

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

In the matter of :
 :
Tapestry Inc., :
 a corporation, and :
 : Docket No. 9429
Capri Holdings Limited, :
 a corporation, :
 :
Respondents. :
 :

NON-PARTY R.G. BARRY CORPORATION’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 R.G. Barry Corporation (“R.G. Barry”) respectfully moves this Court for *in camera* treatment of certain portions of R.G. Barry’s June 26, 2024 objection letter to the Federal Trade Commission’s (“FTC”) subpoena issued to R.G. Barry (“Objection Letter”), as well as the entirety of Exhibits A and B attached to the Objection Letter (the “Market Data”). The Market Data is proprietary, competitively-sensitive, confidential business documents reflecting handbag sales market data for the twelve-month period ending in March 2024, and certain portions of the Objection Letter reference said data.

The FTC notified R.G. Barry that it intends to introduce the Objection Letter and Market Data into evidence in the administrative trial in the above-captioned matter. (*See* August 29, 2024 Letter from the FTC, attached hereto as **Exhibit 1**). These documents warrant protection from public disclosure given the sensitive business information they contain, such that if they were to become part of the public record, R.G. Barry would be significantly harmed in its ability to compete in the handbag market. For the reasons discussed in this motion, R.G. Barry requests that

this Court afford its confidential business documents *in camera* treatment. In support of this Motion, R.G. Barry relies on the Declaration of Elizabeth Ambargis (“Ambargis Decl.”), attached hereto as **Exhibit 2**, which provides additional details on the documents for which R.G. Barry is seeking *in camera* treatment.

I. The Documents for Which Protection is Sought.

R.G. Barry seeks *in camera* treatment for the following documents, copies of which are attached as **Exhibit 3**:

Exhibit No.	Document Title/Description	Beginning Bates No.	Ending Bates No.	Requested <i>In Camera</i> Protection
PX0023	Objection Letter	PX0023-001	PX0023-005	Limited redactions on PX0023-002
PX0023	Retail Tracking Data (Ex. A to Objection Letter)	PX0023-006	PX0023-007	Redacted in Entirety
PX0023	Market Pulse Report (Ex. B to Objection Letter)	PX0023-008	PX-0023-018	Redacted in Entirety

II. The Nature of the Information for Which *In Camera* Status is Requested.

R.G. Barry submits this Motion to request that the Market Data and certain portions of the Objection Letter referencing the Market Data be afforded *in camera* status. The Market Data consists of confidential business documents that contain competitively sensitive and proprietary information relating to the women’s bag market such as pricing, cost, sales, and other proprietary information that is integral to R.G. Barry’s Baggallini brand’s ability to compete in the market as a retailer of women’s bags. R.G. Barry will incur serious competitive and financial harm if this information is placed in the public record and accessed by R.G. Barry’s competitors, consumers,

and others. And, because the Objection Letter references the Market Data, public disclosure of those portions would similarly harm R.G. Barry.

This proceeding involves Tapestry, Inc. (“Tapestry”) and Capri Holdings Limited (“Capri”), both of which also compete in the handbag market through various brands such as Coach, Kate Spade, and Michael Kors. It appears that various other, non-party handbag competitors may also be involved in this proceeding as a result of producing documents in response to subpoenas issued by the FTC, Tapestry, and/or Capri in contemporaneous litigation before the District Court for the Southern District of New York styled *Federal Trade Commission v. Tapestry, Inc., et al.*, Case No. 1:24-cv-3019. As such, this increases the likelihood that competitors in the handbag market will be aware of the upcoming administrative trial and the admission of information into the public record, making their access to R.G. Barry’s confidential and proprietary information a genuine and realistic concern.

III. Public Disclosure Will Cause Serious Injury to R.G. Barry.

Pursuant to 16 C.F.R. § 3.45(b), *in camera* treatment of material is appropriate when “public disclosure will likely result in a clearly defined, serious injury to the person, partnership, or corporation requesting” such treatment. A movant seeking *in camera* treatment demonstrates serious competitive injury by showing that the documents are secret, and that they are material to the business. *In re General Foods Corp.*, 95 F.T.C. 352, 355 (1980); *see also In re Dura Lube Corp.*, No. 9292, 1999 FTC LEXIS 255, at *5 (Dec. 23, 1999). When considering secrecy and materiality, the factors to be weighed include: (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. *In re BristolMeyers Co.*, 90 F.T.C. 455, 456-67 (1977). Generally, courts seek “to protect confidential business information from unnecessary airing.” *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961).

Although the public has an interest in open proceedings, this does not override R.G. Barry’s right to maintain the confidentiality of its proprietary business information. *See H.P. Hood*, 58 F.T.C. at 1187 (“Is this duty [to protect confidential records] in conflict with our duty to hold public hearings? We think not. The answer lies somewhere between the Scylla of indiscriminate ‘*in camera*’ rulings and the Charybdis of complete and unnecessary disclosure.”). Indeed, “if the disclosure of confidential business information is likely to cause serious competitive injury, the principal countervailing consideration weighing in favor of disclosure should be the importance of the information in explaining the rationale of our decisions.” *General Foods*, 95 F.T.C. at 355.

