

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

In the Matter of

TAPESTRY INC.,
a corporation, and

CAPRI HOLDINGS LIMITED,
a corporation,

Respondents.

Docket No. 9429

NON-PARTY ULLA JOHNSON INC.'S MOTION FOR *IN CAMERA* TREATMENT

Pursuant to Rule 3.45(b) of the Federal Trade Commission's Rules of Practice and the Scheduling Order in this matter, non-party Ulla Johnson Inc. ("UJI") moves for *in camera* treatment of a single document (the "2023 Market Study")¹ that Respondents intend to offer into evidence during the trial in this matter. Public disclosure of the information contained in this document would likely result in serious competitive injury to non-party UJI. Accordingly, UJI seeks an order granting *in camera* treatment of the 2023 Market Study in its entirety for five years. No party opposes this motion.

BACKGROUND

Ulla Johnson founded her eponymous line in 1999 in New York City. (Declaration of Thibaut Perrin-Faivre in Support of UJI's Motion for *In Camera* Treatment (the Perrin-Faivre Declaration") at ¶ 2.) UJI has since grown to a global brand, available with premium retailers across the United States, Europe, Australia, and Asia. (*Id.*) UJI sells direct to consumers online

¹ The 2023 Market Study bears bates numbers UJ005-UJ053.

and operates standalone stores in New York and Los Angeles, as well as a shop in shop with Bergdorf Goodman. (*Id.*) UJI launched its handbag collection in 2021. (*Id.*)

UJI produced documents to the Respondents in this matter pursuant to a subpoena *duces tecum* served on or around May 16, 2024, subject to the protections afforded by the Stipulated Protective Order (“Protective Order”) entered on May 1, 2024 in *Federal Trade Commission v. Tapestry, Inc. et ano.*, No. 1:24-cv-03109 (S.D.N.Y.) (the “Federal Court Action”). (*Id.* ¶ 13.) Without the protections of the Protective Order, UJI would not have produced the document that is the subject of this motion – the 2023 Market Study. (*Id.* ¶ 14.) Indeed, in an abundance of caution, UJI stamped the 2023 Market Study as “CONFIDENTIAL.” (*Id.* ¶ 15 & Ex. A.) Additionally, when producing its documents, UJI requested that the parties to this matter treat the 2023 Market Study with the highest level of confidentiality available by law. (*Id.* ¶ 16 & Ex. B.)

On August 23, 2024, Respondents notified UJI that they identified the 2023 Market Study on their exhibit list for the hearing scheduled to begin in the Federal Court Action on September 9, 2024. On August 29, 2024, UJI requested that the Court seal the 2023 Market Study and review it only *in camera*, if the 2023 Market Study is entered into evidence. (*Id.* ¶¶ 17-18; Federal Court Action ECF Nos. 200, 204.)

On August 30, 2024, Respondents notified UJI that they intend to offer the 2023 Market Study as evidence at the administrative evidentiary hearing in this matter beginning on September 25, 2024. UJI now seeks *in camera* treatment for the 2023 Market Study for five years. Moreover, as discussed in the accompanying Perrin-Faivre Declaration, redaction of the 2023 Market Study would not protect UJI’s competitively sensitive information. (*Id.* ¶ 10.) UJI therefore requests leave from the requirement in 16 C.F.R § 3.45 that it file an expurgated

version of the 2023 Market Study and seeks *in camera* treatment for the 2023 Market Study in its entirety.

