

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

In the Matter of Tapestry, Inc., et al.

Docket No. 9429

**NON-PARTY LUG USA, LLC'S
UNOPPOSED 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 Lug USA, LLC ("Lug") respectfully moves this Court for *in camera* treatment of two competitively-sensitive, confidential business documents (the "Confidential Documents") that Lug understands the FTC intends to offer as evidence in the administrative trial in this case. The exhibits, which Lug understands the FTC has designated as PX3123 and PX 3138, are Lug's confidential sales, pricing and costing information, on both a company-wide and individual product basis, for each year since 2019. Lug produced these documents in response to a third-party subpoena and civil investigative demand in the related *case FTC v. Tapestry, Inc.*, Case No. 1:24-cv-03109-JLR (S.D.N.Y.). In that case, Judge Rochon has already ruled that such Confidential Documents must remain sealed during the pendency of the litigation. *See FTC v. Tapestry, Inc.*, Case No. 1:24-cv-03109-JLR (S.D.N.Y.), ECF No. 321 (granting Lug's motion to seal and for *in camera* treatment). For the reasons set forth herein and in the accompanying Declaration of Edmund J. Ferdinand, III ("Ferdinand Decl.", attached hereto as Exhibit A), Lug respectfully requests the same *in camera* treatment by this Court.

Among other reasons, *in camera* treatment of PX3123 and PX 3138 is warranted because

(1) PX3123 and PX 3138 are comprised of confidential revenue and sales information that Lug, a private company and non-party, maintains as strictly confidential in the usual course of its business; (2) Lug would suffer serious competitive injury in the event the contents of PX3123 and PX 3138 were publicly disclosed; (3) Lug produced PX3123 and PX 3138 only with the parties' assurances of confidentiality pursuant to the Stipulated Protective Order in *FTC v. Tapestry, Inc.*, Case No. 1:24-cv-03109-JLR (S.D.N.Y.), ECF No. 70; and (4) Judge Rochon has already recognized the competitively sensitive nature of the information set forth in PX3123 and PX 3138 and has ordered it sealed pursuant to the Stipulated Protective Order. *See FTC v. Tapestry, Inc.*, Case No. 1:24-cv-03109-JLR (S.D.N.Y.), ECF No. 321.

Accordingly, Lug seeks an order granting *in camera* treatment of PX3123 and PX 3138 for ten years. Neither the FTC nor Respondents oppose this motion.

BACKGROUND

Lug is a private company in the business of producing and selling bags and travel accessories, primarily through its own direct to consumer channels and on the retail television channel, QVC. (Ferdinand Decl. ¶ 2.) Pursuant to subpoenas issued by both the Federal Trade Commission ("FTC") and Tapestry, Inc. ("Tapestry"), in *FTC v. Tapestry, Inc.*, Lug produced spreadsheets marked as LUG_000001 and LUG_000002, which detail fulsome sales, pricing and costing information, on both a company-wide and individual product basis, for each year since 2019. (Ferdinand Decl. ¶¶ 3-4.) Lug designated these documents as "Confidential" under the Stipulated Protective Order in that case. *See FTC v. Tapestry, Inc.*, Case No. 1:24-cv-03109-JLR (S.D.N.Y.), ECF 70; Exhibit D, Exhibit Nos. PX3123 and PX 3138 filed under seal).

On August 23, 2024, the FTC notified Lug that the FTC intended to use LUG_000001 and LUG_000002, which the FTC marked as Exhibit Nos. PX3123 and PX3138, as evidence in a

preliminary injunction hearing in the *FTC v. Tapestry, Inc.* case. See Letter from the Federal Trade Commission dated August, 23, 2024 (attached as Exhibit B). On August 29, 2024, Lug moved to seal and request *in camera* treatment of Exhibit Nos. PX3123 and PX3138 during the preliminary injunction hearing that was held in *FTC v. Tapestry, Inc.* on September 9, 2024, explaining that, “[t]hese two spreadsheets contain commercially sensitive and highly confidential information of Lug’s entire business for each year from 2019 to 2023, including, but not limited to: (1) company-wide sales broken down by the different retail channels; (2) the wholesale pricing Lug charges to QVC and other retailers; (3) the cost of goods and other cost deductions which will enable determination of Lug’s profit margins that it realizes for sales of its goods; (4) discounts that Lug affords to certain customers; and (5) the amount of Lug’s marketing expenses. The public disclosure of this confidential information will put Lug at a competitive disadvantage.” *FTC v. Tapestry, Inc.*, Case No. 1:24-cv-03109-JLR (S.D.N.Y.), ECF No. 210 (Lug’s letter motion to seal). On September 6, 2024, Judge Rochon granted Lug’s motion. See *FTC v. Tapestry, Inc.*, Case No. 1:24-cv-03109-JLR (S.D.N.Y.), ECF No. 321. On August 29, 2024, the FTC notified Lug that the FTC also intends to use Exhibit Nos. PX3123 and PX3138 as evidence in the administrative trial in this case. See Letter from the Federal Trade Commission dated August, 29, 2024 (attached as Exhibit C). Given the competitively sensitive nature of Exhibit Nos. PX3123 and PX3138, Lug now seeks *in camera* treatment of Exhibit Nos. PX3123 and PX3138 for a period of ten years in this case. A copy of Exhibit Nos. PX3123 and PX3138 is attached under seal as Exhibit D.

