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**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 DOONEY & BOURKE, INC.'S
UNOPPOSED MOTION FOR *IN CAMERA* TREATMENT**

Pursuant to Rule 3.45(b) of the Federal Trade Commission's Rules of Practice, non-party Dooney & Bourke, Inc. ("D&B") respectfully moves for *in camera* treatment of one exhibit that D&B understands Respondents intend to offer as evidence in an upcoming evidentiary hearing in this case. The exhibit, which D&B understands Respondents have designated as Exhibit DX-0173, is a one-page document Bates-stamped DB-001 and lists D&B's confidential revenue and sales figures for the past several years. D&B produced DB-001 to the parties here in response to subpoenas issued in the related case *FTC v. Tapestry, Inc.*, Case No. 1:24-cv-03109-JLR (S.D.N.Y.). In that case, DB-001 is protected by a Stipulated Protective Order, and Judge Rochon has already ruled in response to D&B's motion to seal that DB-001 must remain sealed during the preliminary injunction hearing set to commence today, September 9, 2024. *See FTC v. Tapestry, Inc.*, Case No. 1:24-cv-03109-JLR (S.D.N.Y.), ECF No. 321 (granting D&B's motion to seal and for *in camera* treatment). For the reasons set forth herein and in the accompanying Declaration of

PUBLIC

Philip Kinsley (“Kinsley Decl.”, attached hereto as Exhibit 1), D&B respectfully requests the same *in camera* treatment by this Court.

Among other reasons, *in camera* treatment of DB-001 is warranted because (1) DB-001 comprises confidential revenue and sales information that D&B, a private company and non-party, maintains as strictly confidential in the usual course of its business; (2) D&B would suffer serious competitive injury in the event the contents of DB-001 were publicly disclosed; (3) D&B voluntarily produced DB-001 only with the parties’ assurances of confidentiality pursuant to the Stipulated Protective Order in *FTC v. Tapestry, Inc.*, Case No. 1:24-cv-03109-JLR (S.D.N.Y.), ECF No. 70; and (4) Judge Rochon has already recognized the competitively sensitive nature of the information set forth in DB-001 and has ordered it sealed pursuant to the Stipulated Protective Order. *See FTC v. Tapestry, Inc.*, Case No. 1:24-cv-03109-JLR (S.D.N.Y.), ECF No. 321.

Accordingly, D&B seeks an order granting *in camera* treatment of DB-001 in this case for ten years. Neither the FTC nor Respondents oppose this motion.

BACKGROUND

D&B is a private company and a leading American designer of fine accessories in leather and fabric. (Kinsley Decl. ¶ 2.) Pursuant to subpoenas *duces tecum* issued May 6, 2024, and May 8, 2024, respectively, by Tapestry, Inc. (“Tapestry”) and the FTC in *FTC v. Tapestry, Inc.*, D&B voluntarily produced a document bearing the Bates stamp DB-001, reflecting D&B’s confidential revenue and sales figures for the past several years. (Kinsley Decl. ¶¶ 3-4.) D&B designated this document as “Confidential” under the Stipulated Protective Order in that case. *See FTC v. Tapestry, Inc.*, Case No. 1:24-cv-03109-JLR (S.D.N.Y.), ECF 70; Exhibit 2 (DB-001, filed under seal).

PUBLIC

On August 23, 2024, Tapestry notified D&B that Tapestry intended to use DB-001 as evidence in a preliminary injunction hearing in the *FTC v. Tapestry, Inc.* case. See Email from Latham & Watkins LLP (attached as Exhibit 3). On August 30, 2024, D&B moved to seal and request *in camera* treatment of DB-001 at the preliminary injunction hearing set to begin in *FTC v. Tapestry, Inc.* on September 9, 2024, explaining that, “D&B is a private company, and the information set forth in Exhibit DB-001 is non-public, confidential, and commercially sensitive revenue and sales data that would harm D&B’s competitive standing if publicly disclosed. This is precisely the type of information that warrants sealing, and courts routinely seal similar information.” *FTC v. Tapestry, Inc.*, Case No. 1:24-cv-03109-JLR (S.D.N.Y.), ECF No. 238 (D&B’s letter motion to seal). On September 6, 2024, Judge Rochon granted D&B’s motion. See *FTC v. Tapestry, Inc.*, Case No. 1:24-cv-03109-JLR (S.D.N.Y.), ECF No. 321.

