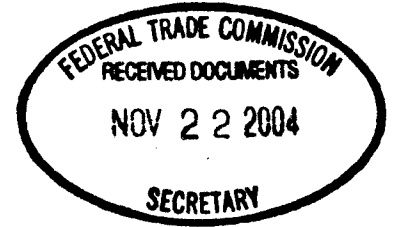


UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES



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

UNION OIL COMPANY OF )  
CALIFORNIA, )  
Respondent. )  
\_\_\_\_\_)

Docket No. 9305

**ORDER ON RESPONDENT'S MOTION  
FOR *IN CAMERA* TREATMENT OF CX 1800 AND CX 1802**

**I.**

Pursuant to Commission Rule 3.45(b), Union Oil Company of California ("Respondent" or "Unocal") filed a motion for *in camera* treatment of CX 1800 and CX 1802, which Complaint Counsel added to its exhibit list after the *in camera* deadline.

In Commission proceedings, requests for *in camera* treatment must show that the 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, 500 (1984); *In re H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961). That showing can be made by establishing that the documentary evidence is "sufficiently secret and sufficiently material to the applicant's business that disclosure would result in serious competitive injury," and then balancing that factor against the importance of the information in explaining the rationale of Commission decisions. *Kaiser*, 103 F.T.C. at 500; *In re General Foods Corp.*, 95 F.T.C. 352, 355 (1980); *In re Bristol Myers Co.*, 90 F.T.C. 455, 456 (1977).

Indefinite *in camera* treatment is granted only in those "unusual" cases where the competitive sensitivity or the proprietary value of the information will not diminish with the passage of time. *In re Coca Cola Co.*, 1990 FTC LEXIS 364, at \*6-7 (Oct. 17, 1990). Examples of documents meriting indefinite *in camera* treatment are trade secrets, such as secret formulas, processes, and other secret technical information, and information that is privileged. *See Hood*, 58 F.T.C. at 1189; *In re R.R. Donnelley & Sons Co.*, 1993 FTC LEXIS 32, at \*3 (Feb. 18, 1993); *In re Textron, Inc.*, 1991 FTC LEXIS 135, at \*1 (Apr. 26, 1991). Where *in camera* treatment is granted for ordinary business records, such as business plans, marketing plans, or sales documents, it is typically extended for two to five years. *E.g., In re E.I. Dupont de Nemours & Co.*, 97 F.T.C. 116 (1981); *In re Int'l Ass. of Conf. Interpreters*, 1996 FTC LEXIS 298 (June 26, 1996).

The Federal Trade Commission strongly favors making available to the public the full record of its adjudicative proceedings to permit public evaluation of the fairness of the Commission's work and to provide guidance to persons affected by its actions. *In re Crown Cork & Seal Co., Inc.*, 71 F.T.C. 1714, 1714-15 (1967); *Hood*, 58 F.T.C. at 1186 (“[T]here is a substantial public interest in holding all aspects of adjudicative proceedings, including the evidence adduced therein, open to all interested persons.”). A heavy burden of showing good cause for withholding documents from the public record rests with the party requesting that documents be placed *in camera*. *Hood*, 58 F.T.C. at 1188. Further, requests for indefinite *in camera* treatment must include evidence to provide justification as to why the document should be withheld from the public's purview in perpetuity and why the requestor believes the information is likely to remain sensitive or become more sensitive with the passage of time. See *DuPont*, 97 F.T.C. at 117. Thus, in order to sustain the heavy burden for withholding documents from the public record, an affidavit or declaration demonstrating that a document is sufficiently secret and material to the applicant's business that disclosure would result in serious competitive injury is required. *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 109, at \*2-3 (Apr. 23, 2004). The parties and non-parties have been advised of this requirement. Protective Order, ¶ 13. Requests for *in camera* treatment shall be made only for those pages of documents or of deposition transcripts that contain information that meets the *in camera* standard.

## II.

Respondent, on October 29, 2004, filed a motion for leave to request *in camera* treatment for two additional documents. Respondent seeks *in camera* treatment until the year 2015 for two documents related to license information. Complaint Counsel does not oppose this motion. The motion for leave to seek *in camera* treatment for two additional documents is GRANTED.

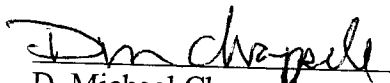
Respondent's motion provides a declaration of Charles Strathman, Contract Counsel and formerly Vice President, Law, of Union Oil Company of California (“Strathman Declaration”). As described by the Strathman Declaration, the documents for which *in camera* treatment is sought contain confidential licensing and other commercially sensitive information and disclosure of the information has been extremely limited.

A review of the declaration in support of the motion and the documents reveals that the information sought to be protected meets the standards for *in camera* treatment. Accordingly, Respondent's motion is GRANTED. *In camera* treatment, to expire on January 1, 2015, is granted to: CX 1800 and CX 1802.

**III.**

Respondent shall inform its testifying current or former employees that *in camera* treatment has been extended to the material described in this Order. At the time that any documents that have been granted *in camera* treatment are offered into evidence or before any of the information contained therein is referred to in court, the parties shall identify such documents and the subject matter therein as *in camera*, inform the court reporter of the trial exhibit number(s) of such documents, and request that the hearing go into an *in camera* session.

ORDERED:

  
D. Michael Chappell  
Administrative Law Judge

Date: November 22, 2004