

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

**IN THE MATTER OF**

**TAPESTRY, INC,**

*-and-*

**CAPRI HOLDINGS LIMITED**

**DOCKET NO. 9429**

**NON-PARTY BURBERRY LIMITED’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), Non-Party Burberry Limited (“Burberry”) respectfully moves this Court for *in camera* treatment of four exhibits containing Burberry’s competitively-sensitive, confidential business information (together, the “Confidential Documents”). The Federal Trade Commission (“FTC”) has notified Burberry that it intends to introduce the four Confidential Documents into evidence at the administrative trial in this matter. *See* Letter from the Federal Trade Commission dated August 29, 2024 (attached as Exhibit A).

Burberry requests that the Court grant *in camera* treatment of the Confidential Documents indefinitely or, in the alternative, for a ten-year period. Burberry is a third party to this litigation, and its confidential business documents would not have been made public but for the subpoenas issued by the parties to this proceeding and the related action pending in the United States District Court for the Southern District of New York. Public disclosure of the Confidential Documents would significantly harm Burberry’s competitive position in the handbag industry. In support of this motion, Burberry relies on the Declaration of Amanda Slatin (“Slatin Declaration”), which

provides additional details on the documents for which Burberry seeks *in camera* treatment (attached as Exhibit B).

**I. The Documents for Which Protection is Sought**

Burberry seeks *in camera* treatment for the following Confidential Documents, copies of which are attached as Exhibit C.

Exhibit No.	Description	Bates No.
PX3119	Burberry Spreadsheet: AUR Analysis	Burberry-0003
PX3120	Burberry Spreadsheet: Burberry Pricing Architecture - Updated Summer 22	Burberry-0004
PX3121	Burberry Spreadsheet: Burberry Pricing Architecture - Updated Spring and Summer 23	Burberry-0005
PX3122	Burberry Spreadsheet: Burberry Pricing Architecture- Updated Spring and Summer 24	Burberry-0006

**II. The Confidential Documents Warrant *In Camera* Treatment Because They Are Secret and Material, and Public Disclosure Would Result in Serious Competitive Injury**

The Confidential Documents warrant *in camera* treatment because they contain secret and material information, the public disclosure of which would lead to serious competitive injury. *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. 16 C.F.R. § 3.45(b). An applicant meets this burden by demonstrating “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.*, 95 F.T.C. 352, 355 (1980). In this context, courts strive “to protect confidential business information from unnecessary airing.” *HP. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961).

When determining whether to grant *in camera* treatment, the court considers both the secrecy and materiality of the information, applying six factors: (1) the extent to which the information is known outside 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 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, 456-457 (1977).

As discussed in the Slatin Declaration, the Confidential Documents are both secret and material to Burberry's handbag business, therefore warranting *in camera* treatment. *First*, absent these proceedings, Burberry would not have disclosed the documents in question outside of the company. Slatin Decl. ¶ 3. *Second*, Burberry restricts internal access to these documents as appropriate, limiting the number of employees who can view them. Slatin Decl. ¶ 3. *Third*, Burberry has taken further measures to safeguard the information, including by password-protecting the documents. Slatin Decl. ¶ 3. *Fourth*, the materials contain highly sensitive confidential information of competitive significance, including strategic pricing analyses, granular competitor handbag comparisons, and detailed handbag sales data. Slatin Decl. ¶ 4. Public disclosure of this information would significantly harm Burberry's competitive position by empowering its competitors to adjust their own strategies based on Burberry's proprietary competitive and pricing analyses. As this court has noted, "[t]he likely loss of business advantages is a good example of a 'clearly defined, serious injury.'" *In re Dura Lube Corp.*, 1999 FTC LEXIS 255, at \*7 (Dec. 23, 1999) (quoting *In re Gen. Foods Corp.*, 95 F.T.C. at 355). *Lastly*, others could not easily acquire or duplicate the information since the materials are proprietary to Burberry and

not publicly known outside the company. For these reasons, the Confidential Documents are both secret and material to Burberry's business and necessitate *in camera* treatment.

### **III. Indefinite *In Camera* Treatment Is Justified Because the Confidential Documents Contain Trade Secrets that Will Remain Sensitive Over Time**

The Confidential Documents at issue constitute Burberry's trade secrets, warranting indefinite *in camera* protection. Information may receive indefinite *in camera* treatment when "the need for confidentiality of the material is not likely to decrease over time." *In re E.I. DuPont de Nemours & Co.*, 1990 FTC LEXIS 134, at \*2 (Apr. 25, 1990). Trade secrets, including "secret formulas, processes, other secret technical information, or information that is privileged" are examples that "merit[] indefinite *in camera* treatment." *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55, at \*5 (Apr. 4, 2017).

