

**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 PRADA USA CORP.'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 Prada USA Corp. ("Prada USA") respectfully moves this Court for *in camera* treatment of nine competitively sensitive, confidential business documents (the "Confidential Documents"). Prada USA produced these documents, among others, in response to a third-party subpoena. The Federal Trade Commission ("FTC") has now notified Prada USA that it intends to introduce the Confidential Documents, into evidence at the administrative trial in this matter. Prada USA submits this Motion requesting permanent *in camera* treatment of the Confidential Documents in their entirety.

All of the materials for which Prada USA is seeking *in camera* treatment are confidential business documents, such that if they were to become part of the public record, Prada USA would be significantly harmed in its ability to compete in the luxury retail industry. For the reasons discussed in this Motion, Prada USA requests that this Court afford its confidential business documents *in camera* treatment indefinitely. In support of this Motion, Prada USA relies on the

Affidavit of Frank Martinez (“Martinez Declaration”), attached as **Exhibit A**, which provides additional details on the documents for which Prada USA is seeking *in camera* treatment.

I. The Documents for Which Protection is Sought

Prada USA seeks *in camera* treatment for the following Confidential Documents, copies of which are attached as **Exhibit B**.

Ex. No.	Title/Description	Date	Bates Range
PX3185	Internal Email re: Important: Private Sales FW23 – Overview & Guidelines w/Attachments: Private Sales FW23 - Overview Plan.pdf; Private Sales FW23-Store Operations Guidelines.pdf	12/19/2023	FTC-LIT-P0000007 – FTC-LIT-P0000033
PX3301	Prada Presentation: Market Trends & Competitors Report Women’s LG & Accessories North America March 2023	3/00/2023	FTC-P0000223 – FTC-P0000262
PX3302	Prada Presentation: Trend Report Woman Bags May 2021	5/00/2021	FTC-P0000040 – FTC-P0000059
PX3303	Prada Presentation: Trend Report Woman Bags July 2021	7/00/2021	FTC-P0000060 – FTC-P0000079
PX3304	Prada Presentation: Trend Report Woman Bags Sept/Oct 2021	10/00/2021	FTC-P0000080 – FTC-P0000104
PX3305	Prada Presentation: Trend Report Donna Leathersgoods & Accessories November 2021	11/00/2021	FTC-P0000105 – FTC-P0000138
PX3309	Prada Presentation: Market Trends & Competitors Report Women’s LG & Accessories NORTH AMERICA	1/00/2023	FTC-P0000192 – FTC-P0000222
PX3311	Prada Presentation: Market Trends & Competitors Report Women’s LG & Accessories North America May 2023	5/00/2023	FTC-P0000263 – FTC-P0000303
PX3314	Prada Presentation: Market Trends & Competitors Report Women’s LG & Accessories North America November 2023	11/00/2023	FTC-P0000001 – FTC-P0000038

II. Prada USA Documents are Secret and Material such that Disclosure Would Result in Serious Injury to Prada USA

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). The proponent demonstrates serious competitive injury by showing that the documents are secret and that they are material to the business. *General Foods Corp.*, 95 F.T.C. 352, 355 (1980); *Dura Lube Corp.*, 1999 F.T.C. LEXIS 255, at *5 (1999). 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).

In considering both secrecy and materiality, the Court may take into account: (1) the extent to which the information is known outside of the business; (2) the extent to which the information 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 Bristol-Myers Co.*, 90 F.T.C. 455, 456-57 (1977).

The Confidential Documents are both secret and material to Prada USA’s business pursuant to this standard as discussed in detail in the Martinez Declaration. In particular, the materials at issue contain information of competitive significance to Prada USA, such as its internal operations, policies, and logistics for private sales and discounting, internal assessments of the handbag market, trends and consumer buying patterns, Prada USA’s placement and competitive positioning in the market in comparison to competitors, styles of handbags and accessories which Prada USA may consider expanding or emphasizing in the future, and information and presentations provided to Prada USA’s Italian parent company, Prada S.p.A. Martinez Declaration at ¶¶ 4, 6-7. As a

luxury retailer, Prada USA depends on its ability to effectively compete in the market for handbags and accessories, and relies on its team's efforts to ensure that it remains competitive with local consumers. *Id.* The information contained in the Confidential Documents is therefore strategically important to the operation of Prada USA's business. *Id.* at ¶¶ 6-7. Prada USA has developed internal processes to promote its business strategy, including to assess the competitive landscape and areas in which the company should focus its future development and sales strategies, for which it has spent significant time and resources. *Id.*

