

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

In the Matter of

Tapestry, Inc.,

a corporation,

Docket No.: 9429

and

Capri Holdings Limited,

a corporation,

Respondents.

**NON-PARTY DAGNE DOVER’S MOTION FOR *IN CAMERA*
TREATMENT OF CERTAIN TRIAL EXHIBITS**

Pursuant to Rule 3.45 of the Federal Trade Commission’s Rules of Practice, 16 C.F.R. § 3.45(b), non-party Dagne Dover (18th and Walnut LLC) (hereinafter “Dagne Dover”) respectfully moves this Court for *in camera* treatment of certain highly confidential and competitively sensitive information produced by Dagne Dover in response to third-party subpoenas in this matter (the “Confidential Material”). The Federal Trade Commission (“FTC”) has now notified Dagne Dover that it intends to introduce certain highly confidential Dagne Dover documents and testimony, including the Confidential Material, into evidence at the administrative trial in this matter (*see* attached “Exhibit A,” Letter from FTC dated August 29, 2024).

As explained here and in the accompanying declaration of Deepa Gandhi, co-founder and COO of Dagne Dover, the public disclosure of these materials would significantly harm Dagne Dover’s competitive position (*see* attached Exhibit “B,” Declaration of Deepa Gandhi dated

September 10, 2024). As a result, Dagne Dover respectfully requests that this Court grant *in camera* treatment for the Confidential Material for a period of five years.¹

I. Confidential Materials

Dagne Dover seeks five years of *in camera* treatment for the following Confidential Material, copies of which are attached hereto as Exhibits “C,” “D,” “E,” and “F” respectively.

Exhibit No.	Description	Date	Bates-Begin	Bates-End
PX3015	Dagne Dover Spreadsheet: FY19-23 Sales Data by Style		Dagne Dover 00001	Dagne Dover 00001
PX3016	Dagne Dover Spreadsheet: FY2019- FY2023 Summary Financials detail		Dagne Dover 00006	Dagne Dover 00006
PX3029	Document: Dagne Dover Composite Production		Dagne Dover 00072	Dagne Dover 00272
PX5032	Deposition Transcript of Deepa Gandhi (Dagne Dover) (July 17,2024)	7/17/2024	PX5032-001	PX5032-042

II. Dagne Dover’s Documents are Secret and Material such that Disclosure Would Result in Serious Injury to Dagne Dover

In camera treatment of material is appropriate if “its public disclosure will likely result in a clearly defined, serious injury to the person, partnership, or corporation requesting in camera treatment.” 16 C.F.R. § 3.45(b) (2015). This Court has long recognized the necessity of granting *in camera* treatment to business records as “[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, Inc.*, 58 F.T.C. 1184, 961 WL 65882 at *2, 4 (Mar. 14, 1961) (noting that courts generally attempt “to protect confidential business information from unnecessary airing.”).

¹ Dagne Dover previously sought *in camera* treatment of the Confidential Material for the same reasons in the preliminary injunction proceedings before the Southern District of New York in *FTC v. Tapestry, Inc. et al.*, No. 1:24-cv-03109-JLR (S.D.N.Y. 2024) (see Doc. 129, 165, 206). The Honorable Jennifer L. Rochon granted Dagne Dover’s motion on September 6, 2024 (see Doc. 321).

A party requesting *in camera* treatment may demonstrate serious competitive injury by showing that the documents are secret and that they are material to the business. *In the Matter of General Foods Corp.*, 95 F.T.C. 352, 1980 WL 338997 at *4 (1980); *In re 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, 1961 WL 65882 at *4 (1961).

In considering both secrecy and materiality, the Court may consider: (1) the extent to which the information is known outside of 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 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. *In re Bristol-Myers Co.*, 90 F.T.C. 455, 1977 WL 189054 at *2 (Nov. 11, 1977). The likely loss of business advantages is a good example of a “clearly defined, serious injury.”

The Confidential Material that Dagne Dover seeks to protect from public disclosure is both secret and material to its business and clearly meets the “serious injury” standard recognized by this Court. Gandhi Decl. (Exhibit B) ¶ 3. The Confidential Material contains information of competitive significance to Dagne Dover such that these documents were marked “Confidential” when they were originally created, and again when they were produced for “attorney’s eyes only” to both Complaint Counsel and Respondents Counsel pursuant to the Stipulated Protective Order in this case. Gandhi Decl. (Exhibit B) ¶¶ 3, 5, 6, 7, 8. Further, the deposition testimony at issue arises from questions posed to Ms. Gandhi, who testified in her personal capacity and as Dagne Dover’s corporate representative pursuant to Federal Rule of Civil Procedure 30(b)(6). Ms. Gandhi testified extensively about the contents of the Confidential Material, including, a

