

[Doc. No. 275]

THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
CAMDEN VICINAGE

MITSUBISHI TANABE PHARMA CORP.  
et al.,

Plaintiffs,

v.

AUROBINDO PHARMA USA, INC. et  
al.,

Defendants.

Civil No. 17-5005 (RMB/JS)

O R D E R

This matter is before the Court on the "Motion to Seal" ("motion") [Doc. No. 275] filed by defendant Sandoz, Inc. ("defendant" or "Sandoz"). Defendant moves to seal Sandoz's confidential and/or highly confidential information contained in the February 11, 2020 Stipulation of Infringement<sup>1</sup> [Doc. No. 270]. The motion is supported by the Declaration of Eric I. Abraham, Esquire<sup>2</sup> [Doc. No. 275-1] and an Index [Doc. No. 275-2]. The Court recently held oral argument. For the reasons to be discussed, the motion is DENIED.

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<sup>1</sup> Sandoz refers to the document at issue as the "February 10, 2020 Stipulation of Infringement" in its motion. However, upon review of the record, the Court finds the correct date is February 11, 2020. See Doc. No. 270. Therefore, for purposes of clarity, the Court will refer to the subject document as the "February 11, 2020 Stipulation of Infringement."

<sup>2</sup> The Court finds counsel's Declaration is deficient and will not be considered because counsel does not possess the personal knowledge required under the relevant local rules. See L. Civ. R. 5.3(c)(3) and L. Civ. R. 7.2(a).

Defendant seeks to seal the February 11, 2020 Stipulation of Infringement because it allegedly contains or discloses Sandoz's proprietary, non-public business information that is not available to the public. See Decl. of Eric I. Abraham, Esq. ¶ 6. Defendant contends the document includes highly proprietary and confidential information related to Sandoz's proposed products and the anticipated marketing and sale of the products. Id. at ¶ 7. Defendant alleges Sandoz would suffer a clearly defined, substantial, irreparable and specific harm, including, but not limited to, financial damage, damage to business relationships, damage to its commercial standing, and/or other irreparable harm if any of the confidential proprietary, commercial, and competitively sensitive business information is publicly disclosed. Id. at ¶ 8. Further, Sandoz contends disclosure would cause harm to its business relationships and divulge confidential and proprietary information concerning its business practices. Id. at ¶ 9. Last, defendant contends this request is the least restrictive means available to protect its confidential and proprietary business information. Id. at ¶ 11.

During oral argument, Sandoz argued that the Stipulation of Infringement should be sealed because if a competitor viewed the claims Sandoz is stipulating to, it would know what form of canagliflozin is in Sandoz's ANDA product. See Oral Arg. Hr'g Tr. 9:5-12. Sandoz's counsel argued this information is highly

confidential and has not been publicly disclosed on the Court's docket. Id. at 9:2-4. Sandoz further argued the information should be sealed because "Sandoz agreed to the stipulation with the understanding that it would be kept under seal." Id. at 10:12-15. Sandoz argued if the parties' understanding is not upheld, the parties will not be able to reach agreements in the future. Id. at 10:18-21. The Court made clear, however, that this argument would not be given much weight because if the Court accepted the argument as a valid reason to seal an order, every case order of this type would be sealed.<sup>3</sup> Id. at 11:11-15.

After oral argument, Sandoz submitted a letter to the Court stating that the "District of New Jersey has previously agreed to seal portions of stipulations between the parties where there is a showing that disclosure of the confidential information would cause harm to the sealing party." See Doc. No. 372. Defendant cited Boehringer Ingelheim Pharmaceuticals, Inc., et al v. Aurobindo Pharma USA, Inc., Case No. 3:17-cv-07887 (MAS/LHG) as an example of a case where the court granted Sandoz's request to seal a filed stipulation which contained similar language to the February 11, 2020 Stipulation of

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<sup>3</sup>Sandoz's argument that it entered into the Stipulation under the understanding that it would be sealed will not be addressed in detail since the argument was not raised in its brief. See Berk v. HMC Int'l, Inc., C.A. No. 07-181 (JLL), 2007 WL 1217353, at \*20 n.10 (D.N.J. Apr. 23, 2007).

