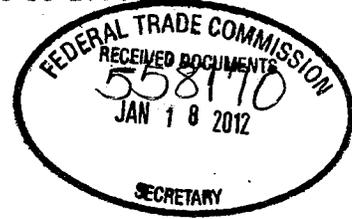


ORIGINAL

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**



_____)
In the Matter of _____)
_____)
Graco Inc., et al. _____)
Respondent _____)
_____)

Docket No. 9350
Honorable D. Michael Chappell

MOTION TO QUASH AND/OR LIMIT SUBPOENA DUCES TECUM

PUBLIC DOCUMENT

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

In the Matter of)	
Graco Inc., et al.)	Docket No. 9350
Respondent)	Honorable D. Michael Chappell
)	

MOTION TO QUASH AND/OR LIMIT SUBPOENA DUCES TECUM

Pursuant to 16 C.F.R. § 3.34 and Rule 3.34(c) of the Rules of Practice for Adjudicative Proceedings before the United States Federal Trade Commission, Complete Automation, Inc. (“Complete”), a non-party to this proceeding, files the following Motion to Quash and/or Limit Subpoena.

I. INTRODUCTION

On January 9, 2012, Complete was served with a Subpoena Duces Tecum issued December 29, 2011 at the behest of Respondent Graco, Inc. (“Graco”). (A copy of the Subpoena is attached as Exhibit A.) Complete moves to quash or limit the Subpoena on three main grounds. First, the Subpoena is overly broad and unduly burdensome. Second, some of the documents to be produced are confidential and proprietary and/or are considered trade secrets, and therefore should be protected from discovery, and particularly from Graco. Third, assuming even that the scope of the Subpoena was manageable, and the responsive documents not privileged, the timing of the Subpoena and the short time frame for response make compliance impossible.

II. ARGUMENT

A. Overview

First, and importantly, Complete is not a party to this proceeding, and has no direct interest in its outcome. The Subpoena would be burdensome even if issued against a party. Because it is issued against a non-party, it is unreasonably burdensome, and should be either quashed in its entirety or dramatically limited.

Like a federal court, an Administrative Law Judge in an FTC proceeding should quash or limit any subpoena that is unduly burdensome or requires the disclosure of privileged or confidential and proprietary information, or information rising to the level of trade secrets. 16 C.F.R. §3.31(c)(1)(iii) (use of subpoena and other discovery methods “shall be limited by the Administrative Law Judge” where the “burden and expense of the proposed discovery outweigh its likely benefit”); 16 C.F.R. §3.31 (c)(2) (authorizing Administrative Law Judge to “enter a protective order denying or limiting discovery to preserve” a privilege); Fed. R. Civ. P. 45(c)(3) (a court “shall quash or modify the subpoena if it ...requires disclosure of privileged or other protected matter... [or] subjects a person to undue burden”). Moreover, an Administrative Law Judge has the power to modify the subpoena and limit the scope of permissible discovery. 16 C.F.R. §3.31(d)(1) (authorizing Administrative Law Judge to “deny discovery or make any order which justice requires to protect a party or other person from annoyance, embarrassment, oppression, or undue burden or expense”); *see also* Fed. R. Civ. P. 26(c) (court may grant a protective order to protect a party from annoyance, embarrassment, oppression, or undue burden or expense). *See also* *Murphy v. Deloitte & Touche Group Ins. Plan*, 619 F. 3d 1151, 1163 (10th Cir., 2010) (discovery has “never been a license to engage in an unwieldy, burdensome and speculative fishing expedition.”).

Information is not discoverable if it is not relevant. Fed. R. Civ. P. 26(b)(1). Further "discovery in Commission adjudicatory proceedings under Part 3 of the Commission's Rules is limited to matters that are relevant to the allegations of the Commission's complaint, to the relief proposed therein, or to the Respondents' defenses, none of which is at issue in this Discovery Motion. See 16 C.F.R. 93.31."

Moreover, discovery requests are overbroad, even if some responsive information is conceivably relevant, when only a fraction of the millions of documents requested are relevant. *Nugget Hydroelectric L.P. v. Pacific Gas & Elec. Co.*, 981 F.2d 429, 438-39 (9th Cir. 1992). The Subpoena in this case calls for the production of probably tens of thousands of pages of documents, *by a non-party*, which Graco has not shown to be relevant. The Subpoena should be quashed, or at least should be limited in several significant respects.