For example, the court in *In re Tronox Ltd.* granted non-party Masco Corporation indefinite *in camera* treatment for documents "contain[ing] detailed analysis of manufacturing processes and evaluations of grades of titanium dioxide, proprietary R&D test results across numerous proprietary formulations, as well as information about internal manufacturing processes." *In re Tronox Ltd.*, 2018 FTC LEXIS, at \*26. Similarly, as explained in the Slatin Declaration, the Confidential Documents here contain Burberry's proprietary internal processes for pricing and evaluating its competitive position in the handbag industry. In particular, the documents shed light on how Burberry determines its handbag prices relative to other handbag competitors, its overall product and price mix for handbags, whom it views as its closest competitors, as well as detailed sales data. If the Confidential Documents were disclosed publicly, a competitor could copy Burberry's internal processes for their own benefit or adjust their current analyses to consider the process Burberry uses to make competitive decisions concerning price, mix, and output. Moreover, the circumstances warranting *in camera* treatment are not likely to decrease over time because the

Confidential Documents contain the processes by which Burberry makes competitive decisions and whom it views as its closest competitors, two factors unlikely to change in the foreseeable future. As a result, the court should grant indefinite *in camera* treatment for the documents in question.

#### **IV. In the Alternative, Ten-Year *In Camera* Treatment Is Justified Given the Competitively Sensitive Nature of These Highly Confidential Documents**

Even if the Court does not grant indefinite *in camera* treatment, Burberry's Confidential Documents should receive *in camera* protection for at least ten years due to the especially confidential, competitively sensitive nature of the materials. Courts routinely grant ten-year *in camera* treatment for similarly sensitive information. *See In re Tronox Ltd.*, 2018 FTC LEXIS 78, \*1 (May 15, 2018); *See Otto Bock HealthCare N. Am., Inc.*, 2018 FTC LEXIS, at \*10-12. For example, in *In re Tronox Ltd.* the court granted ten-year *in camera* protection to documents containing "sales data, pricing, profitability, shipping information, and strategic business plans." *See In re Tronox Ltd.*, 2018 FTC LEXIS 78, at \*32 (May 15, 2018) (granting ten-year *in camera* protection for 14 of 19 non-parties).

The Confidential Documents at issue here contain similar information, including detailed "sales data," "pricing" information, and "strategic business plans" in the form of comparisons between Burberry and competitor handbags. Accordingly, Burberry's Confidential Documents warrant at least the ten-year *in camera* treatment afforded to non-parties in other FTC matters.<sup>1</sup>

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<sup>1</sup> At a minimum, the Confidential Documents qualify as ordinary business records meriting five-year *in camera* treatment because they "contain information of a type which most businesses would prefer to keep confidential." *In Re H. P. Hood & Sons, Inc.*, 58 F.T.C. 1184 (1961).

**V. Conclusion**

For the reasons set forth above and in the accompanying Slatin Declaration, Burberry respectfully requests that this Court grant permanent *in camera* treatment for the Confidential Documents in their entirety.

Dated: September 10, 2024

Respectfully submitted,

*/s/ Brendan Fee*  
**MORGAN LEWIS & BOCKIUS, LLP**  
R. Brendan Fee  
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Philadelphia, PA 19103-3007  
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*Counsel for Non-Party Burberry Limited*

**STATEMENT REGARDING MEET AND CONFER**

The undersigned certifies that counsel for Non-Party Burberry Limited (“Burberry”) notified counsel for the parties via email on or about September 10, 2024 that it would be seeking *in camera* treatment of the Exhibits. Complaint Counsel and Counsel for Respondents indicated that they would not object to Burberry’s motion.

Dated: September 10, 2024

*/s/ Brendan Fee*  
**MORGAN LEWIS & BOCKIUS, LLP**  
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*Counsel for Non-Party Burberry Limited*

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

**IN THE MATTER OF**

**TAPESTRY, INC,**

*-and-*

**CAPRI HOLDINGS LIMITED**

**DOCKET NO. 9429**

**[PROPOSED] ORDER**

Upon consideration of Burberry Limited’s (“Burberry”) Motion for *In Camera* Treatment, it is HEREBY ORDERED that the following documents are to be provided indefinite *in camera* treatment from the date of this Order in their entirety.

<b>Exhibit No.</b>	<b>Description</b>	<b>Bates No.</b>
PX3119	Burberry Spreadsheet: AUR Analysis	Burberry-0003
PX3120	Burberry Spreadsheet: Burberry Pricing Architecture - Updated Summer 22	Burberry-0004
PX3121	Burberry Spreadsheet: Burberry Pricing Architecture - Updated Spring and Summer 23	Burberry-0005
PX3122	Burberry Spreadsheet: Burberry Pricing Architecture- Updated Spring and Summer 24	Burberry-0006

**ORDERED:**

\_\_\_\_\_  
Dania L. Ayoubi  
Administrative Law Judge

Date: \_\_\_\_\_



# EXHIBIT A



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

Bureau of Competition  
Mergers II Division

August 29, 2024

**VIA EMAIL TRANSMISSION**

Burberry Limited  
C/O Brendan Fee  
Morgan, Lewis & Bockius LLP  
2222 Market St.  
Philadelphia, PA 19103-3007  
brendan.fee@morganlewis.com

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

Dear Brendan Fee:

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) 326-2553 or [brisenmay@ftc.gov](mailto:brisenmay@ftc.gov).

