PUBLIC

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

IN THE MATTER OF	)	
	)	Docket No. 9299
MSC. SOFTWARE CORPORATION,	)	
	)	
a corporation	)	
	)	

THIRD-PARTY SCHAEFFER AUTOMATED SIMULATIONS' APPLICATION FOR IN CAMERA TREATMENT OF CERTAIN TRIAL EXHIBITS SOUGHT TO BE INTRODUCED BY RESPONDENT AND/OR COMPLAINT COUNSEL

Third party, Schaeffer Automated Simulations ("SAS") moves, pursuant to Rule 3.45(b) of the Federal Trade Commission's Rules of Practice ("Rules"), for in camera treatment of certain SAS documents sought to be introduced as trial exhibits in this matter by Respondent, MSC.SOFTWARE Corporation ("MSC") and/or Complaint Counsel.

I. INTRODUCTION

SAS is a third party witness. In connection with this matter, SAS has received from MSC subpoenas for records and testimony. As a result, SAS has turned over documents, and a deposition of Harry Schaeffer is scheduled to be held on June 12, 2002. On May 28, 2002, SAS received notices from Complaint Counsel and MSC identifying certain SAS documents that those parties intend to introduce as trial exhibits in this matter.

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II. STANDARDS FOR *IN CAMERA* TREATMENT

Under the standards set froth in Rule 3.45(b), material is entitled to *in camera* protection upon a showing that "public disclosure will likely result in a clearly defined, serious injury" to the party requesting such treatment. 16 C.F.R. §3.45(b). See also H.P. Hood & Sons, Inc., 58 F.T.C. 1184 (1961). 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). Further, a serious injury will result to an applicant where the material is (i) secret, (ii) material to the applicant's business and (iii) public disclosure will plausibly discourage future development of similar information. See In re Bristol-Myers Co., 90 F.T.C. 455, 456 (1977).

Six factors are weighed in considering the "secrecy and materiality" of information for which in camera treatment is sought:

> (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 difficulty with which the information could be properly acquired or duplicated by others.

Id. (citing Restatement of Torts § 757, comment b).

III. REASONS FOR *IN CAMERA* TREATMENT

As established in the attached Declaration of Dr. Harry Schaeffer ("Schaeffer Decl."), the above factors weigh heavily in favor of affording *in camera* protection to a number of the documents sought to be introduced by MSC and Complaint Counsel. These documents are identified in the

Schaeffer Declaration.

All of the materials identified in Dr. Schaeffer's Declaration meet the standard for *in camera* protection because they are not public and are material to SAS's business. Moreover, the information contained in the documents is not of a type known outside of SAS (or, in limited circumstances, its business partners) and is distributed within SAS (or, in limited circumstances, its business partners) on a limited basis. SAS has taken significant steps to safeguard the secrecy of this information, including limiting distribution within SAS. Indeed, when the documents were produced to MSC in this case, they were stamped "Attorneys Eyes Only," and MSC agreed to treat them as such. In addition, the materials could not be duplicated by SAS's competitors since they are based on sensitive, proprietary information. The information contained in these materials would be of significant value to SAS's competitors. Public disclosure of these materials would result in a loss of SAS's business advantage. See Schaeffer Decl. at ¶ 1-5.

SAS seeks indefinite *in camera* protection for all the documents listed, because the sensitive nature of the materials is not likely to diminish in the foreseeable future. Exhibit A to Dr. Schaeffer's Declaration is the lists the documents for which SAS seeks indefinite *in camera* protection.[1] Dr. Schaeffer's declaration, including the attachments thereto, sets forth specific reasons why indefinite *in camera* protection is appropriate for these documents, including:

a. The documents reveal SAS's long-term product marketing strategies. The strategies are not likely to diminish in competitive significance for the foreseeable future

b. The documents reveal SAS's long-term product development strategies. These strategies are not likely to diminish in competitive significance for the foreseeable future.

c. The documents relate to and reflect sensitive information about products that are in development. Public disclosure of this information would give competitors the benefit of SAS's past investments, as well as its strategies and ideas relating to future

[1] Copies of these documents have been served under seal on the office of the Administrative Law Judge but not the parties. In re Hoechst Marion Roussel, 2000 F.T.C. LEXIS 138 at *9.

developments of the products.

d. The documents set forth sensitive information, including strategies used to evaluate business opportunities. The significance of these documents is not likely to diminish in the foreseeable future and public disclosure of this information would compromise SAS's negotiating position and its general pursuit of future business opportunities.