B. General Objections to Scope of Subpoena

Complete first objects to the scope of the Subpoena. It demands production of documents from January 1, 2007 to the present, a period of **five** years.

Moreover, as explained below, some of the document requests themselves are unreasonably broad to a point of being incomprehensible. In addition, and again as set forth more fully below, the Subpoena requests production of documents containing privileged or confidential and commercially sensitive information, including competitively sensitive pricing information and Complete trade secrets, disclosure of which should not be required.

C. Specific Objections to Document Request

Complete asserts the following specific objections to the categories of documents the Subpoena requires to be produced:

1. Transactional level sales data from January 1, 2007, to the present, identifying all of your worldwide sales of liquid or powder industrial finishing systems, lines, services or individual finishing products, the buyer in each transaction, and setting forth the sales price for the system, line or individual product or products.

Assuming Graco is referring to business level sales data from all customers of Complete, various confidentiality agreement and non disclosure agreements exist amongst various parties to such business level sales that warrant notification, opportunity to be heard and object, and conditions and requirements imposed upon Complete and such third party customers. Assuming such consents can be reasonably obtain, and assuming no objections and other motions are filed, Graco should pay all costs and expenses for obtaining such consents, providing such notices, and for possibly producing any and all documents.

2. Annual or quarterly sales summaries, aggregating sales of liquid or powder finishing systems, lines or products 1) in the United States, and 2) globally from January 1. 2007, to the present.

This document request can be more readily obtained by Graco, but Graco should pay all the costs and expense incurred by Complete to produce same. Provided, however, this request is specifically limited to summaries. And provided, further, this information is confidential and consists of sensitive financial information guarded by Complete.

3. Transactional level purchase data and/or documents from January 1, 2007, to the present, by product description/name or part number, indentifying all of your purchases of liquid powder industrial finishing products (including, but not limited to, applicators, pumps and proportioners) and the manufacturer or supplier in each transaction, and setting forth the list price, and any discounts or rebates.

This request is not reasonably limited. Compliance with this overly broad request would require Complete to accumulate information on literally thousands of parts that compose *each* of its paint distribution systems, including its manufacturer and/or

supplier. Further, discounts and rebates are proprietary and guarded as trade secrets of Complete.

4. Copies of all sales, marketing or promotions materials describing the services and products now being sold by you in the United States.

This requested information is neither objected to nor is it required to be quashed; provided, however, it is limited in scope to some time frame and affords ample opportunity to produce. As it is currently presented, no time frame exists which would allow Complete to more readily ascertain the degree and scope of the request.

5. Any business plans or market analyses relating to liquid or powder industrial finishing systems, lines, services or products that have been prepared by you or on your behalf from January 1, 2007, to the present.

This information provided to either Graco or Illinois Tool Works can provide either of them with an unfair business advantage over Complete, a nonparty to this matter. The future business and development plans of Complete, along with its perspective of market trends and analyses in a guarded trade secret, and consist of proprietary information, in some instance developed solely by Complete.

6. All documents from January 1, 2009 to the present that identify companies, manufacturers, integrators or products with which your liquid or powder finishing systems, services or products compete in the United States and worldwide.

This requested information is neither objected to nor is it required to be quashed; provided, however, it affords ample opportunity to produce.

7. Any communications between you and the Federal Trade Commission relating to liquid or powder industrial finishing products, systems or services.

This requested information is neither objected to nor is it required to be quashed; provided, however, it affords ample opportunity to produce.

8. All requests for proposal or bids that you have received from buyers or end users of liquid or powder industrial finishing products from January 1, 2009 to the present; all responses that you have submitted in response to such requests; and any documents showing the outcome of such responses to request for proposals or bids.

This request appears to essentially call for the production of every contract or other communication between Complete and its customers from January 1, 2009. It is overly broad and unduly burdensome. Further, such communications routinely contain privileged and confidential information concerning product purchases which in the possession of Graco can be detrimental to Complete's business interest.

9. All analyses or reports prepared by you or on your behalf relating to competition in liquid or powder industrial finishing systems, lines or products.

This requested information is neither objected to nor is it required to be quashed; provided, however, it affords ample opportunity to produce.

10. Copies of all sales, marketing or promotional materials describing liquid finishing equipment products now being sold by a manufacturer of such in the United States.

