

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

NON-PARTY G-III APPAREL GROUP, LTD'S MOTION FOR *IN CAMERA*
TREATMENT

Pursuant to Rule 3.45 (b) of the Federal Trade Commission's Rules of Practice, 16 C.F.R. § 3.45(b), non-party G-III Apparel Group, Ltd. ("G-III") respectfully moves this Court for *in camera* treatment of DX-0038- GIII-TAPESTRY-00000001, a competitively-sensitive, confidential business document ("Confidential Document") attached as **Exhibit A**, for three years. G-III produced the Confidential Document in response to third-party subpoenas issued by Federal Trade Commission ("FTC") and the respondents, Tapestry, Inc. and Capri Holdings Limited (collectively, the "Respondents"). Respondents have notified G-III that they intend to introduce the Confidential Document into evidence at the administrative trial in this matter. Counsel for Respondents have stated that they do not intend to oppose G-III's motion. *See* Email from K. Kim dated August 30, 2024, attached as **Exhibit B**.

The document for which G-III is seeking *in camera* treatment contains highly confidential, proprietary, and competitively sensitive information from non-party G-III regarding G-III's confidential research into and confidential company impressions of the handbag market. G-III would suffer irreparable harm if its competitors or the public were given access to this highly confidential and competitively sensitive strategic information, which could be used by rivals and customers to undermine G-III's competitive position. In support of this motion, G-III relies on the Affidavit of Jennifer Rager, Group President of Handbags at G-III, attached as **Exhibit C**.

I. Public Disclosure of G-III's Confidential Information Would Cause Harm to G-III's Business

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 *in camera* treatment." 16 C.F.R. § 3.45(b). A proponent seeking *in camera* treatment may satisfy this standard by showing the information is "sufficiently secret and sufficiently material to the applicant's business that disclosure would result in serious competitive injury." *In re N. Texas Specialty Physicians*, Docket No. 9312, 2004 WL 1571167, at *1 (Apr. 23, 2004) (quoting *In re Kaiser Aluminum & Chem. Corp.*, 103 F.T.C. 500, 500 (1984)). "[T]he likely loss of business advantages is a good example of a 'clearly defined, serious injury.'" See *In re Dura Lube Corp.*, No. 9292, 1999 FTC. LEXIS 255, at *7 (Dec. 23, 1999).

To determine whether the information warrants protection from public disclosure 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. *See In re Bristol-Myers Co.*, 90 F.T.C. 455, 456-57 (1977). 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).

The document for which G-III is seeking *in camera* treatment contains highly confidential, proprietary, and competitively sensitive information from non-party G-III. G-III expended considerable resources and time to create a handbag market compendium to provide its brands with an unique understanding and advantage over the handbag market. G-III would suffer irreparable harm if its competitors or the public were given access to this highly confidential and competitively sensitive strategic information, which could be used by rivals and customers to undermine G-III’s competitive position. The information G-III seeks to protect includes G-III’s confidential research into and confidential company impressions and prevailing views of the handbag market. G-III closely guards the secrecy of this information, disclosing it only to particular employees of G-III responsible for handbag marketing.

G-III’s status as a third party particularly justifies *in camera* treatment of the Confidential Document. 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.*, 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.”). G-III’s third-party status therefore weighs in favor of granting *in camera* status to the Confidential Documents.

II. Conclusion

For the reasons set forth above and in the accompanying Rager Declaration, G-III respectfully requests that this Court grant *in camera* treatment for the Confidential Document for a period of three years.

