Public Version

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of	)	
	)	
ASPEN TECHNOLOGY, INC.,	)	Docket No. 9310
	)	
a corporation	)	

THIRD-PARTY SHELL GLOBAL SOLUTIONS (US) INC.'S
MOTION FOR IN CAMERA TREATMENT

Third-party Shell Global Solutions (US) Inc. ("Shell") moves, pursuant to Rule 3.45(b) of the Federal Trade Commission's Rules of Practice, 16 C.F.R. §3.45 (b), for *in camera* treatment of a Shell document that Respondent Aspen Technology, Inc. has designated for possible introduction into evidence at the trial of this matter.

I. INTRODUCTION

Shell is a third-party witness in the above-captioned matter. Shell received notification from Respondent's counsel on April 15, 2004, that Respondent intends to offer as a trial exhibit a Shell document marked ASP-SGS-003319 (designated RX-1574-001 by Respondent), which Shell had produced in response to Respondent's subpoena in this matter. Shell produced the document in question on condition that access to it will be limited to Respondent's outside counsel. As described in the attached Declaration in support of this Motion, the information contained in this document is competitively sensitive and confidential to Shell, public disclosure of this document will cause clearly defined, serious injury to Shell, and the sensitivity of the document is unlikely to decline in the foreseeable future. Accordingly, Shell requests indefinite *in camera* treatment for the document in question, which is attached hereto as Exhibit A.

II. STANDARDS FOR *IN CAMERA* TREATMENT

Under the standards set forth in Rule 3.45(b), material is entitled to *in camera* treatment upon a showing that "public disclosure will likely result in a clearly defined, serious injury" to the party requesting treatment. 16 C.F.R § 3.45(b); *see also H.P. Hood & Sons*, 58 F.T.C. 1184, 1188 (1961). That showing can be established where the applicant shows that the information in question is "sufficiently secret and sufficiently material to their business that disclosure would result in serious competitive injury." *In Re General Foods Corp.*, 95 F.T.C. 352, 355 (1980). The likely loss of business advantage is a clearly defined, serious injury. *See In Re Hoechst Marion Roussel, Inc.*, 2000 F.T.C. LEXIS 138, *6 (2000).

Typically, six factors are weighed in considering the whether the information for which *in camera* treatment is sought meets the "secrecy and materiality" standard:

> (1) the extent to which the information is known outside of his business; (2) the extent to which it is known by employees and others involved in his business; (3) the extent of measures taken by him to guard the secrecy of the information; (4) the value of the information to him and to his competitors; (5) the amount of effort or money expended by him in developing the information; (6) the ease or difficult with which the information could be properly acquired or duplicated by others.

In Re Bristol-Myers Co., 90 F.T.C. 455, 456 (1977) (citing Restatement of Torts § 757).

III. REASONS FOR IN CAMERA TREATMENT

As set forth in the attached Declaration of Herbert A. Epstein in Support of Shell Global Solutions (US) Inc.'s Application for In Camera Treatment of Trial Exhibit Sought to be Introduced by Respondent ("Epstein Declaration"), the above factors weigh heavily in favor of affording *in camera* treatment to RX-1574-001. The information in the document is not known outside of Shell and is important to Shell's business. (Epstein Decl. at ¶ 4) That significant

effort was expended to develop the information is evident from the information itself. Moreover, Shell has taken significant measures to safeguard the secrecy of the information, including limiting access to Respondent's outside counsel. (*Id*.) In addition, the information cannot be duplicated by Shell's suppliers or competitors, because it is based on competitively sensitive, confidential, proprietary information. (*Id*.) The information contained in the document would be of significant value to Shell's suppliers and competitors. (Epstein Decl. at ¶ 5)

In camera treatment is warranted, as explained in the Epstein Declaration, because public disclosure would injure Shell by causing a loss of business advantage. (Epstein Decl. at ¶ 5). If Shell's suppliers – including Respondent -- gained access to the information, it is likely that they would be able to charge Shell higher prices. (*Id*.) Moreover, the information warrants lasting protection because the factors considered in the document are not likely to change. As Mr. Epstein's declaration explains, the sensitivity of the information will persist for the foreseeable future. (Epstein Decl. at ¶ 4). Thus, the requirements of Commission Rule 3.45 are fully satisfied and indefinite *in camera* treatment is warranted.

