

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION



In the Matter of

PUBLIC

MCWANE, INC.,  
a corporation , and

Docket No.: 9351

STAR PIPE PRODUCTS, LTD.,  
a limited partnership.

**SIP INDUSTRIES' MOTION FOR *IN CAMERA* TREATMENT OF MATERIAL  
PREVIOUSLY DESIGNATED AS CONFIDENTIAL**

Pursuant to Rule 3.45(b) of the Federal Trade Commission Rules of Practice, 16 C.F. § 3.45(b), Scrrampore Industries Private (Ltd.), Inc., d/b/a SIP Industries ("SIP Industries"), a non-party, hereby seeks *in camera* treatment for certain documents containing confidential information produced in this proceeding. The public disclosure of such information would divulge SIP Industries' confidential information to competitors and customers and thereby inflict serious harm and irreparable injury on SIP Industries.

**I. Factual Background**

On or around March 9, 2010, the Federal Trade Commission ("FTC") began an investigation, File No. 101-0080, to determine whether McWane, Inc. ("McWane") and Sigma Corporation ("Sigma") had entered into or adopted any anti-competitive policies, agreements, or programs related to the distribution pricing, and selling, of ductile iron pipe fittings (hereinafter "DIPF"). On April 28, 2010, the FTC issued a Subpoena Ad Testificandum to Bharat Agrawal, Vice President - Business Development of SIP Industries, to appear and give testimony regarding the investigation. The FTC also issued a Subpoena Duces Tecum to SIP Industries for documents

pertaining to DIPF in SIP Industries' possession. SIP Industries produced responsive documents on June 3, 2010 and Bharat Agarwal appeared at the investigation hearing on or around June 4, 2010.

On January 4, 2012, the FTC issued the Complaint initiating this proceeding against McWane and Star Pipe Products, Ltd. ("Star Pipe") for engaging in collusive and exclusionary conduct related to the marketing and selling of DIPF. On January 5, 2012, the Commission issued a Protective Order governing discovery to protect the parties and third parties against improper use and disclosure of confidential materials produced in the proceeding. Under the protective order, any confidential material can only be disclosed 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. *See* Protective Order pg. 3 ¶ 7.

Furthermore, "[d]isclosure 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.*"

On February 17, 2012, McWane issued its own Subpoena Duces Tecum to SIP Industries for the production of certain documents and records pursuant to Federal Trade Commission Rules of Practice 3.31 and 3.34(a), 16. C.F.R. §§ 3.31, and 3.34(a). On March 13 2012, SIP Industries

filed a Motion to Quash the Subpoena Duces Tecum from McWane, because the discovery requests were overbroad and burdensome, but also because SIP Industries did not feel the confidentiality order in place was sufficient to protect SIP Industries' confidential and proprietary information from potentially being disclosed to its competitors. *See* SIP Industries Motion to Quash Subpoena Duces Tecum. On April 23, 2012, Chief Administrative Law Judge Chappell signed an Order compelling production of the documents; the order reiterates that any confidential information would only be disclosed to the identified class of people in Paragraph 7 of the Protective Order and states that the Protective Order is sufficient to protect SIP Industries' confidential information. *See* Order on SIP Industries' Motion to Quash Subpoena pg. 5. In response, SIP Industries produced the documents in question, designating these materials "Confidential" per the Protective Order.

On July 17, 2012, Complaint Counsel and Counsel for McWane notified SIP Industries that, in spite of the protective order on confidential information, both parties have marked certain SIP Industries documents as exhibits and intend to offer them into evidence at the administrative trial making them part of the public record. Complaint Counsel has identified the following documents to be offered into evidence:

Exhibit No.	Document Title	Date	Beg. Bates	End Bates
CX0003	Bharat Agarwal's 2009 Calendar	5/21/2010	CX0003-001	CX0003-011
CX0004	Email from Robert Marr to Bharat Agarwal re: DI Fitting Usage	9/21/2009	CX0004-001	CX0004-0018
CX0005	E-mail from Tilak Agarwal to Bharat Agarwal and Laxman Agarwal re; Visit	7/16/2009	CX0005-001	CX00005-004