LEGAL STANDARD

In camera treatment is warranted when public disclosure of an exhibit would “likely result in a clearly defined, serious injury.” 16 C.F.R. § 3.45(b); see *In re Illumina, Inc.*, 2021 FTC LEXIS 35, at *1-2 (Aug. 19, 2021); *In re HP. Hood, Inc.*, 58 F. C. 1184 1188 (1961). To make this

showing, corporations must demonstrate that exhibits contain information both “sufficiently secret and sufficiently material to their business that disclosure would result in serious competitive injury.” *In re Gen. Foods Corp.*, 95 F.T.C. 352, 355 (1980). A movant may rely upon an employee’s declaration to explain the documents’ confidentiality and materiality. *See In re N. Texas Specialty Physicians*, No. 9312, 2004 WL 1571167, at *1–2 (FTC Apr. 23, 2004) (granting in camera treatment to non-party documents containing, inter alia, sensitive pricing and revenue information).

In assessing whether documents are sufficiently secret and material to warrant in camera treatment, the Commission has identified six relevant factors:

- (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 by [the business] to guard the secrecy of the information;
- (4) the value of the information to [the business] and to [its] competitors;
- (5) the amount of effort or money expended by [the business] in developing the information; [and]
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

In re Bristol-Myers Co., 90 F.T.C. 455, 456–57 (1977). Non-parties to the underlying proceeding are entitled to “special solicitude” in this analysis. *In re ProMedica Health Sys.*, 2011 FTC LEXIS 101, at *3-4 (May 25, 2011); *In re Kaiser Aluminum & Chem. Corp.*, 103 F.T.C. 500, 500 (1984). In particular, the Court has recognized that extending robust confidentiality protection to third parties encourages cooperation with the adjudicative discovery process. *Kaiser Aluminum*, 103 F.T.C. at 500 (“As a policy matter, extensions of confidential or in camera treatment in appropriate cases involving third party bystanders encourages cooperation with future adjudicative discovery requests.”).

In camera status is generally granted for a limited period. See 16 C.F.R. § 3.45(b)(3). *In camera* treatment is routinely granted for competitively sensitive business records, including documents revealing research and development plans, financial metrics such as costs, margins,

revenues, competitive positioning, strategic plans, and marketing and pricing strategies for up to ten years. *See Otto Bock HealthCare N. Am., Inc.*, 2018 FTC LEXIS 111, at *10-12 (July 6, 2018) (granting third parties' requests for ten-year in camera treatment of documents discussing research and development plans); *In re Tronox Ltd.*, 2018 FTC LEXIS 78, at *12-13 (May 15, 2018) (granting third parties' requests for ten year in camera treatment of documents containing competitively sensitive information, such as business plans, views on the efficacy of substitutes for products, analyses of prices, capacity, supply and demand, along with market forecasts).

ARGUMENT

Lug seeks *in camera* treatment of Exhibit Nos. PX3123 and PX 3138 for ten years because they contain competitively sensitive information that would result in serious injury to Lug if disclosed. Although it is not a party, Lug cooperated with the FTC and Tapestry in negotiating with them and producing Exhibit Nos. PX3123 and PX 3138 in the related *FTC v. Tapestry, Inc.* case. After significant negotiation with the subpoenaing parties, and in reliance on the parties' assurances of confidentiality (including assurances set forth in the Stipulated Protective Order entered in *FTC v. Tapestry, Inc.*), Lug produced Exhibit Nos. PX3123 and PX 3138, reflecting *inter alia*, Lug's confidential revenue and sales figures for the past several years. (Ferdinand Decl. ¶ 4.)

As required under this Court's standards, and as Judge Rochon recently recognized, Exhibit Nos. PX3123 and PX 3138 are both secret and material to Lug's business. *See Gen. Foods*, 95 F.T.C. at 355; *see also FTC v. Tapestry, Inc.*, Case No. 1:24-cv-03109-JLR (S.D.N.Y.), ECF No. 321 (granting Lug's motion to seal and for *in camera* treatment of Exhibit Nos. PX3123 and PX 3138). At all times, Lug has taken precautions to maintain the confidentiality of this information. (Ferdinand Decl. ¶ 7.) The information set forth in Exhibit Nos. PX3123 and PX 3138 is not public and is treated as highly confidential in the course of Lug's business. (Ferdinand Decl. ¶¶ 5 & 7.) This information

is also material to Lug's business, as "the value of the information to [the business] and to [its] competitors," Bristol-Meyers, 90 F.T.C. at 45, is very high. (Ferdinand Decl. ¶ 7.)

The public disclosure of this confidential information including (1) company-wide sales broken down by the different retail channels; (2) the wholesale pricing Lug charges to QVC and other retailers; (3) the cost of goods and other cost deductions which will enable determination of Lug's profit margins that it realizes for sales of its goods; (4) discounts that Lug affords to certain customers; and (5) the amount of Lug's marketing expenses, would provide competitors with insight into confidential aspects of Lug's business and put Lug at a competitive disadvantage. (Ferdinand Decl. ¶ 5.) For example, Lug's primary sales channel is QVC. If Lug's competitors learn of the company's wholesale pricing and profit margins for QVC, they could approach QVC to undercut Lug on price. This is just one example of the many ways that competitors will surely look to use this information to gain a competitive advantage over Lug. (Ferdinand Decl. ¶ 5.)

Moreover, the proposed *in camera* treatment is narrowly tailored because it involves only two spreadsheets comprising specific information as requested by the FTC and Tapestry, and such treatment would protect Lug from competitive harm. (Ferdinand Decl. ¶ 8.) Under these circumstances, *in camera* treatment is warranted. *See Otto Bock HealthCare N. Am., Inc.*, 2018 FTC LEXIS, at *10-12 (granting third parties' requests for ten-year *in camera* treatment of confidential business records); *In re Tronox Ltd.*, 2018 FTC LEXIS 78, at *12-13 (May 15, 2018) (same); *see also In re N. Texas Specialty Physicians*, No. 9312, 2004 WL 1571167, at *1-2 (FTC Apr. 23, 2004) (granting third parties' requests for five-year *in camera* treatment of confidential business records); *In re Illumina, Inc.*, 2021 FTC LEXIS 35, at *1-2 (same).