In this instance, the documents designated for *in camera* status are both secret and material to R.G. Barry’s business as set forth in the Ambargis Declaration. Exhibit A to the Objection Letter is a spreadsheet tracking the total dollar sales of women’s bags by the top twenty-five brands during the twelve-month period ending in March 2024, including dollar sales and shares, unit sales and shares, and average price by brand, including percentage change from the prior twelve-month period. Ambargis Decl. ¶ 7. This includes sales tracking data for R.G. Barry’s Baggallini brand of women’s bags, such total sales by price and units and the average price of Baggallini women’s bags, as well as the percent change for these values when compared to the prior twelve-month period. *Id.* Similarly, Exhibit B to the Objection Letter contains various spreadsheets tracking differing sales metrics and market data for women’s bags for the twelve-month period ending in March 2024. *Id.* ¶ 8. These metrics include rankings of the top sales channels for women’s bags;

the top retailers of women's bags; the top brands of women's bags; the top-performing women's bags; and the dollar sales and shares, unit sales and shares, and average price per retailer for each category. *Id.* R.G. Barry devoted significant resources to obtain this proprietary and confidential market information, and consideration of the same plays a fundamental role in determining R.G. Barry's Baggallini brand of offerings, and the pricing and marketing thereof. *Id.* ¶¶ 7-8. As such, R.G. Barry would therefore be substantially harmed by public disclosure of this proprietary and confidential business and market data. *Id.* Further, because the Market Data plays a crucial role in informing R.G. Barry's pricing and marketing strategies, *id.* ¶¶ 7-8, disclosure of the Market Data will result in the loss of a business advantage to R.G. Barry that it attained as a result of acquiring and analyzing the Market Data. *See In re Dura Lube*, 199 FTC LEXIS 255, at *7 ("The likely loss of business advantage is a good example of a 'clearly defined, serious injury.'").

R.G. Barry has and continues to take measures to keep its confidential, proprietary information confidential. *Ambargis Decl.* ¶¶ 7-8. Further, when R.G. Barry produced the Market Data in response to a subpoena from the FTC, it took steps to maintain confidentiality by designating those documents as "Confidential – Subject to Protective Order" pursuant to the Protective Order entered in the *Federal Trade Commission v. Tapestry, Inc., et al.* case. *Id.* ¶ 9. R.G. Barry further notes that the parties in that case, one of which was the FTC, fully acknowledged the highly sensitive and confidential nature of documents and information to be produced by including in the Protective Order an extremely high level of confidentiality that allowed only outside counsel to access and review materials that were marked "Confidential – Subject to Protective Order." (*See Federal Trade Commission v. Tapestry, Inc., et al.*, Case No. 1:24-cv-3019, Doc. 70, Section 7(f) at Page 4, attached hereto as **Exhibit 4**). R.G. Barry further notes that the Court in the *FTC v. Tapestry, Inc.* matter recently granted R.G. Barry's Motion to

Seal the exact same documents and data for which R.G. Barry seeks *in camera* treatment here. (*See id.* at Doc. 234 (seeking an order that the Object Letter and Market Data be “sealed in their entirety and only be reviewed *in camera* as an exhibit if used during the preliminary injunction hearing”), attached hereto as **Exhibit 5**; *see also id.* at Doc. 321, attached hereto as **Exhibit 6** (granting R.G. Barry’s motion to seal)).

This Court has previously granted requests to provide *in camera* status to similar categories of documents. *See In the Matter of Tronox Limited*, No. 9377, 2018 WL 2336016, at *4 (May 15, 2018) (granting *in camera* treatment for non-party’s “information relating to purchases and dealings with suppliers, and internal assessments of the market”); *see also id.* at *6 (same for “competitively sensitive purchasing data reflecting identity of suppliers, quantities purchased, and the amounts paid by [the party] to the suppliers”); *id.* at *8-12 (same for information including purchasing trends and data and price changes); *Matter of McWane, Inc.*, No. 9351, 2012 WL 3862131, at *4 (Aug. 17, 2021) (same for “information on pricing and negotiation strategies”); *id.* at *5-6 (same for “other financial and sales information that would be of benefit to competitors of [the non-party]”). The Court should do the same here.

IV. R.G. Barry is a Non-Party.

R.G. Barry’s status as a non-party is relevant to the treatment of its confidential, proprietary documents, and weighs in favor of granting this Motion. The Court 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. Further, the Court has recognized that “a request for *in camera* treatment by a non-party warrants ‘special solicitude.’” *In re Pom Wonderful, Inc.*, No. 9344, 2011 WL 2160777, at *1 (May 9, 2021); *see also In re Kaiser Aluminium & Chem. Corp.*, 103 F.T.C. 500, 500 (1984) (noting “as third parties, the

requests of these companies deserve special solicitude,” and “[a]s a policy matter, extensions of confidential or *in camera* treatment in appropriate cases involving third party bystanders encourages cooperation with future adjudicative discovery requests”).

V. Duration of Protection Afforded.

While the Marketing Data is highly sensitive, confidential, proprietary information, R.G. Barry acknowledges that the Court, in determining the length of time for which *in camera* treatment is appropriate, distinguishes “between trade secrets and ordinary business records.” *In re 1-800 Contacts, Inc.*, No. 9372, 2017 FTC LEXIS 55, at *5-6 (Apr. 4, 2017). The Market Data is not a trade secret, and therefore R.G. Barry submits that *in camera* status should be afforded to the Market Data, and references thereto in the Objection Letter, for a period of five years. However, if other non-parties are afforded a lengthier period of protection, a duration commensurate with the greater protection afforded to other non-parties is appropriate.

VI. Conclusion

For the reasons set forth above and in the accompanying Ambargis Declaration, R.G. Barry Corporation respectfully requests that this Court grant *in camera* treatment for the Market Data in its entirety, as well as limited *in camera* treatment for the portions of the Objection Letter referencing the Market Data.

