

Hogan v Ulta Salon, Cosmetics & Fragrance, Inc.
2022 NY Slip Op 32981(U)
September 6, 2022
Supreme Court, New York County
Docket Number: Index No. 651986/2020
Judge: Andrea Masley
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

-----X

SARAH HOGAN, ELIA RAMIREZ, AMBER MAHA, and JESSICA SHELP, Plaintiffs, - v - ULTA SALON, COSMETICS & FRAGRANCE, INC., Defendant.	INDEX NO. <u>651986/2020</u> MOTION DATE _____ MOTION SEQ. NO. <u>008 010</u> DECISION + ORDER ON MOTION
--	---

-----X

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 008) 101, 102, 103, 105 were read on this motion to/for _____ SEAL _____.

The following e-filed documents, listed by NYSCEF document number (Motion 010) 123, 124, 125, 126, 127, 128 were read on this motion to/for _____ SEAL _____.

Upon the foregoing documents, it is

In motion sequence number 008, plaintiffs Sarah Hogan, Elia Ramirez, and Jessica Shelp move, by order to show cause, to redact portions of NYSCEF Docs. No. (NYSCEF) 84 and 85¹ pursuant to Section 216.1 of the Uniform Rules for New York State Trial Courts. In motion sequence number 010, defendant moves, by order to show cause, to redact portions of NYSCEF 106, and to seal NYSCEF 114-117 pursuant to Section 216.1 of the Uniform Rules for New York State Trial Courts. Both motions are unopposed. There is no indication that the press or public have an interest in these matters.

¹ Publicly redacted versions of these documents are filed at NYSCEF 97 and 98.

NYSCEF 84 is an unredacted copy of plaintiffs' memorandum of law in support of their motion for class certification (mot. seq. no. 009). NYSCEF 85 is the affirmation of Eugene Y. Turin in support of motion sequence number 009. Plaintiffs seek to redact information about defendant's sales, including the number of vegan products made available for sale, the sales volumes of defendant's vegan products, and their average sale price. Plaintiffs assert that the information they seek to redact was taken from two documents that defendant produced and designated as "Highly Confidential" pursuant to the parties' confidentiality stipulation. Plaintiffs further state that defendant's counsel has informed plaintiffs' counsel that it wants the information to remain under seal.

NYSCEF 106 is defendant's memorandum of law in opposition to plaintiffs' motion for class certification. NYSCEF 114 is the Expert Report of Lorin M. Hitt, Ph.D., dated April 22, 2022. NYSCEF 115 is the Rebuttal Expert Report of Lorin M. Hitt, Ph.D., dated May 20, 2022. Defendant asserts that "Dr. Lorin Hitt, extensively opines in his opening and rebuttal expert reports on Ulta's commercially sensitive pricing, pricing mechanisms and proprietary information in the context of current or future business strategies." (NYSCEF 124, Defendant's Memo of Law at 2.) NYSCEF 116 and 117 appear to be copies of spreadsheets listing a number of defendant's products' names and their corresponding SKU numbers and financial information for different fiscal years, including sales, selling margins, items costs, and units purchased. Defendant asserts that the documents they seek to redact or seal contain "[c]ommercially sensitive financial information, including third-party product names and selling prices to Defendant and Defendant's re-sell information such as gross sales, selling margins, Defendant's purchase price, and units purchased" or "[c]ompetitively sensitive

information, including business strategy for product merchandising, marketing, and advertising; third party product information; manufacturing partners, regulatory compliance measures, and strategy for product inventory.” (NYSCEF 124, Defendant’s Memo of Law at 4.) Defendant asserts that it marked each of these documents as “Highly Confidential” pursuant to the parties’ confidentiality stipulation.

Section 216.1(a) of the Uniform Rules for Trial Courts empowers courts to seal documents upon a written finding of good cause. It provides:

“(a) Except where otherwise provided by statute or rule, a court shall not enter an order in any action or proceeding sealing the court records, whether in whole or in part, except upon a written finding of good cause, which shall specify the grounds thereof. In determining whether good cause has been shown, the court shall consider the interests of the public as well as of the parties. Where it appears necessary or desirable, the court may prescribe appropriate notice and opportunity to be heard.”

“Under New York law, there is a broad presumption that the public is entitled to access to judicial proceedings and court records.” (*Mosallem v Berenson*, 76 A.D.3d 345, 348 [1st Dept 2010] [citations omitted].) The “party seeking to seal court records has the burden to demonstrate compelling circumstances to justify restricting public access” to the documents. (*Id.* at 349 [citations omitted].) Good cause must “rest on a sound basis or legitimate need to take judicial action.” (*Danco Lab, Ltd. v Chemical Works of Gedeon Richter, Ltd.*, 274 AD2d 1, 8 [1st Dept 2000] [internal quotations omitted].)