LEGAL STANDARD

Under Rule 3.45(b), the Administrative Law Judge may order that material offered into evidence “be placed *in camera* only after finding that is public disclosure will likely result in a clearly defined, serious injury to that person, partnership or corporation requesting *in camera* treatment.” 16 C.F.R. § 3.45(b). To satisfy this standard, a movant must show that the “public disclosure of the documentary evidence will result in a clearly defined, serious injury to the person or corporation whose records are involved.” *In re Kaiser Aluminum & Chem. Corp.*, No. 9080, 1984 FTC LEXIS 60, at *1 n.1 (F.T.C. May 25, 1984). The movant must “make a clear showing that the information concerned is sufficiently secret and sufficiently material to their business that disclosure would result in serious competitive injury.” *In re General Foods Corp.*, No. 9085, 1980 FTC LEXIS 99, at *10 (F.T.C. Mar. 10, 1980). To make this determination, the Court weighs the potential harm from disclosure against the substantial public interest in access to key facts and background underlying FTC decisions. *In re Polypore, Int’l Inc.*, No. 9327, 2011 FTC LEXIS 23, at *2 (F.T.C. Feb. 11, 2011).

In evaluating a non-party’s request for *in camera* treatment, the Commission recognizes a “special solicitude” because the non-party is “in no way involved in the proceedings” and if “*in camera* treatment is denied, [the non-party’s information] will be open to the scrutiny of its competitors.” *In re Crown Cork & Seal Co.*, No. 8687, 1967 FTC LEXIS 128, at *2 (F.T.C. Jun. 26, 1967). Additionally, “extensions of confidential or *in camera* treatment in appropriate cases involving third party bystanders encourages cooperation with future adjudicative discovery requests.” *Kaiser*, 1984 FTC LEXIS 60, at *2-3.

While indefinite *in camera* treatment is reserved for unusual circumstances and requires the movant to meet a higher standard, the Commission typically grants non-parties five years of *in camera* treatment for the non-party's confidential, ordinary business records. *See, e.g., In re Altria Grp., Inc.*, No. 9393, 2021 FTC LEXIS 66 (F.T.C. May 26, 2021) (granting *in camera* treatment to the confidential business records of several non-parties for five years); *In re Benco Dental Supply Co.*, No. 9379, 2018 FTC LEXIS 156 (F.T.C. Oct. 11, 2018) (same).

DESCRIPTION OF CONFIDENTIAL MATERIAL

UJI created the 2023 Market Study, which focuses exclusively on UJI's handbag collection, to synthesize price and sales data, to analyze different sales channels, to present competitive research, to identify brand building and marketing opportunities, and to make recommendations for business and marketing strategy going forward. (Perrin-Faivre Declaration ¶ 4 & Ex. A.)

Among other things, the 2023 Market Study presents the following information, all of which is confidential and competitively sensitive to UJI:

1. Detailed sales data from 2021-2023, broken down into direct-to-consumer sales vs. other sales, including average wholesale and retail prices and volume, as well as margins (UJ009);
2. Analyses of sales data based on price point and style, materials used, and color (UJ010-UJ012);
3. Analyses of the top selling styles, including volumes and prices for each style (UJ013-UJ016);

4. A detailed analysis of UJI’s direct to consumer sales, focusing on customer demographics, customer survey results, online marketing data, international sales data, and return data (UJ018-UJ026);
5. An analysis of UJI’s wholesale sales, presenting historical sales from 2021-2023, including volume by season by individual (named) wholesale customer (UJ031, UJ028-UJ030);
6. An analysis of competitors’ prices (UJ033-UJ034) and a review of products sold by top competitors (UJ035-UJ036);
7. A presentation of business and marketing strategic opportunities, including pricing strategy, customer targeting strategy, and product development strategy (UJ038, UJ040-UJ042); and
8. An appendix containing additional, highly detailed sales and pricing data and additional competitive research (UJ044-UJ053).

(Perrin-Faivre Declaration ¶ 5 & Declaration Ex. A.)

STATEMENT OF REASONS FOR GRANTING IN CAMERA TREATMENT

“[D]emonstrating serious injury requires the applicant to show that the documents are secret, that they are material to the applicant’s business and that public disclosure will plausibly discourage the future production of such information.” *In re Bristol-Meyers Co.*, 1977 FTC LEXIS 25, at *4-5 (F.T.C. Nov. 11, 1977).

