

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



In the Matter of)
)
Jerk, LLC, a limited liability company,)
also d/b/a JERK.COM, and)
)
John Fanning, individually and)
as a member of Jerk, LLC,)
)
Respondents)
)

PUBLIC
DOCKET NO. 9361

NON-PARTY STRIPE, INC.’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 Stripe, Inc. (“Stripe”) respectfully moves this Court for *in camera* treatment of two competitively-sensitive, confidential business documents (the “Confidential Documents”). Stripe 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 Stripe that it intends to introduce six of Stripe’s documents, including the Confidential Documents, into evidence at the administrative trial in this matter. *See* Letter from the Federal Trade Commission dated October 15, 2014 (attached as Exhibit A).

The FTC notified Stripe that intends to seek permanent *in camera* treatment for five of the six Stripe documents, including the Confidential Documents, which contain sensitive financial or personal information.¹ The Confidential Documents, however, warrant additional protection from public disclosure given the sensitive business information and trade secrets they contain. Thus, Stripe submits this Motion requesting permanent *in camera* treatment of the

¹ The FTC filed its motion on December 23, 2014 and seeks permanent *in camera* treatment for five Stripe documents CX0421-CX0425. Stripe joins the FTC’s request for *in camera* treatment of the personally identifiable information and/or consumer or financial information contained in these documents.

Confidential Documents in their entirety.

All of the materials for which Stripe is seeking *in camera* treatment are confidential business documents, such that if they were to become part of the public record, Stripe would be significantly harmed in its ability to compete in the payments processing industry. For the reasons discussed in this motion, Stripe requests that this Court afford its confidential business documents *in camera* treatment indefinitely. In support of this motion, Stripe relies on the Affidavit of Jon Zieger (“Zieger Declaration”), attached as Exhibit B, which provides additional details on the documents for which Stripe is seeking *in camera* treatment.

I. The Documents for Which Protection is Sought

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

Exhibit No.	Document Title/Description	Date	Beginning Bates No.	Ending Bates No.
CX0421	Account application dashboard	2012	STRIPE000010	STRIPE000017
Cx0422	Underwriting dashboard	2012-2014	STRIPE_000110	STRIPE_000195

II. Stripes Documents are Secret and Material such that Disclosure Would Result in Serious Injury to Stripe

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.” *H.P. 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 Stripe's business as discussed in detail in the Zieger Declaration. In sum, the materials at issue contain information of competitive significance to Stripe, such as underwriting data and analysis as well as internal risk assessments of its merchant-customers and applications of proprietary systems and processes. Zieger Declaration at ¶¶5-6. As a payments processor, Stripe depends on its ability to evaluate underwriting and risk management prior to engaging its merchant-customers and thus, requires internal evaluations and processes to assess the risk of any such relationships. *Id.* at ¶5. Thus, it has developed internal processes to assess risk for which it has spent significant resources and that are reflected in its dashboards. *Id.* at ¶¶ 5-6. Such information and processes are proprietary to Stripe and not publicly known outside of Stripe. *Id.* In addition, the risk of fraud and harm to its users from the public disclosure of Stripe's internal risk management and underwriting processes is likely. *Id.* Indeed, when Stripe produced the Confidential Documents, it took steps to maintain confidentiality by designating the documents "Confidential" and produced them for "attorney's eyes only" pursuant to the Protective Order in this case. Because of the highly confidential and proprietary nature of the information and its materiality to Stripe's business, *in camera* treatment is appropriate.

Further, disclosure of the Confidential Documents will result in the loss of a business advantage to Stripe. *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 Stripe’s internal underwriting and risk assessments that it applies in order to compete with other payments processors. Zieger Declaration at ¶¶5-6. Making such documents public would result in a loss of business advantage that Stripe has built as the result of its own substantial investments in the development of its proprietary systems and technical processes.

Finally, Stripe’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 & 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.”). Stripe’s third-party status therefore weighs in favor of granting *in camera* status to the Confidential Documents.

III. 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, Stripe requests that they be given *in camera* treatment indefinitely.² The trade secret information contained in the Confidential Documents “is likely to remain

² Stripe seeks the same length of time for *in camera* treatment – permanent – as the FTC is seeking in its own motion for *in camera* treatment of Stripe’s documents. To the extent such permanent treatment is not given, Stripe requests that the period of *in camera* treatment of the Confidential Documents be no less than 10 years.

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 Zieger Declaration, the Confidential Documents contain business and trade secrets in the form of internal Stripe dashboards, that apply secret formulas and technical processes in connection with Stripe’s underwriting and risk assessments that are critical to its ability to offer payments processing services. Zieger Declaration at ¶¶ 5-7. The competitive significance of the technical formulas and criteria is unlikely to decrease over time and thus, indefinite protection from public disclosure is appropriate. *Id.* at ¶ 7.

IV. Conclusion

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

Dated: December 29, 2014

Respectfully submitted,


Gwen L. Fanger
DAVIS WRIGHT TREMAINE LLP
505 Montgomery Street, Suite 800
San Francisco, CA 94111
Ph: 415.276.6500 / Fx: 415.276.6599
gwenfanger@dwt.com

Counsel for non-party, STRIPE, INC.