See Schaeffer Decl. at ¶ 4. These reasons satisfy the requirements of Rule 3.45.

IV. CONCLUSION

For all of the foregoing reasons, SAS respectfully requests an Order in the attached form, extending *in camera* treatment to certain SAS documents sought to be introduced as trial exhibits by respondent, MSC and/or Complaint Counsel.

DATED: June 10, 2002

Respectfully submitted,
HILL, FARRER & BURRILL LLP

By: _____
PAUL M. PORTER
CA Bar No. 155852

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37th Floor
Los Angeles, California 90071
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Attorneys for Schaeffer Automated Simulations, LLC.

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CERTIFICATE OF SERVICE

This is to certify that on June 10, 2002, I caused copies of the attached **THIRD-PARTY SCHAEFFER AUTOMATED SIMULATIONS' APPLICATION FOR IN CAMERA TREATMENT OF CERTAIN TRIAL EXHIBITS SOUGHT TO BE INTRODUCED BY RESPONDENT AND/OR COMPLAINT COUNSEL** to be served via facsimile and/or Federal Express, upon the following:

Federal Express Only
Richard B. Dagen, Esq.
Federal Trade Commission
601 Pennsylvania Avenue, N.W.
Washington, DC 20580

Federal Express Only
Karen Mills, Esq.
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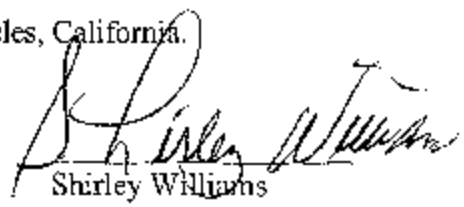
Executed on June 10, 2002, at Los Angeles, California.



Shirley Williams

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

IN THE MATTER OF	)	
MSC.SOFTWARE CORPORATION,	)	Docket No. 9299
a corporation	)	

DECLARATION OF HARRY SCHAEFFER IN SUPPORT OF SCHAEFFER AUTOMATED SIMULATIONS, LLC.'S APPLICATION FOR *IN CAMERA* TREATMENT OF CERTAIN TRIAL EXHIBITS SOUGHT TO BE INTRODUCED BY RESPONDENT AND COMPLAINT COUNSEL

HARRY SCHAEFFER, being duly sworn, deposes and says:

1. My name is Harry Schaeffer. I am employed as Chief Executive Officer of Schaeffer Automated Simulations, L.L.C. ("SAS").

2. Based on personal knowledge, I submit this declaration in support of *in camera* treatment of certain SAS materials produced in this case.

3. Attached hereto as Exhibit A is a table identifying the materials for which *in camera* treatment is sought. SAS seeks indefinite *in camera* treatment for all of the documents identified in the table.

4. The documents and information identified in Exhibit A are each entitled to *in camera* protection for one or more of the following reasons:

a. The documents reveal SAS's long-term product marketing strategies. The strategies are not likely to diminish in competitive significance for the foreseeable future

b. The documents reveal SAS's long-term product development strategies. These strategies are not likely to diminish in competitive significance for the foreseeable future.

c. The documents relate to and reflect sensitive information about products that are in development. Public disclosure of this information would give competitors the benefit of SAS's past investments, as well as its strategies and ideas relating to future developments of the products.

d. The documents set forth sensitive information, including strategies used to evaluate business opportunities. The significance of these documents is not likely to diminish in the foreseeable future and public disclosure of this information would compromise SAS's negotiating position and its general pursuit of future business opportunities.

5. In addition to the reasons set forth above, the materials identified in attachments A and B are secret to SAS and are material to its business. Public disclosure of these materials would discourage SAS from developing similar information in the future and would significantly harm SAS's business advantage. These materials are generally not known outside SAS (or, in limited circumstances, its business partners). The distribution and disclosure of these materials within SAS is limited. SAS takes significant measures to safeguard the secrecy of these materials. SAS has expended significant resources developing and safeguarding these materials. These materials would

have great value to SAS's competitors, who could not easily acquire or duplicate these materials. Public disclosure of these materials would result in a loss of SAS's business advantage.