This request appears to require Complete to perform Graco's discovery for it! It is also not limited in scope. It is also vague and ambiguous, and it is not clear to Complete exactly what documents are being sought. If it is referring to Complete's sales, marketing and promotional materials, Complete can provide same. However, if it is referring to other third party sale, marketing and promotional materials, such request will have to be directed to such other third parties.

11. All documents related to any communication between you and a manufacturer of liquid finishing equipment products, excluding communication between you and Graco, Inc. or Illinois Tool Works, Inc.

This request is not reasonably limited in time or scope.

12. All documents reflecting, including, or related to an assessment of manufacturers of liquid finishing equipment and/or the liquid finishing equipment sold by those manufacturers.

This requested information is neither objected to nor is it required to be quashed; provided, however, it affords ample opportunity to produce.

13. Product catalogs and price lists identifying all liquid and powder industrial finishing products being sold by you in the United States.

This requested information is neither objected to nor is it required to be quashed; provided, however, it affords ample opportunity to produce.

14. All written plans for new product development in liquid or powder industrial finishing products that you now have planned or in progress.

Assuming Graco is referring to work in process and that being developed from all customers of Complete, various confidentiality agreements and non disclosure agreements exist amongst various parties to such projects and programs that warrant notification, opportunity to be heard and object, and conditions and requirements imposed upon Complete and such third party customers. Even if such consents can be reasonably obtained, and assuming no objections and other motions are filed, this information provided to either Graco or Illinois Tool Works can provide either of them with an unfair business advantage over Complete, a nonparty to this matter. The current and future business and development plans of Complete consist of proprietary information, in some instance, developed solely by Complete.

15. Any communication between you and any distributor or any other person, firm, business, or company concerning the proposed sales of ITW' finishing businesses to Graco.

This requested information is neither objected to nor is it required to be quashed; provided, however, it affords ample opportunity to produce.

16. Any documents that constitute or refer to your efforts to expand distribution of your products.

This request would appear to have no relevance to the matter at hand before the FTC other than to obtain sensitive and confidential information relating to Complete's business and its related and affiliated entities. Further, it is objected to as being overly broad and not limited in scope.

17. All sales forecasts or financial projections for liquid finishing products in the United States or North America from January 1, 2008 to the present.

Similar to item #14 above, assuming Graco is referring to specific customer proposed projects (captured and otherwise), proposed costs, work in process, and any other such information developed a customers of Complete, various confidentiality agreements and non disclosure agreements exist amongst various parties to such projects and programs that warrant notification, opportunity to be heard and object, and conditions and requirements imposed upon Complete and such third party customers. Even if such consents can be reasonably obtained, and assuming no objections and other motions are filed, this information provided to either Graco or Illinois Tool Works can provide either of them with an unfair business advantage over Complete, a nonparty to this matter. The current and future sales, and business development plans of Complete consist of proprietary information, in some instance, developed solely by Complete.

18. All documents that refer or related to your decision to expand your liquid finishing line in North America through acquisitions, joint ventures and partnerships, or otherwise.

This information provided to either Graco or Illinois Tool Works can provide either of them with an unfair business advantage over Complete, a nonparty to this matter. The future business and development plans of Complete in the hands of Graco or Illinois Tool Works may very well prove detrimental to Complete and third parties.

Further, the attorney-client privilege extends over communications between a client and his or her attorney when legal advice or counsel is sought.

19. Documents sufficient to itemize expenses and investments you have incurred in expanding your liquid finishing line in North America through acquisitions, joint ventures and partnerships, or otherwise.

This requested information is neither objected to nor is it required to be quashed; provided, however, it affords ample opportunity to produce.

20. All documents created or modified from January 1, 2009, to the present, relating to any analysis of your share of sales in the United States or elsewhere in the world, or your share of sales to any geographic or end-user segment of the United States, for any of the following industrial finishing products: liquid finishing pumps, liquid finishing proportioners, liquid finishing applicators (spray guns), or liquid or powder finishing equipment generally.

This requested information is neither objected to nor is it required to be quashed; provided, however, it affords ample opportunity to produce.

21. All documents discussing or analyzing the Acquisition, the FTC Acquisition Review, and the Action.

To the extent that this request extends over communications between a client and his or her attorney when legal advice or counsel is sought, this request is objected to on the grounds of the attorney-client privilege. Otherwise, this requested information is neither objected to nor is it required to be quashed; provided, however, it affords ample opportunity to produce.

22. Documents sufficient to identify all of your actual or potential competitors with respect to the sale of liquid or powder industrial finishing products in North America.

