

Hogan v Ulta Salon
2023 NY Slip Op 30122(U)
January 12, 2023
Supreme Court, New York County
Docket Number: Index No. 651986/2020
Judge: Andrea Masley
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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SARAH HOGAN, ELIA RAMIREZ, AMBER MAHA, and
JESSICA SHELP,

Plaintiffs,

- v -

ULTA SALON, COSMETICS & FRAGRANCE, INC.,

Defendant.

INDEX NO. 651986/2020

MOTION DATE _____

MOTION SEQ. NO. 011

**DECISION + ORDER ON
MOTION**

-----X
HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 011) 140, 141, 142, 146, 149, 151

were read on this motion to/for _____ SEAL _____.

Upon the foregoing documents, it is

In motion sequence number 011, defendant moves, by order to show cause (OSC), to maintain the sealing of NYSCEF 106, 114, 115, 137, 138, and 139 and to file publicly redacted copies of those documents¹ pursuant to Section 216.1 of the Uniform Rules for New York State Trial Courts on the grounds that they contain commercially and competitively sensitive information. The motion is unopposed. There is no indication that the press or public have an interest in this matter.

NYSCEF 137 is defendant's memorandum of law in opposition to plaintiffs' motion for class certification. Defendant previously moved to redact NYSCEF 106, which is the same document as NYSCEF 137. (NYSCEF 126, OSC [mot. seq. no. 010].) The court denied defendant's motion because defendant failed to file an unredacted copy of the document with highlighted redactions or a publicly redacted

¹ Publicly redacted copies of these documents are currently filed at NYSCEF 143-145.
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copy, such that the court could not determine what information plaintiff sought to redact. (NYSCEF 133, Decision & Order [mot. seq. nos. 008, 010].)

NYSCEF 138 is the Expert Report of Lorin M. Hitt, Ph.D., dated April 22, 2022. NYSCEF 139 is the Rebuttal Expert Report of Lorin M. Hitt, Ph.D., dated May 20, 2022. Defendant previously moved to seal NYSCEF 114 and 115, which are the same documents as NYSCEF 138 and 139, respectively. (NYSCEF 126, OSC [mot. seq. no. 010].) The court denied defendant's motion because defendant failed to point to any specific portions of those documents that are confidential. (NYSCEF 133, Decision & Order [mot. seq. nos. 008, 010].)

Defendant does not identify what category of information is contained in each document, but generally moves to redact "[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" and "[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 141, memorandum of law at 8².)

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."

² References to page numbers are to the NYSCEF-generated page numbers.

“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].)

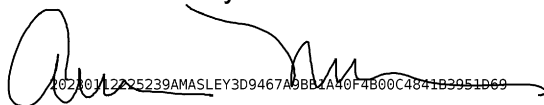
First, there is good cause to redact the documents to the extent they contain defendants' confidential product shipping and sales information, including information from NYSCEF 116 and 117, as this court previously held. (NYSCEF 133, Decision & Order at 4 [mot. seq. nos. 008, 010].) However, defendant fails to narrowly redact this information to only the particular amounts in the documents. (See, e.g. NYSCEF 137, at 10.)

Defendant has not demonstrated good cause to otherwise redact these documents. Defendant relies again on the fact that it has marked these documents “Highly Confidential” in its production but fails to explain how the particular redacted information would give competitors an unfair advantage. Moreover, contrary to defendant’s assertion, a lack of public interest alone is not sufficient cause to redact information. While some of defendant’s proposed redactions, such as descriptions of pricing strategy is potentially confidential, defendant also proposes redactions of information that does not appear to be confidential, such as citations to other documents in the record, as well as quotations and other information that appears to be derived from defendant’s website.

Thus, because there may be good cause to redact some of the information in NYSCEF 137-139—although defendant has not demonstrated it on this motion—the court will give defendant one final opportunity to do so. Defendant must supplement its motion with an affidavit from a person with knowledge and a detailed sealing chart within 20 days of this order.

Accordingly, it is

ORDERED that motion sequence number 011 is granted in part; and it is further ORDERED that this court will direct the County Clerk to unseal NYSCEF 106, 114, 115, 137, 138, and 139 unless additional papers supporting motion sequence number 011 are filed in accordance with this decision within 20 days of this order.



1/12/2023

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

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