First, the 2023 Market Study is secret and material to UJI’s business. The 48-page slide deck, which summarizes the results of an in-depth case study, required significant effort from several employees, as well as contributions from an external consultant, to compile, synthesize, and prepare. (Perrin-Faivre Declaration ¶ 6.) *Bristol-Meyers*, 1977 FTC LEXIS 25, at *2-3, 5

(noting that one factor in the analysis of secrecy and materiality is the “amount of effort or money expended” to develop the information). As the study is only one year old and relates to one of UJI’s newer product categories, it continues to be useful and material to UJI today, as it seeks to expand its sales of handbags. (Perrin-Faivre Declaration ¶ 7.)

Further, in recognition of the fact that the study contains a significant amount of non-public, competitively sensitive information, UJI treats the study with confidentiality internally, allowing only directors, officers, and employees who have pricing or marketing responsibilities for UJI’s handbag collection to access it. (*Id.* ¶ 8.) *See Bristol-Meyers*, 1977 FTC LEXIS 25, at*5 (noting that the extent to which the information is known by employees is relevant to the analysis of secrecy and materiality); *General Foods*, 1980 FTC LEXIS 99, at *7. As explained above, UJI would not have produced the 2023 Market Study to any third-party but for the subpoena it received, and when UJI did produce it, it stamped every page CONFIDENTIAL, it produced the study pursuant to the Protective Order, and it requested confidential treatment from the parties. (Perrin-Faivre Declaration ¶¶ 14-16 & Ex. B.) *See Bristol-Meyers*, 1977 FTC LEXIS 25, at *5 (noting that the “extent of measures” taken to “guard the secrecy” of the information is relevant to secrecy and materiality).

Second, public disclosure of the 2023 Market Study would plausibly discourage the future production of such information because it would likely cause serious injuries to UJI. Specifically, by way of example, competitors could use the pricing and sales data, as well as margin information, analyses of various materials and colors, and UJI’s future business and marketing strategy, to undermine UJI’s competitive position. (Perrin-Faivre Declaration ¶ 9.) *See In re Dura Lube Corp.*, No. 9292, 1999 FTC LEXIS 255, at *7 (F.T.C. 1999) (“The likely loss of business advantages is a good example of a ‘clearly defined, serious injury.’”). Also, by

way of example, competitors could use the wholesale customer data to target the named wholesale customers and damage UJI's relationships with them. Or, a potential competitor could use the sales data, including both the online and wholesale customer pricing, sales, and margin information, as well as the customer demographic information, to develop a plan for entering the market. The likelihood that any of these injuries comes to fruition, particularly when UJI relied on the Protective Order and took steps to ensure the confidentiality of its information, is enough to cause future non-parties to refuse to produce similar information.

**STATEMENT OF REASONS FOR THE DATE ON WHICH
IN CAMERA TREATMENT WILL EXPIRE**

UJI's status as a non-party justifies *in camera* treatment of the 2023 Market Study for at least five years. The Commission typically grants non-parties five years of *in camera* treatment. *See generally, e.g., Altria*, 2021 FTC LEXIS 66 (granting *in camera* treatment to non-parties for five years); *Benco Dental*, 2018 FTC LEXIS 156 (same). Further, the highly detailed nature of the information contained in the 2023 Market Study is likely to remain material to UJI for many years, particularly because UJI's handbag collection was launched only a few years ago and is still developing, and because the study reveals UJI's future business and marketing strategy. (Perrin-Faivre Declaration ¶¶ 2, 11.) For these reasons, *in camera* treatment for at least five years is warranted.

PERSONS TO BE NOTIFIED

UJI designates Laura E. Sedlak, Sills Cummis & Gross P.C., One Riverfront Plaza, Newark, New Jersey, 07102 as the person who should be notified in the event that the Commission intends to disclose the 2023 Market Study in its final decision or elsewhere.

CONCLUSION

For all of the foregoing reasons and those set forth in the accompanying Perrin-Faivre Declaration, UJI respectfully requests that the Court grant *in camera* treatment to the 2023 Market Study in its entirety for a period of five years.