breakdown of Dagne Dover's annual, quarterly, and monthly revenue from 2019 to the present, and what portions of Dagne Dover's revenue is attributable to particular activities, for example, marketing and branding research. Gandhi Decl. (Exhibit B) ¶ 9. As a result, the deposition testimony contains highly confidential information consisting of Dagne Dover's annual revenue and projected revenue for the years 2019 to the present, as well as a detailed proprietary analysis of these figures across the various product lines which Dagne Dover offers. Gandhi Decl. (Exhibit B) ¶ 10. The testimony also contains thoughts and opinions throughout that reflect Dagne Dover's assessment of these figures and the market at-large, any of which would cause irreparable harm to Dagne Dover should the testimony be made public. *Id.* The highly confidential nature of the information and its materiality to how Dagne Dover's conducts its business necessitates *in camera* treatment.

Furthermore, public disclosure of the Confidential Material would harm Dagne Dover's competitive standing as it would provide insight into Dagne Dover's financial strength, competitive process, position in the market, and mental impressions concerning its potential business going forward. Gandhi Decl. (Exhibit B) ¶¶ 6, 7, 8. As such, Dagne Dover's competitors would gain insight into Dagne Dover's strategic thinking and business strategy, influencing the public's perception of the brand, and undermining the considerable time and resources Dagne Dover has devoted to its product lines and business decisions *Id.* The harm to Dagne Dover that would result from this public disclosure would be serious and immediate. Gandhi Decl. (Exhibit B) ¶¶ 9, 10.

As a non-party, Dagne Dover has made diligent efforts to maintain the confidentiality of the documents and testimony it seeks to protect from public disclosure, including the Confidential Material at issue here, by so designating it "Confidential" at all times during the course of this litigation. Gandhi Decl. (Exhibit B) ¶¶ 2, 5. 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*, 1961 WL 65882, at *2. 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 In re Kaiser Aluminum & Chem. Corp.*, 103 FTC 500, 1984 WL 565325, at *1 (1984) (“[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.”) To Dagne Dover’s knowledge, the contents of the Confidential Material has been treated as highly confidential by all parties as well, with both Complaint Counsel and Respondents Counsel previously moving to seal the Confidential Material in the Southern District of New York. Dagne Dover’s third-party status therefore weighs in favor of granting *in camera* treatment to the Confidential Material. *See* Fn. 1 *supra*.

Finally, Dagne Dover seeks five years of *in camera* treatment for the Confidential Material, which reflects its competitive analysis and deposition testimony relating to that same competitive analysis. Due to the secret nature of this information and its materiality to Dagne Dover’s business, five years of *in camera* treatment is necessary to protect Dagne Dover from the clearly defined and serious competitive injury that would result from its disclosure. Gandhi Decl. (Exhibit B) ¶ 10. Five years of *in camera* treatment is routinely granted for competitively sensitive business records, including documents revealing competitive positioning, strategic plans, and marketing strategies. *See, e.g., Benco Dental Supply Co.*, 2018 WL 5292624 at *6-7 (Oct. 11, 2018) (granting non-party motions for five years of *in camera* treatment of business documents including “strategic business plans” and “business model[s]”); *1-800 Contacts, Inc.*, 2017 WL 1345290 at *4-13 (Apr. 4, 2017) (same); *McWane, Inc.*, 2012 WL 3862131 at *7-8

(Aug.17, 2012) (same); *ProMedica Health Sys.*, 2011 WL 2258040, at *11 (May 25, 2011) (same).

III. Parties Do Not Oppose *In Camera* Treatment

On September 5, 2024, undersigned counsel for non-party Dagne Dover notified counsel for the parties via email that it would be seeking *in camera* treatment of the Confidential Material. Both the counsel for FTC and Respondents indicated that they do not oppose this motion.

IV. Conclusion

For the foregoing reasons, Dagne Dover respectfully requests that this Court grant its motion and “So Order” this request to provide five years of *in camera* treatment of the Confidential Material as described above and in the attached Declaration of Deepa Gandhi.

Dated: September 10, 2024

LIPPES MATHIAS LLP

/s/ Christian R. Flemming
Christian R. Flemming, Esq.
1900 K Street, NW Suite 730
Washington, DC 20006
Telephone: (202) 888-7610, ext. 1621
Facsimile: (202)-888-7615
Email: cflemming@lippes.com

Attorney for Non-Party Dagne Dover (18th and Walnut LLC)

EXHIBIT A

VIA EMAIL TRANSMISSION

18th and Walnut LLC d/b/a Dagne Dover
Christian R. Flemming
1900 K Street, NW
Suite 730
Washington, DC 20006
cflemming@lippes.com

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

Dear Christian R. Flemming:

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) 326-3772 or kdipietro@ftc.gov.