IV. CONCLUSION

For all of the foregoing reasons, Shell respectfully requests an Order in the attached form extending indefinite *in camera* treatment to RX-1574-001.

DATED: April 22, 2004

Respectfully submitted,

_____

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Counsel for Shell Global Solutions (US) Inc.

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

In the Matter of	)	
	)	
ASPEN TECHNOLOGY, INC.,	)	Docket No. 9310
	)	
a corporation	)	

ORDER

Upon review of Third-Party Shell Global Solutions (US) Inc.'s ("Shell's") Motion For In Camera Treatment, IT IS ORDERED THAT:

1. Shell's Motion For In Camera Treatment is GRANTED.

2. RX-1574-001 will be afforded indefinite *in camera* treatment for the reasons stated in the Declaration of Herbert A. Epstein.

DATED:_____

_____
Stephen J. McGuire
Chief Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that on April 22, 2004, I caused the original and one copy of the Public Version of Third-Party Shell Global Solutions (US) Inc.'s Motion for In Camera Treatment, Proposed Order and Declaration of Hebert A. Epstein in Support of Shell Global Solutions (US) Inc.'s Application for In Camera Treatment to be filed by Federal Express and one electronic copy of that motion to be filed by electronic mail with:

Donald Clark, Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW, Rm. H-159
Washington, DC 20580
E-mail: *secretary@ftc.gov*

I also certify that on April 22, 2004, I caused two copies of the Non-Public Version of Third-Party Shell Global Solutions (US) Inc.'s Motion for In Camera Treatment, Proposed Order and Declaration of Hebert A. Epstein in Support of Shell Global Solutions (US) Inc.'s Application for In Camera Treatment to be delivered by Federal Express to:

:

The Honorable Stephen J. McGuire
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

I also certify that on April 22, 2004, I caused one copy of the Non-Public Version of Third-Party Shell Global Solutions (US) Inc.'s Motion for In Camera Treatment, Proposed Order and Declaration of Hebert A. Epstein in Support of Shell Global Solutions (US) Inc.'s Application for In Camera Treatment to be delivered by Federal Express to:

Phillip L. Broyles
Peter Richman
Federal Trade Commission
Room NJ-7172-A
601 New Jersey Avenue, N.W.
Washington, D.C. 20001

I also certify that on April 22, 2004, I caused one copy of the Non-Public Version of Third-Party Shell Global Solutions (US) Inc.'s Motion for In Camera Treatment, Proposed Order, Declaration of Hebert A. Epstein in Support of Shell Global Solutions (US) Inc.'s Application for In Camera Treatment and Notice of Appearance to be delivered by U.S. mail to:

Tanya N. Dunne
Mark W. Nelson
Jeremy J. Calsyn
Counsel for Aspen Technology
Cleary, Gottlieb, Steen & Hamilton
2000 Pennsylvania Avenue, N. W.
Washington, D.C. 20006

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Shalanda Washington
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Shell Oil Company
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Houston, Texas 77002
713.241.8131/713.241-4081 (fax)
shalanda.washington@shell.com

COPY CERTIFICATION

I certify that the election version of the Public Version of Third-Party Shell Global Solutions (US) Inc.'s Motion for In Camera Treatment and Proposed Order and Declaration of Hebert A. Epstein in Support of Shell Global Solutions (US) Inc.'s Application for In Camera Treatment filed electronic mail with the Secretary of the Commission is a true and accurate copy of the paper original and that a paper copy with the original signature has been filed with the Secretary of the Commission on this day.

Dated April 22, 2004

By: _____

Shalanda Washington
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