Dated: September 9, 2024

Respectfully submitted,

By: /s/ Laura E. Sedlak

Laura E. Sedlak
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Inc.*

STATEMENT PURSUANT TO SCHEDULING ORDER PROVISION 4

Pursuant to the Scheduling Order entered in this matter on May 16, 2024, I represent that I have conferred in good faith with counsel for Claimant and each Respondent in an effort to resolve the issues raised by this motion. Each party indicated that they do not oppose *in camera* treatment for the 2023 Market Study.

By: /s/ Laura E. Sedlak
Laura E. Sedlak

CERTIFICATE OF SERVICE

I hereby certify that on September 9, 2024, I filed the foregoing document, as well as the Declaration of Thibaut Perrin-Faivre in Support of Non-Party Ulla Johnson Inc.'s Motion for *In Camera* Treatment and Non-Party Ulla Johnson Inc.'s Proposed Order, electronically using the FTC's E-Filing System, which will send notification of such filing to:

April Tabor
Secretary
Federal Trade Commission
600 Pennsylvania Avenue, N.W., Rm. H-113
Washington, DC 20580
ElectronicFilings@ftc.gov

The Honorable Diana L. Ayoubi
Office of Administrative Law Judges
Federal Trade Commission
600 Pennsylvania Avenue, N.W., Rm. H-110
Washington, DC 20580

I also certify that I caused the documents identified above to be served via email to:

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Peggy Bayer Femenella
Brandon Boxbaum
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Abby L. Dennis
Kassandra DiPietro
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By: /s/ Laura E. Sedlak
Laura E. Sedlak
Counsel for Non-Party Ulla Johnson Inc.

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

In the Matter of

TAPESTRY INC.,

a corporation, and

CAPRI HOLDINGS LIMITED,

a corporation,

Respondents.

Docket No. 9429

**DECLARATION OF THIBAUT PERRIN-FAIVRE IN SUPPORT OF
NON-PARTY ULLA JOHNSON INC.'S MOTION FOR *IN CAMERA* TREATMENT**

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. I am the Chief Executive Officer of Ulla Johnson Inc. (“UJI”), a position I have held since April, 15th 2024.

2. Ulla Johnson founded her eponymous line in 1999 in New York City. UJI has since grown to a global brand, available with premium retailers across the United States, Europe, Australia, and Asia. UJI sells direct to consumers online and operates standalone stores in New York and Los Angeles, as well as a shop in shop with Bergdorf Goodman. UJI launched its handbag collection in 2021.

**THE 2023 MARKET STUDY IS SECRET AND MATERIAL,
AND ITS PUBLIC DISCLOSURE WOULD CAUSE SERIOUS INJURY**

3. In 2023, UJI conducted a market study for its handbag collection. The results of that study are presented in a slide deck, which is attached as Exhibit A, and which bears the bates numbers UJ005-UJ053. I will refer to Exhibit A as the “2023 Market Study.”



4. The purposes of the study were to, among other things, synthesize price and sales data, to analyze different sales channels, to present competitive research, to identify brand building and marketing opportunities, and to make recommendations for business and marketing strategy going forward.

5. Specifically, among other things, the 2023 Market Study presents the following information, all of which is confidential and competitively sensitive to UJI:

- (a) Detailed sales data from 2021-2023, broken down into direct-to-consumer sales vs. other sales, including average wholesale and retail prices and volume, as well as margins (UJ009);
- (b) Analyses of sales data based on price point and style, materials used, and color (UJ010-UJ012);
- (c) Analyses of the top selling styles, including volumes and prices for each style (UJ013-UJ016);
- (d) A detailed analysis of UJI's direct to consumer sales, focusing on customer demographics, customer survey results, online marketing data, international sales data, and return data (UJ018-UJ026);
- (e) An analysis of UJI's wholesale sales, presenting historical sales from 2021-2023, including volume by season by individual (named) wholesale customer (UJ031, UJ028-UJ030);
- (f) An analysis of competitors' prices (UJ033-UJ034) and a review of products sold by top competitors (UJ035-UJ036);
- (g) A presentation of business and marketing strategic opportunities, including pricing strategy, customer targeting strategy, and product development strategy (UJ038, UJ040-UJ042); and
- (h) An appendix containing additional, highly detailed sales and pricing data and additional competitive research (UJ044-UJ053).