Sincerely,

/s/ *Kassandra DiPietro*

Kassandra DiPietro

Counsel Supporting the Complaint

Attachment

Ex No.	Description	Date	Bates-Begin	Bates-End
PX3015	Dagne Dover Spreadsheet: FY19-23 Sales Data by Style		Dagne Dover 00001	Dagne Dover 00001
PX3016	Dagne Dover Spreadsheet: FY2019- FY2023 Summary Financials detail		Dagne Dover 00006	Dagne Dover 00006
PX3029	Document: Dagne Dover Composite Production		Dagne Dover 00072	Dagne Dover 00272
PX3055	Dagne Dover Spreadsheet: Census 2024	7/11/2024	Dagne Dover 00304	Dagne Dover 00304
PX5032	Deposition Transcript of Deepa Gandhi (Dagne Dover) (July 17,2024)	7/17/2024	PX5032-001	PX5032-042

EXHIBIT B

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

In the Matter of

Tapestry, Inc.,

a corporation,

Docket No.: 9429

and

Capri Holdings Limited,

a corporation,

Respondents.

**DECLARATION OF DEEPA GANDHI IN SUPPORT OF NON-PARTY DAGNE
DOVER’S MOTION FOR *IN CAMERA* TREATMENT**

I, Deepa Gandhi, hereby declare as follows:

1. I am the Co-Founder and Chief Operating Officer (“COO”) of non-party Dagne Dover (18th and Walnut LLC) (hereinafter “Dagne Dover”). I make this declaration in support of non-party Dagne Dover’s Motion for In Camera Treatment (the “Motion”). I have personal knowledge of the matters stated herein and, if called upon to do so, could competently testify about them.

2. I have reviewed and am familiar with the documents Dagne Dover produced in the above-captioned matter in response to third-party subpoenas from the Federal Trade Commission (hereinafter “FTC”) and Respondents, and the testimony I provided, pursuant to a Rule 30(b)(6) deposition notice in connection with this matter (attached to Motion as Exhibit “G”).

3. Dagne Dover is a women-founded lifestyle brand that designs problem-solving bags that allow customers to keep up with fast-paced lifestyles and make the day-to-day more seamless. Dagne Dover’s product line spans the spectrum of bags for work, the gym, going out,

and travel, including backpacks, duffel bags, crossbody bags, wallets, fanny packs, organizers, pet carriers, and carry-on and checked luggage, among many other categories of bags. As part of our business research, Dagne Dover performs competitive analyses across the market to further research and development of its merchandise and better position itself for future product launches. To provide high quality products to its customers, and to determine what market conditions provide the best possible outcome, Dagne Dover invests in market analysis to identify and track its competitors, and in making plans for the future. Dagne Dover’s business interests would be significantly harmed if its competitors were to learn detailed information about its investments, Dagne Dover’s costs to produce its offerings, or Dagne Dover’s future business plans.

4. Given my position as COO at Dagne Dover, I am familiar with the type of information contained in the documents and testimony at issue and its competitive significance to Dagne Dover. Based on my review of the documents and my deposition testimony, my knowledge of Dagne Dover’s business, and my familiarity with the confidentiality protection afforded this type of information by Dagne Dover, I submit that the disclosure of these documents to the public and to competitors of Dagne Dover would cause serious competitive injury to Dagne Dover.

5. FTC has informed Dagne Dover that they intend to use four of the documents that Dagne Dover produced in response to third-party subpoenas at the administrative hearing in this matter as well as my deposition testimony. Three of these documents and the testimony, collectively referred to in the Motion as “Confidential Material,” are particularly sensitive and contain confidential business information. As described in the Motion, Dagne Dover seeks *in camera* protection of the following documents for a period of five years:

Exhibit No.	Description	Date	Bates-Begin	Bates-End
PX3015	Dagne Dover Spreadsheet: FY19-23 Sales Data by Style		Dagne Dover 00001	Dagne Dover 00001

Exhibit No.	Description	Date	Bates-Begin	Bates-End
PX3016	Dagne Dover Spreadsheet: FY2019- FY2023 Summary Financials detail		Dagne Dover 00006	Dagne Dover 00006
PX3029	Document: Dagne Dover Composite Production		Dagne Dover 00072	Dagne Dover 00272
PX5032	Deposition Transcript of Deepa Gandhi (Dagne Dover) (July 17,2024)	7/17/2024	PX5032-001	PX5032-042

6. PX3015 is an internal document maintained by Dagne Dover regarding Dagne Dover's retail sales for the last five years, categorized by style. Public disclosure of Dagne Dover's sales data by style would allow competitor's the distinct competitive advantage of manipulating their prices to negatively impact Dagne Dover's sales strategy. As such, Dagne Dover's sales data is competitively sensitive and highly confidential business information that could be used to harm Dagne Dover's business interests and cause serious competitive injury. This data is marked "confidential" and kept confidential even within the company.

