

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

)	
In the Matter of)	
)	
Tapestry, Inc.,)	DOCKET NO. 9429
a corporation,)	
)	
and)	
)	
Capri Holdings Limited,)	
a corporation,)	
)	
Respondents.)	

THIRD PARTY TELFAR, 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), third party Telfar, LLC (“Telfar”) respectfully moves this Court for *in camera* treatment of a highly competitively-sensitive, confidential business document, bearing Exhibit No. PX3186 (the “Confidential Document”). Telfar produced this document, among others, in connection with *Federal Trade Commission v. Tapestry, Inc.*, No. 1:24-cv-03109-JLR (S.D.N.Y.) in response to a subpoena issued by Tapestry, Inc. in that action. The Federal Trade Commission (“FTC”) has now notified Telfar that it intends to introduce this Confidential Document into evidence at the administrative trial in this Rule 3 proceeding. *See* Letter from the Federal Trade Commission dated August 29, 2024 (attached as **Exhibit A**).

For the reasons discussed in this motion, Telfar requests that this Court afford the Confidential Document *in camera* treatment indefinitely or, in the alternative, for a period of five years. In support of this motion, Telfar relies on the Declaration of Nels Lippert (the “Lippert Declaration”), attached as **Exhibit B**, and the Declaration of Romola Lucas (the “Lucas

Declaration”), attached as **Exhibit C**, which provide additional details on the Confidential Document.

I. THE CONFIDENTIAL DOCUMENT

Telfar seeks *in camera* treatment for the Confidential Document, a copy of which is attached hereto as **Exhibit D**. Telfar is a third party to this action and, but for the subpoena it received in the *Federal Trade Commission v. Tapestry, Inc.*, No. 1:24-cv-03109-JLR (S.D.N.Y.), the Confidential Document would not have been made available to anyone outside of Telfar.

II. LEGAL STANDARD

Entities involved in Rule 3 proceedings may move the Court to “obtain *in camera* treatment for material, or portions thereof, offered into evidence.” 16 C.F.R. § 3.45(b). *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. *Id.* “[M]aterial made subject to an *in camera* order will be kept confidential and not placed on the public record of the proceeding in which it was submitted.” 16 C.F.R. § 3.45(a). “Only respondents, their counsel, authorized Commission personnel, and court personnel concerned with judicial review may have access thereto, provided that the Administrative Law Judge, the Commission and reviewing courts may disclose such *in camera* material to the extent necessary for the proper disposition of the proceeding.” *Id.*

III. ARGUMENT

An entity seeking *in camera* treatment of a document must “make a clear showing that the information concerned is sufficiently secret and sufficiently material to [its] business that disclosure would result in serious competitive injury.” *In the Matter of Otto Bock HealthCare N. Am., Inc.*, 2018 WL 2491602, at *1 (F.T.C. July 2, 2018) (internal quotation omitted). The

submission of declarations in support of the secret nature of these documents, such as those attached to this motion as Exhibits B and C, is essential. *In the Matter of Benco Dental Supply Co., A Corp., Henry Schein, Inc., A Corp., & Patterson Companies, Inc., A Corp. Respondents.*, No. 9379, 2018 WL 5292624, at *2 (F.T.C. Oct. 11, 2018).¹

The Confidential Document contains information related to Telfar's sales data, including an analysis of this data as well as its procurement. See Lucas Declaration, ¶ 5; see also Lippert Declaration ¶ 5. Information "such as...pricing to customers, business costs and profits, as well as business plans, marketing plans, or sales documents" has been granted *in camera* treatment during Rule 3 proceedings. *In the Matter of 1-800 Contacts, Inc., A Corp.*, No. 9372, 2017 WL 1493851, at *8 (F.T.C. Apr. 7, 2017); see also *In the Matter of Mcwane, Inc., A Corp., and Star Pipe Products, Ltd., A LP, Respondents.*, 9351, 2012 WL 3862131, at *10 (F.T.C. Aug. 17, 2012) (protecting "purchase and sales data"). "Five years of *in camera* treatment is routinely granted for competitively sensitive business records, including documents revealing competitive positioning, strategic plans, and marketing strategies." *In the Matter of Meta Platforms, Inc., A Corporation, Mark Zuckerberg, A Natural Person, and Within Unlimited, Inc., A Corporation*, 2022 WL 18273876, at *2 (collecting cases).