On August 30, 2024, Tapestry notified D&B that Tapestry also intends to use DB-001 as evidence (specifically, as Exhibit DX-0173) in an upcoming administrative evidentiary hearing in this case. See Email from Latham & Watkins LLP (attached as Exhibit 4). Given the competitively sensitive nature of DB-001, D&B now seeks *in camera* treatment of DB-001 for a period of ten years in this case. A copy of DB-001 is attached under seal as Exhibit 2.

LEGAL STANDARD

In camera treatment is warranted when public disclosure of an exhibit would “likely result in a clearly defined, serious injury.” 16 C.F.R. § 3.45(b); see *In re Illumina, Inc.*, 2021 FTC LEXIS 35, at *1-2 (Aug. 19, 2021); *In re HP. Hood, Inc.*, 58 F. C. 1184 1188 (1961). To make this showing, corporations must demonstrate that exhibits contain information both “sufficiently secret and sufficiently material to their business that disclosure would result in serious competitive injury.” *In re Gen. Foods Corp.*, 95 F.T.C. 352, 355 (1980). A movant may rely upon an

PUBLIC

employee's declaration to explain the documents' confidentiality and materiality. *See In re N. Texas Specialty Physicians*, No. 9312, 2004 WL 1571167, at *1–2 (FTC Apr. 23, 2004) (granting *in camera* treatment to non-party documents containing, *inter alia*, sensitive pricing and revenue information).

In assessing whether documents are sufficiently secret and material to warrant *in camera* treatment, the Commission has identified six relevant factors:

- (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 by [the business] to guard the secrecy of the information;
- (4) the value of the information to [the business] and to [its] competitors;
- (5) the amount of effort or money expended by [the business] in developing the information; [and]
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

In re Bristol-Myers Co., 90 F.T.C. 455, 456–57 (1977). Non-parties to the underlying proceeding are entitled to “special solicitude” in this analysis. *In re ProMedica Health Sys.*, 2011 FTC LEXIS 101, at *3-4 (May 25, 2011); *In re Kaiser Aluminum & Chem. Corp.*, 103 F.T.C. 500, 500 (1984). In particular, the Court has recognized that extending robust confidentiality protection to third parties encourages cooperation with the adjudicative discovery process. *Kaiser Aluminum*, 103 F.T.C. at 500 (“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.”).

In camera status is generally granted for a limited period. *See* 16 C.F.R. § 3.45(b)(3). *In camera* treatment is routinely granted for competitively sensitive business records, including documents revealing research and development plans, financial metrics such as costs, margins, revenues, competitive positioning, strategic plans, and marketing and pricing strategies for up to ten years. *See Otto Bock HealthCare N. Am., Inc.*, 2018 FTC LEXIS 111, at *10-12 (July 6, 2018)

PUBLIC

(granting third parties' requests for ten-year in camera treatment of documents discussing research and development plans); *In re Tronox Ltd.*, 2018 FTC LEXIS 78, at *12-13 (May 15, 2018) (granting third parties' requests for ten year in camera treatment of documents containing competitively sensitive information, such as business plans, views on the efficacy of substitutes for products, analyses of prices, capacity, supply and demand, along with market forecasts).

ARGUMENT

D&B seeks *in camera* treatment of DB-001 for ten years because it contains competitively sensitive information that would result in serious injury to D&B if disclosed. Although it is not a party, D&B cooperated with the FTC and Tapestry in negotiating with them and producing DB-001 in the related *FTC v. Tapestry, Inc.* case. After significant negotiation with the subpoenaing parties, and in reliance on the parties' assurances of confidentiality (including assurances set forth in the Stipulated Protective Order entered in *FTC v. Tapestry, Inc.*), D&B voluntarily produced DB-001, reflecting D&B's confidential revenue and sales figures for the past several years. (Kinsley Decl. ¶ 4.)

As required under this Court's standards, and as Judge Rochon recently recognized, DB-001 is both secret and material to D&B's business. *See Gen. Foods*, 95 F.T.C. at 355; *see also FTC v. Tapestry, Inc.*, Case No. 1:24-cv-03109-JLR (S.D.N.Y.), ECF No. 321 (granting D&B's motion to seal and for *in camera* treatment of DB-001). At all times, D&B has taken precautions to maintain the confidentiality of this information. (Kinsley Decl. ¶ 7.) The revenue and sales figures set forth in DB-001 are not public and are treated as highly confidential in the course of D&B's business. (*Id.* ¶ 5.) These figures are also material to D&B's business, as "the value of the information to [the business] and to [its] competitors," *Bristol-Meyers*, 90 F.T.C. at 45, is very high. (Kinsley Decl. ¶ 5.) If D&B's competitors knew D&B's confidential internal revenue and

PUBLIC

sales figures, then such knowledge would provide competitors with insight into confidential aspects of D&B's business and harm D&B's competitive standing. (*Id.* ¶ 7.)