This requested information is neither objected to nor is it required to be quashed; provided, however, it affords ample opportunity to produce.

23. All documents relating to any discounts given to any distributor or end user customer for the purchase of any liquid or powder industrial finishing products from January 1, 2009 to the present.

This requested information is neither objected to nor is it required to be quashed; provided, however, it affords ample opportunity to produce. Further, discounts and rebates are proprietary and guarded as trade secrets of Complete.

24. All documents discussing your attempts to sell liquid finishing products directly to end users from January 1, 2008 to the present.

This request is overly broad and unduly burdensome. Further, such communications and documents routinely contain privileged and confidential information concerning product purchases which in the possession of Graco can be detrimental to Complete's business interest.

25. Documents sufficient to show all entities that distribute liquid or powder industrial finishing products for Complete Automation, Inc., in the United States from January 1, 2009 to the present.

This requested information is neither objected to nor is it required to be quashed; provided, however, it affords ample opportunity to produce.

D. Unreasonable Time Periods

As noted above, the Subpoena seeks documents generated or received over a five year period. The amount of effort, time and expense necessary to respond to the Subpoena grows in proportion to the length of time covered by the Subpoena. Complete requests that if it is required to respond to it, the Subpoena be expressly limited to the last two years.

Moreover, while the time period covered by the Subpoena is too long, the time allotted to Complete to respond is too short. If compliance is required, Complete should be granted significantly more time to provide responsive information.

E. The Existing Protective Order Does Not Adequately Protect Complete.

As set forth above, many of the documents requested by the Subpoena contain sensitive and confidential information. Complete would be competitively disadvantaged if such information were disclosed to Complete's competitors, Graco or Illinois Tool Works or their customers. If such information is to be disclosed, it should be subject to a protective order more narrow than the one already in effect.

A Protective Order was issued in this proceeding on December 16, 2011. Complete was not invited to participate in the drafting of that Order. While the Protective Order places some restrictions on certain categories of documents, the Order does not adequately protect Complete.

F. Graco Should Reimburse Non-Party Complete for Its Expenses.

In the event Complete is required to produce information responsive to the Subpoena, even if its scope is narrowed considerably, the cost of production will be substantial, requiring the work of numerous employees reviewing, organizing, and copying thousands and thousands of documents. Further, Complete has incurred and will continue to incur legal expenses contesting the scope of the Subpoena. Under Fed. R. Civ. P. 45, the issue is whether the subpoena imposes expenses on a non-party, and if so, whether those expenses are significant. If they are, the court must protect the non-party by requiring the party seeking discovery to bear at least enough of the expense to render

the remainder “non-significant.” *Linder v. Calero-Portocarrero*, 251 F.3d 178, 182 (D.C. Cir. 2001). At a minimum, Graco must be required to bear some of the expense of production.

III. CONCLUSION

For the foregoing reasons, non party Complete respectfully requests that the Administrative Law Judge quash, modify, or limit the Subpoena. If the Subpoena is not quashed in its entirety (1) Complete should not be required to produce documents over a five year period; (2) the overly broad document requests should be narrowed considerably; (3) Complete should not be required to produce confidential information, but if required to do so, only under a narrowly-drawn protective order; and (4) Graco should reimburse Complete’s expenses related to responding to the Subpoena.

IV. CERTIFICATE OF CONFERENCE

Daniel E. Chapman, counsel for non-party Complete, left a voice mail message for John Hinderaker, counsel for Graco, at approximately 4:00 pm EST on January 17, 2011, in an attempt to resolve any disputes concerning the Subpoena that is the subject of the foregoing motion. Daniel E. Chapman, counsel for non-party Complete, then emailed on or about 4:15pm EST on January 17, 2011 a draft of this motion seeking concurrence or resolution of same. As of the time this motion is filed, the issues in dispute have not been fully resolved.

WHEREFORE, PREMISES CONSIDERED, Complete respectfully requests the Subpoena Duces Tecum be quashed and/or limited, and that it be awarded its reasonable

attorney's fees and costs, as well as such other relief, both legal and equitable, to which it may show itself justly entitled.