Such information and processes are proprietary to Prada USA and not publicly known outside of Prada USA. *Id.* at ¶¶ 4, 6-7. Moreover, the dissemination of the information is limited even within Prada USA to executives and others who need to know the information to conduct the business of Prada USA. *Id.* at ¶ 4. Prada USA has implemented rigorous security protocols, including restricted access to sensitive information, the use of confidentiality agreements with employees and business partners, and encrypted storage systems, all designed to safeguard the proprietary nature of the information and to prevent unauthorized disclosure. *Id.* Allowing public access to these materials would undermine these substantial efforts and risk competitive harm. *Id.* at ¶¶ 4, 6-7.

Indeed, when Prada USA produced the Confidential Documents, it took steps to maintain confidentiality by designating the documents "Confidential" pursuant to the Protective Order in this case. In related litigation in the Southern District of New York, Prada USA likewise filed motions seeking that such documents remain confidential and under seal. *FTC v. Tapestry, Inc., et al.*, No. 1:24-cv-03109-JLR (S.D.N.Y.), ECF Nos. 147, 279. These motions to seal were granted by the Court. *Id.* at ECF No. 321. Because of the highly confidential and proprietary nature of the information and its materiality to Prada USA's business, *in camera* treatment is appropriate.

Given the competitively sensitive nature of Prada USA's materials, disclosure of the Confidential Documents will result in the loss of a business advantage to Prada USA. *See Dura Lube Corp.*, 1999 FTC LEXIS 255, at *7 (Dec. 12, 1999) ("The likely loss of business advantages is a good example of a 'clearly defined, serious injury.'"); *see also I-800 Contacts, Inc.*, 2017 FTC LEXIS 55, *28 (F.T.C. April 4, 2017) (granting *in camera* treatment for documents concerning non-party's pricing strategies and margins); *Int'l Assoc. of Conference Interpreters*, 1996 FTC LEXIS 298, at *13-14 (June 26, 1996) (collecting cases granting *in camera* treatment for documents revealing business plans and pricing strategies). The Confidential Documents are material to Prada USA's internal merchandising and product prioritization assessments that it applies in order to compete in the luxury retail and handbag markets, reflecting Prada USA's considerations, factors in assessing its own products and competitors' products, and internal approaches to market analysis. Martinez Declaration at ¶ 7. Additionally, the Confidential Documents reflect business strategies and certain pricing and discounting policies that are likely to be in effect and considered as part of Prada USA's internal business plans for years to come (*id.* at ¶ 6), as demonstrated in part by the consistent use of such analysis since at least 2021. As such, "the need for confidentiality of the material is not likely to decrease over time." 54 Fed. Reg. 49,279 (1989). Here, disclosure of this secret information concerning Prada USA's short- and long-term business strategies would create an unreasonable and unnecessary risk of competitive harm to Prada USA. Given the broad nature of the confidential strategic information contained in the Confidential Documents, the competitive significance of that information is unlikely to diminish with time. Making such documents public would result in a loss of business advantage that Prada USA has built as the result of its own substantial investment in the development of its business strategies.

Finally, Prada USA's status as a third party is relevant to the treatment of its documents. 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 *Kaiser Aluminum & Chem. Corp.*, 103 FTC 500, 500 (1984) ("As a policy matter, extensions of confidential or *in camera* treatment in appropriate cases involving third party bystanders encourage cooperation with future adjudicative discovery requests."). Prada USA's third-party status therefore also weighs in favor of granting *in camera* treatment to the Confidential Documents.

III. Conclusion

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

Dated: September 10, 2024
New York, New York

Respectfully submitted,

By: /s/ Eva W. Cole
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Counsel for Third-Party Prada USA Corp.

STATEMENT REGARDING MEET AND CONFER

The undersigned certifies that counsel for Non-party Prada USA Corp. (“Prada USA”) notified counsel for the parties via email on or about September 10, 2024 that it would be seeking *in camera* treatment of the Confidential Documents. Both counsel for the Federal Trade Commission and Respondents indicated that they would not object to Prada USA’s motion.

Dated: September 10, 2024
New York, New York

Respectfully submitted,

By: /s/ Eva W. Cole
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Counsel for Third-Party Prada USA Corp.