CONCLUSION

The Court has recognized that requests for *in camera* treatment are entitled to “special solicitude” when they come from non-parties like Lug. *Kaiser Aluminum*, 103 F.T.C. at 500. The information contained in Exhibit Nos. PX3123 and PX 3138 is both secret and material to Lug. For the reasons explained in this motion and the Declaration of Edmund J. Ferdinand, III Lug respectfully requests that the Court grant *in camera* treatment to Exhibit Nos. PX3123 and PX 3138 for ten years.

Dated: October 24, 2024
New York, New York

MEISTER SEELIG & FEIN PLLC

/s/ Edmund J. Ferdinand, III.

Edmund J. Ferdinand, III.

Meister Seelig & Fein PLLC

125 Park Avenue

7th Fl

New York, NY,

10017

Tel: (203) 348-7852

gnm@msf-law.com

Counsel for Non-Party Lug USA, LLC

CERTIFICATE OF SERVICE

I hereby certify that on October 25, 2024, I filed the foregoing documents electronically with the FTC's-Filing System, and sent courtesy copies via email to:

The Honorable Dania L. Ayoubi
Office of the Administrative Law Judges
Federal Trade Commission
600 Pennsylvania Ave., NW
Room H-110
Washington, DC 20580
oalj@ftc.gov

April Tabor
Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW
Room H-113
Washington, DC 20580
ElectronicFilings@ftc.gov

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

*Complaint Counsel***Federal Trade Commission**

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/s/ Grace N. Monroy

Meister Seelig & Fein PLLC

Counsel for Non-Party Lug USA, LLC

EXHIBIT A

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

In the Matter of Tapestry, Inc., et al.

Docket No. 9429

**DECLARATION OF EDMUND J. FERDINAND, III IN SUPPORT OF
NON-PARTY LUG USA, LLC'S
MOTION FOR *IN CAMERA* TREATMENT**

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. I am a Partner at Meister, Seelig & Fein, PLLC. I have been counsel to Lug USA, LLC ("Lug") for more than fifteen years and oversee, and am responsible for, all of the company's legal matters. I make this declaration in support of non-party Lug's Motion for *In Camera* Treatment. I have personal knowledge of the matters stated herein and, if called upon to do so, could testify about them.

2. Lug, a private company based in Orlando, Florida, is in the business of producing and selling bags and travel accessories.

3. On May 15, 2024 and May 16, 2024 respectively, the parties in the above-captioned proceeding issued subpoenas to Lug in the related case *FTC v. Tapestry, Inc.*, Case No. 1:24-cv-03109-JLR (S.D.N.Y.), seeking certain confidential business information for use in connection with that litigation.

4. On June 28, 2024, after we negotiated with the parties, and in reliance on the parties' assurances of confidentiality (including assurances set forth in the Stipulated Protective Order entered in *FTC v. Tapestry, Inc.*, Case No. 1:24-cv-03109-JLR (S.D.N.Y.), ECF No. 70),

Lug produced documents bearing the Bate stamps LUG_000001 and LUG_000002 reflecting fulsome sales, pricing and costing information, on both a company-wide and individual product basis, for each year since 2019.

5. The information set forth in LUG_000001 and LUG_000002, specifically includes (1) company-wide sales broken down by the different retail channels; (2) the wholesale pricing Lug charges to QVC and other retailers; (3) the cost of goods and other cost deductions which will enable determination of Lug's profit margins that it realizes for sales of its goods; (4) discounts that Lug affords to certain customers; and (5) the amount of Lug's marketing expenses, is not public and is treated as highly confidential in the course of Lug's business. Based on my knowledge of Lug's business and competitive standing, and my familiarity with the confidentiality protection Lug affords such information, disclosure of this information to the public and to Lug's competitors would cause serious competitive injury to Lug. For example, Lug's primary sales channel is the television retail network, QVC. If Lug's competitors learn of the company's wholesale pricing and profit margins for QVC, they could approach QVC to undercut Lug on price and erode Lug's market share. This is just one example of the many ways that competitors will surely look to use this information to gain a competitive advantage over Lug.

6. On August 29, 2024, the FTC notified Lug that the FTC intends to use LUG_000001 and LUG_000002, which have been marked as Exhibit Nos. PX3123 and PX3138, as evidence in the administrative trial in this case.

7. At all times, Lug has taken precautions to maintain the confidentiality of this material information, which is not public. If Lug's competitors knew Lug's confidential information found in Exhibit Nos. PX3123 and PX3138, then such knowledge would provide competitors with insight into confidential aspects of Lug's business and harm Lug's competitive

standing. Because Lug would experience a clearly defined and serious injury, Lug respectfully requests *in camera* treatment of this information for ten years.

8. The proposed *in camera* treatment is narrowly tailored because it involves only two spreadsheets comprising specific information as requested by the FTC and Tapestry, and such treatment would protect Lug from competitive harm.

I hereby declare that my statements are true and correct under penalties of perjury

Executed on: October 23, 2024



Edmund J. Ferdinand, III

EXHIBIT B



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

Bureau of Competition
Mergers II Division

August 23, 2024

VIA EMAIL TRANSMISSION

Lug USA, LLC C/O
Jessica S. Rutherford
MSeister Seelig & Fein
125 Park Avenue , 7th Fl.
New York, NY 10017
jrutherford@msf-law.com

RE: *Federal Trade Commission v. Tapestry, Inc.*, et al., No. 1:24-cv-03109-JLR
(S.D.N.Y. 2024)

Dear Jessica S. Rutherford:

The Federal Trade Commission (“FTC”) has brought the above-captioned action for preliminary relief pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), seeking to enjoin Tapestry, Inc. and Capri Holdings Ltd. from consummating a proposed transaction while the FTC’s administrative review of the transaction is pending. The Court has issued a temporary restraining order and set an evidentiary hearing on the FTC’s request for a preliminary injunction to begin September 9, 2024.