CX2521	RESERVED FOR Designated Investigational Hearing Transcript of Bharat Agarwal	6/4/2010	CX2521-001	CX2521-001
CX2522	RESERVED FOR Designated Deposition Transcript of Bharat Agarwal	5/25/2012	CX2522-001	CX2522-001

Counsel for McWane has identified the following documents to be offered into evidence:

Exhibit No.	Document Title	Date	Beg. Bates	End Bates
CX0007	Email from Robert Marr to Bharat Agarwal re: ready to produce ductile	10/22/2009	CX0007-001	CX0007-001
CX0003	Bharat Agarwal's 2009 Calendar	5/21/2010	CX0003-001	CX0003-011
-	SIP Industries Fitting Sales 2008-2011	-	-	-
CX2522	Deposition of Bharat Agarwal	5/25/2012		-

Pursuant to Section 3.45(b), and because SIP Industries has continuously sought to prevent the public disclosure of its confidential and proprietary information, SIP Industries now requests *in camera* treatment for certain documents on Complaint Counsel's and McWane's Counsel's exhibit list, including portions of the Agarwal deposition. The public disclosure of the documents identified above would likely result in a clearly defined and serious injury to SIP Industries, and these documents should thus be afforded *in camera* treatment. *In re Dura Lube Corp.* 1999 FTC LEXIS 255 (Dec. 23 1999); *In re Hoechst Marion Roussel, Inc.*, 2000 FTC LEXIS 157 (Nov. 22, 2000); *In re Basic Research, Inc.* 2006 FTC LEXIS 14 (Jan. 25, 2006).

## II. Argument and Authorities

### A. Legal Standard

Pursuant to Rule 3.45(b) of the Federal Trade Commission Rules of Practice, 16 C.F. § 3.45(b), the Administrative Law Judge may order materials or portions thereof offered into evidence to be placed *in camera* on a finding that their public disclosure will result in a clearly defined serious injury to the corporation requesting *in camera* treatment. *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961). The showing can be made by establishing that the documents to be given *in camera* treatment are sufficiently secret and sufficiently material to the corporation's business that disclosure would result in a serious competitive injury. *In re Gen. Foods Corp.*, 95 F.T.C. 352, 355 (1980).

In *Bristol-Myers Co.*, 90 FTC 455, 456 (1977), the Court identified the following six factors in determining whether an *in camera* applicant has made a sufficient showing:

- (1) The extent to which the information is now outside of the applicant's business;
- (2) The extent to which the information is known by employees and other involved in the applicant's business;
- (3) The extent of measures taken by the applicant to guard the secrecy of the information;
- (4) The value of the information to the applicant and its competitors;
- (5) The amount of effort or money expended by the applicant in developing the information; and
- (6) The ease or difficulty with which the information could be properly acquired or duplicated by others.

Administrative law judges have broad discretion in applying these factors to determine whether the information should be afforded *in camera* treatment. *In re Gen. Food Copr.*, 95 F.T.C. at 353. Furthermore, extending *in camera* treatment in appropriate cases dealing with third parties is important to encourage cooperation with future proceedings before the commission. *Kaiser Aluminum & Chem. Cop.*, 103 F.T.C. 500 (1984); *see also In re Crown Cork & Seal Co.*, 71 F.T.C. 1714, 1715 (1967)(stating that a request for *in camera* treatment by a non-party warrants 'special solicitude').

In addition, the Commission has recognized that it may be appropriate to provide *in camera* treatment for certain business records. *In re Champion Spark Plug, Co.*, 1982 FTC LEXIS 85, at\* 2(April 5, 1982); *see Hood*, 58 FTC at 1188-89; *Kaiser Aluminum*, 102 F.T.C. at 500. Where *in camera* treatment is granted for business records, such as business strategies, marketing plans, pricing policies, or sales documents, it is typically provided for two to five years.

**B. The proposed exhibits meet the legal standard for *In Camera* treatment because the public disclosure would result in a clearly defined serious injury to SIP Industries.**

This motion is supported by the Declaration of Bharat Agarwal, Vice President - Business Development for SIP, which is attached hereto as Exhibit A and incorporated herein by reference. Additionally, a copy of the all documents that SIP Industries is seeking *in camera* treatment for is attached as Exhibits D1 - D7 and incorporated herein by reference.

