

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

In the Matter of)
)
H&R Block Inc.,)
a corporation,)
) Docket No. 9427
HRB Digital LLC,)
a limited liability company, and)
)
HRB Tax Group, Inc.,)
a corporation,)
)
Respondents.)

**ORDER ON UNOPPOSED MOTION TO REMOVE
CERTAIN REDACTIONS FROM THE PUBLIC COMPLAINT**

Complaint Counsel has moved for an order removing certain redactions presently contained in the public version of the Complaint. Prior to issuance of the Complaint, Respondents had designated certain information as confidential pursuant to 16 C.F.R. § 4.10(g)(2). Complaint Counsel states that it has conferred with Respondents' counsel and represents that Respondents either consent to the removal of certain redactions or do not oppose the request to remove certain redactions. Complaint Counsel's proposed order would remove (1) all redactions in paragraphs 8, 17, 19, 20, 24, 25, 26, 27, 28, 33, 40, 53, and 54; and (2) designated redactions in paragraphs 29, 30, 31, and 32.

Pursuant to 16 C.F.R. § 3.31, Appendix A: Standard Protective Order, "confidential material" is limited to privileged information, competitively sensitive information, or sensitive personal information. *Id.* ¶ 1. Parties and non-parties may designate material as confidential only after careful determination that the material is not reasonably believed to be already in the public domain and where counsel believes the material so designated constitutes confidential material. *Id.* ¶¶ 3, 5.

It is questionable that much, if any, of the remaining material redacted in paragraphs 29, 30, 31, and 32 from the public version of the Complaint rises to the level of competitively sensitive information. Certainly, none of it appears to be privileged or sensitive personal information.

The FTC recognizes the “substantial public interest in holding all aspects of adjudicative proceedings . . . open to all interested persons.” *In re H.P. Hood & Sons*, 1961 FTC LEXIS 368, at *5-6 (Mar. 14, 1961) (*quoted with approval in In re Altria Grp. Inc.*, No. 9393, 2021 WL 2379509, at *2 (F.T.C. May 26, 2021)). Accordingly, if *in camera* treatment were sought for evidence offered at the scheduled hearing later this year, there would be a presumption against denying public access for information more than three years old. *See Altria*, 2021 WL 2379509, at *2 (citing authorities). Paragraphs 29 through 32 are appropriately reviewed with this “staleness” benchmark in mind. *See also In re General Foods Corp.*, 1980 FTC LEXIS 99, at *5, 95 F.T.C. 352 (Mar. 10, 1980) (“The Commission has usually denied *in camera* treatment for data of that vintage.”) (footnote citing authorities omitted); *United States v. Int’l Bus. Mach. Corp.*, 67 F.R.D. 40, 46 (S.D.N.Y. 1975) (“The disclosure of a secret formula will almost invariably result in [‘clearly defined, serious’] injury . . . , but the disclosure of two-and-a-half-year-old sales data will not.”) (citations to FTC authorities omitted).

Therefore, the ALJ directs the parties to revisit the remaining redactions in paragraphs 29 through 32 and determine whether they can agree to remove, or not oppose removing, additional redactions.

The parties shall file a joint status report no later than April 18, 2024 setting forth the additional material, if any, that can be unredacted. Ruling on Complaint Counsel’s motion is held in abeyance, pending receipt of the joint status report.

In the future, any contested or uncontested application to remove redactions from a previously redacted filing must attach to the motion a complete copy of the relevant paper, conspicuously marking redactions to be removed by, for example, highlighting or underscoring.

ORDERED:

Jay L. Himes
Jay L. Himes
Administrative Law Judge

Date: April 5, 2024