

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED
JAN 8 2005
MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

DOCKETED
JAN 11 2005

LAWRENCE E. JAFFE PENSION PLAN,
on Behalf of Itself and All Others Similarly
Situated,

Plaintiff,

v.

HOUSEHOLD INTERNATIONAL, INC., et al.

Defendants.

Lead Case No. 02-C-5893
(Consolidated)

Judge Ronald A. Guzman
~~Magistrate Judge Nan R. Nolan~~

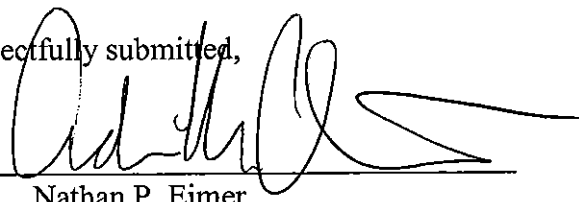
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NOTICE OF MOTION

PLEASE TAKE NOTICE that, on January 11, 2005, at 9:00 a.m., we shall appear before Magistrate Judge Nan R. Nolan in Room 1858 of the Dirksen Federal Building, 219 S. Dearborn St., Chicago, Illinois, and shall then and there present Household Defendants' Motion to Amend the Protective Order, a copy of which is attached hereto.

Respectfully submitted,

By:



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Situated,

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Defendants.

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Judge Ronald A. Guzman
Magistrate Judge Nan R. Nolan

**MOTION OF HOUSEHOLD DEFENDANTS
TO AMEND THE PROTECTIVE ORDER**

Defendants Household International, Inc., Household Finance Corporation, William F. Aldinger, David A. Schoenholz, Gary Gilmer and J.A. Vozar (collectively, the "Household Defendants") present to the Court this Motion to Amend the Protective Order seeking to include one additional category of confidential information eligible for protection: "Household Organizational Charts Containing Non-Public Employee Information." Defendant Arthur Anderson does not oppose this motion. For the reasons set forth in the accompanying (i) Memorandum of Law of Household Defendants in Support of their Motion to Amend the Protective Order; and (ii) the Affidavit of Michael Woodward in support thereof, the Household Defendants' request to amend the Protective Order should be granted.

Dated: January 3, 2005
Chicago, Illinois

Submitted by:

Defendants Household International, Inc.
Household Finance Corporation, William F.
Aldinger, David A. Scherholz, Gary Gilmer
and J.A. Vozar

By: 

One of their Attorneys

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The Court's November 5, 2004 Entry of the Proposed Protective Order

On November 5, 2004 the Court entered the Protective Order in this matter. Pursuant to the Protective Order, if defendants believe additional categories of information should be added they may file a motion defining the types of documents and providing an analysis of the propriety of secrecy for each category of information. (Order at 3.) The Household Defendants thus submit this motion to amend the Protective Order. Counsel for the Household Defendants and Lead Plaintiffs met and conferred regarding this additional category, but were unable to agree regarding its inclusion under the Order. Defendant Arthur Anderson does not oppose this motion.

ARGUMENT

I. Household's Organizational Charts Qualify for Confidential Treatment

The Federal Rules of Civil Procedure allow a district court to issue protective orders for trade secrets and other confidential discovery material when good cause is shown. Fed. R. Civ. P. 26(c)(7); *see also Andrew Corp. v. Rossi*, 180 F.R.D. 338, 340 (N.D. Ill. 1998) (noting that a protective order is appropriate when (1) the information sought to be protected is a trade secret or other confidential information; and (2) there is good cause for a protective order). In cases with "thousands" of documents, "[t]here is no objection to an order that allows the parties to keep their trade secrets (or some other properly demarcated category of legitimately confidential information) out of the public record, provided the judge: (1) satisfies himself that the parties know what a trade secret is and are acting in good faith in deciding which parts of the record are trade secrets and (2) makes explicit that either party

and any interested member of the public can challenge the secreting of particular documents.” *Citizens First National Bank v. Cincinnati Insurance Co.*, 178 F.3d 943, 946 (7th Cir. 1999).

“When deciding whether proprietary business information requires protection as a Rule 26(c)(7) trade secret, courts have often looked to § 757 of the Restatement of Torts for guidance.” *Andrew Corp.*, 180 F.R.D. at 341. According to the Restatement, a trade secret is any “formula, pattern, device or compilation of information which is used in one’s business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it.” Restatement (First) of Torts § 757 cmt. b (1939); *see also Andrew Corp.*, 180 F.R.D. at 341.

Household’s organizational charts reveal the areas of responsibility of various Household employees — areas in which these employees have expertise. At the highest executive levels, this information is publicly available through Household’s filings with the Securities and Exchange Commission. To the extent this information is not publicly available, however, these organizational charts would be valuable to recruiters, or directly to Household competitors, seeking to recruit employees with relevant experience and expertise. (Affidavit of Michael Woodward, sworn to December 22, 2004 (“Woodward Aff.”) ¶¶ 6, 7)

Many of these charts, such as the Household Technology and Services “HTS Banking Systems” chart already produced to Plaintiffs, are very detailed, providing sensitive staffing information in critical areas.¹ The charts are not knowingly distributed outside of Household. (Woodward Aff. ¶ 5) They are not available to outside persons, including the consultants or agencies used in Household’s own recruiting and employee development

¹ Plaintiffs have agreed to treat such charts as confidential on an interim basis pending this Court’s ruling on the instant motion.

processes, despite repeated requests for the charts from these consultants and agencies.

(Woodward Aff. ¶ 5) The charts are distributed internally for business purposes only.