7. PX3016 is an internal document maintained by non-party Dagne Dover regarding Dagne Dover's revenue and expenses for the last five fiscal years, broken out by category, which is valuable information that bears on Dagne Dover's revenue strategy and its subsequent business advantage. Dagne Dover's revenue information as well as its operating costs is competitively sensitive and highly confidential business information that could be used to harm Dagne Dover's business interests and cause serious competitive injury. This information is marked "confidential" and kept confidential within the company.

8. PX3029 is a series of internal documents maintained by Dagne Dover regarding Dagne Dover's tracking of competitive trends, opportunities and risks, and the results of competitive analysis performed on the market. Tracking this information and staying on top of trends helps maintain Dagne Dover's business advantage. Dagne Dover's internal, confidential

views of the competitive landscape are competitively sensitive and confidential business information that could be used to harm Dagne Dover's business interests and cause serious competitive injury. This information is marked "confidential" and is kept confidential within the company.

9. PX5032 is the transcript of my July 17, 2024 deposition testimony provided in this matter. The transcript contains information related to these highly confidential documents, Dagne Dover's view of the competitive landscape for Dagne Dover's products and offerings, and Dagne Dover's internal and confidential forward-looking business strategy. This is competitively sensitive and confidential business information that could be used to harm Dagne Dover's business interests and cause serious competitive injury. This testimony was declared confidential by Dagne Dover pursuant to the Stipulated Protective Order and was only provided by me because I understood it would remain confidential.

10. These documents and testimony are material to Dagne Dover's business and disclosure would result in serious competitive injury. These documents are highly competitively sensitive and the competitive significance of these documents is unlikely to decrease over time and thus, I respectfully submit that the five year protection from disclosure is appropriate.

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

Executed September 10, 2024 in New York, New York.

DocuSigned by:

Deepa Gandhi
DEEPA GANDHI

EXHIBIT C

**{CONFIDENTIAL - Redaction
in its entirety requested}**

EXHIBIT D

**{CONFIDENTIAL - Redaction
in its entirety requested}**

EXHIBIT E

**{CONFIDENTIAL - Redaction
in its entirety requested}**

EXHIBIT F

**{CONFIDENTIAL - Redaction
in its entirety requested}**

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
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In the Matter of

Tapestry, Inc.,

a corporation,

Docket No.: 9429

and

Capri Holdings Limited,

a corporation,

Respondents.

[PROPOSED] ORDER GRANTING *IN CAMERA* TREATMENT

Upon consideration of Non-Party Dagne Dover’s Motion for *In Camera* Treatment, it is HEREBY ORDERED that the following documents are to be provided *in camera* treatment in their entirety for a period of five years.

Exhibit No.	Description	Date	Bates-Begin	Bates-End
PX3015	Dagne Dover Spreadsheet: FY19-23 Sales Data by Style		Dagne Dover 00001	Dagne Dover 00001
PX3016	Dagne Dover Spreadsheet: FY2019- FY2023 Summary Financials detail		Dagne Dover 00006	Dagne Dover 00006
PX3029	Document: Dagne Dover Composite Production		Dagne Dover 00072	Dagne Dover 00272
PX5032	Deposition Transcript of Deepa Gandhi (Dagne Dover) (July 17,2024)	7/17/2024	PX5032-001	PX5032-042

Date: _____

Hon. Dania L. Ayoubi
Administrative Law Judge

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

In the Matter of

Tapestry, Inc.,

a corporation,

Docket No.: 9429

and

Capri Holdings Limited,

a corporation,

Respondents.

CERTIFICATE OF SERVICE

I hereby certify that on September 12, 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-110 Washington, DC 20580
(ElectronicFilings@ftc.gov)

The Honorable Dania L. Ayoubi
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, NW, Room H-110
Washington, DC 20580
(oalj@ftc.gov)

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

Abby L. Dennis
(adennis@ftc.gov)
Laura Antonini
(lantonini@ftc.gov)
Kassandra DiPietro
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Complaint Counsel

*Counsel for Respondent
Tapestry, Inc*

*Counsel for Respondent
Capri Holdings Limited*

DATED: September 12, 2024

/s/ Christian R. Flemming
Christian R. Flemming, Esq.
Attorney for Non-Party Dagne Dover (18th and
Walnut LLC)