Dated: September 9, 2024

Respectfully submitted,

/s/ Shaina Vinayek

SHAINA VINAYEK
PAUL, WEISS, RIFKIND
WHARTON & GARRISON LLP
2001 K Street NW
Washington, DC 20006
(202) 223 7497
svinayek@paulweiss.com

*Counsel for Non-Party G-III
Apparel Group, Ltd.*

EXHIBIT A

CONFIDENTIAL – REDACTED IN ENTIRETY

EXHIBIT B

From: Karen.Kim@lw.com Karen.Kim@lw.com
Sent: Friday, August 30, 2024 5:40 PM
To: Vinayek, Shaina <svinayek@paulweiss.com>; Sher, Scott A <ssher@paulweiss.com>
Cc: David Johnson <David.Johnson@lw.com>
Subject: F.T.C. v. Tapestry - Part III Exhibit Notice - G-III

Counsel,

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 G-III Apparel Group (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-0038 - GIII-TAPESTRY-00000001
- DX-0037 - Declaration of J. Rager (G-III)

Best,
Karen

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

LATHAM & WATKINS LLP
1271 Avenue of the Americas
New York, NY 10020
Direct Dial: +1.332.240.1416
Email: karen.kim@lw.com
<https://www.lw.com>

From: Karen.Kim@lw.com <Karen.Kim@lw.com>
Sent: Wednesday, September 4, 2024 9:22 PM
To: Vinayek, Shaina <svinayek@paulweiss.com>; Sher, Scott A <ssher@paulweiss.com>
Cc: David Johnson <David.Johnson@lw.com>; Andrew.Paik@lw.com
Subject: RE: FTC v. Tapestry, Inc., No. 24-cv-3109 – Exhibit List Notice - G-III Apparel Group

Shaina,

Thank you for discussing the Part 3 exhibit list with us today, as it relates to documents from your client, G-III. Pursuant to our conversation, we are sending you a renewed notice that the following materials from G-III are included on Respondents’ Part 3 exhibit list:

- DX-0038 - GIII-TAPESTRY-00000001
- DX-0037 - Declaration of J. Rager (G-III)

Best,
Karen

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

LATHAM & WATKINS LLP
1271 Avenue of the Americas | New York, NY 10020
D: +1.332.240.1416 | M: +1.617.7687080

EXHIBIT C

**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

**DECLARATION OF JENNIFER RAGER IN SUPPORT OF G-III APPAREL
GROUP, LTD'S MOTION FOR *IN CAMERA* TREATMENT**

I, Jennifer Rager, declare as follows:

1. I am Group President of Handbags at G-III Apparel Group, Ltd. (“G-III”). I submit this Declaration in support of G-III’s Motion for In-Camera Treatment (the “Motion”) of DX-0038- GIII-TAPESTRY-00000001. I have personal knowledge of the matters stated herein and, if called upon to do so, could testify competently about them.
2. G-III is an apparel company that owns several brands that sell handbags, including DKNY, Karl Lagerfeld, Donna Karan New York, and Sonia Rykiel. G-III also, as of the time of this declaration, has a license to sell Calvin Klein and Halston handbags through some sales channels.
3. G-III is not a party to and has no direct interest in either the above-captioned litigation (the “FTC Proceeding”) or the related action pending in the Southern

District of New York, captioned Federal Trade Commission v. Tapestry, Inc., et a., Case No. 1:24-cv-03109-JLR (S.D.N.Y.) (the “Federal Court Action”).

4. In my capacity as Group President of Handbags, I am familiar with the information contained in DX-0038- GIII-TAPESTRY-00000001 and the competitive significance to G-III. The document includes G-III’s confidential research into the handbag market and proprietary impressions of G-III and non-G-III brands. G-III continues to rely on the contents of this document for marketing and positioning purposes, and as such public disclosure would harm G-III’s competitive position.
5. G-III has taken precautions to maintain the confidentiality of the DX-0038- GIII-TAPESTRY-00000001, limiting distribution of the document internally and stamping the document HIGHLY CONFIDENTIAL prior to producing in response to third-party subpoenas issued by the Federal Trade Commission and Tapestry, Inc. and Capri Holdings Limited.
6. Disclosure of this document to the public and competitors of G-III would cause serious, irreparable competitive injury to G-III, giving competitors an asymmetric inside look at G-III’s view of the handbag landscape. Disclosure would undermine the time and resources G-III spent compiling this compendium, which G-III spent with the understanding that such efforts would benefit G-III rather than its competitors.
7. I declare under penalty of perjury that the foregoing is true and correct.