**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

Upon consideration of Non-Party Prada USA Corp.’s (“Prada USA”) Motion for *In Camera* Treatment, it is HEREBY ORDERED that the following documents are to be provided permanent *in camera* treatment from the date of this Order in their entirety.

Ex. No.	Title/Description	Date	Bates Range
PX3185	Internal Email re: Important: Private Sales FW23 – Overview & Guidelines w/Attachments: Private Sales FW23 - Overview Plan.pdf; Private Sales FW23-Store Operations Guidelines.pdf	12/19/2023	FTC-LIT-P0000007 – FTC-LIT-P0000033
PX3301	Prada Presentation: Market Trends & Competitors Report Women’s LG & Accessories North America March 2023	3/00/2023	FTC-P0000223 – FTC-P0000262
PX3302	Prada Presentation: Trend Report Woman Bags May 2021	5/00/2021	FTC-P0000040 – FTC-P0000059
PX3303	Prada Presentation: Trend Report Woman Bags July 2021	7/00/2021	FTC-P0000060 – FTC-P0000079
PX3304	Prada Presentation: Trend Report Woman Bags Sept/Oct 2021	10/00/2021	FTC-P0000080 – FTC-P0000104

PX3305	Prada Presentation: Trend Report Donna Leathersgoods & Accessories November 2021	11/00/2021	FTC-P0000105 – FTC-P0000138
PX3309	Prada Presentation: Market Trends & Competitors Report Women’s LG & Accessories NORTH AMERICA	1/00/2023	FTC-P0000192 – FTC-P0000222
PX3311	Prada Presentation: Market Trends & Competitors Report Women’s LG & Accessories North America May 2023	5/00/2023	FTC-P0000263 – FTC-P0000303
PX3314	Prada Presentation: Market Trends & Competitors Report Women’s LG & Accessories North America November 2023	11/00/2023	FTC-P0000001 – FTC-P0000038

ORDERED:

 Dania L. Ayoubi
 Administrative Law Judge

Date: _____

CERTIFICATE OF SERVICE

I certify that on September 10, 2024, I filed a copy of the foregoing electronically using the FTC's e-filing system, which will send notification 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
Washington, D.C. 20580
OALJ@ftc.com

I certify that on September 10, 2024, I served a copy of the foregoing by e-mail upon:

Complaint Counsel at kdipietro@ftc.gov.
Counsel for Respondent Tapestry, Inc. at Jennifer.Giordano@lw.com.
Counsel for Respondent Capri Holdings Limited at JMMoses@wlrk.com.

By: /s/ Eva W. Cole
Eva W. Cole

EXHIBIT A

**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 FRANK MARTINEZ IN SUPPORT OF NON-PARTY PRADA USA
CORP.'S MOTION FOR *IN CAMERA* TREATMENT**

I, Frank Martinez, hereby declare as follows:

1. I am the SVP General Counsel of Prada USA Corp. (“Prada USA”). I make this declaration in support of Non-Party Prada USA’s Motion for *In Camera* Treatment (the “Motion”).

2. The facts stated in this declaration are within my personal knowledge or are made upon information and belief.

3. I have reviewed and am familiar with the documents Prada USA produced in the above-captioned matter in response to subpoenas from the Federal Trade Commission (“FTC”) and Respondents Tapestry Inc. and Capri Holdings Limited (collectively, “Respondents”). Given my position at Prada USA, I am familiar with the type of information contained in the documents at issue and its competitive significance to Prada USA. Based on my review of the documents, my knowledge of Prada USA’s business, and my familiarity with the confidentiality protection afforded this type of information by Prada USA, I submit that the disclosure of these documents to the public and to the competitors of Prada USA would cause serious competitive injury to Prada USA.

4. Prada USA has a strong relationship with its parent company, Prada S.p.A. Prada S.p.A. is headquartered and operates in Italy. As such, Prada USA is sensitive not only to the privacy concerns of its own business operations, but also those of Prada S.p.A. Given the competitively sensitive nature of its information, in particular that which is shared from Prada S.p.A., even within Prada USA, certain competitively sensitive information is not widely distributed and instead is typically limited to certain individuals, such as executives and others who need to know the information to conduct the business of Prada USA.