Dated: January 18, 2012

Respectfully submitted,
THE TROY LAW FIRM

/s/ Daniel E. Chapman
Daniel E. Chapman (P41043)
Kimberly A. Cochrane (P73032)
Attorneys for Non-Party, Complete
Automation, Inc.
755 W Big Beaver Rd, Ste 1800
Troy, MI 48084
(248) 244-9100
dchapman@troylawfirm.com
kcochrane@troylawfirm.com

CERTIFICATE OF SERVICE

I certify that on January 18, 2012 I electronically filed a document entitled "Motion to Quash and/or Limit Subpoena Duces Tecum" with the Federal Trade Commission using the FTC E-Filing System, and that I served the same document upon the following:

John H. Hinderaker, Esq.
Richard A. Duncan, Esq.
Randall E. Kahnke, Esq.
Faegre & Benson LLP
90 South Seventh Street,
Suite 2200
Minneapolis, MN 55402-3901

J. Robert Robertson, Esq.
Logan Breed, Esq.
Hogan, Lovells US LLP
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004

Katrina Robson
O'Melveny & Myers LLP
1625 Eye St., N.W.
Washington, DC 20006

Phillip L. Broyles
Peter Richman
Marc W. Schneider
Brian J. Telpner
Robert E. Friedman
Amanda Hamilton
Cathlin Tully
Anna Chehtova
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington, DC 20580

by placing the document in an envelope properly addressed, with First Class postage affixed, and depositing it in a receptacle of the United States Mail.

In addition, this document was also served upon the following:

Honorable D. Michael Chappell
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

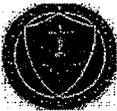
via UPS Next Day Air (Tracking Number: 1Z 562 R3W 23 1000 0585)

I declare that the above statements are true to the best of my information, knowledge, and belief.

Dated: January 18, 2012

Respectfully submitted,
THE TROY LAW FIRM

/s/ Daniel E. Chapman
Daniel E. Chapman (P41043)
Kimberly A. Cochrane (P73032)
Attorneys for Non-Party, Complete
Automation, Inc.
755 W Big Beaver Rd, Ste 1800
Troy, MI 48084
(248) 244-9100
dchapman@troylawfirm.com
kcochrane@troylawfirm.com



SUBPOENA DUCES TECUM

Provided by the Secretary of the Federal Trade Commission, and
Issued Pursuant to Commission Rule 3.34(b), 16 C.F.R. § 3.34(b)(2010)

1. TO
KENNETH J. MATHEIS, SR., REGISTERED AGENT
1776-D W. CLARKSTON ROAD
LAKE ORION, MI 48362

2. FROM

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

ON BEHALF OF: COMPLETE AUTOMATION, INC.

This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things, at the date and time specified in Item 5, and at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

3. PLACE OF PRODUCTION
SUBMIT DOCUMENTS TO:
Susan M. Lahr, Paralegal
Faegre & Benson LLP
2200 Wells Fargo Center, 90 South Seventh Street
Minneapolis, MN 55402-3901
(612)-766-8071

4. MATERIAL WILL BE PRODUCED TO
Susan M. Lahr, Paralegal, Faegre & Benson LLP

5. DATE AND TIME OF PRODUCTION
January 11, 2012

6. SUBJECT OF PROCEEDING

In the Matter of Graco Inc., et al., Docket No. 9350

7. MATERIAL TO BE PRODUCED

See attached Exhibit A and the Protective Order Governing Discovery Material. Documents described in the attached Exhibit A must be submitted to Susan M. Lahr, Paralegal, Faegre & Benson LLP, as listed above, no later than January 5, 2012. If you have any questions please call Susan M. Lahr at 612-766-8071.

8. ADMINISTRATIVE LAW JUDGE

Honorable D. Michael Chappell
Chief Administrative Law Judge

Federal Trade Commission
Washington, D.C. 20580

9. COUNSEL AND PARTY ISSUING SUBPOENA

John H. Hinderaker
Faegre & Benson LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-3901

Katrina Robson
O'Melveny & Myers LLP
1625 Eye St., N.W.
Washington, D.C. 20006

DATE SIGNED

12/29/11

SIGNATURE OF COUNSEL ISSUING SUBPOENA

612-766-8430

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

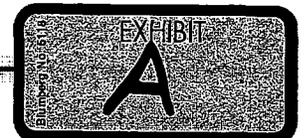
The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 9, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to counsel listed in Item 9 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from counsel listed in Item 9.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.



RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

- in person.*
- by registered mail.*
- by leaving copy at principal office or place of business, to wit:*

on the person named herein on:

(Month, day, and year)

(Name of person making service)

(Official title)

COMPLETE AUTOMATION, INC.