Respectfully submitted,

/s/ Brent D. Craft

Brent D. Craft

Michael F. Soder

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*Counsel for Non-Party R.G. Barry
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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:

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Washington, DC 20580
ElectronicFilings@ftc.gov

The Honorable Dania L. Ayoubi
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I further certify that I cause the foregoing document to be served via email to:

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Counsel for Capri Holdings Limited

/s/ Brent D. Craft
Brent D. Craft

Exhibit 1

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

WASHINGTON, D.C. 20580

Bureau of Competition
Mergers II Division

August 29, 2024

VIA EMAIL TRANSMISSIONR.G. Barry Corporation
Brent Craft
Vorys, Sater, Seymour and Pease LLP
301 East Fourth Street
Suite 3500
Great American Tower
Cincinnati, Ohio 45202
bdcraft@vorys.comRE: *In the Matter of Tapestry, Inc. and Capri Holdings Limited*, Docket No. 9429

Dear Brent Craft:

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 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) 326-3672 or nlindquist@ftc.gov.

Sincerely,

/s/ Nicole Lindquist
Nicole Lindquist
Counsel Supporting the Complaint

Attachment

Ex No.	Description	Date	Bates-Begin	Bates-End
PX0023	Letter from Brent D. Craft to Nicole Lindquist re: Subpoena to R.G. Barry Corporation (June 26, 2024)	6/26/2024	PX0023-001	PX0023-018

Exhibit 2

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

In the matter of	:	
	:	
Tapestry Inc.,	:	
a corporation, and	:	
	:	Docket No. 9429
Capri Holdings Limited,	:	
a corporation,	:	
	:	
Respondents.	:	
	:	

DECLARATION OF ELIZABETH AMBARGIS IN SUPPORT OF NON-PARTY R.G. BARRY CORPORATION’S MOTION FOR *IN CAMERA* TREATMENT

I, Elizabeth Ambargis, pursuant to 28 U.S.C. § 1746, state and declare as follows:

1. I am the Chief Financial Officer for R.G. Barry Corporation (“R.G. Barry”). I make this declaration in support of Non-Party R.G. Barry Corporation’s Motion for *In Camera* Treatment (the “Motion”) of certain portions of R.G. Barry’s June 26, 2024 objection letter to the Federal Trade Commission’s (“FTC”) subpoena issued to R.G. Barry (the “Objection Letter”), as well as the entirety of Exhibits A and B attached to the Objection Letter (the “Market Data”).
2. I have personal knowledge of the matters stated herein and, if called upon to do so, could competently testify about them.
3. I understand that Complaint Counsel will seek to admit the Objection Letter and the Market Data into evidence in the administrative trial in the above-captioned matter that is scheduled to begin on September 25, 2024.
4. I have reviewed the Objection Letter and the Market Data to determine how R.G. Barry will be affected if the Market Data and references thereto in the Objection Letter are publicly disclosed.

5. Based on my review of the Objection Letter and the Market Data, my knowledge of R.G. Barry’s business, and my familiarity with the confidentiality protection afforded to this type of information by R.G. Barry, I submit that the disclosure of the Market Data and references thereto in the Objection Letter to the public and to competitors of R.G. Barry would cause serious competitive injury to R.G. Barry.

6. As described in the Motion, R.G. Barry seeks *in camera* protection of the following documents:

Exhibit No.	Document Title/Description	Beginning Bates No.	Ending Bates No.	Requested <i>In Camera</i> Protection
PX0023	Objection Letter	PX0023-001	PX0023-005	Limited redactions on PX0023-002
PX0023	Retail Tracking Data (Ex. A to Objection Letter)	PX0023-006	PX0023-007	Redacted in Entirety
PX0023	Market Pulse Report (Ex. B to Objection Letter)	PX0023-008	PX-0023-018	Redacted in Entirety

7. PX0023-006 – PX0023-007 is a spreadsheet tracking the total dollar sales of women’s bags by the top twenty-five brands during the twelve-month period ending in March 2024, including dollar sales and shares, unit sales and shares, and average price by brand, including percentage change from the prior twelve-month period. This includes sales tracking data for R.G. Barry’s Baggallini brand of women’s bags, such as total sales by price and units and the average price of Baggallini women’s bags, as well as the percent change for these values when compared to the prior twelve-month period. R.G. Barry devoted significant resources to obtain this proprietary and confidential business and market information, and heavily relies on said information to evaluate the competitive market position of its Baggallini brand of women’s bags

and make fundamental business decisions concerning the brand, such as pricing and other marketing considerations. This information represents substantial competitive value to R.G. Barry, and thus public disclosure of the same would substantially harm R.G. Barry's ability to compete in the marketplace. R.G. Barry does not make this spreadsheet and the information it contains available to its competitors or customers and R.G. Barry does not share this information with non-R.G. Barry personnel in the ordinary course of business, and has devoted its resources to protecting the confidentiality of the information in PX0023-006 – PX0023-007.

8. Similarly, PX0023-008 – Px0023-018 contains various spreadsheets tracking differing sales metrics and market data for women's bags for the twelve-month period ending in March 2024. These metrics include rankings of the top sales channels for women's bags; the top retailers of women's bags; the top brands of women's bags; the top-performing women's bags; and the dollar sales and shares, unit sales and shares, and average price per retailer for each category. Again, R.G. Barry devoted significant resources to obtain this proprietary and confidential business and market information, and consideration of the same plays a fundamental role in determining R.G. Barry's Baggallini brand of offerings, and the pricing and marketing thereof. This information is not publicly available to R.G. Barry's competitors or customers, as it represents substantial competitive value to R.G. Barry. R.G. Barry would therefore be substantially harmed by public disclosure of this proprietary and confidential business and market data. R.G. Barry does not share this information with non-R.G. Barry personnel in the ordinary course of business, and has devoted its resources to protecting the confidentiality of the information in PX0023-008 – PX0023-018.

9. When R.G. Barry produced the Market Data in response to the FTC's subpoena served in connection with litigation styled *Federal Trade Commission v. Tapestry, Inc., et al.*, Case

No. 1:24-cv-3109 (S.D.N.Y.), R.G. Barry designated the Market Data as “Confidential – Subject to Protective Order” pursuant to the Protective Order entered in that case.