Pursuant to the Case Management and Scheduling Order issued May 1, 2024, the Court has directed the parties 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)” on or by August 23, 2024. Additionally, the Court has directed non-parties to “provide notice whether they object to the potential public disclosure at [the] hearing of any non-party documents and depositions, explain the basis for any such objections, and propose redactions where possible” by August 30, 2024. *See* attached Case Management and Scheduling Order, Dkt. 71 Exhibit A – Proposed Schedule (May 1, 2024).

We anticipate that the FTC’s exhibit list may include certain non-public material that Lug USA, LLC produced in connection with the FTC’s review of the transaction. The FTC has included the following exhibits identified in Attachment A on its exhibit list for the S.D.N.Y. proceeding. If the list changes in any way—and in particular, if additional exhibits are added to the list—we will provide reasonable notice of supplemental exhibits that Lug USA, LLC has produced.

To the extent that you determine any material should be sealed in the district court proceeding, you may file a letter motion to seal pursuant to this Court’s Individual Rule of

Practice 4(B)(iii) and Paragraph 11 of the Stipulated Protective Order, Dkt. 70 (May 1, 2024).
We can provide an example of a letter motion to seal upon your request.

If you have any questions, please contact me at nlindquist@ftc.gov and (202) 326-3672.

Sincerely,

s/ Nicole Lindquist
Nicole Lindquist

Attachments:

Attachment A
Stipulated Protective Order, Dkt. 70 (May 1, 2024)
Case Management and Scheduling Order, Dkt. 71 (May 1, 2024)

Exhibit No.	Description	Date	BegBates	EndBates
PX3123	Lug Spreadsheet: LUG_000001-LUG_000001 CONFIDENTIAL.xlsm		LUG_000001	LUG_000001
PX3138	Lug Spreadsheet: Custom Income Statement From Jan 2019 to Apr 2024		LUG_000002	LUG_000002

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: _____

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~~ CASE
MANAGEMENT AND
SCHEDULING ORDER

Plaintiff Federal Trade Commission (“FTC” or “Commission”) and Defendants Tapestry, Inc. and Capri Holdings Limited (collectively, “Defendants”) respectively submit this Proposed Case Management and Scheduling Order.

A. **TEMPORARY RESTRAINING ORDER.** The FTC and Defendants stipulated to a temporary restraining order on April 22, 2024, which the Court so ordered on April 24, 2024. Under that temporary restraining order, the Defendants have agreed not to close their transaction until after 11:59 PM Eastern Time on the fifth business day after the Court rules on the Plaintiff’s request for a preliminary injunction pursuant to Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. § 53(b), or until after the date set by the Court, whichever is later.

B. **DISCOVERY**

1. **Initial Disclosures.** The parties shall serve upon each other initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1)(A)(i) by May 7, 2024. The

disclosures shall include the name and, if known, the address and telephone number of each individual likely to have discoverable information (or in the alternative, the relevant information for that individual's counsel, if known)—along with the subjects of that information—that the disclosing party may use to support its claim or defenses in this action. If the parties need to supplement or correct their disclosures during the pendency of this action, they will do so pursuant to Federal Rule of Civil Procedure 26(e).

2. Fact Discovery. The parties shall commence fact discovery upon the filing of this Joint Stipulated Case Management Order and complete it in accordance with Exhibit A.
3. Discovery Conference. This stipulated Order relieves the parties of their duty under Federal Rule of Civil Procedure 26(f) to confer about scheduling and a discovery plan.
4. Third-Party Discovery. The notice requirements of Federal Rule of Civil Procedure 45(a)(4) shall apply. No party issuing a third-party subpoena for the production of documents or electronically stored information shall request a return date sooner than seven (7) calendar days after service. Every documentary subpoena to a third party shall include a cover letter requesting that (1) the third party Bates-stamp each document with a production number and any applicable confidentiality designation prior to producing it and (2) the third party provide to the other parties copies of all productions at the same time as they are produced to the requesting party. If a third party fails to provide copies of productions to the other parties, the requesting party shall produce all materials received pursuant to the third-party subpoena, as well as all materials received voluntarily in lieu of a subpoena, including declarations or

affidavits obtained from a third party, to all other parties within three (3) business days of receiving those materials. Production shall occur in the format the materials were received, except that in the event a non-party produces documents or electronic information that are non-Bates-stamped, the party receiving the documents shall promptly Bates-stamp the documents or electronic information and produce them in an appropriate timeframe. The parties shall serve document requests to third parties by the deadlines in Exhibit A.

5. Limitations on Party and Third-Party Declarations or Letters. No party may submit as evidence a declaration, letter, or affidavit from a party or third-party fact witness if such declaration, letter, or affidavit was executed or served less than three (3) business days prior to his or her agreed-to deposition date. In any event, no party or third-party declaration, letter, or affidavit may be submitted as evidence if it was executed or served fewer than seven (7) calendar days before the close of fact discovery. Declarations, letters, or affidavits produced after this date shall not be admitted into evidence or used at the preliminary injunction hearing absent agreement of the parties or with leave of the Court for good cause shown.
6. Document Requests and Production. No more than 25 requests for production shall be served on any party. The parties agree to make good faith efforts to produce documents on a rolling basis, prioritizing data requests, and shall make a good-faith effort to substantially comply with requests for production no later than thirty (30) calendar days after the date of service. The parties shall serve any objections to requests for the production of documents no later than ten (10) calendar days after the date of service of the document requests to which they assert objections. Within three (3) calendar days of service of any such objections, the parties shall meet and confer

in a good faith attempt to resolve the objections. The parties also agree to make a good faith effort to substantially produce documents for a deponent three (3) calendar days before the deponent's deposition, provided the deposition is noticed for a date no fewer than thirty (30) calendar days after service of objections to the corresponding document requests. In response to any document requests, the parties need not produce to each other in discovery in this case any documents previously produced by Defendants to the FTC in the course of the investigation of Tapestry, Inc.'s proposed acquisition of Capri Holdings Limited, FTC File No. 231-0133.