EXHIBIT A

DEFINITIONS AND INSTRUCTIONS

A. The terms "you," "your" or "yours" mean the company named on the attached subpoena, and any parent, subsidiary, division or other affiliated company engaged in the manufacture, marketing or sale of liquid or powder industrial finishing products, and specifically pumps suitable for use in industrial finishing applications, in the United States or elsewhere in the world, and anybody acting on its behalf.

B. If, after conducting a reasonable investigation, a complete production cannot be provided for any request for the production of documents, answer to the fullest extent possible, stating what responsive documents or information are available, what documents or information cannot be provided, and why the documents or information are unavailable.

C. If any document responsive to these document requests has been destroyed, describe the contents of such document, the date of such destruction and the name of the person who ordered or authorized such destruction.

D. If the production of any documents responsive to these document requests is objected to on the ground of privilege or work product, or for any other reason, provide a privilege log identifying the responsive document, its author and recipients, its date, and the basis for the claim of privilege.

E. As used herein, "and" includes the word "or" and vice versa, and the singular includes the plural, and vice versa.

F. As used herein, "communication" shall mean any transmission of information by one or more persons and/or between two or more persons by any means, including

telephone conversations; letters; telegrams; teletypes; telexes; telecopies; electronic mail; other computer linkups; written memoranda, and face-to-face conversations.

G. As used herein, "document" includes any written or graphic matter or any medium of any type or description upon which information is recorded or from which information can be gathered, which is or has been in your possession, control, or custody, or of which you have knowledge, including the original and any non-identical copy; electronic documents and mail or "e-mail;" summaries of meetings or discussions (including any memoranda, minutes, notes, records, or summary of any (a) telephone or intercom conversation or message, (b) personal conversation or interview, or (c) meeting or conference); video or voice recordings; and any writing or other handwritten, printed, reproduced, recorded, typewritten, or otherwise produced graphic material from which information responsive to these requests may be obtained, or any other documentary material of any nature, in your possession, custody, or control.

H. The "FTC," means the United States Federal Trade Commission.

I. "Action," as used herein, means the above-captioned FTC administrative proceeding entitled *In the matter of Graco Inc., et al.*, Docket No. 9350.

J. The "FTC Acquisition Review," as used herein, refers to any investigative steps, including, but is not limited to, the issuance of subpoenas or civil investigative demands, formal or informal requests for Documents or testimony, the taking of any testimony, the conduct of any interviews or hearings, market research, and any other gathering of facts, that were taken in connection with a review of the Acquisition, FTC File No. 111-0169 and/or Docket No. 9350, under either Part 2 or Part 3 of the FTC Rules of Practice.

K. "Relevant Equipment," as used herein, refers to pumps, pump parts, pump accessories, and/or any equipment used for or related to industrial liquid or powder finishing.

L. Provide all electronically stored information ("ESI") and hard copy documents in standard, single-page Group IV TIFF format with accompanying extracted text and metadata in a Concordance load file. Provide Microsoft Access, Excel, and PowerPoint files, as well as audio, audiovisual, and video files, in their native formats. Produce the metadata for any responsive ESI with the responsive data, including the following fields: custodian, author(s), recipient(s), blind copy recipient(s), subject, file sent date/time, file creation date/time, file modification date/time, file last accessed data/time, beginning bates, ending bates, parent beginning bates, attachment(s) beginning bates, hash value, application type, file type, file name, file size, file path, and folder path. Documents produced in native format shall be accompanied by a native link field.

REQUESTS FOR DOCUMENTS

1. Transactional level sales data from January 1, 2007, to the present, identifying all of your worldwide sales of liquid or powder industrial finishing systems, lines, services or individual finishing products, the buyer in each transaction, and setting forth the sales price for the system, line or individual finishing product or products.
2. Annual or quarterly sales summaries, aggregating sales of liquid or powder finishing systems, lines or products 1) in the United States, and 2) globally from January 1, 2007, to the present.
3. Transactional level purchase data and/or documents from January 1, 2007, to the present, by product description/name or part number, identifying all of your purchases of liquid or powder industrial finishing products (including, but not limited to, applicators, pumps and proportioners) and the manufacturer or supplier in each transaction, and setting forth the list price, sales price, and any discounts or rebates.
4. Copies of all sales, marketing or promotional materials describing the services and products now being sold by you in the United States.
5. Any business plans or market analyses relating to liquid or powder industrial finishing systems, lines, services or products that have been prepared by you or on your behalf from January 1, 2007, to the present.
6. All documents from January 1, 2009, to the present that identify companies, manufacturers, integrators or products with which your liquid or powder finishing systems, services or products compete in the United States or worldwide.
7. Any communications between you and the Federal Trade Commission relating to liquid or powder industrial finishing products, systems or services.
8. All requests for proposals or bids that you have received from buyers or end users of liquid or powder industrial finishing products from January 1, 2009 to the present; all responses that you have submitted in response to such requests; and any documents showing the outcome of such responses to requests for proposals or bids.
9. All analyses or reports prepared by you or on your behalf relating to competition in liquid or powder industrial finishing systems, lines or products.
10. Copies of all sales, marketing or promotional materials describing liquid finishing equipment products now being sold by a manufacturer of such in the United States.