STATEMENT REGARDING MEET AND CONFER

The undersigned certifies that counsel for Non-party Stripe, Inc. ("Stripe") notified counsel for the parties via email on or about December 22, 2014 that it would be seeking *in camera* treatment of the Confidential Documents. Both counsel for the Federal Trade Commission and Jerk, LLC indicated that they would not object to Stripe's motion. As of the filing of the above motion, counsel for Mr. Fanning has not responded.

Dated: December 29, 2014



Gwen L. Fanger
DAVIS WRIGHT TREMAINE LLP
505 Montgomery Street, Suite 800
San Francisco, CA 94111
Ph: 415.276.6500 / Fx: 415.276.6599
gwenfanger@dwt.com

Counsel for non-party, STRIPE, INC.

EXHIBIT A



United States of America
FEDERAL TRADE COMMISSION
WESTERN REGION

Sarah Schroeder
901 Market Street, Suite 570
San Francisco, CA 94521
Phone: (415) 848-5186
Email: sschroeder@ftc.gov

October 15, 2014

Gwen Fanger
Davis Wright Tremaine LLP
505 Montgomery Street, Suite 800
San Francisco, CA 94111-6533

Re: *In the Matter of Jerk.com and John Fanning*, Dkt. 9361
Notice of Intent to Use Documents

Dear Ms. Fanger:

Thank you for Stripe Payments' cooperation in responding to the Federal Trade Commission's Civil Investigative Demand and Complaint Counsel's subpoena for documents relating to Jerk, LLC. Pursuant to Federal Trade Commission Rule of Practice 3.45(b), 16 C.F.R. § 3.45(b), and Paragraph 7 of the Court's May 28, 2014 Scheduling Order, I am writing to inform you that we intend to introduce the attached materials as evidence in the adjudicative hearing on January 27, 2015.

We intend to file a motion seeking *in camera* treatment of all personally identifiable information, including consumers' financial and contact information. Stripe Payments may also seek *in camera* treatment for any material it considers confidential by motion to the Administrative Law Judge in accordance with Commission Rules of Practice 3.45 and 3.22, 16 C.F.R. §§ 3.45, 3.22. The deadline to file a motion for *in camera* treatment is January 5, 2015. The standards for motions for *in camera* treatment are set forth in 16 C.F.R. § 3.45 and explained in *In re Dura Lube Corp.*, 1999 FTC LEXIS 255 (Dec. 23, 1999); *In re Hoechst Marion Roussel, Inc.*, 2000 FTC LEXIS 157 (Nov. 22, 2000) and 2000 FTC LEXIS 138 (Sept. 19, 2000); and *In re Basic Research, Inc.*, 2006 FTC LEXIS 14 (Jan. 25, 2006). Motions must be supported by a declaration or affidavit by a person qualified to explain the confidential nature of the documents. *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 66 (April 23, 2004).

Please feel free to contact me if you have any questions or intend to file a motion for *in camera* treatment of any documents.

Sincerely,

A handwritten signature in cursive script that reads "Sarah Schroeder".

Sarah Schroeder

EXHIBIT B

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

In the Matter of)
)
Jerk, LLC, a limited liability company, also d/b/a JERK.COM, and)
)
John Fanning, individually and as a member of Jerk,LLC,)
Respondents)
)

DOCKET NO. 9361

**DECLARATION OF JON ZIEGER IN SUPPORT OF NON-PARTY STRIPE, INC.'S
MOTION FOR *IN CAMERA* TREATMENT**

I, Jon Zieger, hereby declare as follows:

1. I am the General Counsel and Corporate Secretary of Stripe, Inc. ("Stripe"). I make this declaration in support of Non-Party Stripe, Inc.'s 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 Stripe produced in the above-captioned matter in response to a subpoena and civil investigative demand from the Federal Trade Commission. I provided a certification of authenticity as to the produced documents, including the documents that are the subject of the Motion. Given my position at Stripe, I am familiar with the type of information contained in the documents at issue and its competitive significance to Stripe. Based on my review of the documents, my knowledge of Stripe's business, and my familiarity with the confidentiality protection afforded this type of information by Stripe, I submit that the disclosure of these documents to the public and to competitors of Stripe would cause serious competitive injury to Stripe.

3. Stripe is a payments processor that provides its customers with a platform on which to accept payments online and in mobile apps. Stripe processes billions of dollars a year for thousands of businesses, from newly launched start-ups to Fortune 500 companies. In order to provide these payment services to its customers, Stripe collects and monitors various data, including bank and credit card account numbers, tax identification numbers, emails and other related financial information necessary to process payments. Stripe also applies proprietary and confidential underwriting and risk management methods and formulas in order to service its customers. Stripe often reviews this information in its internal dashboard applications. Such methods and applications distinguish Stripe's business model from its competitors and are critical to its business development and competition strategies.