a) Document Productions shall be sent to the attention of:

i. To the FTC:

Danielle Quinn (dquinn@ftc.gov)
Nicole Lindquist (nlindquist@ftc.gov)
Laura Antonini (lantonini@ftc.gov)
Peter Colwell (pcolwell@ftc.gov)
Andrew Lowdon (alowdon@ftc.gov)
Blake Risenmay (brisenmay@ftc.gov)
Tim Singer (tsinger@ftc.gov)
Steven Powell (spowell@ftc.gov)
Mary Karikari (mkarikari@ftc.gov)

ii. To Tapestry:

Andrew.Paik@lw.com
Mary.Casale@lw.com
Chris.Brown@lw.com
David.Johnson@lw.com
Kimon.Triantafyllou@lw.com
Ivy.Ziedrich@lw.com
Charlotte.Yeung@lw.com
Brian.Nowak@lw.com
Patrick.Dezil@lw.com
TLSPM_Latham_Sunrise@transperfect.com

iii. To Capri:

JMMoses@WLRK.com
EPGolin@WLRK.com

DGDidden@wlrk.com
ALGoodman@wlrk.com
KRHaigh@wlrk.com
BAFish@wlrk.com
JCKaplan@wlrk.com
MJSicilian@wlrk.com
caprismervice@wlrk.com

7. Requests for Admission. The parties shall serve no more than 20 requests for admission, including subparts, per side, not including those related solely to the authenticity of a document or the admissibility of documents, data, or other evidence.
8. Interrogatories. The parties shall serve no more than ten (10) interrogatories per side, only five (5) of which can be contention interrogatories, served later in the discovery period pursuant to Local Rule 33.3. The parties shall serve objections to interrogatories no later than ten (10) calendar days after the date of service. Within three (3) calendar days of service of any such objections, the parties shall meet and confer in a good faith attempt to resolve the objections. The parties shall serve substantive responses no later than fourteen (14) days after service of objections to the interrogatories.
9. Deadline to Issue Written Discovery to Parties. Document requests, requests for admission, and interrogatories must be served no later than the dates as set out in Exhibit A.
10. Expert Reports. Plaintiff and Defendants shall serve expert reports, rebuttal expert reports, and reply expert reports on the dates set forth in Exhibit A.
11. Expert Materials Not Subject to Discovery. Expert disclosures, including each side's expert reports, shall comply with the requirements of Federal Rule of Civil Procedure 26(a)(2), except as modified herein:

- a) Neither side must preserve or disclose, including in expert deposition testimony, the following documents or materials, and the Parties shall not be obligated to include such information on any privilege log:
- i. any form of communication or work product shared between any of the parties' counsel and their expert(s) or consultants, or between any of the experts themselves, unless such communications relate to assumptions that the party's counsel provided and that the expert relied on in forming the opinions to be expressed;
 - ii. any form of communication or work product shared between an expert(s) and persons assisting the expert(s);
 - iii. expert's notes, unless the expert expressly relies upon and/or cites such notes;
 - iv. drafts of expert reports, affidavit, declaration, exhibits, analyses, or other work product; or
 - v. data formulations, data runs, data analyses, or any database-related operations not relied upon by the expert in the opinions contained in his or her final report, except as set forth in 11(b).
- b) The parties agree that they will disclose the following materials with all expert reports:
- i. a list by Bates number of all documents relied upon by the testifying expert(s); and copies of any materials relied upon by the expert not previously produced that are not readily available publicly;

- ii. for any calculations appearing in the report, all data and programs underlying the calculation, including all programs and codes necessary to recreate the calculation from the initial or raw data.

12. Notwithstanding anything to the contrary, the testifying expert may be presented at deposition or the hearing with documents, testimony, or other materials not contained in his or her expert report(s) and questioned about whether the testifying expert saw or considered such documents, testimony, or other materials; the reasons why the testifying expert did or did not consider or rely on such documents, testimony, or other materials in forming his or her opinions; and whether such documents, testimony, or other materials cause the testifying expert to alter his or her opinions in any respect.

13. Exchange of Lists of Fact Witnesses to Appear at Hearing.

- a) *Preliminary Fact Witness Lists:* The parties shall exchange preliminary fact witness lists in accordance with Exhibit A. Preliminary fact witness lists shall be limited to twenty-five (25) per side and summarize the general topics of each witness's anticipated testimony. The preliminary witness list shall include the name of the employer of each witness and a description of the responsibilities of any third-party witness. Only a witness who appears on a party's preliminary witness list may be included on that party's final witness list, unless opposing party was provided a reasonable opportunity to take the witness's deposition prior to the close of fact discovery, absent agreement of the parties or with leave of the Court for good cause shown.
- b) *Final Fact Witness Lists:* Final fact witness lists shall be exchanged in accordance with Exhibit A. The final fact witness list shall identify all fact

witnesses the producing party expects that it may present at the evidentiary hearing. Final fact witness lists shall be limited to twenty (20) per side and shall summarize the general topics of each witness's anticipated testimony. Each side's final fact witness list shall be limited to witnesses who appeared on either side's preliminary fact witness list and up to ten (10) others, provided that any witness not appearing on a preliminary fact witness list must have otherwise been deposed or the opposing party was provided a reasonable opportunity to take the witness's deposition prior to the close of fact discovery in connection with this federal court preliminary injunction proceeding absent agreement of the parties or with leave of the Court for good cause shown. Additional witnesses may be added to either side's final fact witness list after the date identified in Exhibit A only by agreement of the parties or with leave of the Court for good cause shown.

