

ORIGINAL

246860

544958

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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

Docket No. 9327

PUBLIC

RESPONDENT'S RESPONSE TO INTERVENOR HOLLINGSWORTH & VOSE COMPANY'S BRIEF ON REMEDIES AFFECTING ITS CONTRACTUAL RIGHTS

Respondent, Polypore International, Inc. ("Polypore"), respectfully submits this Memorandum in Response to Intervenor Hollingsworth & Vose Company's Brief on Remedies Affecting its Contractual Rights and Proposed Findings of Fact.

ARGUMENT

In its brief and proposed findings of fact, Intervenor Hollingsworth & Vose Company ("H&V") asserts to this Court the fundamental point that Respondent has advanced through its evidence at the hearing: the Cross Agency Agreement between Daramic and H&V (the "Agreement") was a proper, lawful agreement, serving legitimate business needs of both companies as they attempted to expand their sales of their respective products. As H&V itself notes:

The Agreement provided that {

} H&V FOF ¶ 3.

H&V further notes:

Since the cross-agency relationship would {

6.¹

H&V's proposed findings demonstrate the propriety and validity of the Agreement and further undermine Complaint Counsel's claim that the Agreement "unlawfully restrained trade."

Of course, H&V's articulation of the purpose of the non-compete provisions in the Agreement is entirely consistent with the evidence advanced by Respondent during the hearing. Daramic's evidence showed that the Agreement was entered into for valid business purposes and in fact promoted the business of both companies.

- The Agreement provided Daramic and H&V the platform to counter the alliance formed between Entek (one of Daramic's competitors in PE) and Dumas (one of H&V's competitors in AGM). {

(RFOF 1125). {

}. (RFOF 1125).

- The Agreement allowed Daramic the benefit of adding an AGM product to its portfolio and allowed H&V access to PE technology. (RFOF 1124). {

} (PX0917 (Cullen, Dep. at 90-91), *in camera*).

- Additionally, the Agreement facilitated joint sales and promotional efforts which were successful in opening doors in regions of the world where Daramic or H&V had little or no presence. (RFOF 1126). {

} (PX0917 (Cullen, Dep. at 77), *in camera*). As a result of Daramic's sales efforts in South America, {

} (H&V FOF ¶ 10).

- {

} (PX0917 (Cullen, Dep. at 86, 91), *in camera*). {

} (PX0917 (Cullen, Dep. at 86, 91), *in camera*).

¹ These two reciprocal non-competition provisions are set forth in Sections 4(a) and 4(b) of the Agreement.

- The Agreement facilitated joint efforts to better service existing customers in the United States. {

} (PX0917 (Cullen, Dep. at 61-63), *in camera*).

Specifically, {

}.
 (PX0917 (Cullen, Dep. at 63), *in camera*). {

} (PX0917 (Cullen, Dep. at 65), *in camera*). {

} (PX0917 (Cullen, Dep. at 68), *in camera*).

- The Agreement also encouraged Daramic and H&V to explore joint research and development opportunities, {

} (RFOF 1127).

And while H&V's findings and brief focus on the confidential information H&V shared with Daramic, the exchange of confidential information was certainly not a one-way street. Daramic also shared with H&V valuable confidential information {

} (PX0917 (Cullen, Dep. at 90-91, 94-95), *in camera*).

The exchange of this confidential information facilitated the joint activities, which included significant joint marketing and promotional efforts as well as joint exhibits at trade shows and conventions. (RFOF 1126). These efforts were successful in opening doors in regions of the world where Daramic or H&V had little or no presence. (RFOF 1126). As such, the agreement with its restrictions is proper. *See e.g. Universal Studios Inc. v. Viacom, Inc.*, 705 A.2d 579 (Del. Ch. 1997) (finding a non-compete provision in a joint venture agreement enforceable); *Piercing Pagoda, Inc. v. Hoffner*, 351 A.2d 207 (Pa. 1975) (finding a non-compete provision in a franchise agreement enforceable).

As the evidence from both Daramic and H&V proves, the Agreement was a reasonable means of facilitating joint sales efforts and product development efforts between Daramic and H&V and had neither the intent nor the effect of either eliminating or restraining competition between the two companies. Indeed, as the evidence demonstrates, Daramic had no plans to

produce AGM separators and { } when the parties entered into the Agreement. (PX0925 (Porter, Dep. at 39), *in camera*; PX0200). Complaint Counsel's claim that the Agreement "unlawfully restrained trade" is based entirely on supposition, not fact, and is without merit. This Court should find for Respondent and against Complaint Counsel on Counts II and III of the Complaint.

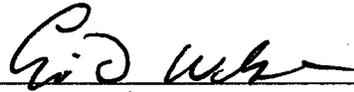
Respondent submits the Agreement is lawful and was entered into for a valid business purpose, which the evidence amply supports. Respondent implores this Court not to eliminate parties' continuing obligations designed to protect against the use of the shared confidential information. Should the Court, however, find the Agreement to be an unlawful restraint of trade, Respondent respectfully submits that the Agreement must be considered a nullity and the parties must both be relieved of their obligations under sections 4(a) and 4(b). While H&V requests that the Court only nullify the limitations imposed on H&V under Section 4(b), Respondent has found no case law or authority supporting such a piecemeal remedy, and H&V has cited none. Again, Respondent submits that the Agreement is proper but if this Court finds that not to be the case, then the Agreement as a whole must fall.

CONCLUSION

Respondent respectfully submits for the reasons previously stated that this Court find the Agreement to be valid and enforceable. Respondent further submits that should this Court find otherwise, that this Court nullify the Agreement in its entirety.

Dated: October 9, 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 October 9, 2009, I caused to be filed via hand delivery and electronic mail delivery an original and two copies of the foregoing ***Respondent's Response to Intervenor Hollingsworth & Vose Company's (H&V), Brief on Remedies Affecting its Contractual Rights (Public)***, 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

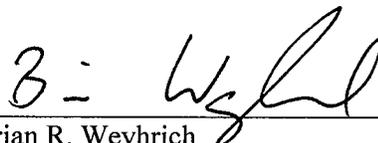
I hereby certify that on October 9, 2009, I caused to be served one copy via electronic mail delivery and two copies via overnight delivery of the foregoing ***Respondent's Response to Intervenor Hollingsworth & Vose Company's (H&V), Brief on Remedies Affecting its Contractual Rights (Public)*** upon:

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 October 9, 2009, I caused to be served via electronic mail delivery and one copy via First Class mail delivery a copy of the foregoing ***Respondent's Response to Intervenor Hollingsworth & Vose Company's (H&V), Brief on Remedies Affecting its Contractual Rights (Public)*** 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 R. Weyhrich
Parker Poe Adams & Bernstein LLP
Three Wachovia Center
401 South Tryon Street, Suite 3000
Charlotte, NC 28202
Telephone: (704) 372-9000
Facsimile: (704) 334-4706