10. It is my understanding that certain portions of R.G. Barry’s Objection Letter (PX0023-002) reference specific metrics contained in the Market Data. For the reasons stated above in Paragraphs 7 and 8, R.G. Barry will be seriously injured and disadvantaged competitively by public disclosure of those references.

11. Further, it is my understanding that other manufacturers and sellers of handbags are involved in this proceeding. This fact increases the likelihood that R.G. Barry’s competitors will be aware of the upcoming administrative trial and the admission of evidence into the public record, making their access to R.G. Barry’s proprietary and confidential information a genuine and realistic concern.

I declare under penalty of perjury that the foregoing is true and correct. Executed September 9, 2024 at Pickerington, Ohio.



Elizabeth Ambargis

Exhibit 3



301 East Fourth Street, Suite 3500
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Founded 1909

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June 26, 2024

VIA E-MAIL

Nicole Lindquist, Esq.
600 Pennsylvania Avenue NW
Washington, DC 20580
nlindquist@ftc.gov

Re: *Federal Trade Commission v. Tapestry, Inc., et al.*,
Case No. 1:24-cv-03109-JLR (S.D.N.Y.)
Subpoena to R.G. Barry Corporation

Dear Ms. Lindquist:

As you are aware, I represent R.G. Barry Corporation (“R.G. Barry”), and am in receipt of the subpoena *duces tecum* you, on behalf of the Federal Trade Commission (“FTC”), purportedly served upon R.G. Barry on May 15, 2024 (the “Subpoena”). As an initial matter, as discussed on our June 20, 2024 call, R.G. Barry has no record of being served with the subpoena on or around May 15, 2024; the first instance R.G. Barry or my law firm Vorys, Sater, Seymour and Pease LLP became aware of the Subpoena was on June 18, 2024, when I received a copy of the subpoena via email from you.

Pursuant to Federal Rule of Civil Procedure 45(d)(2)(B), R.G. Barry hereby objects to the Subpoena. We briefly discussed R.G. Barry’s objections to the Subpoena on our June 20, 2024 call, and said objections are set forth in more detail below. While our June 20, 2024 call included discussion of certain limited and narrowed document requests, R.G. Barry in no way waives the following objections to the Subpoena and hereby expressly reserves the right to supplement its objections.

The Documents Requested Are Irrelevant to this Litigation

As an initial matter, the above-referenced suit stems from the Proposed Transaction,¹ which concerns the “accessible luxury” handbag market. R.G. Barry’s offerings, which are largely comprised of nylon totes, backpacks, and similar bags, however, do not fall within the “accessible luxury” handbag market. The U.S. handbag market is a very large market,

¹ Terms not defined herein shall have the meaning ascribed to them in the Subpoena.



June 26, 2024

Page 2

and the sector in which R.G. Barry sells (comprised of nylon construction bags) represents a very small portion of that market. This sector in the overall handbag market is very distinct from the “accessible luxury” handbag market, which is at issue in this litigation. Indeed, for the 12 month period ending in March 2024, [REDACTED]

[REDACTED]. Moreover, [REDACTED]
[REDACTED].

In contrast to “accessible luxury” brand handbags such as Kate Spade, Coach, and Michael Kors, which retail for hundreds of dollars, the average price for R.G. Barry’s handbag offerings is [REDACTED], and it is therefore plainly evident that R.G. Barry does not operate in the “affordable luxury” space. (*See Ex. A*). Thus, R.G. Barry objects to the Subpoena on the grounds that the information sought in the Subpoena is irrelevant to the case. *See, e.g., In re Application of Evenstar Master Fund SPC*, No. 20 Misc. 00418 (CS)(JCM), 2021 U.S. Dist. LEXIS 162773, at *19 (S.D.N.Y. Aug. 27, 2021) (“[A] subpoena that pursues material with little apparent or likely relevance to the subject matter, . . . is likely to be quashed as unreasonable even where the burden of compliance would not be onerous.”) (internal quotations omitted); *Campinas Found. v. Simoni*, No. 02 Civ. 3965 (BSJ)(KNF), 2004 U.S. Dist. LEXIS 1637, at *3 (S.D.N.Y. Feb. 10, 2004) (“Documents sought via subpoena must be relevant to the subject matter of the action; a subpoena which calls for the production of irrelevant material should not be enforced.”); *Concord Boat Corp. v. Brunswick Corp.*, 169 F.R.D. 44, 50 (S.D.N.Y. 1996) (“[T]o the extent a subpoena sweepingly pursues material with little apparent or likely relevance to the subject matter it runs the greater risk of being found overbroad and unreasonable.”) (internal quotations omitted).

Specific Objections

R.G. Barry objects to the definition of “the Company” as improperly purporting to require R.G. Barry to produce documents outside of its possession, custody, or control by vaguely referring to “all directors, officers, employees, agents, and representatives of the foregoing.” R.G. Barry will not produce documents outside of its possession, custody, or control.

R.G. Barry objects to the Subpoena as overbroad and unduly burdensome to the extent that it requests documents from January 1, 2019 to the present, and therefore is not appropriately and narrowly limited in scope.

R.G. Barry objects to Request Nos. 1 and 2 on the grounds that R.G. Barry has objected to the subpoena issued to R.G. Barry by Tapestry, Inc. on May 14, 2024 (the “Tapestry Subpoena”) and has yet to produce any documents in response to the Tapestry Subpoena. R.G. Barry in no way waives any objections previously raised with regard to the Tapestry Subpoena, and expressly reserves its right to supplement said objections.



June 26, 2024

Page 3

R.G. Barry objects to Request No. 2 as vague and ambiguous to the extent it seeks “documents requested by all Specifications in the subpoena issued to the Company by Tapestry or Capri,” as it is unclear what is meant by the undefined term “Specifications.”

