

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

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

**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 documents, bearing Exhibit Nos. DX-0040 and DX-0041 (the “Confidential Documents”). Telfar produced these documents, 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. Counsel for Respondent Tapestry, Inc., has now notified Telfar that it intends to introduce these Confidential Documents, along with an additional document bearing Exhibit No. DX-0039,<sup>1</sup> into evidence at the administrative trial in this Rule 3 proceeding. See email correspondence dated August 30, 2024 (attached as **Exhibit A**).

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<sup>1</sup> Telfar does not seek to have Exhibit No. DX-0039 be reviewed *in camera*. See *In the Matter of Polypore Intl., Inc., Respt.*, 9327, 2009 WL 1353461, at \*5 (F.T.C. May 6, 2009) (where *in camera* treatment was granted when the requesting entity narrowly tailored its request for documents for which it sought such treatment).

For the reasons discussed in this motion, Telfar requests that this Court afford the Confidential Documents *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 Romola Lucas (the “Lucas Declaration”), attached as **Exhibit B**, which provides additional details on the Confidential Documents.

## I. THE CONFIDENTIAL DOCUMENTS

Telfar seeks *in camera* treatment for the Confidential Documents, copies of which are attached hereto as **Exhibit C**. 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 Documents 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 particular documents 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 a declaration in support of the secret nature of these documents, such as that which as attached as Exhibit B to this motion, 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).<sup>2</sup>

The Confidential Documents contain information related to Telfar’s net quantity and net sales data. See Lucas Declaration ¶¶ 5-6. 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).

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<sup>2</sup> Although some information contained within the Confidential Documents reflects data from over three years ago, the Confidential Documents themselves were prepared this year. Moreover, the Lucas Declaration demonstrates 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.”)

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.*

As such, the content of the Confidential Documents clearly falls within the scope of information designed to be protected by 16 C.F.R. § 3.45(b), and warrants them 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 Documents, Telfar seeks five years of such treatment in the alternative.

#### IV. CONCLUSION

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

Dated: September 10, 2024

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

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Fax: (212) 216-8001

PUBLIC

**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](mailto:oyalj@ftc.gov))

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

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

Kassandra DiPietro  
([kdipietro@ftc.gov](mailto:kdipietro@ftc.gov))

*Complaint Counsel*

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

**[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 Nos. DX-0040 and DX-0041 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

PUBLIC

**From:** Nikki.Bourassa@lw.com <Nikki.Bourassa@lw.com>  
**Sent:** Friday, August 30, 2024 7:09 PM  
**To:** Nels T. Lippert <nlippert@tarterkrinsky.com>; Philip Y. Braginsky <pbraginsky@tarterkrinsky.com>  
**Cc:** David.Johnson@lw.com; Kimon.Triantafyllou@lw.com; Karen.Kim@lw.com  
**Subject:** [EXT] In the Matter of Tapestry Inc., and Capri Holdings Ltd., Dkt No. 9439 (Telfar, LLC)

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 Telfar, LLC (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-0041 - TELFAR-TAP-000001
- DX-0040 - TELFAR000001
- DX-0039 - Declaration of R. Lucas (Telfar)

Please let me know if you have any questions.



**PUBLIC**

Best,

**Nikki Bourassa\***

Pronouns: She/Her/Hers

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\*Not admitted to practice in Washington, DC. Admitted in New York. All work supervised by a member of the DC Bar.

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# **EXHIBIT B**

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

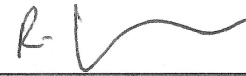
these documents, but also the highly sensitive nature of the information contained within them and their competitive significance to Telfar. My review of these documents, as well as my familiarity with Telfar's business and the confidentiality protection afforded to the type of information provided to 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. Counsel for the Respondents in the above-captioned action have informed Telfar that they intend to use the documents bearing Exhibit Nos. DX-0039, DX-0040, and DX-0041 during an administrative hearing. Exhibit Nos. DX-0040 and DX-0041 contain competitively-sensitive and confidential sales data. For these reasons, Telfar is seeking permanent *in camera* treatment of these two documents.
5. DX-0040 is a document that contains sales data for a specific subset of Telfar's online sales.
6. DX-0041 is a document that contains information regarding Telfar's net quantity and net sales of its handbags.
7. With respect to both Exhibit Nos. DX-0040 and DX-0041, Telfar depends on the confidentiality of this 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.

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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 \_\_\_\_\_.

A handwritten signature in black ink, consisting of a stylized 'R' followed by a wavy line, positioned above a horizontal line.

# EXHIBIT C"

FZ/2262"cpf "FZ/2263

**Eqphf gpvkn' "Tgf cevgf 'kp'  
Gpvk gv{**