Moreover, the proposed *in camera* treatment is narrowly tailored because it involves only a single, one-page document comprising ten specific revenue and sales figures, and such treatment would protect D&B from competitive harm. (*See* Kinsley Decl. ¶ 8.) Under these circumstances, *in camera* treatment is warranted. *See Otto Bock HealthCare N. Am., Inc.*, 2018 FTC LEXIS, at *10-12 (granting third parties' requests for ten-year *in camera* treatment of confidential business records); *In re Tronox Ltd.*, 2018 FTC LEXIS 78, at *12-13 (May 15, 2018) (same); *see also In re N. Texas Specialty Physicians*, No. 9312, 2004 WL 1571167, at *1-2 (FTC Apr. 23, 2004) (granting third parties' requests for five-year *in camera* treatment of confidential business records); *In re Illumina, Inc.*, 2021 FTC LEXIS 35, at *1-2 (same).

CONCLUSION

The Court has recognized that requests for *in camera* treatment are entitled to "special solicitude" when they come from non-parties like D&B. *Kaiser Aluminum*, 103 F.T.C. at 500. The information contained in DB-001 is both secret and material to D&B. For the reasons explained in this motion and the Declaration of Philip Kinsley, D&B respectfully requests that the Court grant *in camera* treatment to DB-001 (Exhibit DX-0173) for ten years.

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Dated: September 9, 2024
New York, New York

Respectfully submitted,

By: /s/ Nathan E. Denning

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*Counsel for Third-Party Dooney & Bourke,
Inc.*

PUBLIC**CERTIFICATE OF SERVICE**

I hereby certify that on September 9, 2024, I filed the foregoing document electronically using the Federal Trade Commission's e-filing system, which will send notification of such filing to:

April Tabor
Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-113
Washington, D.C. 20580
ElectronicFilings@ftc.gov

The Honorable Dania L. Ayoubi
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW., Rm. H-110
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OALJ@ftc.com

I also certify that I caused the foregoing document to be served via email to:

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Respectfully submitted,

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Counsel for Third-Party Dooney & Bourke, Inc.

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EXHIBIT 1

**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 PHILIP KINSLEY IN SUPPORT OF NON-PARTY DOONEY &
BOURKE, INC.'S MOTION FOR *IN CAMERA* TREATMENT**

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

1. As Vice President of Finance at Dooney & Bourke, Inc. ("D&B"), I make this declaration in support of Non-Party Dooney & Bourke, Inc.'s Motion for *In Camera* Treatment. I have personal knowledge of the matters stated herein and, if called upon to do so, could competently testify about them.

2. D&B is a private company and a leading American designer of fine accessories in leather and fabric.

3. I understand that on May 6, 2024, and May 8, 2024, respectively, the parties to the above-captioned proceeding issued subpoenas to D&B in the related case, *FTC v. Tapestry, Inc.*; Case No. 1:24-cv-03109-JLR (S.D.N.Y.), seeking certain confidential business information for use in connection with that litigation.

4. I understand that on July 23, 2024, after significant negotiation with the subpoenaing parties, and in reliance on the parties' assurances of confidentiality (including assurances set forth in the Stipulated Protective Order entered in *FTC v. Tapestry, Inc.*, Case No. 1:24-cv-03109-JLR (S.D.N.Y.), ECF No. 70), D&B voluntarily produced a document bearing the Bates stamp DB-001, reflecting D&B's confidential revenue and sales figures for the past several years.

5. The revenue and sales figures set forth in DB-001 are not public and are treated as highly confidential in the course of D&B's business. Based on my knowledge of D&B's business, D&B's competitive standing, and my familiarity with the confidentiality protection D&B affords its revenue and sales figures, disclosure of this information to the public and to D&B's competitors would cause serious competitive injury to D&B.

6. I understand that on August 30, 2024, Respondent Tapestry, Inc. ("Tapestry") notified D&B that Tapestry intends to use DB-001 as evidence (specifically, as Exhibit DX-0173) in an upcoming administrative evidentiary hearing.

7. At all times, D&B has taken precautions to maintain the confidentiality of this information, which is not public. If D&B's competitors knew D&B's confidential internal revenue and sales figures, then such knowledge would provide competitors with insight into confidential aspects of D&B's business and harm D&B's competitive standing. Because D&B would experience a clearly defined and serious injury, D&B respectfully seeks *in camera* treatment of this information for ten years.

