
UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
WASHINGTON D.C.

In the Matter of

UNION OIL COMPANY OF CALIFORNIA,
a corporation.

Docket No. 9305

**UNOCAL’S MOTION FOR IN CAMERA TREATMENT OF CONFIDENTIAL
PERSONNEL DOCUMENTS THAT COMPLAINT COUNSEL IDENTIFY AS
POTENTIAL HEARING EXHIBITS**

Pursuant to Section 3.45 of the Federal Trade Commission’s Rules of Practice, Respondent Union Oil Company of California (“Unocal”) hereby moves for *in camera* treatment of certain documents that Complaint Counsel identify as potential hearing exhibits because they contain highly confidential personal information of individual Unocal employees.

As described more fully below and in the accompanying Declaration of Charles O. Strathman (“Strathman Decl.”), Unocal’s Vice President, Law, each document contains highly-sensitive, non-public information that would cause individual Unocal employees serious personal injury if published in this proceeding.

ARGUMENT

I. Legal Standard for *In Camera* Treatment

The documents that are described in this motion warrant *in camera* treatment as provided by Commission Rule 3.45(b), 16 C.F.R. § 3.45(b).

“There is 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, 1186 (1961). The Commission weighs six factors in determining the secrecy and materiality of documents under Rule 3.45(b):

1. the extent to which the information is known outside of respondent’s business;
2. the extent to which it is known by employees and other involved in respondent’s business;
3. the extent of measures taken by respondent to guard the secrecy of the information;
4. the value of the information to respondent and his competitors;
5. The amount of effort or money expended by respondent 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 Company, 90 F.T.C. 455, 456-57 (1977).

In addition, Commission Rule 3.45(b) properly affords *in camera* treatment on a clear showing that the information concerned is “sufficiently secret and sufficiently material” to Unocal’s business that public disclosure of the documentary evidence will result in a clearly defined, serious injury to the person or corporation whose records are involved. In re Kaiser Aluminum & Chem. Corp., 103 F.T.C. 500 (1984); H.P. Hood & Sons, 58 F.T.C. at 1188. Within the context of this legal backdrop, “the courts have generally attempted to protect confidential business information from unnecessary airing.” H.P. Hood & Sons, 58 F.T.C. at 1188.

Using these criteria, the Court should afford *in camera* treatment to the documents in question so that certain Unocal employees do not needlessly suffer serious personal injury from an unwarranted invasion of their personal privacy in this proceeding.

BACKGROUND

Unocal believes that its employees' personnel files, resumes, performance reviews, compensation information and stock option plans deserve *in camera* treatment and should not be published in this proceeding.

II. The Documents in Question Should be Afforded *In Camera* Treatment

In proceedings outside the context of the FTC, before a court will even allow a personnel document to be admitted or subject to discovery, it will routinely review documents *in camera* to determine whether confidential personnel information is relevant. See, e.g., Poseidon Oil Pipeline Co. et al. v. Transocean Sedco Forex, Inc. et al., 2002 U.S. Dist. LEXIS 17635 (E.D. La. Sept. 18, 2002) (court reviewed non-party employee personnel files *in camera* to determine relevancy); Cornelius O. Ogunsalu v. Roadway Express, Inc., 58 Fed. Appx. 763 (9th Cir. 2003) (finding the magistrate judge properly reviewed privileged personnel files *in camera* to determine their relevance before ruling on plaintiff's motion to compel). Here, Unocal has already produced confidential personnel files to Complaint Counsel subject to this Tribunal's Protective Order. Unocal is not requesting that Complaint Counsel refrain from using the personnel documents in this proceeding, but only that the documents be afforded *in camera* treatment to prevent them from being published and causing harm to the individuals.

The documents contain private, personal information about individual Unocal employees, including their educational background, past work experience, salary, compensation, performance

reviews, incentive awards and other highly sensitive personal information, including their social security numbers, home addresses and telephone numbers. Strathman Decl. ¶ 3. Significant measures have been taken to guard their confidentiality, and they are kept secret, even within Unocal. Id. Only select Unocal human resource employees have access to these documents and they are not disseminated within or outside of the company. Id. at ¶¶ 6, 7. Unocal never consented to the disclosure of these documents or information to the public either in connection with this proceeding or any other context. Id. at ¶ 3. Their publication would clearly be a serious and unwarranted invasion of personal privacy. The information contained in these documents is not significant to this proceeding, nor can the public reasonably be expected to have an interest in it.