**1. Exhibits CX0003, CX0004, CX0005, CX0007, and SIP Industries Fitting Sales for 2008-2011 meet the standard for *In Camera* treatment.**

Exhibits CX0003, CX0004, CX0005, CX0007, and SIP Industries' Fitting Sales for 2008 - 2011 meet the standard for *in camera* treatment. These proposed exhibits by Complaint Counsel

and McWane's Counsel contain proprietary information regarding SIP Industries' business, which if disclosed could be misused by SIP Industries' competitors and customers. Specifically, these documents contain information regarding negotiations on SIP Industries' business dealings, SIP Industries' sales of DIPF for years 2008-2011, SIP Industries' potential costs of doing business, negotiations and meetings with SIP Industries' potential customers and clients, and negotiations on various pricing structures and costs of doing business in various markets. The disclosure of this information would inflict serious injury upon SIP Industries by allowing a rival competitor or customer or client to gain a competitive advantage over SIP Industries in any future business dealing. The public disclosure of these exhibits could give a competitor, current client, or future client the blueprint for how SIP Industries develops and implements its strategic plans to grow its business and market share. Disclosure of this information could severely limit SIP Industries ability to effectively compete in various markets and locations giving outside parties undue leverage in any future negotiation with SIP Industries.

Additionally, the information contained in these documents has not been disclosed or made available to any person in the general public or SIP Industries employees and representatives other than specific salesmen and management involved in the negotiations. SIP Industries has even taken specific steps, such as labeling all communications privileged and confidential, to prevent disclosure of this information outside of the intended recipient. The public disclosures of the information contained in these exhibits would inflict serious and irreparable injury upon SIP Industries, and accordingly SIP Industries requests *in camera* treatment for these exhibits.

**2. Portions of Bharat Agarwal's Deposition Should be Afforded In Camera Treatment**

Complaint Counsel and McWane's Counsel have proposed to use specific excerpts from Bharat Agarwal's deposition on May 25, 2010 as exhibits during the administrative law trial. SIP Industries seeks to have *in camera* treatment for certain portions of Mr. Agarwal's deposition. Attached to this motion as Exhibit B is a list of the deposition excerpts that SIP Industries seeks *in camera* treatment for. The excerpts listed in Exhibit B concern SIP Industries' pricing procedures, SIP Industries' sales and negotiations with customers and distributors, and SIP Industries' strategic business decisions and internal market evaluation.

This information should be afforded *in camera* treat because: (1) it details how SIP Industries prices their various products in different markets in relation to their customers and competitors; (2) the public disclosure of this information would reveal SIP Industries' strategic growth plans, revenue sources, ability to compete in certain markets, and other important aspects of SIP Industries relations with its customers, clients, and distributors; (3) SIP Industries has expended a considerable amount of time and money to develop the information and knowledge contained in these excerpts, which is not readily available to the general public; and (4) SIP Industries has taken steps to prevent the disclosure of this highly sensitive information from public disclosure. If this information was publicly disclosed, it would severely hamper SIP Industries to effectively compete in certain markets as both potential customers and competitors could utilize this information to SIP Industries' detriment

**3. Portions of Bharat Agarwal's Testimony at the Investigation Hearing Should also be Afforded In Camera Treatment**

Complaint Counsel and McWane's Counsel have also proposed to used specific excerpts from Bharat Agarwal's testimony at the investigational hearing in front of the Federal Trade

Commission as exhibits. Attached as Exhibit C to this Motion is a list of the excerpts from the investigational hearing that SIP Industries also wishes to have in camera treatment be extended to. For the same reason *in camera* treatment should be extended to Bharat Agarwal's deposition testimony, his testimony at the investigational hearing should also be afforded *in camera* treatment.

For the foregoing reasons and those articulated in the Declaration of Bharat Agarwal, Serrampore Industries Private (Ltd.), Inc., d/b/a SIP Industries respectfully requests that this Court grant *in camera* protection to all of the documents identified in this motion.

