

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



\_\_\_\_\_  
In the Matter of )

DOCKET NO. 9350

Graco Inc., *et al.* )  
\_\_\_\_\_)

PUBLIC

**COMPLAINT COUNSEL'S MOTION TO PLACE THE UNREDACTED COMPLAINT  
ON THE PUBLIC RECORD**

Complaint Counsel respectfully moves for an order placing an unredacted version of the Complaint on the public record. Complaint Counsel initially placed a redacted version of the Complaint on the public record, after providing Respondents' counsel the opportunity to identify potentially sensitive information. The redacted material quotes Respondents' documents and a Graco Inc. ("Graco") executive.<sup>1</sup> The Federal Trade Commission ("Commission" or "FTC") protected these quotes from public disclosure during the Commission's pre-Complaint antitrust investigation. That investigation ended on December 15, 2011, when the Commission filed the Complaint. The redacted material does not merit continuing confidentiality.

Respondents Illinois Tool Works Inc. and ITW Finishing LLC (collectively "ITW") do not oppose disclosing the redacted material received from ITW, comprising all of the redacted material in paragraphs 5 and 22 of the Complaint. Respondent Graco opposes this motion. Complaint Counsel has moved to unseal a virtually-identical version of the Complaint in the related district court proceeding. Judge Robert L. Wilkins set a briefing schedule for that motion terminating on January 19, 2012.

<sup>1</sup> See ¶¶ 1-3, 5-6, 12, 18-19, 22-23, and 40 of the Complaint.

As discussed below, the longstanding public policy in favor of open access to adjudicative records, as reflected in the Commission's Rules of Practice and the applicable law, creates a strong presumption in favor of public access to the full Complaint.

### ARGUMENT

There is a strong presumption in favor of open access to Commission adjudicative proceedings. *Detroit Auto Dealers Ass'n, Inc.*, D-9189, 1985 FTC LEXIS 90, at \*3 (June 7, 1985) (citing *E. Griffith Hughes, Inc. v. FTC*, 63 F.2d 362, 363 (D.C. Cir. 1933)); *see also H.P. Hood & Sons, Inc.*, D-7709, 1961 FTC Lexis 368, at \*7 (Mar 14, 1961) ("To foreclose [FTC] hearings and the evidence adduced therein from the scrutiny of . . . interested persons would serve in a large measure to defeat the very reason for our existence."). Open proceedings permit the public to evaluate the "fairness of the Commission's work," and they provide "guidance to persons affected by [the Commission's] actions." *Intel Corp.*, D-9288, 1999 FTC LEXIS 227, at \*1 (Feb. 23, 1999) (citing *The Crown Cork & Seal Co., Inc.*, 1967 FTC LEXIS 128, at \*2 (June 26, 1967)). Neither embarrassment nor the desire to protect business information are sufficient bases for obscuring material from the public. *See H.P. Hood*, 1961 FTC LEXIS at \*14 ("Quite clearly the mere embarrassment of the movant should not foreclose public disclosure. Nor should documents be sealed simply on the ground that they contain information which competitors for business reasons are extremely desirous to possess."). Instead, Respondent Graco must demonstrate that it will suffer "a clearly defined, serious injury" as a result of disclosure. 16 C.F.R. § 3.45(b).

Here, the redacted material quotes Respondents' documents and a Graco executive discussing competition and the likely impact of the acquisition. The Complaint contains no trade

secrets and no competitively sensitive information. Moreover, the redacted quotes implicate the very heart of the case, making public disclosure more important.

Without this information in the public record, the matter's ultimate resolution is less useful as a guide to practitioners and the business community. The public has a right to see the exact wording of any non-privileged, non-confidential information in Respondents' documents and investigational hearings. The need for open proceedings is particularly important in light of the tremendous interest in antitrust enforcement.

### **CONCLUSION**

For the foregoing reasons, Complaint Counsel respectfully requests that the Court authorize placement of the original, unredacted Complaint on the public record.

Dated: January 13, 2012

Respectfully submitted,

By:

  
~~PHILLIP L. BROYLES~~

Assistant Director

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*Complaint Counsel*

**CERTIFICATE OF SERVICE**

I hereby certify that I caused to be filed *via* hand a paper original and a true and correct copy by electronic mail of the foregoing Complaint Counsel's Motion to Place the Unredacted Complaint on the Public Record, upon:

The Honorable D. Michael Chappell  
Chief Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Avenue, NW, H-106  
Washington, DC 20580

I hereby certify that I caused to be delivered by the FTC E-Filing System a true and correct copy of the foregoing Complaint Counsel's Motion to Place the Unredacted Complaint on the Public Record upon:

Donald S. Clark  
Office of the Secretary  
Federal Trade Commission  
600 Pennsylvania Avenue, NW, H-135  
Washington, DC 20580

I also certify I delivered *via* electronic mail a copy of the foregoing Complaint Counsel's Motion to Place the Unredacted Complaint on the Public Record upon:

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Dated: January 13, 2012

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

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	)	<b>DOCKET NO. 9350</b>
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<b>Graco Inc., et al.</b>	)	<b>PUBLIC</b>
	)	

**[PROPOSED] ORDER GRANTING COMPLAINT COUNSEL’S MOTION TO PLACE THE  
UNREDACTED COMPLAINT ON THE PUBLIC RECORD**

On January 13, 2012, Complaint Counsel submitted a Motion to Place the Unredacted Complaint on the Public Record. Complaint Counsel states that after consultation with Respondents’ Counsel, Complaint Counsel initially placed a redacted version of the Complaint on the public record, in order to protect from disclosure quotes from Respondents’ documents and prior testimony that had been protected from disclosure during the pre-Complaint investigation. Complaint Counsel argues that the redacted text does not merit continued confidentiality.

Complaint Counsel argues that making the Complaint public will also serve the policy of open access to the Commission’s adjudicative proceedings. Complaint Counsel notes that the redacted material in the Complaint does not reveal trade secrets, customer-specific information, or other specific material that could be considered sensitive.

Based on the foregoing, Complaint Counsel’s Motion to Place Complaint on the Public Record is hereby GRANTED.

ORDERED:

Dated: \_\_\_\_\_

\_\_\_\_\_  
D. Michael Chappell  
Chief Administrative Law Judge

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

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**STATEMENT REGARDING MEET AND CONFER**

Pursuant to paragraph 4 of the Scheduling Order issued January 12, 2012, Complaint Counsel conferred telephonically with Respondents' Counsel regarding Complaint Counsel's Motion to Place the Unredacted Complaint on the Public Record ("Motion"). Respondents Illinois Tool Works Inc. and ITW Finishing LLC (collectively "ITW") do not oppose disclosing the redacted material received from ITW, comprising all of the redacted material in paragraphs 5 and 22 of the Complaint. Complaint Counsel attempted to confer with Graco Inc. ("Graco") but received no definitive response. Graco opposed a nearly identical motion in the district court action.



Dated: January 13, 2012

Respectfully submitted,

By:

  
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