FURTHER, affiant sayeth not.

Dr. Harry Schaeffer

State of California)
) ss:
Los Angeles County)

Sworn to and subscribed before me this 10th day of June, 2002:

[Notary Public]

My commission expires:

GEORGE WARTAN
Commission #: 287904
Notary Public - California
Los Angeles County
My Comm. Expires Dec 21, 2004

EXHIBIT "A"

SAS 1-15	Internal planning and strategy notes regarding technical issues. These documents were released as "Attorney Eyes Only", and require *in camera* treatment because MSC is a direct competitor of SAS and the documents are confidential in nature. Release of these documents to a competitor could cause significant detriment to SAS. The need for indefinite *in camera* status is based on the fact that the documents will continue to maintain their confidential nature.
SAS 17-33	Profit and Loss Statements. These documents were released as "Attorney Eyes Only", and require *in camera* treatment because MSC is a direct competitor of SAS and the documents are confidential in nature. Release of these documents to a competitor could cause significant detriment to SAS. The need for indefinite *in camera* status is based on the fact that the documents will continue to maintain their confidential nature.
SAS 34-37	SAS Board Meeting Minutes and related documents. These documents were released as "Attorney Eyes Only", and require *in camera* treatment because MSC is a direct competitor of SAS and the documents are confidential in nature. Release of these documents to a competitor could cause significant detriment to SAS. The need for indefinite *in camera* status is based on the fact that the documents will continue to maintain their confidential nature.
SAS 38-72	SAS's Amended and Restated Operating Agreement. These documents were released as "Attorney Eyes Only", and require *in camera* treatment because MSC is a direct competitor of SAS and the documents are confidential in nature. Release of these documents to a competitor could cause significant detriment to SAS. The need for indefinite *in camera* status is based on the fact that the documents will continue to maintain their confidential nature.
04197-SCH-001 - 0043	Agreement between SAS and Ansys. These documents were released as "Attorney Eyes Only", and require *in camera* treatment because MSC is a direct competitor of SAS and the documents are confidential in nature. The documents reflect strategic information relating to SAS's dealings with ANSYS, a competitor of

	MSC's.Release of these documents to a competitor could cause significant detriment to SAS. The need for indefinite *in camera* status is based on the fact that the document will continue to maintain their confidential nature.
04153B	Business Plan for SAS. This document was released as "Attorney Eyes Only", and requires *in camera* treatment because MSC is a direct competitor of SAS and the document is confidential in nature. It is an internal document reflecting SAS's business plan and its attempts to develop and market its products. Release of this document to a competitor could cause significant detriment to SAS. The need for indefinite *in camera* status is based on the fact that the document will continue to maintain their confidential nature.

CERTIFICATE OF SERVICE

This is to certify that on June 10, 2002, I caused copies of the attached **DECLARATION OF HARRY SCHAEFFER IN SUPPORT OF SCHAEFFER AUTOMATED SIMULATIONS, LLC.'S APPLICATION FOR *IN CAMERA* TREATMENT OF CERTAIN TRIAL EXHIBITS SOUGHT TO BE INTRODUCED BY RESPONDENT AND COMPLAINT COUNSEL** to be served via facsimile and/or Federal Express, upon the following:

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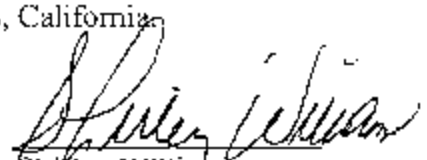

Shirley Williams

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ORDER

AND NOW, this ___ day of _____, 2002, upon consideration of Third Party Schaeffer Automated Simulation LLC's Application for *In Camera* Treatment of Certain Trial Exhibits Sought to be Introduced by Respondent it is hereby ORDERED that said application is GRANTED. For the reasons set forth in the Declaration of Dr. Harry Schaeffer in Support of Schaeffer Automated Simulation's LLC's Application for *In Camera* Treatment of Certain Trial Exhibits Sought to be Introduced by Respondent ("Schaeffer Declaration"), it is further ORDERED:

1. That the documents identified in Exhibit A to the Schaeffer Declaration (a copy of which is attached hereto) are afforded indefinite *in camera* treatment for the reasons set forth therein.

_____
D. Michael Chappell
Administrative Law Judge

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