(Woodward Aff. ¶ 5)

Indeed, many Household employees have transferable skills that make them targets for recruitment by other employers. (Woodward Aff. ¶¶ 6, 7) The cost to replace these employees is substantial. The cost to Household to replace one Technology Services professional, for example, is estimated at \$50,000. (Woodward Aff. ¶ 6) Therefore, organizational charts of Household that contain non-public employee information merit protection. *See Andrew Corp.*, 80 F.R.D. at 341 (holding that, *inter alia*, the value of the information to the business or its competitors, the extent to which information is known outside of the business, the extent to which it is known by employees and others involved in the business, and the ease or difficulty of duplicating or properly acquiring the information are factors relevant to determining whether confidential trade secret protection is warranted).

II. Good Cause Exists to Protect Household's Organizational Charts

A party must also establish good cause for entry of an order limiting dissemination of information. *Star Scientific, Inc. v. Carter*, 204 F.R.D. 410, 415 (S.D. Ind. 2001). Courts require "specific examples of articulated reasoning" to establish good cause under Rule 26(c)(7). *Andrew Corp.*, 180 F.R.D. at 341 (citations omitted). Good cause is generally found upon a showing that the litigant will be competitively disadvantaged if the information is made public. *Star Scientific*, 204 F.R.D. at 415 (finding good cause where plaintiff made showing that if trade secrets and confidential information were subject to public dissemination, plaintiffs would suffer economic harm); *Magnavox Co. v. Mattel, Inc.*,

1981 U.S. Dist. LEXIS 11208, at *3 (N.D. Ill. Mar. 24, 1981) (holding that the good cause requirement under Federal Rule 26(c)(7) is fulfilled if disclosure of the requested documents would weaken a litigant's competitive position).

Good cause exists to protect Household's organizational charts that contain non-public employee information. As set forth above, disclosure of this information would enable competitors to gain advantage at Household's expense. A recruiter or competitor armed with critical Household staffing information and employee names throughout the country would easily be able to poach Household employees, or even whole support offices, all to Household's disadvantage. (Woodward Aff. ¶ 7) Indeed, Household has lost entire departments to raids by recruiters and/or competitors in the past. (Woodward Aff. ¶ 7) With Household's organizational charts available, recruiters and competitors would have even easier access to Household employees with relevant expertise. (Woodward Aff. ¶ 7)

Significantly, Plaintiffs have listed as individuals or entities with information relevant to this litigation competitors of Household, including Associates First Capital, MBNA Consumer Services, Inc., and Providian Financial Corp., as well as scores of other potential witnesses without addresses or business affiliation. *See* Plaintiffs' Initial Disclosures, at Pages 4-10/Paragraph C. It is clear that good cause exists for protection.

CONCLUSION

For the foregoing reasons, the Household Defendants' Motion to Amend the Protective Order to include "Household organizational charts containing non-public employee information" should be granted.

Dated: January 3, 2005
Chicago, Illinois

Respectfully submitted,

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24 this information produced by the Household Defendants in response to Plaintiffs' discovery re-
25 quests.

26 4. As Vice President of Human Resources, my responsibilities include the
27 recruitment and retention of qualified computer professionals, accountants, auditors, lawyers
28 and other corporate-level professionals.


29 5. Human Resources creates for its own internal use detailed organizational
30 charts that contain employee names, areas of responsibility, and reporting structures. Human
31 Resource's organizational charts are confidential and are not knowingly distributed outside of
32 Household companies. Human Resources does not make the charts available to outside persons,
33 not even consultants or agencies used in our own recruiting and employee development proc-
34 esses. Indeed, Human Resources has received repeated requests for the organizational charts
35 from outside consultants and agencies with whom we are doing business, and we always refuse
36 these requests. The charts are distributed or made available internally for business purposes
37 only.

38 6. Many persons employed by Household's subsidiaries are highly skilled
39 professionals with transferable expertise, and the cost to Household to replace these employees is
40 substantial. I estimate that the cost of replacing one Technology and Services professional, for
41 example, is approximately \$50,000, which includes recruitment and training costs, and accounts
42 for the learning curve inherent with every new hire. As a result, it is a constant concern to try to
43 retain employees.

44 7. In the past, Household subsidiaries have lost entire departments to raids by
45 recruiting firms and/or competitors. Dissemination of the non-public information in the Human
46 Resources organizational charts would provide a road map directly to employees with specific
47 expertise for these recruiters and others seeking to hire people with relevant experience.

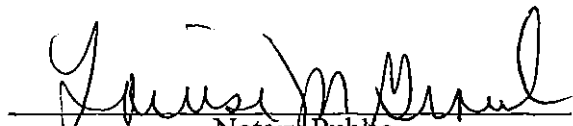
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Michael Woodward

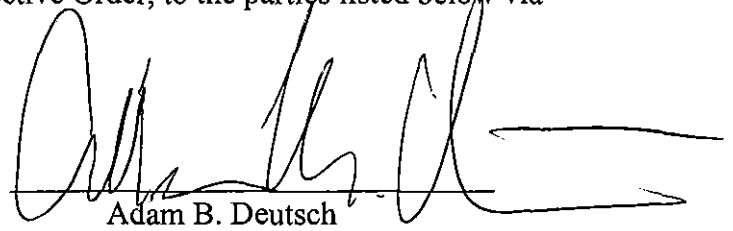
50 Sworn to before me this
51 22nd day of December, 2004.

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Notary Public

CERTIFICATE OF SERVICE

Adam B. Deutsch, an attorney, certifies that on January 3, 2005, he served a copy of Household Defendants' Motion to Amend the Protective Order, to the parties listed below via Federal Express delivery.



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