

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

PUBLIC-REDACTED



In the Matter of
1-800 Contacts, Inc.,
a corporation.

Federal Trade Commission File No. 17-1372

NON-PARTY LENSFAST, LLC'S 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 Lensfast, LLC ("Lensfast") respectfully moves this Court for *in camera* treatment of six competitively-sensitive, confidential business documents (the "Confidential Documents"). Lensfast 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 Lensfast that it intends to introduce Lensfast's documents, including the Confidential Documents, into evidence at the administrative trial in this matter. See Letter from the Federal Trade Commission dated March 6, 2017 (attached as Exhibit A).

All of the materials for which Lensfast is seeking *in camera* treatment are confidential business documents, such that if they were to become part of the public record, Lensfast would be significantly harmed in its ability to compete in the online contact lens industry. For the reasons discussed in this motion, Lensfast requests that this Court afford its confidential business documents *in camera* treatment indefinitely. In support of this motion, Lensfast relies on the Affidavit of

Randolph Weigner ("Weigner Declaration"), attached as Exhibit B, which provides additional details on the documents for which Lensfast is seeking *in camera* treatment.

I. The Documents for Which Protection is Sought.

Lensfast seeks *in camera* treatment for the following Confidential Documents, copies of which are attached as Exhibit C.

Exhibit No.	Description	Date	BegBates	EndBates
CX 1480	Spreadsheet: Lensfast 2011 P&L	00/00/0000	Lensfast-00031	Lensfast-00031
CX 1481	Spreadsheet: Lensfast 2012 P&L	00/00/0000	Lensfast-00032	Lensfast-00032
CX 1482	Spreadsheet: Lensfast 2013 P&L	00/00/0000	Lensfast-00033	Lensfast-00033
CX 1483	Spreadsheet: Lensfast 2014 P&L	00/00/0000	Lensfast-00034	Lensfast-00034
CX 1484	Spreadsheet: Lensfast 2015 P&L	00/00/0000	Lensfast-00035	Lensfast-00035
CX 1486	Contactlens.com campaign negative keywords	00/00/0000	Lensfast-000025	Lensfast-000025
	Spreadsheet: P&L 2015		FTC-LENSFAST-000035	

II. Lensfast's Documents are Secret and Material such that Disclosure Would Result in Serious Injury to Lensfast.

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 BristolMyers Co.*, 90 F.T.C. 455, 456-457 (1977).

The Confidential Documents are both secret and material to Lensfast's business as discussed in detail in the Weigner Declaration. In sum, the materials at issue contain information of competitive significance to Lensfast, such as internal profit and loss information from which margins can be identified and used in an unfair competitive manner. Weigner Declaration at ¶¶ 7, 8. As an online contact lens distributor, Lensfast depends on its ability to purchase contact lenses and sell them at the appropriate prices to maintain a competitive margin and advantage over other online sellers and companies using other methods of distribution. Thus, it has developed internal processes for which it has spent significant resources and that are reflected in these documents. *Id.* Such information is proprietary to Lensfast and not publicly known outside of Lensfast. *Id.* Because of the highly confidential and proprietary nature of the information and its materiality to Lensfast's business, *in camera* treatment is appropriate.

Further, disclosure of the Confidential Documents will result in the loss of a business advantage to Lensfast. 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.'"). The Confidential Documents are material to Lensfast's internal business decisions which it applies in order to compete with other contact lens distributors. Weigner Declaration at ¶¶ 5-6. Making such

documents public would result in a loss of business advantage that Lensfast has built as the result of its own substantial investments in the development of its proprietary systems and technical processes.

Finally, Lensfast's 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 & Chern. 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."). Lensfast's third-party status therefore weighs in favor of granting in camera status to the Confidential Documents.

III. Conclusion.

For the reasons set forth above and in the accompanying Weigner Declaration, Lensfast respectfully requests that this Court grant permanent *in camera* treatment for the Confidential Documents in their entirety.

Dated: March 16, 2017

Respectfully submitted,



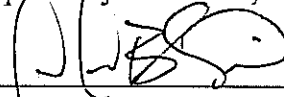
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STATEMENT REGARDING MEET AND CONFER

The undersigned certifies that counsel for Non-party Lensfast, LLC ("Lensfast") notified counsel for the parties via email on or about March 15, 2017 that it would be seeking *in camera* treatment of the Confidential Documents. Counsel for the Federal Trade Commission indicated that they would not object to Lensfast's motion.

Dated: March 16, 2017

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on March 16, 2017 I served **NON-PARTY LENSFAST, LLC'S**

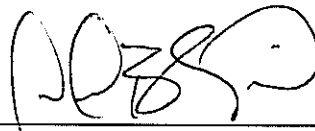
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Dated this 16th day of March, 2017.



Daniel B. Garriott
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Notice of Electronic Service

I hereby certify that on April 05, 2017, I filed an electronic copy of the foregoing Non-Party Lensfast, LLC's Motion for In Camera Treatment, with:

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I hereby certify that on April 05, 2017, I served via E-Service an electronic copy of the foregoing Non-Party Lensfast, LLC's Motion for In Camera Treatment, upon:

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