Moreover, requests for *in camera* treatment of documents by third parties deserve "special solitude." *In the Matter of Kaiser Aluminum & Chem. Corp.*, 103 F.T.C. 500 (F.T.C. 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." *Id.*

¹ Although some information contained within the Confidential Document reflects data from over three years ago, the Confidential Document itself was prepared this year. Moreover, the Lippert Declaration and Lucas Declaration demonstrate the need to provide for *in camera* treatment of this highly sensitive information, including information from years prior to 2021. See *In the Matter of Benco Dental Supply Co., A Corp., Henry Schein, Inc., A Corp.*, No. 9379, 2018 WL 5292624, at *2 ("To overcome the presumption that *in camera* treatment will not be granted for information that is more than three years old, applicants seeking *in camera* treatment for such documents must also demonstrate, by affidavit or declaration, that such material remains competitively sensitive.")

As such, the content of the Confidential Document clearly falls within the scope of information designed to be protected by 16 C.F.R. § 3.45(b), and warrants it being granted *in camera* treatment to prevent Respondent Tapestry, Inc., as well as other competitors, from having access to some of Telfar's most competitively sensitive information. Telfar recognizes, however, that "[w]here *in camera* treatment is granted for ordinary business records, it is typically provided for two to five years," (*In the Matter of 1-800 Contacts, Inc., A Corp.*, 9372, 2017 WL 1493851, at *8) which is why although this motion serves primarily to request permanent *in camera* treatment of the Confidential Document, Telfar seeks five years of such treatment in the alternative.

IV. CONCLUSION

For the reasons set forth above, and in the Lippert and Lucas Declarations, Telfar respectfully requests permanent *in camera* treatment of the Confidential Document to protect in from public disclosure or, in the alternative, *in camera* treatment of the Confidential Document for a period of five years.

Dated: September 10, 2024

By: /s/ Nels T. Lippert
Nels T. Lippert

TARTER KRINSKY & DROGIN LLP
1350 Broadway
New York, NY 10018
Email: nlippert@tarterkrinsky.com
Tel: (212) 216-8000
Fax: (212) 216-8001

CERTIFICATE OF SERVICE

I hereby certify that on September 10, 2024, I filed the forgoing documents electronically using the FTC's E-Filing System, which will send notification of such to the following:

The Honorable Dania L. Ayoubi
Office of the Administrative Law Judges
Federal Trade Commission
600 Pennsylvania Ave., NW
Room H-110
Washington, DC 20580
(oyalj@ftc.gov)

April Tabor Secretary Federal Trade
Commission 600 Pennsylvania Ave., NW
Rm. H-110 Washington, DC 20580
(ElectronicFilings@ftc.gov)

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

Kassandra DiPietro
(kdipietro@ftc.gov)

Complaint Counsel

Christopher S. Yates
(chris.yates@lw.com)

David L. Johnson
(david.johnson@lw.com)

Christopher J. Brown
(chris.brown@lw.com)

Counsel for Respondent
Tapestry, Inc

Jonathan M. Moses
(JMMoses@wlrk.com)

Elaine P. Golin
(EPGolin@wlrk.com)

Damian G. Didden
(DGDidden@wlrk.com)

Counsel for Respondent
Capri Holdings Limited

Dated: September 10, 2024

/s/ Nels T. Lippert

Nels T. Lippert, Esq.

Attorneys for Non-Party Telfar, LLC.

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

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Respondents.)	
_____)	

[PROPOSED] ORDER

Upon consideration of Telfar, LLC’s Motion for *In Camera* Treatment 16 C.F.R. §3.45, it is HEREBY ORDERED that Exhibit No. PX3186 be afforded *in camera* treatment in its entirety.

The Motion is hereby GRANTED.

ORDERED:

The Honorable Dania L. Ayoubi
Administrative Law Judge

Date: _____

EXHIBIT A



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UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Bureau of Competition
Mergers II Division

August 29, 2024

VIA EMAIL TRANSMISSION

Telfar, LLC
Nels Lippert
Tarter Krinsky & Drogin
1350 Broadway
New York, NY 10018
nlippert@tarterkrinsky.com

RE: *In the Matter of Tapestry, Inc. and Capri Holdings Limited*, Docket No. 9429

Dear Nels Lippert:

By this letter we are providing formal notice, pursuant to Rule 3.45(b) of the Commission's Rules of Practice, 16 C.F.R. § 3.45(b), that Complaint Counsel intends to offer the documents and testimony referenced in the enclosed Attachment A into evidence in the administrative trial in the above-captioned matter. Please let me know if you need copies of the documents and testimony referenced in Attachment A.