5. The FTC has informed Prada USA that it intends to use nine of the documents that Prada USA produced in response to a subpoena at the administrative hearing in this matter. Each of these documents are particularly sensitive and contain confidential business information. As described in the Motion, Prada USA seeks permanent *in camera* protection of the following documents:

Ex. No.	Title/Description	Date	Bates Range
PX3185	Internal Email re: Important: Private Sales FW23 – Overview & Guidelines w/Attachments: Private Sales FW23 - Overview Plan.pdf; Private Sales FW23-Store Operations Guidelines.pdf	12/19/2023	FTC-LIT-P0000007 – FTC-LIT-P0000033
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PX3302	Prada Presentation: Trend Report Woman Bags May 2021	5/00/2021	FTC-P0000040 – FTC-P0000059
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PX3305	Prada Presentation: Trend Report Donna Leathergoods & Accessories November 2021	11/00/2021	FTC-P0000105 – FTC-P0000138
PX3309	Prada Presentation: Market Trends & Competitors Report Women’s LG & Accessories NORTH AMERICA	1/00/2023	FTC-P0000192 – FTC-P0000222
PX3311	Prada Presentation: Market Trends & Competitors Report Women’s LG & Accessories North America May 2023	5/00/2023	FTC-P0000263 – FTC-P0000303
PX3314	Prada Presentation: Market Trends & Competitors Report Women’s LG & Accessories North America November 2023	11/00/2023	FTC-P0000001 – FTC-P0000038

6. PX3185 is an internal Prada USA email reflecting operational instructions, logistics, and discounting policies with respect to the Fall/Winter 2023 private sale held by Prada USA. The details of how Prada USA operates and organizes its private sales and discounting decisions are not publicly known and the information contained in PX3185 is confidential information about how Prada USA strategically decides to conduct its private sales and discounting, both of which relate to Prada USA’s pricing strategies. Prada USA keeps this information in strict confidence because it is strategically important to the operation of Prada USA’s business and would be harmful to Prada USA’s competitive positioning in the luxury retail industry if its pricing information were publicly disclosed to consumers and competitors. Certain of the information was provided to Prada USA by its parent company, Prada S.p.A., solely for dissemination within Prada USA. Prada USA, with the guidance and direction of Prada S.p.A., has devoted significant resources to developing its private sales, the associated operations and guidelines included in PX3185, and organizing its stores in carrying out such sales as referenced in the document. Prada USA does not make its internal private sales strategy and operations, including the information contained in PX3185, available to its competitors or customers and

Prada USA does not share this information with non-Prada USA personnel in the ordinary course of business.

7. The remaining eight documents are various iterations of market trends and competitor reports prepared by Prada USA's merchandising department and shared with its parent company, Prada S.p.A. These documents, as cited by the FTC, are PX3301, PX3302, PX3303, PX3304, PX3305, PX3309, PX3311 and PX3314. These reports were prepared between the years of 2021 and 2023 and are expected to continue as an ordinary course of business practice for Prada USA. These reports are shared with Prada S.p.A. in order to inform Prada S.p.A. about specific issues relevant to the United States luxury retail market, and relate to the Prada Group's corporate strategy, product designs, and pricing considerations by assessing market conditions, competitor activity, and consumer buying habits. In collecting the underlying information and preparing the reports, Prada USA does not interview any consumers or competitors or otherwise notify anyone outside of the company that such reports are being prepared. Prada USA keeps this information in strict confidence because it is strategically important to the operation of Prada USA's business and it would be harmful to Prada USA's competitive positioning in the luxury retail industry if its strategic considerations regarding design, pricing, and forward-looking trends were publicly disclosed to consumers and competitors. Further, Prada USA seeks to avoid public disclosure of its marketing, merchandising, and competitive positioning assessment methodology and criteria because of its concerns that the information could be used to undermine Prada USA's proprietary processes and methodologies in remaining a competitive brand in the luxury retail industry.

8. The nine documents contained on the FTC's list for use in the administrative trial were produced with the expectation that such information would not be made available to the public or Prada USA's competitors.

9. Neither the FTC nor Respondents oppose Prada USA's request for *in camera* treatment to maintain the confidentiality of the documents.

I declare under penalty of perjury that the foregoing is true and correct. Executed September 10, 2024 in New York, New York.



Frank Martinez

EXHIBIT B

**MARKED CONFIDENTIAL
REDACTION IN THEIR ENTIRETY
REQUESTED**