917-072 PX0917-073 PX0917-073 PX0917-073 to -074 PX0917-074 PX0917-074
Kevin Porter Feb. 4, 2009	p. 134, line 12 – p. 135, line 2 p. 136, lines 8-24 p. 145, line 24 – p. 146, line 20 p. 159, lines 8-10	PX0925-033 PX0925-033 to -034 PX0925-035 PX0925-037

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<sup>1</sup> This list does not include portions of Messrs. Cullen's and Porter's testimony that were granted *in camera* treatment as a result of the Order on Non-Parties' Motions for *In Camera* Treatment, May 6, 2009.