

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

Federal Trade Commission,  
Plaintiff,

Civil Action No. 4:24-cv-02508

vs.

Judge Charles Eskridge

Tempur Sealy International, Inc.,  
*et al.*,  
Defendants.

**DEFENDANT TEMPUR SEALY INTERNATIONAL'S  
MOTION TO SEAL INFORMATION IN ITS ANSWER**

Defendant Tempur Sealy International Inc. respectfully requests that the Court allow Tempur Sealy to redact certain narrow provisions of its Answer that reflect confidential and competitively sensitive information under Federal Rule of Civil Procedure 5.2 and Court Procedure 12(b).

**I. Nature and Stage of the Proceeding**

The FTC filed its Complaint on July 2, 2024, seeking a preliminary injunction preventing Tempur Sealy's acquisition of Mattress Firm. ECF No. 1. On July 16, this Court entered a Stipulated Protective Order. ECF No. 43. Yesterday, the parties jointly filed a proposed Joint Discovery and Case Management Plan and a proposed schedule. ECF Nos. 46, 46-1. Tempur

Sealy filed its Answer under seal shortly before filing this motion and has attached a redacted Answer to this motion for the public docket.

## **II. Statement of Facts**

As explained further below, certain provisions of Tempur Sealy's Answer contain confidential and competitively sensitive information that would harm Tempur Sealy, Mattress Firm, and third parties if it were revealed publicly. Accordingly, Tempur Sealy seeks to redact those provisions from the public docket.

## **III. Statement of Issues**

Whether to allow Tempur Sealy to redact certain limited provisions of the Answer that reflect confidential and competitively sensitive information and that would harm the parties and third parties if they were disclosed publicly.

## **IV. Argument**

Generally, the common law imposes a "working presumption" that materials filed on a judicial docket will be public. *See Binh Hoa Le v. Exeter Fin. Corp.*, 990 F.3d 410, 419 (5th Cir. 2021). But the presumption is not absolute, and this Court has the authority to seal filings. *E.g., Vantage Health Plan, Inc. v. Willis-Knighton Med. Ctr.*, 913 F.3d 443, 450 (5th Cir. 2019); *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978). In considering whether to seal information, the Court must balance the public's

common-law right of access against countervailing interests. *Vantage*, 913 F.3d at 450. In doing so, the Fifth Circuit has indicated that the stage of proceedings matters. *See Le*, 990 F.3d at 420 (noting that the standard for sealing might be lower at the discovery stage than at the adjudicative stage).

“[C]ourts have refused to permit their files to serve as reservoirs . . . of business information that might harm a litigant’s competitive standing.” *Nixon*, 435 U.S. at 598. Accordingly, courts often seal filings reflecting competitively sensitive information. *E.g.*, *Vantage*, 913 F.3d at 452 (affirming order attempting to protect “legitimate business needs by redacting competitively sensitive confidential information”); *see also Le*, 990 F.3d at 419 (identifying trade secrets as a potentially proper basis for sealing). This Court should do the same.

Here, Tempur Sealy, a publicly traded company, has proposed a set of narrow redactions for the confidential competitively sensitive information reflected in the Answer. Specifically:

- The redacted information on Pages 4 and 5 reflect specific information about Tempur Sealy’s and other companies’ forward-looking business plans and as-of-yet-unexecuted contract negotiations.
- The redacted information in Paragraphs 8, 61, and 67 reflects confidential contract negotiations and dispute resolutions.

- The redacted information on Page 2 reflects an internal estimate regarding customer volume.
- The redacted information in Paragraphs 55 and 109 reflects a confidential revenue estimate and an assessment of profitability.
- The redacted information in Paragraph 82 reflects a confidential executive strategic assessment.
- The redacted information in Paragraph 88 reflects Tempur Sealy's confidential product-development process.
- The redacted information in Paragraph 102 reflects a confidential competitive strategy relating to an existing competitor.

Moreover, the proposed redactions are minimal and narrowly tailored to keeping confidential competitively sensitive information. Indeed, of the approximately 7,819 words in the Answer, less than 300 are redacted. *Cf. Le*, 990 F.3d at 417 (noting that 73% of the record had been sealed).

Further, the early stage of the proceedings favors the proposed redactions. This case is not at the adjudicative stage, and Tempur Sealy is not seeking to redact evidence. *Cf. Le*, 990 F.3d at 420 (“Perhaps most disquieting, documents marked confidential provided the basis for summary judgment . . . .”). Rather, Tempur Sealy seeks only to redact references to allegations and responses to those allegations.

Against that backdrop, the public's interest in accessing an unredacted Answer is outweighed by Defendants' legitimate business interest in protecting confidential competitively sensitive information.

**V. Conclusion**

For the foregoing reasons, Tempur Sealy respectfully requests that this Court keep the unredacted Answer under seal.

Dated: July 23, 2024

Respectfully submitted,

/s/ Ryan A. Shores

Ryan A. Shores  
D. Bruce Hoffman  
Daniel P. Culley  
Matthew I. Bachrack  
Blair W. Matthews  
Jacob M. Coate  
Gabriel J. Lazarus  
CLEARY GOTTLIEB STEEN &  
HAMILTON LLP  
2112 Pennsylvania Ave., NW  
Washington, D.C. 20037  
202-974-1500  
bhoffman@cgsh.com  
rshores@cgsh.com  
dculley@cgsh.com  
mbachrack@cgsh.com  
bmatthews@cgsh.com  
jcoate@cgsh.com  
glazarus@cgsh.com

Heather S. Nyong'o  
CLEARY GOTTLIEB STEEN &  
HAMILTON LLP

650 California St.  
San Francisco, CA 94108  
415-796-4400  
hnyongo@cgsh.com

Lina Bensman  
CLEARY GOTTLIEB STEEN &  
HAMILTON LLP  
One Liberty Plaza  
New York, NY 10006  
212-225-2000  
lbensman@cgsh.com

Alex B. Roberts  
Federal Bar No. 865757  
Texas State Bar No. 24056216  
aroberts@beckredde.com  
Garrett S. Brawley  
Federal Bar No. 3311277  
Texas State Bar No. 24095812  
gbrawley@beckredde.com  
Maryam Ghaffer  
Federal Bar No. 3710605  
Texas State Bar No. 24120847  
mghaffer@beckredde.com  
BECK REDDEN LLP  
1221 McKinney Street, Suite 4500  
Houston, Texas 77010  
Telephone: (713) 951-3700  
Facsimile: (713) 951-3720

*Counsel for Tempur Sealy  
International, Inc.*

### **Certificate of Service**

I hereby certify that on July 23, 2024, I electronically filed a true and correct copy of the foregoing document using this Court's CM/ECF system, which will send a notice of electronic filing to all counsel of record.

/s/ Ryan A. Shores  
Ryan A. Shores

### **Certificate of Conference**

I hereby certify that Defendant's counsel reached out to Plaintiff's counsel by email on July 23, 2024, regarding their position on this motion, noting that the proposed redactions were consistent with redactions made to the Answer filed in the parallel administrative proceedings last week. Counsel responded that they were unable to take a position at this time, suggesting they would need to first see the Answer and this motion.

/s/ Ryan A. Shores  
Ryan A. Shores



### **Certificate of Word Count**

Pursuant to Court Procedure 18(c), I hereby certify that the foregoing document contains 731 words according to the word-processing software, exclusive of the case caption, signature block, and certificates.

/s/ Ryan A. Shores  
Ryan A. Shores