R.G. Barry objects to Request No. 3 to the extent it seeks “documents and/or communications concerning the Proposed Transaction, the Investigation, [*sic*] Administrative Proceeding, or this Litigation” on the grounds that R.G. Barry is a non-party to, and not otherwise involved in, the Proposed Transaction, the Investigation, the Administrative Proceeding, or this Litigation, except to the extent it is the recipient of subpoena(s) concerning the above-referenced litigation.

R.G. Barry objects to Request No. 4 as vague and ambiguous to the extent it requests documents “sufficient to show competition in the manufacture or sale of handbags in the United States.” Further, R.G. Barry objects to Request No. 4 as overbroad, vague, and ambiguous on the grounds that it is unclear what is meant by the undefined term “handbag.” R.G. Barry also objects to Request No. 4 as overbroad, vague, and ambiguous on the grounds that it is unclear what is meant by the phrases “competition in pricing,” “discounting,” “promotions,” “marketing,” “product quality,” “innovation,” “labor,” or “other competitive factors.” R.G. Barry objects to Request No. 4 on the grounds that it seeks the production of confidential and/or proprietary business information.

R.G. Barry objects to Request No. 5 as vague and ambiguous to the extent it requests documents “sufficient to show” information concerning R.G. Barry’s manufacture or sale of handbags. Further, R.G. Barry objects to Request No. 5 as overbroad, vague, and ambiguous on the grounds that it is unclear what is meant by the undefined term “handbag.” R.G. Barry also objects to Request No. 5 as overbroad, vague, and ambiguous on the grounds that it is unclear what is meant by the phrase “pricing, marketing, and business strategy.” R.G. Barry objects to Request No. 5 on the grounds that it seeks the production of confidential and/or proprietary business information.

R.G. Barry objects to Request No. 6 as vague and ambiguous to the extent it requests documents “sufficient to identify” certain manufacturing information concerning R.G. Barry’s handbags. Further, R.G. Barry objects to Request No. 6 as overbroad, vague, and ambiguous on the grounds that it is unclear what is meant by the undefined term “handbag.” R.G. Barry also objects to Request No. 6 as overbroad, vague, and ambiguous on the grounds that it is unclear what is meant by the phrases “manufacturing locations” and “manufacturing volume by manufacturer.” R.G. Barry objects to Request No. 6 on the grounds that it seeks the production of confidential and/or proprietary business information.

R.G. Barry objects to Request No. 7 as vague and ambiguous to the extent it requests documents “sufficient to identify” certain sales information concerning R.G. Barry’s handbags. Further, R.G. Barry objects to Request No. 7 as overbroad, vague, and ambiguous on



June 26, 2024

Page 4

the grounds that is unclear what is meant by the undefined term “handbag.” R.G. Barry also objects to Request No. 7 as overbroad, vague, and ambiguous on the grounds that it is unclear what is meant by the phrases “sales revenue,” “cost of goods sold,” “margins,” “marketing,” and “sales channel.” R.G. Barry objects to Request No. 7 on the grounds that it seeks the production of confidential and/or proprietary business information.

R.G. Barry objects to Request No. 8 as vague and ambiguous to the extent it requests documents “sufficient to identify” certain sales information concerning R.G. Barry’s handbags. Further, R.G. Barry objects to Request No. 8 as overbroad, vague, and ambiguous on the grounds that it is unclear what is meant by the undefined phrase “handbag.” R.G. Barry also objects to Request No. 8 as overbroad, vague, and ambiguous on the grounds that it is unclear what is meant by the phrases “monthly handbag sales” and “Company store.” R.G. Barry objects to Request No. 8 on the grounds that it seeks the production of confidential and/or proprietary business information.

R.G. Barry also objects to the Subpoena on the grounds that the time identified by the FTC for responding to the Subpoena—within fourteen (14) days from the date of service of the Subpoena—is unreasonably and unworkably brief. As explained herein, the requests set forth in the Subpoena are impermissibly broad and unduly burdensome in scope. A production in response to the Subpoena as currently drafted would require significant document review and analysis efforts by R.G. Barry personnel and counsel. Such efforts within the time period identified by the FTC are unduly burdensome and expensive. Because R.G. Barry is a non-party to the action, the FTC must take reasonable steps to avoid imposing undue burden or expense on R.G. Barry. With the Subpoena, the FTC has failed to do so, and R.G. Barry objects to the Subpoena on that basis.

General Objections

R.G. Barry objects to the Subpoena to the extent that it seeks information or documents protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or doctrines. R.G. Barry will not be providing any such information or producing any such protected documents. Any disclosure by R.G. Barry of any such information here or elsewhere is inadvertent and is not to be construed as a waiver of any such privilege. R.G. Barry reserves the right to retract the production of any document or information that is produced inadvertently and later found to fall within a general or specific objection or privilege.

R.G. Barry also asserts the following objections to the Subpoena:

1. R.G. Barry objects to the Subpoena and its “Definitions” and “Instructions” on the grounds that they seek to impose undue burdens and obligations or duties that are inconsistent with and greater than those authorized by the Federal Rules of Civil Procedure.

VORYS

June 26, 2024

Page 5

2. R.G. Barry objects to the Subpoena requests on the grounds that they are vague, ambiguous, confusing, compound, and/or incomprehensible because of undefined, insufficiently defined, or ill-defined terms.
3. R.G. Barry objects to the Subpoena requests on the grounds that they are overly broad, oppressive, and unduly burdensome.
4. R.G. Barry objects to the Subpoena on the grounds that it imposes undue burden, expense, or oppression on R.G. Barry, a non-party to the above-referenced matter.
5. R.G. Barry objects to the Subpoena requests on the grounds that they call for documents and information that are not relevant to the claims in the action, are not proportional to the needs of the case, and/or call for information whose likely benefit to the action is outweighed by the burden and/or expense imposed on R.G. Barry for their production.
6. R.G. Barry objects to the Subpoena requests on the grounds that they require R.G. Barry to undertake time-consuming and expensive searches and reviews which impose an unreasonably burdensome and costly expenditure of time, effort, and resources.
7. R.G. Barry objects to the Subpoena requests on the grounds that the Subpoena seeks the production of confidential and/or proprietary business information.
8. R.G. Barry objects to the Subpoena requests to the extent that they seek the production of documents that are already in the possession, custody, or control of the requesting party or a party to the litigation.