Infringement. Id. (citing to Doc. Nos. 151, 160, and 164). William C. Baton, counsel for plaintiff in this matter as well as counsel for Boehringer in the case cited by Sandoz, wrote in response to Sandoz's letter and stated, "the Boehringer case is different because, among other reasons, it involved a stipulation staying the case against Sandoz . . . Sandoz here seeks to seal a stipulation of infringement." See Doc. No. 373. Mr. Baton clarified that Stipulations of Infringement are routinely filed publicly in ANDA cases. Id. This statement has not been rebutted. Last, Mr. Baton stated that in Boehringer Sandoz agreed to publicly file a Consent Judgement Regarding Infringement. Id. (citing Boehringer, Case No. 3:17-cv-7887 at Doc. No. 183).

It is well-established there is "a common law public right of access to judicial proceedings and records." In re Cendant Corp., 260 F.3d 183, 192 (3d Cir. 2001) (citation omitted). When a party files a motion to seal, it must demonstrate that "good cause" exists for protection of the material at issue. Securimetrics, Inc. v. Iridian Techs., Inc., C.A. No. 03-4394 (RBK), 2006 WL 827889, at \*2 (D.N.J. Mar. 30, 2006). Good cause exists when a party makes "a particularized showing that disclosure will cause a 'clearly defined and serious injury to the party seeking closure.'" Id. (citing Pansy v. Borough of Stroudsburg, 23 F.3d 772, 786 (3d Cir. 1994)).

In this District, motions to seal are governed by Local Civil Rule 5.3(c) which requires the moving party to describe: (a) the nature of the materials or proceedings at issue; (b) the legitimate private or public interest which warrants the relief sought; (c) the clearly defined and serious injury that would result if the relief sought is not granted; and (d) why a less restrictive alternative to the relief sought is not available. In particular, "[b]road allegations of harm, unsubstantiated by specific examples or articulated reasoning" cannot satisfy the required showing of "clearly defined and serious injury." Pansy, 23 F.3d at 786 (citation omitted). Further, "it is well-settled that a party's classification of material as protected or confidential does not automatically satisfy the criteria for sealing pursuant to Local Civil Rule 5.3." In re: Benicar (Olmesarten) Prods. Liab. Litig., C.A. No. 15-2606 (RBK/JS), 2016 WL 266353, at \*3 (D.N.J. Jan. 21, 2016).

The Court has reviewed Sandoz's motion and finds Sandoz has failed to meet its burden under L. Civ. R. 5.3. Information relating to pricing strategies, business plans, or operations that if disclosed would potentially compromise a party's ability to remain competitive in its industry, meets the burden of a motion to seal. See Zavala v. Wal-Mart Corp., C.A. No. 03-5309(JAG), 2007 WL 2688934, at \*24 (D.N.J. Sep. 12, 2007). However, the information Sandoz seeks to seal does not fall into

these categories. The information does not contain commercially sensitive, proprietary, or non-public business information. Further, the Court finds Sandoz has not established that it would suffer a serious injury if a competitor read the information it seeks to seal. This is true because a competitor would not have access to commercially sensitive or proprietary information. It is not insignificant that a similar Stipulation of Infringement has been filed on the public docket in this case without issue. See Doc. No. 265. Further, the Court finds that Sandoz's argument that competitors will be able to decipher its confidential information by reading the Stipulation of Infringement is too speculative to warrant sealing the information. This is in addition to the fact that Sandoz's claims of potential injury are not supported by an appropriate Declaration. Last, the Court is unpersuaded by the Boehringer stipulation cited in defendant's letter. This stipulation relates to a stipulation to stay the case against Sandoz while the document at issue in this motion is a Stipulation of Infringement. Further, as stated by Mr. Baton in his letter, Sandoz filed a Consent Judgment Regarding Infringement in Boehringer which contains similar information to the February 11, 2020 Stipulation of Infringement. See Boehringer, Case No. 3:17-cv-7887 [Doc. No. 183]. If the information was filed on the public docket in that case, there is no reason it should be

sealed in this case. Therefore, the Court denies Sandoz's sealing request.

Accordingly, for the foregoing reasons,

IT IS HEREBY ORDERED this 17th day of August 2020, that defendant's "Motion to Seal" [Doc. No. 275] is DENIED; and it is further

ORDERED the Clerk of the Court is directed to unseal the February 11, 2020 Stipulation of Infringement [Doc. No. 270] after the time to appeal this decision that is set forth in the local rules expires.

/s/ Joel Schneider  
JOEL SCHNEIDER  
United States Magistrate Judge