Sincerely,

/s/ Blake Risenmay

Blake Risenmay

Counsel Supporting the Complaint

Attachment

<b>Ex No.</b>	<b>Description</b>	<b>Date</b>	<b>Bates-Begin</b>	<b>Bates-End</b>
PX3119	Burberry Spreadsheet: AUR Analysis	7/16/2024	Burberry-0003	Burberry-0003
PX3120	Burberry Spreadsheet: Burberry Pricing Architecture - Updated Summer 22	7/22/2024	Burberry-0004	Burberry-0004
PX3121	Burberry Spreadsheet: Burberry Pricing Architecture - Update for Spring 23 & Summer 23	7/22/2024	Burberry-0005	Burberry-0005
PX3122	Burberry Spreadsheet: Burberry Pricing Architecture - Updated For Spring 24 and Summer 24	7/22/2024	Burberry-0006	Burberry-0006

# **EXHIBIT B**

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

IN THE MATTER OF  TAPESTRY, INC,  <p style="text-align: center;"><i>-and-</i></p> CAPRI HOLDINGS LIMITED
--

DOCKET NO. 9429

**DECLARATION OF AMANDA SLATIN IN SUPPORT OF  
BURBERRY LIMITED’S MOTION FOR *IN CAMERA* TREATMENT**

I, Amanda Slatin, hereby declare as follows:

1. I am Principal Counsel – Americas for Burberry Limited (“Burberry”) and I make this declaration in support of Burberry’s Motion for *In Camera* Treatment.

2. I have reviewed and am familiar with the documents Burberry produced in discovery, including the following documents, which Counsel Supporting the Complaint in the above-referenced matter has indicated it intends to offer into evidence at the administrative trial in this matter:

Exhibit No.	Description	Bates No.
PX3119	Burberry Spreadsheet: AUR Analysis	Burberry-0003
PX3120	Burberry Spreadsheet: Burberry Pricing Architecture - Updated Summer 22	Burberry-0004
PX3121	Burberry Spreadsheet: Burberry Pricing Architecture - Updated Spring and Summer 23	Burberry-0005
PX3122	Burberry Spreadsheet: Burberry Pricing Architecture- Updated Spring and Summer 24	Burberry-0006

3. These documents are highly confidential competitive and pricing analyses prepared by Burberry for internal use only. Burberry takes substantial measures to safeguard the confidentiality of these documents including by limiting internal access to these documents as appropriate, protecting them with passwords, and taking other reasonable steps to protect their confidentiality. In the absence of subpoenas issued by the parties to this proceeding and the related action pending in the United States District Court for the Southern District of New York, these documents would not have been disclosed outside of Burberry.

4. These documents contain highly confidential business strategy, including how Burberry prices its products relative to its handbag competitors. Disclosure of these documents would reveal Burberry's sensitive strategies to the public, and in turn, to Burberry's competitors, which would cause significant and irreparable harm to Burberry.

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

Dated: September 10, 2024



\_\_\_\_\_  
Amanda Slatin  
Principal Counsel – Americas  
Burberry Limited

# **EXHIBIT C**

**Hearing Exhibit Nos. PX3119, PX3120, PX3121,  
and PX3122**

**CONFIDENTIAL - REDACTED  
IN ENTIRETY**



**Hearing Exhibit No. PX3119**

**CONFIDENTIAL - REDACTED  
IN ENTIRETY**

**Hearing Exhibit No. PX3120**

**CONFIDENTIAL - REDACTED  
IN ENTIRETY**

**Hearing Exhibit No. PX3121**

**CONFIDENTIAL - REDACTED  
IN ENTIRETY**

**PUBLIC**

**Hearing Exhibit No. PX3122**

**CONFIDENTIAL - REDACTED  
IN ENTIRETY**

## CERTIFICATE OF SERVICE

I hereby certify that on September 10, 2024, I filed the foregoing document electronically using the FTC'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, DC 20580  
[ElectronicFilings@ftc.gov](mailto:ElectronicFilings@ftc.gov)

The Honorable Dania L. Ayoubi  
Office of Administrative Law Judges  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Rm. H-110  
Washington, DC 20580

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

Blake Risenmay  
Federal Trade Commission  
400 7<sup>th</sup> Street, SW  
Washington, DC 20024  
Email: [brisenmay@ftc.gov](mailto:brisenmay@ftc.gov)

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*Counsel for Capri Holdings Limited*

By: /s/ Brendan Fee  
Brendan Fee

*Counsel for Non-Party Burberry Limited*