For each document at issue, the factors set forth above compel the conclusion that the documents are secret and material within the meaning of the Commission's Rule 3.45(b) analysis. As described below, each document should be afforded *in camera* protection.

A. Employee Resumés, Performance Evaluations and Personnel Files

Complaint Counsel has identified several documents relating to Unocal employees that are irrelevant to this proceeding and should be given *in camera* treatment by the Commission. The first set of 8 documents include the following:

REDACTED

. Strathman Decl. ¶¶ 5(a) - 5(d).

These eight documents contain highly private and personal facts about the individual employees and therefore should not be published on the public record. Id.

B. Employee Stock Options, Incentive Awards and Financial Information

The second set of documents that require *in camera* treatment are the documents revealing employees' salary information, including stock options, incentive awards, and Internal Revenue Service tax forms. These include the following 17 documents:

REDACTED

. Again, these sixteen documents contain highly private and personal facts about individual employee and contractor compensation. Employees'

salary and bonuses are not relevant to any of the myriad of fraud allegations in the Complaint against Unocal.

II. Publishing the Documents Will Cause Individual Unocal Employees Clearly Defined, Serious Personal Injury

The value of the information contained in each of these documents is immeasurable to these Unocal employees, as the documents reflect their personal performance and compensation on many levels of their employment. Strathman Decl. ¶¶ 3, 5.

The information in these documents has limited circulation. Id. at ¶ 3. It is not widely known even within, let alone outside of, Unocal. Id. Unocal has taken great measures to guard secrecy of every document for which it now seeks *in camera* treatment. Id. These documents are not already a matter of public record. Id. at ¶ 7. Furthermore, to the extent that any of them have been disclosed to third parties, Unocal has done so only upon first procuring assurances of confidentiality, usually by written agreement. Id. at ¶ 3.

The public interest would not be served by making these confidential documents a matter of public record, since the information contained in them would not aid the public understanding of this proceeding. In fact, the private, personal data contained in these documents does not bear any relationship to consumers or other members of the public at large. Instead of assisting the public's understanding of the proceeding, the information would simply be an unwarranted violation of the individuals' privacy. See Kaiser Aluminum, 103 F.T.C. at 500 (holding that certain documents warranted *in camera* treatment reasoning that a "public understanding of this proceeding does not depend on access to these data submitted").

Release of the information in these documents would have serious and adverse competitive impacts on Unocal and could adversely affect Unocal strategies and decisions regarding licensing, its plans to innovate with specific technologies in various areas, Unocal's royalty pricing and ultimately prospects for profits. The effects of making the subject documents available to Unocal's competitors would therefore be substantial. The individual employees would be irreparably harmed as well if the information contained in these documents were disclosed. Strathman Decl. ¶¶ 4, 5. Given the lack of relevance of these documents and their high degree of sensitivity to Unocal and its employees, *in camera* treatment is appropriate.

III. Indefinite In Camera Treatment is Necessary

The need for confidentiality of this personal material will not decrease over time. E.I. du Pont de Nemours & Co., 1990 FTC LEXIS 134, *2 (April 25, 1990) (quoting 54 Fed. Reg. 49,279 (1989)). The resumés, performance reviews, and compensation plans of individual Unocal employees will remain sensitive and confidential indefinitely. Employee performance and compensation information will always be the kind of information which Unocal has a significant interest in protecting. Similarly, employee salary, stock option information and performance reviews will never be relevant to this proceeding. Accordingly, we request that indefinite *in camera* protection be granted to these documents. Strathman Decl. ¶ 4.