R.G. Barry reserves the right to assert additional objections and supplement its objections and responses as necessary.

Very truly yours,



Brent D. Craft

BDC/cbk
Attachments

cc: Michael F. Soder, Esq.

Exhibit A

Confidential – Redacted in Entirety

Exhibit B

Confidential – Redacted in Entirety

Exhibit 4

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

TAPESTRY, INC.,

and

CAPRI HOLDINGS LIMITED,

Defendants.

Case No. 1:24-cv-03109-JLR

~~PROPOSED~~ STIPULATED
PROTECTIVE ORDER

Plaintiff Federal Trade Commission (“FTC” or “Commission”) and Defendants Tapestry, Inc. and Capri Holdings Limited, by and through their respective counsel, have stipulated, pursuant to Federal Rule of Civil Procedure 26(c), to the terms of this Stipulated Protective Order. Discovery in this action may yield documents and information of a sensitive and confidential nature, including business, commercial, financial, and trade secret information of Defendants or third parties. The Court finds that good cause exists for entry of a protective order in this action (the “Litigation”) to prevent unauthorized disclosure and use of such sensitive and confidential material during and after the course of the Litigation.

IT IS HEREBY ORDERED THAT this Stipulated Protective Order shall govern the handling of all Confidential Material, as hereafter defined.

1. As used in this Order:
 - a. “Confidential Material” means any trade secret or other confidential research, development, or commercial information, as such terms are used in Fed. R. Civ.

P. 26(c)(1)(G), or any Document, transcript, or other material containing such information that has not been published or otherwise made publicly available, including Sensitive Personal Information.

- b. “Sensitive Personal Information” shall refer to, but shall not be limited to, an individual’s Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver’s license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual’s medical records.
 - c. “Document” means any document or electronically stored information, as the term is used in Fed. R. Civ. P. 34(a).
 - d. “Parties” shall refer to the Defendants and the Plaintiff.
 - e. “Protected Person” shall refer to any party or nonparty that produces information designated as Confidential Material.
 - f. “FTC Administrative Action” means *In the Matter of Tapestry, Inc. and Capri Holdings Limited.*, before the United States of America Federal Trade Commission Office of Administrative Law Judges, Docket No. 9429, and any related investigation by the Federal Trade Commission.
2. Any Document or portion thereof submitted by a Defendant or a nonparty during an FTC investigation, the FTC Administrative Action, or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any federal or state statute or regulation, or under any federal court or Commission precedent interpreting such statute or regulation, as well as any information taken from any portion of such Document, or

information that discloses the substance of the contents of any Confidential Materials derived from a Document subject to this Protective Order, shall be treated as Confidential Material for purposes of this Protective Order.

3. The Parties and any nonparties, in complying with informal discovery requests, disclosure requirements, discovery demands, or subpoenas in this proceeding, may designate any responsive Document or portion thereof as Confidential Material, including Documents obtained by them from nonparties pursuant to discovery or as otherwise obtained.

4. The Parties, in conducting discovery from nonparties, shall provide to each nonparty a copy of this Stipulated Protective Order so as to inform each such nonparty of their rights herein.

5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain that counsel believes the material so designated constitutes Confidential Material as defined in Paragraph 1 of this Order.

6. Material may be designated as Confidential Material by placing on or affixing to the Document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of Documents is confidential by placing on or affixing to that folder or box, the designation “CONFIDENTIAL,” “CONFIDENTIAL – FTC v. TAPESTRY/CAPRI,” “CONFIDENTIAL–FTC v. TAPESTRY, et al., Case No. 1:24-cv-03109”, or any other appropriate notice, together with an indication of the portion or portions of the Document considered to be Confidential Material. Confidential Material contained in electronic Documents may also be designated as confidential by placing the designation “CONFIDENTIAL,” “CONFIDENTIAL – FTC v. TAPESTRY/CAPRI”, “CONFIDENTIAL–

FTC v. TAPESTRY, et al., Case No. 1:24-cv-03109”, or any other appropriate notice, in the Document metadata, image file, or through another mechanism that clearly identifies the Document as confidential. Masked or otherwise redacted copies of Documents may be produced where the portions masked or redacted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been masked or redacted and the reasons therefor. The Party or nonparty desiring to designate any or all portions of oral testimony as Confidential Material shall do so by stating orally on the record on the day that the oral testimony is being given or by notifying the Parties in writing of the intention to designate any or all portions of oral testimony as Confidential Material after the oral testimony is given.

7. Confidential Material shall be disclosed only to: (a) the Court presiding over this proceeding and personnel assisting the Court, including its support staff; (b) the Administrative Law Judge presiding over the FTC Administrative Action, and staff and personnel assisting the Administrative Law Judge; (c) Plaintiff and their employees; (d) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter or the FTC Administrative Action; (e) outside counsel of record for any Defendant, their associated attorneys and other employees of their law firm(s), provided they are not employees of a Defendant; (f) anyone retained to assist outside counsel of record for any Defendant in the preparation or hearing of this proceeding or the FTC Administrative Action including experts, consultants, contract attorneys, litigation support services, and their staff, provided they are not employees of a Defendant and have signed Exhibit A; (g) anyone retained to assist the FTC in the preparation or hearing of this proceeding or the FTC Administrative Action including experts, consultants, contract attorneys, litigation support services, and their staff, provided they have signed Exhibit A, (h) any witness or deponent who may have authored or received the

information in question or who had access to the material in the ordinary course of their employment; and (i) any interpreter, court reporter, shorthand reporter, typist or videographer translating, recording, or transcribing Documents or testimony in connection with this Litigation or the FTC Administrative Action. Nothing in this Protective Order precludes a Party from using or disseminating its own Confidential Material, including for purposes other than litigating this Litigation, or from showing Confidential Material that it has produced to its own employee-witness or to anyone it deems proper.