8. The proposed *in camera* treatment is narrowly tailored because it involves only a single, one-page document comprising ten specific revenue and sales figures, and such treatment would protect D&B from competitive harm.

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9. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge and belief.

Executed on: 9/5/2024



A handwritten signature in black ink, consisting of a large, stylized 'P' followed by 'Kinsley' in a cursive script. The signature is written above a horizontal line.

Philip Kinsley

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EXHIBIT 2
(filed under seal)

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EXHIBIT 3

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From: David.Johnson@lw.com <David.Johnson@lw.com>
Sent: Friday, August 23, 2024 5:40:39 PM
To: Denning, Nathan E. <NDenning@wiggin.com>; tmcandrew@tjmcandrewlaw.com <tmcandrew@tjmcandrewlaw.com>; Vallancourt, Sean <SVallancourt@wiggin.com>
Cc: Karen.Kim@lw.com <Karen.Kim@lw.com>
Subject: [EXTERNAL] Exhibit List Notice Dooney & Bourke - FTC v. Tapestry, Inc., No. 24-cv-3109

Nathan and Tom,

Pursuant to the Case Management and Scheduling Order and Protective Order in *F.T.C. v. Tapestry, Inc.*, 24-cv-3109 (S.D.N.Y.), Defendants are providing notice that materials or testimony provided by Dooney & Bourke (the “Non-Party”) are included in the evidentiary hearing exhibit list and/or deposition designations that Defendants submitted to the Plaintiff today, August 23, 2024. The submission of those exhibit lists and deposition designations is a non-public event between the parties to this proceeding. This act has not publicly disclosed any of Non-Party’s materials. It is possible, however, that these materials will be relied upon during the live evidentiary hearing beginning on September 9, 2024. Accordingly, pursuant to the Protective Order in this matter, if Non-Party “wishes to obtain protection from public disclosure for the Document or transcript” listed below, it must “file an appropriate motion with the Court within seven (7) days” of receiving this notice. Defendants will not oppose any proposed sealing. Non-Party’s materials and/or testimony included are:

- DB-001

Happy to talk through this by phone if you have any questions.

Best,
David

David L. Johnson
Pronouns: He/Him/His

LATHAM & WATKINS LLP
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EXHIBIT 4

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From: Karen.Kim@lw.com <Karen.Kim@lw.com>
Sent: Friday, August 30, 2024 10:15:24 PM
To: Denning, Nathan E. <NDenning@wiggin.com>; tmcandrew@tjmcandrewlaw.com <tmcandrew@tjmcandrewlaw.com>; Vallancourt, Sean <SVallancourt@wiggin.com>
Cc: David.Johnson@lw.com <David.Johnson@lw.com>
Subject: [EXTERNAL] Order In the Matter of Tapestry Inc., and Capri Holdings Ltd., Dkt No. 9439 - Dooney & Bourke

Hi Nathan,

Pursuant to the Scheduling Order and Protective Order *In the Matter of Tapestry Inc., and Capri Holdings Ltd.*, Dkt No. 9439 (attached for reference) and 16 C.F.R. § 3.45(b), we are providing notice that we intend to offer materials or testimony provided by Dooney & Bourke (the "third party") as evidence at the FTC's Part 3 administrative evidentiary hearing beginning on September 25, 2024 in Washington, DC. Accordingly, pursuant to the Scheduling Order in this matter, if a third party wishes *in camera* treatment for a document or transcript that a party intends to introduce into evidence, that third party shall file an appropriate motion with the Administrative Law Judge within ten (10) days after it receives notice of a party's intent to introduce such material. Respondents will not oppose any proposed *in camera* treatment. The materials and/or testimony included are:

- DX-0173 - DB-001

We are happy to discuss if you have any questions.

Best,
Karen

Karen Keun-Yong Kim
Pronouns: She/Her/Hers

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EXHIBIT 5

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**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

**[PROPOSED] ORDER GRANTING NON-PARTY DOONEY & BOURKE, INC.'S
UNOPPOSED MOTION FOR *IN CAMERA* TREATMENT**

Pursuant to Rule 3.45(b) of the Rules of Practice of the Federal Trade Commission (“FTC”), Non-Party Dooney & Bourke, Inc. has filed a motion for *in camera* treatment. Neither the FTC nor Respondents oppose this motion.

Dooney & Bourke’s motion for *in camera* treatment as to Exhibit DX-0173 (DB-001) is GRANTED. Before Exhibit DX-0173 (DB-001) is offered into evidence and before any of the information contained therein is referred to in court, the parties shall identify such document 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: _____

Dania L. Ayoubi
Administrative Law Judge