Respectfully submitted,

SHEINESS, SCOTT, GROSSMAN & COHN, L.L.P.

By:           /s/ H. Miles Cohn          

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SERAMPORE INDUSTRIES PRIVATE (LTD.),  
INC., D/B/A SIP INDUSTRIES

**CERTIFICATE OF SERVICE**

I certify that a true copy of SIP Industries' Motion for *In Camera* Treatment of Material Previously Designated Confidential has been served, by United States mail, on the 27<sup>th</sup> day of July 2012, to the Administrative Law Judge and to all counsel of record, as follows:

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/s/ H. Miles Cohn  
H. Miles Cohn

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**PROPOSED ORDER ON SIP INDUSTRIES'  
MOTION FOR *IN CAMERA* TREATMENT**

Upon consideration of Serrampore Industries Private (Ltd.), Inc., d/b/a SIP Industries' Motion for *In Camera* Treatment of Material Previously Designated as Confidential, any opposition thereto, any hearing thereon,

IT IS HEREBY ORDERED, that Serrampore Industries Private (Ltd.), Inc., d/b/a SIP Industries Motion for *In Camera* Treatment of Material Previously Designated Confidential is GRANTED;

IT IS FURTHER ORDERED that pursuant to Rule 3.45(b) of the Federal Trade Commission Rules of Practice, 16 C.F. § 3.45(b), the following documents shall be subject to *in camera* treatment and will be kept confidential and not placed on the public records of this proceeding for 3 years.

Exhibit No.	Document Title	Date	Beg. Bates	End Bates
CX0003	Bharat Agarwal's 2009 Calendar	5/21/2010	CX0003-001	CX0003-011
CX0004	Email from Robert Marr to Bharat Agarwal re: DI Fitting Usage	9/21/2009	CX0004-001	CX0004-0018

CX0005	E-mail from Tilak Agarwal to Bahrat Agarwal and Laxman Agarwal re; Visit	7/16/2009	CX0005-001	CX00005-004
CX0007	Email from Robert Marr to Bharat Agarwal re: ready to produce ductile	10/22/2009	CX0007-001	CX0007-001
-	SIP Industries Fitting Sales 2008-2011	-	-	-

IT IS FURTHER ORDERED that pursuant to Rule 3.45(b) of the Federal Trade Commission Rules of Practice, 16 C.F. § 3.45(b), the deposition excerpts identified in Exhibit B hereto and the Investigational Hearing excerpts identified in Exhibit C hereto shall be subject to *in camera* treatment and will be kept confidential and not placed on the public records of this proceeding for 5 years.

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D. Michael Chappell  
Administrative Law Judge

Date: \_\_\_\_\_

**EXHIBIT A**  
**BHARAT AGARWAL'S DECLARATION FOR *IN CAMERA* TREATMENT**

**MATERIAL REDACTED PURSUANT TO RULE 3.45(b) OF  
THE FEDERAL TRADE COMMISSION RULES OF  
PRACTICE, 16 C.F.R. § 3.45(b)**

**EXHIBIT B**  
**CX 2522 DEPOSITION EXCERPTS FOR *IN CAMERA* TREATMENT**

**MATERIAL REDACTED PURSUANT TO RULE 3.45(b) OF  
THE FEDERAL TRADE COMMISSION RULES OF  
PRACTICE, 16 C.F.R. § 3.45(b)**

**EXHIBIT C**  
**CX 2521 EXCERPTS FROM INVESTIGATION HEARING**  
**FOR *IN CAMERA* TREATMENT**

**MATERIAL REDACTED PURSUANT TO RULE 3.45(b) OF  
THE FEDERAL TRADE COMMISSION RULES OF  
PRACTICE, 16 C.F.R. § 3.45(b)**

**EXHIBITS D-1 - D-7**  
**COPIES OF DOCUMENTS FOR *IN CAMERA* TREATMENT**

**MATERIAL REDACTED PURSUANT TO RULE 3.45(b) OF  
THE FEDERAL TRADE COMMISSION RULES OF  
PRACTICE, 16 C.F.R. § 3.45(b)**