8. Disclosure of Confidential Material to any person described in Paragraph 7 of this Protective Order shall be only for the purposes of the preparation and hearing of this proceeding and the FTC Administrative Action, or any appeal of either proceeding, and any legitimate law enforcement purpose, and for no other purpose whatsoever; provided, however, that Plaintiff may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose Confidential Material as provided by the FTC's Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

9. In the event that any Confidential Material is contained in any pleading, motion, exhibit, or other paper filed or to be filed with the Court, the Court shall be so informed by the Party filing such papers, and such papers shall be filed under seal. Confidential Material contained in the papers shall remain under seal until further order of the Court; provided, however, that such papers may be furnished to persons or entities who may receive Confidential Material pursuant to Paragraph 7 or 9. Upon or after filing any paper containing Confidential Material, the filing Party shall file on the public record a copy of the paper containing redactions,

such that the public version does not reveal Confidential Material within two business days of the sealed filing.

10. Party Exhibits. If a Party includes exhibits on its exhibit list that contain or discuss information that has been designated as Confidential Material by a Party, at the time designated in Exhibit A to the Case Management Order, the Party must also provide redacted versions of those exhibits. At the time designated in Exhibit A to the Case Management Order, each Party must also (a) provide redacted versions of any exhibits on the opposing Party's exhibit list that contain information that the Party previously designated as Confidential Material and (b) exchange objections to the redacted evidentiary hearing exhibits that were provided with the exhibit lists. The Parties must exchange objections to those redactions in accordance with the Case Management Order. The Parties' joint proposal regarding this Confidential Material and any disputes will be raised to the Court in the Parties' joint submission in accordance with the Case Management Order.

11. Nonparty Confidential Material at Evidentiary Hearing. If counsel plans to introduce into evidence at the hearing any Document or transcript containing Confidential Material produced by a nonparty, they shall provide advance notice to the nonparty for purposes of allowing that Protected Person to seek an order that the Document or transcript be granted protection from public disclosure. If that Protected Person wishes to obtain protection from public disclosure for the Document or transcript, the Protected Person shall file an appropriate motion with the Court within seven (7) days after it receives such notice. Except where such an order is granted, Documents and transcripts shall be part of the public record. Where such protection is granted, a duplicate copy of such Document or transcript with the Confidential Material deleted therefrom may be placed on the public record.

12. If any Party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of Confidential Material submitted by another Party or nonparty, the recipient of the discovery request shall promptly notify the Protected Person of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and served to the Protected Person at least fifteen (15) business days before production, and shall include a copy of this Protective Order. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Protective Order to challenge or appeal any order requiring production of Confidential Material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Court. The recipient shall not oppose the Protected Person's efforts to challenge the disclosure of Confidential Material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 C.F.R. § 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

13. At the time that any expert, consultant, or other person retained to assist counsel in the preparation of this Litigation concludes participation in the Litigation, such person shall return to counsel or destroy all copies of Documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential material. At the conclusion of this proceeding and the FTC Administrative Action, including the exhaustion of judicial review, the Parties shall return or destroy Documents obtained in this Litigation except as follows: (a) the Commission's obligation to return or destroy Documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 C.F.R. § 4.12; and (b) Counsel for the Parties will be entitled to retain court papers, deposition, hearing, and evidentiary hearing transcripts, evidentiary hearing exhibits, and work

product, as may be required by the Rules of Professional Conduct provided that the Parties and their counsel do not disclose the portions of those materials containing information designated as Confidential Material except pursuant to Court order or an agreement with the party that produced the Confidential Material or as otherwise permitted by this Order.

14. The provisions of this Protective Order, insofar as they restrict the communication and use of Confidential Material, shall, without written permission of the submitter or further order of the Court, continue to be binding after the conclusion of this proceeding.

STIPULATED AND AGREED:

S/ Abby L. Dennis
Counsel for Federal Trade Commission

May 1, 2024
Date

S/ Alfred C. Pfeiffer
Counsel for Tapestry, Inc.

May 1, 2024
Date

S/ Elaine P. Golin
Counsel for Capri Holdings Limited

May 1, 2024
Date

SO ORDERED:

Dated: May 1, 2024



UNITED STATES DISTRICT JUDGE
The Honorable Jennifer L. Rochon

EXHIBIT A ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Southern District of New York on [date] in the case of *Federal Trade Commission v. Tapestry, Inc., et al.*, Case No. 1:24-cv-03109. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order. I further agree to submit to the jurisdiction of the United States District Court for the Southern District of New York for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

Printed name: _____

Signature: _____

Exhibit 5

VORYS

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Founded 1909

Brent D. Craft
Direct Dial (513) 723-4072
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Email bdcraft@vorys.com

August 30, 2024

VIA ECF

Hon. Jennifer L. Rochon
United States District Judge
Southern District of New York
500 Pearl Street, Room 1920
New York, NY 10007

Re: *Federal Trade Commission v. Tapestry, Inc.*, et al., Case No. 1:24-cv-03109-JLR

Dear Judge Rochon:

We are counsel for non-party R.G. Barry Corporation (“R.G. Barry”), and we write in regards to the Court’s upcoming hearing on the Federal Trade Commission’s (“FTC”) request for a preliminary injunction, set to begin on September 9, 2024.