(See Exhibit A.)

6. UJI considers the 2023 Market Study to be confidential and material to its business. It required significant effort from several employees, as well as contributions from an external consultant, to compile, synthesize, and prepare.

7. As the 2023 Market Study is only one year old and relates to one of UJI's newer product categories, it continues to be useful and material to UJI today, as it seeks to expand its sales of handbags.

8. UJI treats the 2023 Market Study as confidential even within its own walls. Only directors, officers, and employees who have pricing or marketing responsibilities for UJI's handbag collection are allowed to access it. Those individuals continue to rely on the 2023 Market Study to make pricing and marketing decisions today.

9. Public disclosure of the 2023 Market Study is likely to cause serious injury to UJI. Competitors and potential competitors could use it to undermine UJI's competitive position.

10. Because nearly every page of the 2023 Market Study reveals highly confidential, competitively sensitive information in detail, UJI requests *in camera* treatment for the study in its entirety.

11. In addition, because the 2023 Market Study presents recent data on one of UJI's newer collections, which UJI is still developing, and because it reveals UJI's future business and marketing strategy, the 2023 Market Study will remain competitively sensitive for many years to come. For that reason, UJI respectfully requests that the Commission provide the 2023 Market Study with at least five years of *in camera* treatment.

**UJI HAS USED BEST EFFORTS TO MAINTAIN THE CONFIDENTIALITY
OF THE 2023 MARKET STUDY SINCE PRODUCING IT**

12. On or around May 16, 2024, Respondents in the above-captioned matter served a *subpoena duces tecum* on UJI that sought, among other documents, the 2023 Market Study.



13. UJI produced the 2023 Market Study, as well as other documents, on May 30, 2024, subject to the protections afforded by the Stipulated Protective Order (“Protective Order”) entered in *Federal Trade Commission v. Tapestry, Inc. et ano.*, No. 1:24-cv-03109 (S.D.N.Y.).

14. Without the protections of the Protective Order, UJI would not have produced the 2023 Market Study.

15. UJI stamped every page of the 2023 Market Study as CONFIDENTIAL. (See Exhibit A.)

16. In addition, when counsel made the production, counsel requested that the parties treat the 2023 Market Study with the highest level of confidentiality available by law. Attached as Exhibit B is the transmittal email that accompanied the production of the 2023 Market Study.

17. On August 23, 2023, UJI’s counsel was notified that Respondents in the above-referenced matter identified the 2023 Market Study on their exhibit list for the hearing that is scheduled to begin in federal court on September 9, 2024.

18. On August 29, 2024, UJI filed a motion to seal the 2023 Market Study in federal court.

19. On August 30, 2024, Respondents notified UJI that they intend to offer the 2023 Market Study as evidence at the administrative evidentiary hearing that is scheduled to begin on September 25, 2024. UJI is, with the accompany motion, seeking *in camera* treatment for the 2023 Market Study.

20. I declare under penalty of perjury that the foregoing is true and correct.

Executed on: September 6th, 2024

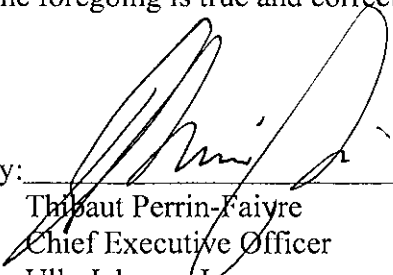
By: 
Thibaut Perrin-Faiyre
Chief Executive Officer
Ulla Johnson Inc.