14. Depositions.

- a) Number of Fact Depositions. The parties agree that relief from the limitation on the number of depositions set forth in Federal Rule of Civil Procedure 30(a)(2) is necessary and appropriate. Each side may depose a witness who (i) is listed on either side's preliminary fact witness list or (2) provides a declaration, note of support or opposition, or affidavit in connection with this matter. In addition, each side may take a maximum of twenty-five (25) depositions of individuals beyond those listed on either side's preliminary fact witness lists and/or who provide a declaration, note of support or opposition, or affidavit. Each 30(b)(6) deposition notice counts as one deposition for purposes of this paragraph even if the noticed

entity designates multiple individuals to provide testimony. Cross-notices of depositions will not count against the above totals. To the extent a deposition involves a non-party and is not cross-noticed, the party who did not notice the deposition will have 30 minutes available to them and the party seeking the deposition will have 6 hours and 30 minutes. Additional depositions of fact witnesses shall be permitted only by agreement of the parties or by leave of the Court for good cause shown. The parties shall consult with each other prior to confirming any deposition to coordinate the time and place of the deposition. The parties shall use reasonable efforts to reduce the burden on witnesses noticed for depositions and to accommodate the witness's schedule.

- b) Allocation of time. All depositions, including depositions of individual fact and expert witnesses, shall last no more than seven hours. For the avoidance of doubt, one deposition notice issued pursuant to Rule 30(b)(6) shall last no more than seven hours even if more than one individual is designated to provide testimony. If both Plaintiff and Defendants issue a subpoena to depose the same third-party fact witness, they shall allocate the time evenly between them. For purposes of this Order, former employees, consultants, agents, contractors, or representatives of the parties are considered party witnesses. Unused time in any side's allocation of deposition time shall not transfer to the other side.
- c) Notice. The parties may not serve a deposition notice with fewer than seven (7) calendar days' notice. The parties shall consult with each other prior to confirming any deposition to coordinate the time and place of the

deposition. The parties shall use reasonable efforts to reduce the burden on witnesses noticed for depositions and to accommodate the witness's schedule. If a party serves a non-party subpoena for the production of documents or electronically stored information and a subpoena commanding attendance at a deposition, the deposition date must be at least seven (7) calendar days after the original return date for the document subpoena.

- d) Deposition Designations. The parties agree to work in good faith to reach agreement regarding the need, and, if appropriate, a procedure for deposition designations by the close of fact discovery.
- e) Remote Depositions. All party and non-party depositions in this matter shall be conducted remotely, except that expert witness depositions may be conducted in-person at deposing counsel's option. The parties agree to meet and confer regarding remote depositions and the protocol that would govern any such depositions.

15. Expert Depositions. Each side may take one deposition of each of the other side's testifying experts. Unless the parties agree or the Court orders otherwise, expert depositions must be completed before the close of expert discovery, as set forth in Exhibit A.

16. Discovery Uses. All discovery taken in the above-captioned litigation can be used in connection with any Part 3 administrative proceeding. Only discovery obtained by a party in any Part 3 administrative proceeding before the close of fact discovery in this proceeding may be used as part of this litigation, except by agreement of the parties or by leave of the Court for good cause shown.

C. MOTIONS AND BRIEFING SCHEDULE

1. Plaintiff will file its memorandum in support of its motion for a preliminary injunction by the date set in Exhibit A. This brief is not to exceed 35 pages.
2. Defendants will file their opposition to the Plaintiff's motion for a preliminary injunction by the date set in Exhibit A. This brief is not to exceed 40 pages.
3. Plaintiff will file its reply memorandum in further support of its motion for a preliminary injunction by the date set in Exhibit A. This brief is not to exceed 20 pages.
4. Any motions *in limine* or *Daubert* motions, shall be filed by the date set in Exhibit A. Any responses to any such motions shall be filed by the date set in Exhibit A. Any briefs in support of, or in opposition to, *motions in limine* shall not exceed 5 pages. Any briefs in support of, or in opposition to, *Daubert* motions shall not exceed 15 pages.
5. Each side's prehearing proposed findings of fact and conclusions of law will be filed by the date in Exhibit A and shall not exceed 50 pages. Each side's post-hearing proposed findings of fact and conclusions of law will be filed by the date in Exhibit A and shall not exceed 100 pages.

D. PRELIMINARY INJUNCTION EVIDENTIARY HEARING

1. The parties propose an evidentiary hearing of twenty (20) hours per side on the date set in Exhibit A. Time spent conducting a direct examination shall count against the side conducting that direct examination; time spent conducting a cross-examination shall count against the side conducting that cross-examination. Time spent arguing an objection shall count against the side that loses the objection. Plaintiff and Defendants will each tally the time consumed by each side and confer on a daily basis

on the total time each side has consumed. Plaintiff may reserve a portion of their time for rebuttal. Unused time does not transfer to the other side.

E. OTHER MATTERS

1. Service. Service of any documents not filed via ECF, including pleadings, discovery requests, Rule 45 subpoenas for testimony or documents, expert disclosure, and delivery of all correspondence, whether under seal or otherwise, shall be by electronic mail to the following individuals designated by each party:

- i. For FTC:

Abby Dennis (adennis@ftc.gov)
Peggy Bayer Femenella (pbayerfemenella@ftc.gov)
Danielle Quinn (dquinn@ftc.gov)
Nicole Lindquist (nlindquist@ftc.gov)
Laura Antonini (lantonini@ftc.gov)
Peter Colwell (pcolwell@ftc.gov)
Andrew Lowdon (alowdon@ftc.gov)
Blake Risenmay (brisenmay@ftc.gov)
Tim Singer (tsinger@ftc.gov)
Steven Powell (spowell@ftc.gov)
Mary Karikari (mkarikari@ftc.gov)

