

ORIGINAL



UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of)
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)
)
)
Polypore International, Inc.)
a corporation)
)

Docket No. 9327

Public Document

**RESPONDENT'S PROPOSED REPLY TO COMPLAINT COUNSEL'S
OPPOSITION TO RESPONDENT'S MOTION FOR *IN CAMERA*
TREATMENT OF CERTAIN TRIAL EXHIBITS**

Complaint Counsel's surprising opposition to Respondent's motion for *in camera* treatment is in direct contrast with the ultimate mission and goal of the Federal Trade Commission. The Federal Trade Commission is "directed to prevent persons, partnerships, or corporations...from using unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce." 15 U.S.C. § 45(a)(2). In suggesting that the public be allowed unfettered access to Respondent's confidential and sensitive documents Complaint Counsel will inevitably create a less competitive marketplace and harm competition. Production of Respondent's trade secrets and confidential information to its competitors and customers will allow those businesses an enormous and unfair competitive advantage that is in direct conflict with the inherent purpose of the Federal Trade Commission. The F.T.C. "promotes healthy competition and challenges anticompetitive business practices to make sure that consumers have access to quality goods and services, and that businesses can compete on the merits of their work."¹ (emphasis added). In opposing Respondent's reasonable desire to protect its competitive information in order to allow it to remain competitive in the marketplace,

¹ From the F.T.C. pamphlet, *Competition Counts*.

Complaint Counsel fails to uphold the basic tenants of the F.T.C.'s duty to protect the competitive marketplace and succeeds only in further harassing Respondent.

Complaint Counsel is in no way prejudiced through the *in camera* treatment of Respondent's confidential documents and objects simply to further harm and waste Respondent's limited resources. By opposing without due cause the *in camera* protection that is contemplated by the F.T.C rules Complaint Counsel seeks to put Respondent in the untenable position of either allowing all manner of confidential business and competitive information to be introduced into the public record, causing it significant and irreparable competitive harm in the marketplace, or to withdraw documents which are supportive and helpful to its case from being introduced into evidence thus jeopardizing its defense of the FTC's claims.

Complaint Counsel's apparent motive in opposing Respondent's motion for *in camera* treatment is further demonstrated in the fact that Complaint Counsel did not object to the *in camera* motions of any and all third parties. In singling out Respondent's desire to protect its confidential information, Complaint Counsel unfairly promotes the interests of all other competitors and consumers involved in this case. Complaint Counsel unfairly targets Respondent's request for *in camera* treatment as overly "broad", but fails to make the same argument as to *in camera* requests submitted by third parties.

Many of the third parties to this action have sought *in camera* protection for the majority of their documents. By way of example only, Johnson Controls, Inc. has sought *in camera* treatment for 89 percent of the JCI documents Complaint Counsel designated as a potential exhibits. Similarly, Entek requested that 76 percent of the documents that Complaint Counsel designated as potential exhibit be grated *in camera* treatment. In turning a blind eye to the *in camera* requests of third parties, Complaint Counsel's singular objection to the Respondent's

request is utterly disingenuous and serves only to interfere with the presentation of Respondent's case and to further distract Respondent from preparing for the hearing in this matter.

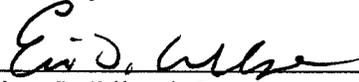
Finally, Complaint Counsel targets Respondent's Motion as too general and the reasons for *in camera* treatment of each document as too broad. However, Complaint Counsel's own response is overly broad in that nowhere does Complaint Counsel articulate a specific objection to any one of Respondent's *in camera* designations. Complaint Counsel correctly states that "applicants for *in camera* treatment must make a 'clear showing that the information concerned is sufficiently secret and sufficiently material...'" yet fails to point to any description or document identified in Respondent's Motion that does not specifically address and satisfy the necessary standards. Moreover, Complaint Counsel's position is severely undermined by its silence in the fact of Third Parties motions for *in camera* treatment which evidencing no greater specificity and in many cases far less specificity, than Respondent's motion.

CONCLUSION

Complaint Counsel's objection to Respondent's Motion for *in camera* treatment of sensitive and confidential documents serves no legitimate purpose other than to harass Respondent. Further, releasing Respondent's confidential documents and proprietary information to the public—especially when similar information from competitors and customers is afforded confidentiality—would cause Respondent severe and irreparable harm and would be directly at odds with the Federal Trade Commission's duty to protect and preserve the competitive marketplace. Respondent requests that the Court overrule Complaint Counsel's objection and grant its Motion for *in camera* Treatment in the interest in protecting the competitive environment in the industry at issue.

Dated: April 23, 2009

Respectfully Submitted,



William L. Rikard, Jr.

Eric D. Welsh

PARKER POE ADAMS & BERNSTEIN, LLP

Three Wachovia Center

401 South Tryon Street, Suite 3000

Charlotte, NC 28202

Telephone: (704) 372-9000

Facsimile: (704) 335-9689

williamrikard@parkerpoe.com

ericwelsh@parkerpoe.com

John F. Graybeal

PARKER POE ADAMS & BERNSTEIN, LLP

150 Fayetteville Street

Raleigh, NC 27602

Telephone: (919) 835-4599

Facsimile: (919) 828-0564

johngraybeal@parkerpoe.com

Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that on April 23, 2009, I caused to be filed via hand delivery and electronic mail delivery an original and two copies of the foregoing ***Proposed Reply to Complaint Counsel's Opposition to Respondent's Motion for In Camera Treatment of Certain Trial Exhibits***, and that the electronic copy is a true and correct copy of the paper original and that a paper copy with an original signature is being filed with:

Donald S. Clark, Secretary
Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW, Rm. H-135
Washington, DC 20580
secretary@ftc.gov

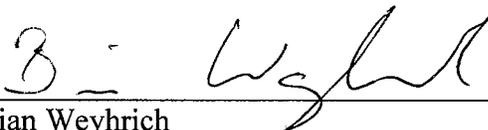
I hereby certify that on April 23, 2009, I caused to be served one copy via electronic mail delivery and two copies via overnight mail delivery of the foregoing ***Proposed Reply to Complaint Counsel's Opposition to Respondent's Motion for In Camera Treatment of Certain Trial Exhibits***, upon:

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
oalj@ftc.gov

I hereby certify that on April 23, 2009, I caused to be served via first-class mail delivery and electronic mail delivery a copy of the foregoing ***Proposed Reply to Complaint Counsel's Opposition to Respondent's Motion for In Camera Treatment of Certain Trial Exhibits*** upon:

J. Robert Robertson, Esq.
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
rrobertson@ftc.gov

Steven Dahm, Esq.
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
sdahm@ftc.gov



Brian Weyhrich
PARKER POE ADAMS & BERNSTEIN LLP
Three Wachovia Center
401 South Tryon Street, Suite 3000
Charlotte, NC 28202
Telephone: (704) 335-6639
Facsimile: (704) 334-4491