In the business context, courts have sealed records where the disclosure of documents “could threaten a business’s competitive advantage.” (*Mosallem*, 76 AD3d at 350 [citations omitted].) Records concerning financial information may be sealed where there has not been a showing of relevant public interest in the disclosure of that

information. (See *Dawson v White & Case*, 184 AD2d 246, 247 [1st Dept 1992].) A party “ought not to be required to make their private financial information public ... where no substantial public interest would be furthered by public access to that information.” (*D’Amour v Ohrenstein & Brown*, 17 Misc.3d 1130[A], 2007 NY Slip Op 52207[U], *20 [Sup Ct, NY County 2007] [citations omitted].)

As an initial matter, the fact that defendant has designated the documents at issue as “Highly Confidential” pursuant to the parties’ confidentiality stipulation in this action is not itself a basis for sealing or redacting the documents. (*Mosallem*, 76 AD3d at 350, quoting *Eusini v Pioneer Elecs. (USA), Inc.*, 29 AD3d 623, 626 [2d Dept 2006] [“Merely because some of the documents were marked ‘confidential’ or ‘private’ ‘is not controlling on the court’s determination whether there is good cause to seal the record.’”].) Likewise, the parties cannot seal documents on consent; good cause must be shown. (See *Benkert v Smithers (In re Will of Benkert)*, 288 AD2d 147 [1st Dept 2001] [“The Surrogate correctly held that the stipulation of the parties to a terminated probate proceeding consenting to the sealing or expunging of certain records in that proceeding does not obviate the need to show good cause for such relief, as required by 22 NYCRR 216.1(a).”].)

Plaintiffs have demonstrated good cause for the redactions they seek in NYSCEF 84 and 85. Both documents contain defendant’s confidential product shipping and sales information, which if revealed, could put defendant at a competitive disadvantage. (See *Mosallem*, 76 AD3d at 350-351 [internal citations omitted].) Moreover, there has been no showing of legitimate public concern (see *Dawson*, 184 AD2d at 247 [1st Dept 1992]), and the requested redactions are narrowly tailored to the

specific sales and pricing amounts. (*See Danco Lab, Ltd.*, 274 AD2d at 6.) Similarly, defendant has demonstrated good cause to seal NYSCEF 116 and 117, which contain financial information of the company and are of minimal public interest. (*See Feffer v Goodkind, Wechsler, Labaton & Rudoff*, 152 Misc 2d 812, 815-816 [Sup Ct, NY County 1991], *affd* 183 AD2d 678 [1st Dept 1992].)

However, defendant has not demonstrated good cause to seal NYSCEF 114 and 115. While defendant broadly asserts that these expert reports contain commercially and competitively sensitive information, defendant fails to point to any specific portions of the reports that it asserts are confidential. Indeed, the reports contain information that is clearly not confidential, including general background, expert qualifications, general opinions, and information that is publicly accessible. Thus, there is not good cause to seal these reports, and to the extent there is cause to redact them, defendant has failed to demonstrate that on this motion.

Finally, because defendant has failed to file either an unredacted copy of NYSCEF 106 with highlighted redactions or a publicly redacted copy, this court has no ability to review the information at issue. To redact portions of NYSCEF 106, defendant must follow the Part 48 Rules.

Accordingly, it is

ORDERED that motion sequence number 008 is granted; and it is further

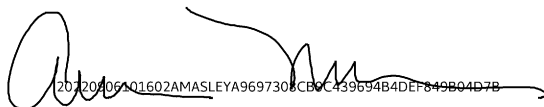
ORDERED, that the New York County Clerk, upon service to him of this order, shall permanently seal NYSCEF 84 and 85; and it is further

ORDERED that motion sequence number 010 is granted in part and the New York County Clerk, upon service to him of this order, shall permanently seal NYSCEF 116 and 117; and it is further

ORDERED that, within ten days of this order, this court will direct the County Clerk to unseal NYSCEF 106, 114 and 115 unless a new OSC is filed in accordance with this decision; and it is further

ORDERED the New York County Clerk shall restrict access to the sealed documents with access to be granted only to authorized court personnel and designees, the parties and counsel of record in the above-captioned action, and any representative of a party or of counsel of record upon presentation to the County Clerk of written authorization from counsel; and it is further

ORDERED that this order does not authorize sealing or redacting for purposes of trial.



9/6/2022

DATE

CHECK ONE:

☐

CASE DISPOSED

☐

GRANTED

☐

DENIED

APPLICATION:

☐

SETTLE ORDER

CHECK IF APPROPRIATE:

☐

INCLUDES TRANSFER/REASSIGN

☒

NON-FINAL DISPOSITION

☒

GRANTED IN PART

☐

OTHER

☐

SUBMIT ORDER

☐

FIDUCIARY APPOINTMENT

☐

REFERENCE

ANDREA MASLEY, J.S.C.