The administrative trial is scheduled to begin on September 25, 2024. All exhibits admitted into evidence become part of the public record unless Administrative Law Judge Dania L. Ayoubi grants *in camera* status (i.e., non-public/confidential).

For documents or testimony that include sensitive or confidential information that you do not want on the public record, you must file a motion seeking *in camera* status or other confidentiality protections pursuant to 16 C.F.R. §§ 3.45 and 4.10(g). Judge Ayoubi may order materials, whether admitted or rejected as evidence, be placed *in camera* only after finding that their public disclosure will likely result in a clearly-defined, serious injury to the person, partnership, or corporation requesting *in camera* treatment.

Motions for *in camera* treatment for evidence to be introduced at trial must meet the strict standards set forth in 16 C.F.R. § 3.45 and explained in *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *In re Jerk, LLC*, 2015 FTC LEXIS 39 (Feb. 23, 2015); *In re Basic Research, Inc.*, 2006 FTC LEXIS 14 (Jan. 25, 2006). Motions also must be supported by a declaration or affidavit by a person qualified to explain the confidential nature of the material. *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 66 (Apr. 23, 2004). For your convenience, we included, as links in the cover email, an example of a third-party motion (and the accompanying declaration or affidavit) for *in camera* treatment that was filed and granted in an FTC administrative proceeding. If you choose to move for *in camera* treatment, you must provide a copy of the document(s) for which you seek such treatment to the Administrative Law Judge. Also, you or

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your representative will need to file a Notice of Appearance in the administrative proceeding. For more information regarding filing documents in adjudicative proceedings, please see <https://www.ftc.gov/about-ftc/bureaus-offices/office-secretary/document-filing>.

Please be aware that under the current Scheduling Order **the deadline for filing motions seeking *in camera* treatment is September 10, 2024**. A copy of the May 16, 2024 Scheduling Order can be found at [Tapestry/Capri](#). If you have any questions, please feel free to contact me at (202) 326-3154 or tsinger@ftc.gov.

Sincerely,

/s/ Timothy Singer

Timothy Singer

Counsel Supporting the Complaint

Attachment

**ATTACHMENT A
CONFIDENTIALITY NOTICE****PUBLIC**

Ex No.	Description	Date	Bates-Begin	Bates-End
PX3186	Email from Nels Lippert to Karen Kim, David Johnson, Sean Berkowitz, et al. re: Federal Trade Commission v. Tapestry, Inc., No. 1:24-cv-03109-JLR (S.D.N.Y.) w/Attach: Telfar on Amazon - Sales 2019 - 2024.pdf	7/25/2024	PX3186-001	PX3186-002

EXHIBIT B

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

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)	
Tapestry, Inc.,)	DOCKET NO. 9429
a corporation,)	
)	
and)	
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Capri Holdings Limited,)	
a corporation,)	
)	
Respondents.)	
)	

**DECLARATION OF NELS LIPPERT IN SUPPORT OF THIRD PARTY
TELFAR, LLC’S MOTION FOR *IN CAMERA* TREATMENT**

I, Nels Lippert, hereby declare as follows:

1. I am a Partner at Tarter Krinsky & Drogin, LLP, a law firm that serves as outside counsel to Telfar, LLC (“Telfar”). I make this declaration in support of Third Party Telfar, LLC’s Motion for *In Camera* Treatment (the “Motion”). I have personal knowledge of the facts set forth in this declaration, and if called as a witness, I could testify competently under oath to such facts.

2. I have reviewed the document referenced in this Declaration, as well as the documents produced by Telfar in *Federal Trade Commission v. Tapestry, Inc.*, No. 1:24-cv-03109-JLR (S.D.N.Y.) in response to a subpoena issued by Tapestry, Inc. in that action. These documents were produced as confidential under a protective order issued in that action, and are subject to a granted motion to seal in that case. Romola Lucas, General Counsel of Telfar, has previously provided a certification in *the Federal Trade Commission v. Tapestry, Inc.*, No. 1:24-cv-03109-JLR (S.D.N.Y.) case as to the produced documents, including the document that is the subject of the Motion. As outside counsel to Telfar, I am familiar with not only the content of these

documents, but also the highly sensitive nature of the information contained within them and their competitive significance to Telfar. My review of these documents, as well as my familiarity with Telfar's business and the confidentiality protection afforded to the type of information provided to the FTC by Telfar, serves as the basis for my submission that the disclosure of the document that is the subject of the Motion would cause serious competitive injury to Telfar.