- ii. For Tapestry:

Sean.Berkowitz@lw.com
Chris.Brown@lw.com
Lawrence.Buterman@lw.com
Mary.Casale@lw.com
Lindsey.Champlin@lw.com
Ian.Conner@lw.com
Jennifer.Giordano@lw.com
David.Johnson@lw.com
Andrew.Paik@lw.com
Al.Pfeiffer@lw.com
Amanda.Reeves@lw.com
Chris.Yates@lw.com
Brian.Nowak@lw.com
Patrick.Dezil@lw.com

iii. For Capri:

JMMoses@wlrk.com
EPGolin@wlrk.com
DGDidden@wlrk.com
ALGoodman@wlrk.com
KRHaigh@wlrk.com
BAFish@wlrk.com
JCKaplan@wlrk.com
MJSicilian@wlrk.com
capriservice@wlrk.com

In the event the volume of served materials is too large for email and requires electronic data transfer by file transfer protocol or a similar technology, or overnight delivery if agreed by the parties, the serving party will telephone or email the other side's principal designee when the materials are sent to provide notice that the materials are being served. For purposes of calculating discovery response times under the Federal Rules of Civil Procedure, electronic delivery shall be treated the same as hand delivery.

2. Response to Complaint. Defendants shall answer the complaint or file another response pursuant to the Federal Rules on or before the date set in Exhibit A.
3. Nationwide Service of Process. Good cause having been shown in view of the geographic dispersion of potential witnesses in this action, the parties will be allowed nationwide service of process of discovery and evidentiary hearing subpoenas pursuant to Federal Rule of Civil Procedure 45 and 15 U.S.C. § 23, to issue from this Court that may run into any other federal district requiring witnesses to attend this Court. The availability of nationwide service of process, however, does not make a witness who is otherwise "unavailable" for purposes of Federal Rule of Civil Procedure 32 and Federal Rule of Evidence 804 available under these rules regarding the use at the evidentiary hearing of a deposition taken in this action.

4. Protective Order Concerning Confidentiality. The parties anticipate requesting entry of a Protective Order Concerning Confidentiality.
5. Privilege Logs. The parties agree to suspend the obligations of Federal Rule of Civil Procedure 26(b)(5)(A) to produce a log of materials withheld from discovery in this case (excluding Defendants' productions made during the course of the FTC's pre-complaint investigation) for the following categories of documents:
 - a) Documents or communications sent solely between or among external counsel for the Defendants, including any persons employed by counsel or acting on their behalf, on the one hand, and employees or agents of the Defendants, on the other hand;
 - b) Documents or communications sent solely between or among counsel for Plaintiff, including any persons employed by counsel or acting on their behalf, on the one hand, and employees or agents of Plaintiff, on the other hand;
 - c) Documents or communications sent solely between outside counsel for Defendants (or persons employed by or acting on behalf of such counsel) or solely between counsel for Plaintiff (or persons employed by or acting on behalf of such counsel);
 - d) Documents or communications sent solely within Plaintiff's organization (including persons employed by or acting on behalf of the Plaintiff);
 - e) Documents or communications sent solely between or among experts retained for purposes of this matter (including the Federal Trade Commission's investigation of this matter), on the one hand, and counsel for any Party or Parties, employees of the parties, the experts themselves, or persons acting

under the supervision of or on behalf of those experts in connection with the expert's work on this matter, on the other; and

- a) Materials exempted from disclosure under the Expert Materials provision of Paragraph 11 of this Order.

Defendants may provide a metadata only privilege log for documents or communications sent solely between or among in-house counsel for the Defendants, including any persons employed by counsel or acting on their behalf, on the one hand, and employees or agents of the Defendants, on the other. This Paragraph shall not alter either party's right to challenge any privilege claims made by either party.

6. Inadvertent Production of Privileged Material. In accordance with Federal Rule of Civil Procedure 16(b)(3)(B)(iv) and Federal Rule of Evidence 502(d), inadvertent production of documents or communications containing privileged information or attorney work product shall not be a basis for loss of privilege or work product of the inadvertently produced material, provided that the producing party notifies the receiving party within a reasonable period of time of learning of the inadvertent production. When a party determines that it has inadvertently produced such material, it will notify other parties, who will promptly return, sequester, or delete the protected material from their document management systems. Within two (2) business days of identifying inadvertently produced information or documents(s), the party seeking claw-back of such materials shall provide a privilege log entry for the identified information or documents.
7. Attorney Work-Product. The parties will neither request nor seek to compel the production of any interview notes, interview memoranda, or recitation of information contained in such notes or memoranda, or recitation of information contained in such

notes or memoranda, created by any party's Counsel, except as specified in Paragraph

11. Nothing in this Order requires the production of any party's attorney work-product; confidential attorney-client communications; communications with or information provided to any potentially or actually retained expert; communications between counsel for the FTC, its Commissioners, and/or persons employed by the FTC; or materials subject to the deliberative-process privilege or any other privilege.

8. Electronically Stored Information. The parties agree as follows regarding the preservation and production of electronically stored information ("ESI"):
- a) All Parties have established litigation holds to preserve ESI that may be relevant to the expected claims and defenses in this case. In addition, the Parties have taken steps to ensure that automatic deletion systems will not destroy any potentially relevant information.
 - b) All Parties agree that the use of Technology Assisted Review tools may assist in the efficient production of ESI. However, if a party desires to use such technologies that materially differ from the technologies used in connection with Defendants' response to the Second Request, it shall meet and confer with the other side and negotiate in good faith on the reasonable use of such technology.
 - c) All parties will request ESI in the form or forms that facilitate efficient review of ESI. In general, the parties shall produce ESI according to the same ESI technical specifications used by Defendants in the FTC's pre-complaint investigation. However, the parties need not produce color images of documents during production. If a party requests color images of specific

documents, then the receiving party shall provide it within three (3) business days.