Pursuant to the Court’s May 1, 2024 Case Management and Scheduling Order, the parties were directed to inform “each non-party of all documents produced by that non-party that are on that Party’s exhibit list and all depositions of that non-party that have been designated by any Party (to the extent necessary).” (Doc. 71, Ex. A, p. 19). Further, the Court has directed that by August 30, 2024, “[n]on-parties provide notice whether they object to the potential public disclosure at hearing of any non-party documents and depositions, explain the basis for any such objections, and propose redactions where possible.” (*Id.*).

On August 23, 2024, the FTC provided R.G. Barry, through undersigned counsel, written notice that its exhibit list for the upcoming preliminary injunction hearing includes R.G. Barry’s June 26, 2024 objection letter to the FTC’s subpoena issued to R.G. Barry, Bates stamped PX0023-001 – PX0023-005, which references and attaches as Exhibits A and B confidential handbag sales market data, Bates stamped PX0023-006 – PX0023-018). Exhibits A and B to the objection letter were designated by R.G. Barry as Confidential Material pursuant to the Stipulated Protective Order entered in this case. (Doc. 70).

“[B]usiness information that might harm a litigant’s competitive standing” is among the narrow categories of information traditionally protected by courts from disclosure. *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978). As such, courts may seal information that would aid “[c]ommercial competitors seeking an advantage over rivals.” *U.S. v. Amodeo*, 71 F.3d

VORYS

August 30, 2024
Page 2

1044, 1051 (2d Cir. 1995). “Documents falling into categories commonly sealed are those containing trade secrets, confidential research and development information, marketing plans, revenue information, pricing information, and the like.” *Cumberland Packing Corp. v. Monsanto Co.*, 184 F.R.D. 504, 506 (E.D.N.Y. 1999). This Court has stated that “protecting the privacy interests of non-parties, including their business and financial records, represents a legitimate basis for sealing judicial documents.” *SEC v. Telegram Grp., Inc.*, 2020 WL 3264264, at *3 (S.D.N.Y. June 17, 2020) (“[T]he public’s right of access [to certain exhibits] . . . is outweighed by non-parties’ interests in privacy and the protection of proprietary business information.”).

Here, Exhibits A and B attached to R.G. Barry’s objection letter set forth in-depth retail tracking data for handbag sales, including information concerning R.G. Barry’s sales data, pricing, and market share. Public access to said competitively-sensitive data would result in R.G. Barry suffering irreparable harm, including potential use by rivals or customers to undermine R.G. Barry’s competitive position. As such, R.G. Barry—a non-party—is entitled to the protection of this confidential information, and respectfully requests that (1) R.G. Barry’s June 26, 2024 objection letter, Bates stamped PX0023-001 – PX0023-005, be redacted as proposed if used as an exhibit during the preliminary injunction hearing;¹ and (2) Exhibits A and B to R.G. Barry’s June 26, 2024 objection letter, Bates stamped PX0023-006 – PX0023-018, be sealed in their entirety and only be reviewed *in camera* if used as an exhibit during the preliminary injunction hearing.²

For the foregoing reasons, R.G. Barry respectfully requests that this letter motion be granted and an Order be issued prescribing that R.G. Barry’s June 26, 2024 objection letter, Bates stamped PX0023-001 – PX0023-005, be redacted as proposed and Exhibits A and B thereto, Bates stamped PX0023-006 – PX0023-018, be sealed in their entirety and only be reviewed *in camera* if used as an exhibit during the preliminary injunction hearing.

Very truly yours,



Brent D. Craft

BDC/cbk

cc: All counsel of record via ECF

¹ Pursuant to the Court’s Individual Rules of Practice in Civil Cases, a copy of R.G. Barry’s June 26, 2024 objection letter is filed simultaneously herewith as both (1) a redacted version and (2) under seal with the proposed redactions highlighted.

² Should the Court desire to review Exhibits A and B attached to R.G. Barry’s June 26, 2024 objection letter, R.G. Barry will provide said documents to the Court for an in-chambers inspection.

Exhibit 6

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FEDERAL TRADE COMMISSION,
Plaintiff,
-against-
TAPESTRY, INC. and CAPRI HOLDINGS
LIMITED,
Defendants.

Case No. 1:24-cv-03109 (JLR)

ORDER

JENNIFER L. ROCHON, United States District Judge:


For the reasons stated on the record during the September 6, 2024 hearing, Plaintiff’s motion to exclude the testimony of Karen Giberson is DENIED, Plaintiff’s motion to exclude the testimony of the testimony of Jeff Gennette is DENIED, and Defendants’ motion to exclude Dr. Loren Smith’s opinions regarding and relying upon his diversion analysis is DENIED. The Clerk of Court is respectfully directed to close the motions pending at Dkts. 170, 175, and 184.

Additionally, for the reasons stated on the record during the September 6, 2024 hearing, the motions to seal filed in this case thus far are GRANTED. However, the Court reiterates that as the case continues to progress, some of what has been filed under seal may need to be unsealed. Specifically, the Court grants the following motions to seal and respectively directs the Court to close the motions pending at Dkts. 120, 131, 134, 135, 136, 141, 143, 147, 150, 155, 164, 165, 166, 167, 169, 174, 179, 183, 188, 193, 194, 196, 200, 202,

206, 209, 210, 211, 213, 214, 215, 216, 217, 219, 220, 221, 224, 227, 229, 231, 234, 238, 240,
245, 248, 249, 251, 254, 256, 262, 263, 267, 268, 270, 273, 274, 276, 278, 279, 284, 311, 315.

Dated: September 6, 2024
New York, New York

SO ORDERED.



JENNIFER L. ROCHON
United States District Judge