4. The FTC has informed Stripe that it intends to use six of the documents that Stripe produced in response to a subpoena at the administrative hearing in this matter. Of these documents, CX0421 and CX0422 are particularly sensitive and contain confidential business information and trade secrets. As described in the Motion, Stripe seeks permanent *in camera* protection of the following documents:

Exhibit No.	Document Title/Description	Date	Beginning Bates No.	Ending Bates No.
CX0421	Underwriting dashboard	2012	STRIPE000010	STRIPE000017
Cx0422	Account application dashboard	2012-2014	STRIPE_000110	STRIPE_000195

5. CX0421 is a snapshot of Stripe's internal underwriting dashboard, which reflects the underwriting and risk analysis of merchants who apply to do business with Stripe. CX0421 also contains confidential information about Stripe's personnel and how they evaluate the customer applications. Stripe keeps this information in strict confidence because it would be

harmful to Stripe's ability to analyze the underwriting risk of potential merchant-customers if how Stripe determines whether to approve an application is publicly disclosed. Stripe has devoted significant resources to developing the underwriting and risk methodologies and technical formulas represented in CX0421. As a payments processor, Stripe depends on its relationships with its customers as well as its ability to evaluate underwriting and risk management prior to engaging such relationships. Thus, it would not only harm Stripe's ability to compete with other payments processors if its risk methodology was disclosed, but it also would harm consumers if potential merchant-customers fraudulently obtained and misused the information. Stripe does not make its internal dashboard and the information it contains available to its competitors or customers and Stripe does not share this information with non-Stripe personnel in the ordinary course of business.

6. Similarly, CX0422 is a printout of Stripe's account dashboard, which contains information about consumer transactions for a particular merchant account. Disclosure of CX0422 would reveal what systems Stripe uses to process the accounts and charges as well as how underwriters at Stripe review risk and make assessments. Stripe has devoted significant resources developing its proprietary processes and technical systems or formulas underlying and reflected in CX0422, which represent substantial competitive value to Stripe. This information is not publicly available and Stripe has devoted its resources to protecting the confidentiality of the information in CX0422. Thus, disclosure of CX0422 would harm Stripe's ability to compete by making its proprietary business systems public. In addition, Stripe seeks to avoid public disclosure of its risk assessment methodology and criteria because of its concern that the information could be used to fraudulently reverse engineer Stripe's proprietary processes and methodologies.

7. Both CX0421 and CX0422 contain business and trade secrets in the form of internal Stripe dashboards, which apply Stripe's secret formulas and technical information. Stripe uses this information in connection with its underwriting and risk assessments that are critical to its ability to offer payments processing services. The competitive significance of the technical formulas and confidential criteria in CX0421 and CX0422 is unlikely to decrease over time and thus, indefinite protection from public disclosure is appropriate.

I declare under penalty of perjury that the foregoing is true and correct. Executed December 22, 2014 at San Francisco, California.



Jon Zieger

EXHIBIT C
Hearing Exhibits Nos. CX0421 and CX0422

**MARKED CONFIDENTIAL
REDACTION IN THEIR ENTIRETY
REQUESTED**

CERTIFICATE OF SERVICE

I, Christine Coopey, declare under penalty of perjury under the laws of the State of California that the following is true and correct. On December 30, 2014, I caused to be served the following documents on the parties listed below by the manner indicated:

- **NON-PARTY STRIPE, INC.'S MOTION FOR *IN CAMERA* TREATMENT (PUBLIC VERSION AND NON-PUBLIC VERSION)**
- **NOTICE OF APPEARANCE**
- **[PROPOSED] ORDER**

The Office of the Secretary: (via hand delivery)

Donald S. Clark
Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, N.W., Room H-172
Washington, D.C. 20580

The Office of the Administrative Law Judge (via hand delivery and electronic mail (public version only))

D. Michael Chappell
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, N.W., Room H-106
Washington, D.C. 20580

Federal Trade Commission – Western Region, San Francisco (via overnight delivery and electronic mail (public version only))

Sarah Schroeder
Federal Trade Commission
901 Market Street, Suite 570
San Francisco, CA 94103

Counsel for John Fanning (via overnight delivery and electronic mail (public version only))

Peter F. Carr, II
Eckert, Seamans, Cherin & Mellott, LLC
Two International Place, 16th Floor
Boston, MA 02110

Counsel for Jerk, LLC (via overnight delivery and electronic mail (public version only))

David Duncan
Zalkind Duncan & Bernstein LLP
65A Atlantic Avenue
Boston, MA 02110



Christine Coopey

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

In the Matter of)	
)	
Jerk, LLC, a limited liability company, also d/b/a JERK.COM, and)	DOCKET NO. 9361
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John Fanning, individually and as a member of Jerk, LLC,)	
)	
Respondents)	
)	

[PROPOSED] ORDER

Upon consideration of Non-Party Stripe, Inc.'s ("Stripe's") Motion for *In Camera* Treatment, it is HEREBY ORDERED that the following documents are to be provided permanent *in camera* treatment from the date of this Order in their entirety.

Exhibit No.	Document Title/Description	Date	Beginning Bates No.	Ending Bates No.
CX0421	Account application dashboard	2012	STRIPE000010	STRIPE000017
Cx0422	Underwriting dashboard	2012-2014	STRIPE_000110	STRIPE_000195

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

Date: _____