EXHIBIT A

SLIPSHEET FOR CONFIDENTIAL MATERIAL

EXHIBIT B

Laura Sedlak

From: Laura Sedlak
Sent: Thursday, May 30, 2024 3:43 PM
To: 'TLSPM_Latham_Sunrise@transperfect.com'; david.johnson@lw.com; 'chris.brown@lw.com'; Kimon.Triantafyllou@lw.com; 'stefanie.johnson@lw.com'; BAFish@wlrk.com; 'adennis@ftc.gov'; 'dquinn@ftc.gov'; 'alowdon@ftc.gov'; 'brisenmay@ftc.gov'; 'bboxbaum@ftc.gov'; 'fjohnson@ftc.gov'; 'kdi Pietro@ftc.gov'; 'lantonini@ftc.gov'; 'nlindquist@ftc.gov'; 'pbayer@ftc.gov'; 'pcolwell@ftc.gov'; 'skerman@ftc.gov'; 'tsinger@ftc.gov'; 'vsims@ftc.gov'
Subject: FTC v. Tapestry, Inc. et ano., 1:24-cv-3109-JLR (S.D.N.Y.)

Attachments for this email are being securely delivered by **iManage Share**



 [2024.05.30 Ulla Johnson Subpoena Production - CONFIDENTIAL.zip](#) (38.5 MB)

A password is required to access these files, if you do not have a password, please contact the sender.
 The file(s) will expire on Thursday, June 13, 2024.

Counsel,

Please see the attached document production, which I am providing on behalf of Ulla Johnson in response to the subpoena served by Tapestry, Inc., dated May 16, 2024. The password for accessing the zip file will be provided in a separate email. In the file, you will find four responsive documents (the "Documents") bearing bates numbers UJ001-UJ053. Ulla Johnson has designated each of the Documents as "CONFIDENTIAL" pursuant to the Stipulated Protective Order entered in the above-referenced proceeding on May 1, 2014 (Dkt. No. 70) (the "Stipulated Protective Order"). Ulla Johnson does not consent to the use of the Documents for any other purpose besides those authorized by the Stipulated Protective Order. Further, the Documents contain sensitive, confidential, proprietary information, including trade secrets, financial information, and competitively sensitive information belonging to Ulla Johnson. For these reasons, Ulla Johnson requests that all parties receiving the Documents, including the Federal Trade Commission, treat the Documents with the highest degree of confidentiality. Additionally, the Documents are exempt from disclosure under the Freedom of Information Act, pursuant to, among other subsections, 5 U.S.C. § 552(b)(4). In addition, the Documents are entitled to the protections granted by the Federal Trade Commission Act, including 15 U.S.C. §§ 46(f) and 57b-2, as well as those contained in the Federal Trade Commission's Rule of Practice 4.10 (16 C.F.R. § 4.10) and 4.11(e) (16 C.F.R. § 4.11).

Ulla Johnson reserves all rights.

Best regards,

Laura E. Sedlak
 Member
 Admitted in NJ & NY


[website](#) | [bio](#) | [vCard](#) | [newsroom](#) | [email](#) 

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

In the Matter of

TAPESTRY, INC.,
a corporation,

and

CAPRI HOLDINGS LIMITED,
a corporation.

DOCKET NO. 9429

**[PROPOSED] ORDER GRANTING NON-PARTY
ULLA JOHNSON INC.’SMOTION FOR *IN CAMERA* TREATMENT**

Pursuant to Rule 3.45(b) of the Rules of Practice of the Federal Trade Commission (“FTC”) and the Scheduling Order entered in this matter on May 16, 2024, non-party Ulla Johnson Inc. has filed a motion for *in camera* treatment. No party opposes this motion.

Non-party Ulla Johnson Inc.’s motion for *in camera* treatment is GRANTED as to the document it produced bearing bates numbers UJ005-UJ053 for a period of five years from the date of this Order, in its entirety.

At the time that UJ005-UJ053 is or may be offered into evidence or before any of the information contained therein is referred to in court, the parties shall identify such documents and the subject matter therein as *in camera*, inform the court reporter of the trial exhibit number of such document and request that the hearing go into an *in camera* session.

ORDERED:

Date: _____

Diana L. Ayoubi
Administrative Law Judge