

STATE OF NORTH CAROLINA
BUNCOMBE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
19 CVS 3707

VITAFORM, INC. d/b/a BODY
AFTER BABY,

Plaintiff,

v.

AEROFLOW, INC. and MOTIF
MEDICAL, LLC,

Defendants.

ORDER ON MOTIONS TO SEAL

1. **THIS MATTER** is before the Court upon Plaintiff Vitaform, Inc.'s ("Plaintiff") Motion for Leave to File Under Seal Exhibits H, M, N, O, P, and U to Plaintiff's Response Brief to Defendants Aeroflow, Inc. and Motif Medical, LLC's (the "Defendants") Motion for Summary Judgment (the "Motion"), (Pl.'s Mot. Leave File Under Seal Exs. H, M, N, O, P, U to Pl.'s Resp. Br. Defs.' Mot. Summ. J., ECF No. 128), and Plaintiff's Amended Motion for Leave to File Under Seal Certain Exhibits to Plaintiff's Response Brief to Defendants' Motion for Summary Judgment (the "Amended Motion"; together, the "Motions"), (Pl.'s Am. Mot. Leave File Under Seal Certain Exs. Pl.'s Resp. Br. Defs.' Mot. Summ. J. [hereinafter "Am. Mot. Seal"], ECF No. 129), in the above-captioned case.

2. After reviewing the Motions, the Court entered an Interim Order on Motions to Seal (the "Interim Order") on 22 March 2022. (Interim Order Mots. Seal [hereinafter "Interim Order"], ECF No. 132.) In its Interim Order, the Court directed the Buncombe County Clerk of Superior Court to unseal Exhibits Q, R, T, and V to Plaintiff's Response Brief to Defendants' Motion for Summary Judgment (the

“Response”) because Defendants, as the designating party for those exhibits, indicated that they may be filed publicly. (See Interim Order ¶¶ 6, 10(a).) The Court further directed Plaintiff to file a supplemental brief in support of the Motions that explains why sealing Exhibits H, M–P, and U to its Response is necessary in compliance with Rule 5.2(b)(2) of the Business Court Rules (“BCR”). (See Interim Order ¶ 10(b).) The Plaintiff timely filed its Supplemental Brief in Support of the Amended Motion (the “Supplemental Brief”) on 31 March 2022. (Pl.’s Suppl. Br. Supp. Am. Mot. Seal [hereinafter “Suppl. Br.”], ECF No. 133.)

3. Documents filed in the courts of this State are “open to the inspection of the public[.]” except as prohibited by law. N.C.G.S. § 7A-109(a); see *Virmani v. Presbyterian Health Servs. Corp.*, 350 N.C. 449, 463 (1999). Nevertheless, “a trial court may, in the proper circumstances, shield portions of court proceedings and records from the public[.]” *France v. France*, 209 N.C. App. 406, 413 (2011) (emphasis omitted) (quoting *Virmani*, 350 N.C. at 463). “The determination of whether [documents] should be filed under seal is within the discretion of the trial court.” *Taylor v. Fernandes*, 2018 NCBC LEXIS 4, at *4 (N.C. Super. Ct. Jan. 18, 2018).

4. BCR 5 governs the process for filing documents under seal in this Court and includes specific procedural instructions designed to ensure a proper balance between the interests of the litigants and the public. For the Court to assess whether sealing is warranted, a motion to seal documents must state “the circumstances that warrant sealed filing[.]” BCR 5.2(b)(2). Until the Court can make this determination, BCR 5.2(d) provides the public with notice that documents have been provisionally sealed

and allows access to public redacted versions or non-confidential descriptions of those documents. *See* BCR 5.2(d). Furthermore, “[t]he party seeking to maintain materials under seal bears the burden of establishing the need for filing under seal.” BCR 5.1(b); *see also PDF Elec. & Supply Co., LLC v. Jacobsen*, 2020 NCBC LEXIS 80, at *4 (N.C. Super. Ct. July 8, 2020) (stating that the party seeking to have a document sealed bears the burden of overcoming the presumption of the public’s right to open court proceedings).

5. Plaintiff seeks to seal the entirety of six exhibits filed in support of its Response. (*See* Am. Mot. Seal 1; *see also* Suppl. Br. 1.) Exhibits M–O are technical design packs for three of the products at issue in this case, Exhibit P includes the associated training manuals, and Exhibits H and U consist of size specification charts for the products. (*See* Am. Mot. Seal 1.)

6. In its Supplemental Brief, Plaintiff contends that sealing its confidential and proprietary designs, technical specifications, and training manuals is warranted because “public disclosure would mark the beginning of the end of any market advantage [Plaintiff] may still possess” and “signal [Plaintiff]’s demise.” (Suppl. Br. 4–5.) Specifically, Plaintiff contends that “possess[ion of] the actual designs offers a potential competitor a research and development cost-free entry into [the] market,” and faster market penetration, “increasing [a potential competitor’s] chance of success in gaining market share at the expense of [Plaintiff].” (Suppl. Br. 5–6.) According to Plaintiff, it is “already fighting for survival in a market it created, and

the inability to counter other unidentifiable competitors further complicates its chances of sustainability.” (Suppl. Br. 6.)

7. “A corporation may possess a strong interest in preserving the confidentiality of its proprietary and trade-secret information, which in turn may justify partial sealing of court records.” *Doe v. Doe*, 263 N.C. App. 68, 91–92 (2018) (quoting *Co. Doe v. Pub. Citizen*, 749 F.3d 246, 269 (2014)). A “trade secret” includes

business or technical information, including but not limited to a formula, pattern, program, device, compilation of information, method, technique, or process that:

- a. Derives independent actual or potential commercial value from not being generally known or readily ascertainable through independent development or reverse engineering by persons who can obtain economic value from its disclosure or use; and
- b. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

N.C.G.S. § 66-152(3). Section 66 additionally provides that “a court shall protect an alleged trade secret by reasonable steps which may include . . . sealing the records of the action subject to further court order[.]” N.C.G.S. § 66-156.

8. Because “[i]nformation for which a claimant asserts trade secret protection can lose the benefit of protection if it has been disclosed, publicly released, or publicly filed during litigation[.]” *Roundpoint Mortg. Co. v. Florez*, 2016 NCBC LEXIS 18, at *39 (N.C. Super. Ct. Feb. 18, 2016), and Plaintiff has demonstrated the potential competitive harm it would suffer should these exhibits be filed publicly, *see Addison Whitney, LLC v. Cashion*, 2020 NCBC LEXIS 74, at *5 (N.C. Super. Ct. June 10, 2020) (“Some showing of harm is essential.”), the Court will therefore permit this information to be filed under seal.

9. **WHEREFORE**, based on the above, the Court, in the exercise of its discretion, hereby **GRANTS** the Motions as to Exhibits H, M–P, and U to Plaintiff’s Response, (Exs. H, M–P, U Pl.’s Resp. Br. Defs.’ Mot. Summ. J., ECF Nos. 126.9, .15–.18, .23), and hereby **ORDERS** that they remain under seal pending further order of the Court.

SO ORDERED, this the 5th day of April, 2022.

/s/ Louis A. Bledsoe, III
Louis A. Bledsoe, III
Chief Business Court Judge