11. All documents related to any communication between you and a manufacturer of liquid finishing equipment products, excluding communication between you and Graco, Inc. or Illinois Tool Works Inc.
12. All documents reflecting, including, or related to an assessment of manufacturers of liquid finishing equipment and/or the liquid finishing equipment sold by those manufacturers.
13. Product catalogs and price lists identifying all liquid and powder industrial finishing products now being sold by you in the United States.
14. All written plans for new product development in liquid or powder industrial finishing products that you now have planned or in progress.
15. Any communications between you and any distributor or any other person, firm, business, or company concerning the proposed sales of ITW's finishing businesses to Graco.
16. Any documents that constitute or refer to your efforts to expand distribution of your products.
17. All sales forecasts or financial projections for liquid finishing products in the United States or North America from January 1, 2008 to the present.
18. All documents that refer or relate to your decision to expand your liquid finishing line in North America through acquisitions, joint ventures and partnerships, or otherwise.
19. Documents sufficient to itemize expenses and investments you have incurred in expanding your liquid finishing line in North America through acquisitions, joint ventures and partnerships, or otherwise.
20. All documents created or modified from January 1, 2009, to the present, relating to any analysis of your share of sales in the United States or elsewhere in the world, or your share of sales to any geographic or end-user segment of the United States, for any of the following industrial finishing products: liquid finishing pumps, liquid finishing proportioners, liquid finishing applicators (spray guns), or liquid or powder finishing equipment generally.
21. All documents discussing or analyzing the Acquisition, the FTC Acquisition Review, and the Action.
22. Documents sufficient to identify all of your actual or potential competitors with respect to the sale of liquid or powder industrial finishing products in North America.

23. All documents relating to any discounts given to any distributor or end user customer for the purchase of any liquid or powder industrial finishing products from January 1, 2009 to the present.

24. All documents discussing your attempts to sell liquid finishing products directly to end users from January 1, 2008 to the present.

25. Documents sufficient to show all entities that distribute liquid or powder industrial finishing products for Complete Automation, Inc., in the United States from January 1, 2009 to the present.

fb.us.7932674.02

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of

GRACO INC.,
a corporation, and

ILLINOIS TOOL WORKS INC.,
a corporation, and

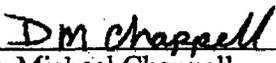
ITW FINISHING LLC,
a limited liability company,
Respondents.

DOCKET NO. 9350

PROTECTIVE ORDER GOVERNING DISCOVERY MATERIAL

Commission Rule 3.31(d) states: "In order to protect the parties and third parties against improper use and disclosure of confidential information, the Administrative Law Judge shall issue a protective order as set forth in the appendix to this section." 16 C.F.R. § 3.31(d). Pursuant to Commission Rule 3.31(d), the protective order set forth in the appendix to that section is attached verbatim as Attachment A and is hereby issued.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: December 16, 2011

ATTACHMENT A

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material ("Protective Order") shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order, "confidential material" shall refer to any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information. "Sensitive personal information" shall refer to, but shall not be limited to, an individual's Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual's medical records. "Document" shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. "Commission" shall refer to the Federal Trade Commission ("FTC"), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.
2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.
3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.
4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.
5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation "CONFIDENTIAL-FTC Docket No. 9350" or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation "CONFIDENTIAL-FTC Docket No. 9350" or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.

7. Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question.

8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

9. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed *in camera*. To the extent that such material was originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall continue to have *in camera* treatment until further order of the Administrative Law Judge, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted *in camera* treatment. If that party wishes *in camera* treatment for the document or transcript, the party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where *in camera* treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record.

11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 CFR 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

12. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12.

13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.