9. Evidentiary Presumptions.

- a) All documents produced by a Defendant either in response to document requests in this litigation or in the course of the FTC's pre-complaint investigation of the proposed acquisition, FTC File No. 231-0133, are presumed to be authentic. All documents produced by non-parties from their files shall be presumed to be authentic within the meaning of Federal Rule of Evidence 901. If a party serves a specific written objection to a document's authenticity, the presumption of authenticity shall no longer apply to that document, and the parties shall promptly meet and confer to attempt to resolve the objection. The Court will resolve any objections that are not resolved through this means or through the discovery process.
- b) Any party may challenge the authenticity or admissibility of a document, and if necessary may take discovery related solely to authenticity or admissibility of documents.

10. Modification of Scheduling and Case Management Order. Any party may seek modification of this Order for good cause, except that the parties may also modify discovery and expert disclosure deadlines by agreement.

EXHIBIT A - PROPOSED SCHEDULE

Event	Date(s)
Discovery Commences	Upon filing of this Proposed Joint Stipulated Case Management Order with the Court
Response to Complaint	May 6, 2024
Parties Serve Initial Disclosures	May 7, 2024
Plaintiff Serves Preliminary Fact Witness Lists	May 10, 2024 at 5 p.m. ET
Defendants Serve Preliminary Fact Witness List	May 15, 2024, at 5 p.m. ET
Deadline to Serve Written Discovery, excluding Contention Interrogatories	May 17, 2024
Deadline to Serve Contention Interrogatories	June 26, 2024
Good-faith Commitment to Complete Party Depositions	July 19, 2024
Close of Fact Discovery	July 26, 2024
Plaintiff Serves Initial Expert Report(s)	July 26, 2024
Plaintiff's Memorandum of Law in Support of Preliminary Injunction Motion	August 6, 2024
Defendants Serve Rebuttal Expert Report(s)	August 7, 2024
Plaintiff Serves Expert Rebuttal/Reply Report(s)	August 14, 2024
Defendants' Opposition to Preliminary Injunction Motion	August 20, 2024
Close of Expert Discovery	August 20, 2024
Exchange of Final Witness Lists	August 21, 2024 at 5 p.m. ET
Exchange of Exhibit Lists and Deposition Designations (to the extent necessary)	August 23, 2024 at 5 p.m. ET

Event	Date(s)
Each Party informs 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)	August 23, 2024
Deadline for Motions <i>In Limine</i> and Daubert Motions	August 26, 2024
Plaintiff's Reply to Defendants' Opposition to Preliminary Injunction Motion	August 27, 2024
Each side exchanges its objections to the other side's exhibits and opening deposition designations and provides its deposition counter-designations (to the extent necessary)	August 27, 2024
Each side exchanges its objections to the other side's deposition counter-designations and its counter-counter-designations (to the extent necessary)	August 29, 2024
Deadline for Oppositions to Motions <i>In Limine</i> and Daubert Motions	August 30, 2024
Proposed Findings of Fact and Conclusions of Law	August 30, 2024
Non-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	August 30, 2024
Parties meet and confer regarding disputes about confidentiality of Party documents on hearing exhibit lists and deposition designations (to the extent necessary)	August 30, 2024 (and as required thereafter)
Parties meet and confer regarding admissibility of hearing exhibits	August 30, 2024 (and as required thereafter)
Joint submission regarding disputes about admissibility of hearing exhibits	September 4, 2024
Joint submission regarding disputes about confidentiality of Party and non-party documents on hearing exhibit lists to be filed	September 4, 2024
Evidentiary Hearing Begins	September 9, 2024
Post-Hearing Proposed Findings of Fact and Conclusions of Law	7 days after the evidentiary hearing concludes

STIPULATED AND AGREED:

S/ Abby 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

This order has been entered after consultation with the parties. Absent good cause shown, the deadlines set by this order will not be modified or extended.

IT IS SO ORDERED, this 1st day of May, 2024.



UNITED STATES DISTRICT JUDGE
The Honorable Jennifer L. Rochon

EXHIBIT C

VIA EMAIL TRANSMISSION

Lug USA, LLC C/O
Jessica S. Rutherford
MSeister Seelig & Fein
125 Park Avenue , 7th Fl.
New York, NY 10017
jrutherford@msf-law.com

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

Dear Jessica S. Rutherford:

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
PX3123	Lug Spreadsheet: LUG_000001-LUG_000001 CONFIDENTIAL.xlsm		LUG_000001	LUG_000001
PX3138	Lug Spreadsheet: Custom Income Statement From Jan 2019 to Apr 2024		LUG_000002	LUG_000002

EXHIBIT D

(filed under seal)

EXHIBIT E

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

In the Matter of Tapestry, Inc., et al.

Docket No. 9429

**[PROPOSED] ORDER GRANTING NON-PARTY LUG USA, LLC'S
UNOPPOSED MOTION FOR *IN CAMERA* TREATMENT**

Pursuant to Rule 3.45(b) of the Rules of Practice of the Federal Trade Commission ("FTC"), Non-Party Lug USA, LLC ("Lug"), has filed a Motion for *In Camera* Treatment. Neither the FTC nor Respondents oppose this motion.

Lug's Motion for *In Camera* Treatment as to Exhibit Nos. PX3123 and PX3138 (LUG_000001 and LUG_000002) is GRANTED. Before Exhibit Nos. PX3123 and PX3138 are offered into evidence and before any of the information contained therein is referred to in court, the parties shall identify such document and the subject matter therein as *in camera*, inform the court reporter of the trial exhibit number of such document, and request that the hearing go into an *in camera* session.

ORDERED:

Date: _____

Dania L. Ayoubi
Administrative Law Judge