Executed on: September 9, 2024

/s/ Jennifer Rager
Jennifer Rager

EXHIBIT D

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

In the Matter of

Tapestry, Inc.,
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DOCKET NO. 9429

**[PROPOSED] ORDER GRANTING NON-PARTY G-III APPAREL GROUP,
LTD'S MOTION 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 G-III Apparel Group, Ltd. has filed a motion for *in camera* treatment.

G-III’s motion for *in camera* treatment is GRANTED for three years as to DX-0038- GIII-TAPESTRY-00000001. At the time that any documents that have been granted in camera treatment are 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 documents, and request that the hearing go into an *in camera* session.

ORDERED:

Date: _____

Dania L Ayoubi
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that on September 9, 2024, pursuant to Federal Trade Commission Rules of Practice 4.2(c) and 4.4(b), I caused the foregoing Notice of Appearance (FTC Form 232) and Statement of Good Standing to be filed electronically using the FTC's E-Filing System, which will send a notification of such filing to:

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

The Honorable Dania L. Ayoubi
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, NW, Room H-110
Washington, DC 20580

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

Complaint Counsel
U.S. Federal Trade Commission
Abby L. Dennis (adennis@ftc.gov)
Peggy Bayer Femenella (pbayerfemenella@ftc.gov)
Frances Anne Johnson (fjohnson@ftc.gov)
Timothy Singer (tsinger@ftc.gov)
Brandon Boxbaum (bboxbaum@ftc.gov)
Victoria Sims (vsims@ftc.gov)
Peter Colwell (pcolwell@ftc.gov)
Blake Risenmay (brisenmay@ftc.gov)
Andrew Lowdon (alowdon@ftc.gov)
Sarah Kerman (skerman@ftc.gov)
Kassandra DiPietro (kdipietro@ftc.gov)
Nicole Lindquist (nlindquist@ftc.gov)
Danielle Quinn (dquinn@ftc.gov)
Laura Antonini (lantonini@ftc.gov)
Sean D. Hughto (shughto@ftc.gov)

Counsel for Respondent Tapestry, Inc.
Latham & Watkins LLP
Amanda P. Reeves (amanda.reeves@lw.com)
Ian R. Conner (ian.conner@lw.com)
Lindsey S. Champlin (lindsey.champlin@lw.com)
Jennifer L. Giordano (jennifer.giordano@lw.com)
David L. Johnson (david.johnson@lw.com)
Seung Wan (Andrew) Paik (andrew.paik@lw.com)

Mary A. Casale (mary.casale@lw.com)
Christopher J. Brown (chris.brown@lw.com)
Lawrence E. Buterman (lawrence.buterman@lw.com)
Al Pfeiffer (al.pfeiffer@lw.com)
Christopher S. Yates (chris.yates@lw.com)
Sean Berkowitz (sean.berkowitz@lw.com)

Counsel for Respondent Capri Holdings Limited

Wachtell, Lipton, Rosen & Katz

Jonathan M. Moses (JMMoses@WLRK.com)
Elaine P. Golin (EPGolin@WLRK.com)
Damian G. Didden (DGDidden@WLRK.com)
Brittany A. Fish (BAFish@WLRK.com)
Martin J. Sicilian (MJSicilian@WLRK.com)
Karen Wong (Kwong@WLRK.com)
Jordan Cohen-Kaplan (JCKaplan@WLRK.com)
Adam L. Goodman (ALGoodman@WLRK.com)

/s/ Shaina Vinayek

SHAINA VINAYEK

*Counsel for Non-Party G-III Apparel
Group, Ltd.*