

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA,)	
Plaintiff,)	Civil Action No. 1:08 CV 1311
)	
v.)	
)	
MICROSEMI CORPORATION,)	
Defendant.)	
)	

[PROPOSED] ORDER

Before the Court is the Plaintiff’s Motion to File Under Seal its Memorandum in Opposition to Defendant Microsemi’s Motion to Dismiss for Improper Venue, Motion to Dismiss for Lack of Personal Jurisdiction, or, in the Alternative, Motion to Transfer Venue and Exhibits B, C, D, E, F, G, H, and I Appended Thereto.

Plaintiff’s Memorandum in Opposition contains detailed descriptions of the Defendant’s relationship with one of its non-party customers, as well as lists of Defendant’s other customers, distributors, and potential industry entrants. Exhibit B is a declaration given by the Purchasing Manager of Technical Operations East for the aforementioned non-party customer. It contains detailed information regarding the non-party customer’s transactions with the Defendant, including product price information. Exhibit C is a declaration given by Kevin C. Quin, an attorney for the United States, that lists the Defendant’s customers, distributors, and potential industry entrants. Exhibit D is a transmittal e-mail from the Defendant for a spreadsheet

containing the Defendant's sales information for the products at issue from the years 1997 to 2008. This spreadsheet has already been filed under seal in CD-ROM format as Exhibit 6 in support of Plaintiff's Emergency Motion for a Temporary Restraining Order. Exhibits E, F, and G are derived from the information in that spreadsheet. Exhibit H is a spreadsheet containing the names of the Defendant's customers for the products at issue as well as the amount of business transacted with each for the years 2005 to 2008. Exhibit I is a spreadsheet containing the Defendant's product orders for its Lawrence, Massachusetts, facility from October, 2007, to July 14, 2008.

The aforementioned documents contain information that was supplied to the Department of Justice by Defendant and a non-party customer of the Defendant's. This information was provided to the Department in confidence and, to date, has been protected from public disclosure. Public disclosure of the confidential information contained in the aforementioned documents might place the Defendant, as well as any company that may acquire assets divested as a result of this action, at a disadvantage with respect to their existing and potential competitors, who would gain access to customer, pricing, and contractual information. Disclosure might also place the non-party customer at a disadvantage with respect to its existing and potential competitors and suppliers, who would gain access to its purchasing information. The Court therefore finds that it is appropriate to enter an order sealing the aforementioned documents.

The Court has come to this conclusion mindful of the factors set forth in *Ashcraft v. Conoco, Inc.*, 218 F.3d 288, 302 (4th Cir. 2000), which mandates that before entering an order sealing documents, a district court must "(1) provide public notice of the request to seal and allow interested parties a reasonable opportunity to object, (2) consider less drastic alternatives to

sealing the documents, and (3) provide specific reasons and factual findings supporting its decision to seal the documents and for rejecting the alternatives.”

Docketing the motion to seal “reasonably in advance of deciding the issue” is sufficient to provide the public notice required by *Ashcraft*. See *In re Knight Publ’g Co.*, 743 F.2d 231, 235 (4th Cir. 1984) (cited by *Ashcraft*, 218 F.3d at 302). The Plaintiff has properly noticed its motion for a hearing, and this Court’s docket has been made available to the public. In addition, the Court finds that there are no less drastic alternatives to sealing the aforementioned documents. Redacting the competitively sensitive information from the documents is not a viable option because it would deprive the Court of the business information it needs in order to evaluate the extent of Defendant’s contacts with the Eastern District of Virginia.

For these reasons, and for good cause shown, Plaintiff’s Motion to File Under Seal its Memorandum in Opposition to Defendant Microsemi’s Motion to Dismiss for Improper Venue, Motion to Dismiss for Lack of Personal Jurisdiction, or, in the Alternative, Motion to Transfer Venue and Exhibits B, C, D, E, F, G, H, and I Appended Thereto is GRANTED. It is ORDERED that Plaintiff’s Memorandum in Opposition and Exhibits B, C, D, E, F, G, H, and I appended thereto shall be SEALED until further order of this Court.

SO ORDERED, this ____ day of _____, 2009.

UNITED STATES MAGISTRATE JUDGE