Despite the fact "there is a presumption that *in camera* treatment will not be provided to information that is three or more years old," In re Dura Lube Corp., 1999 FTC LEXIS 255 (1999) (citing In re General Foods Corp., 95 F.T.C. at 353 (1980)), the FTC has recognized that this presumption is rebuttable and, on numerous occasions, granted *in camera* protection to older documents depending on their contents. See In re Coca-Cola Company, 1990 FTC LEXIS 364

(1990) (noting that a three-year standard is sometimes used, but holding that the age of a particular document offers “little guidance” as to whether *in camera* treatment is warranted; instead it is the actual justification for the treatment that matters).

As time has passed, the personal information contained in these documents has retained its sensitive nature, and will continue to retain this sensitive nature in the future. At no time should individual Unocal employees be subject to having their resumes, job performance, compensation or other private employment-related information published, particularly when there is no relevance to the proceeding. Thus, indefinite *in camera* treatment is appropriate for these documents.

CONCLUSION

For the foregoing reasons, Unocal respectfully requests that the information in the documents listed above be given indefinite *in camera* treatment, kept confidential, and not placed on the public record of this proceeding. This information meets the criteria set forth in FTC precedent as qualifying for *in camera* treatment, and therefore, should be accorded such protection. In the event the Commission intends to disclose *in camera* Unocal information in a final decision, Unocal respectfully requests that the Commission notify both David W. Beehler of Robins, Kaplan, Miller & Ciresi, L.L.P., 2800 LaSalle Plaza, 800 LaSalle Avenue, Minneapolis, MN 55402, telephone: 612-349-0802, facsimile: 612-339-4181, and Unocal Vice President, Law, Charles O. Strathman, Unocal Corporation, 2141 Rosecrans, Suite 4058, El Segundo, CA 90245, telephone: 310-726-7763, facsimile: 310-726-7815.

Dated: October 10, 2003.

Respectfully submitted,

GIBSON, DUNN & CRUTCHER, LLP

By: Signature on File with Commission
Joseph Kattan, P.C.
Chris Wood

1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5306
Phone: 202-55-8500
Fax: 202-530-9558

and

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

Martin R. Lueck
David W. Beehler
Sara A. Poulos
Diane L. Simerson
Steven E. Uhr
Bethany D. Krueger
David E. Oslund

2800 LaSalle Plaza
800 LaSalle Avenue
Minneapolis, Minnesota 55402-2015
Phone: 612-349-8500
Fax: 612-339-4181

ATTORNEYS FOR UNION OIL COMPANY OF
CALIFORNIA

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
WASHINGTON D.C.

In the Matter of

UNION OIL COMPANY OF CALIFORNIA,
a corporation.

Docket No. 9305

PROPOSED ORDER

On October 10, 2003, Respondent Union Oil Company of California (“Unocal”) filed a motion for *in camera* treatment of confidential personnel documents that Complaint Counsel identified as potential trial exhibits.

IT IS HEREBY ORDERED that Unocal’s Motion is GRANTED. The information set forth in the following documents will be subject to indefinite *in camera* treatment under 16 C.F.R. § 3.45 and will be kept confidential and not placed on the public record of this proceeding:

<u>Exhibit Number</u>	<u>Duration</u>
CX0451	Indefinite
CX0450	Indefinite
CX0516	Indefinite
CX0510	Indefinite
CX0554	Indefinite
CX0452	Indefinite
CX0100	Indefinite
CX0353	Indefinite
CX0549	Indefinite
CX0691	Indefinite
CX0546	Indefinite
CX0547	Indefinite

<u>Exhibit Number</u>	<u>Duration</u>
CX0569	Indefinite
CX0548	Indefinite
CX0555	Indefinite
CX0556	Indefinite
CX0558	Indefinite
CX0562	Indefinite
CX0559	Indefinite
CX0567	Indefinite
CX0568	Indefinite
CX0712	Indefinite
CX1575	Indefinite
CX1576	Indefinite
CX1577	Indefinite

IT IS FURTHER ORDERED that only the respondent, their counsel, authorized Federal Trade Commission (“Commission”) personnel, and court personnel concerned with judicial review may have access to the above-referenced information, provided that I, the Commission, and reviewing courts may disclose such *in camera* information to the extent necessary for the proper disposition of the proceeding.

ORDERED:

Date: _____

D. Michael Chappell
Administrative Law Judge