3. The FTC has informed Telfar that it intends to use the document bearing Exhibit No. PX3186 during an administrative hearing in the above-captioned matter. This document contains competitively sensitive and confidential sales data, as well as an analysis of this data and the methods by which it is procured. For these reasons, Telfar is seeking permanent *in camera* treatment of this document.

4. PX3186-001 is an email that I sent to Karen Kim, counsel for Tapestry, Inc., offering an analysis of the nature and procurement of the data contained within the email's attachment—an Excel spreadsheet detailing a specific subset of Telfar's online sales. Ms. Kim had previously presented me with a series of questions related to the nature and content of the data included in this attachment. PX3186-001 served as my response to these questions. Telfar depends on the confidentiality of its sales data in order to remain competitive within an already highly competitive industry. The disclosure of this confidential information would allow Telfar's competitors to review and replicate aspects of Telfar's sales model, and gain insight into Telfar's strategic decision making and internal data procurement methods. Accordingly, the protection from public disclosure of this information is necessary to eliminate the substantial prejudice that would be

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suffered by Telfar should it be released, along with the irreparable competitive and financial harm that would follow as a result.

I declare under penalty of perjury that the foregoing is true and correct. Executed on September 9, 2024 in New York, New York.



Nels T. Lippert

EXHIBIT C

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

_____)	
In the Matter of)	
)	
Tapestry, Inc.,)	DOCKET NO. 9429
a corporation,)	
)	
and)	
)	
Capri Holdings Limited,)	
a corporation,)	
)	
Respondents.)	
_____)	

**DECLARATION OF ROMOLA LUCAS IN SUPPORT OF THIRD PARTY
TELFAR, LLC’S MOTION FOR *IN CAMERA* TREATMENT**

I, Romola Lucas, hereby declare as follows:

1. I am General Counsel for Telfar, LLC (“Telfar”). I make this declaration in support of Third Party Telfar, LLC’s Motion for *In Camera* Treatment (the “Motion”). I have personal knowledge of the facts set forth in this declaration, and if called as a witness, I could testify competently under oath to such facts.
2. I have reviewed the document referenced in this Declaration, as well the documents produced by Telfar in *Federal Trade Commission v. Tapestry, Inc.*, No. 1:24-cv-03109-JLR (S.D.N.Y.) in response to a subpoena issued by Tapestry, Inc. in that action. These documents were produced as confidential under a protective order issued in that action, and are subject to a granted motion to seal in that case. I have previously provided a certification as to the produced documents in the *Federal Trade Commission v. Tapestry, Inc.*, No. 1:24-cv-03109-JLR (S.D.N.Y.) case, including the document that is the subject of the Motion. As General Counsel for Telfar, I am familiar with not only the content of

these documents, but also the highly sensitive nature of the information contained within them and their competitive significance to Telfar. My review of these documents, as well as my familiarity with Telfar's business and the confidentiality protection afforded to the type of information provided to the FTC by Telfar, serves as the basis for my submission that the disclosure of the document that is the subject of the Motion would cause serious competitive injury to Telfar.

3. Founded by Telfar Clemens in 2005, Telfar is well-known throughout the United States and the world as a culture-creating collection, lifestyle brand, and source of highly sought after products, including bags, apparel, and accessories.
4. The FTC has informed Telfar that it intends to use the document bearing Exhibit No. PX3186 during an administrative hearing in the above-captioned matter. This document contains competitively-sensitive and confidential sales data, as well as an analysis of this data and the methods by which it is procured. For these reasons, Telfar is seeking permanent *in camera* treatment of this document.
5. PX3186-002 is an attachment to an email sent by Nels Lipper, Partner at Tarter Krinsky & Drogin, LLP—a law firm that serves as outside counsel for Telfar. This attachment provides sales data for a specific subset of Telfar's online sales. Telfar depends on the confidentiality of its sales data in order to remain competitive within an already highly competitive industry. The disclosure of this confidential information would allow Telfar's competitors to review and replicate aspects of Telfar's sales model, and gain insight into Telfar's strategic decision making and internal data procurement. Accordingly, the protection from public disclosure of this information is necessary to

eliminate the substantial prejudice that would be suffered by Telfar should it be released,
along with the irreparable competitive and financial harm that would follow as a result.

I declare under penalty of perjury that the foregoing is true and correct. Executed on September
9, 2024 in _____.




EXHIBIT D
PX3186

**Confidential - Redacted in
Entirety**