

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES**

In the Matter of

McWANE, INC.,  
a corporation, and

STAR PIPE PRODUCTS, LTD.,  
a limited partnership,

Respondents.

DOCKET NO. 9351

Chief Administrative Law Judge  
D. Michael Chappell

**PUBLIC DOCUMENT  
(REDACTED)**

**MOTION OF NON-PARTY GRIFFIN PIPE PRODUCTS  
FOR *IN CAMERA* TREATMENT OF PROPOSED EVIDENCE**

Griffin Pipe Products (“GPP”) respectfully requests that this Court grant *in camera* treatment of documents and testimony that Complaint Counsel and Respondent McWane, Inc.’s Counsel have designated for possible introduction in the administrative trial in this matter. GPP, which is not a party to the above-captioned action, produced the documents at issue in response to a subpoena served on it by Complaint Counsel. The deposition testimony sought to be introduced was subpoenaed by Respondent McWane, Inc.

By letter dated July 17, 2012, Complaint Counsel notified GPP that it intends to introduce into evidence two documents produced by GPP in response to the subpoena and portions of the transcript of testimony given by Douglas Kuhrts, GPP’s National Customer Service Manager, in a deposition (the “Kuhrts deposition”). By letter dated July 17, 2012, counsel for Respondent McWane, Inc. likewise advised GPP that Respondent McWane, Inc. intends to introduce into evidence one of the two documents designated by Complaint Counsel and the Kuhrts deposition transcript in its entirety.

The documents designated by the Parties and the Kuhrts deposition transcript have been designated as confidential by GPP. As demonstrated below, this evidence meets the standard required to justify indefinite *in camera* treatment in this proceeding. Information contained in these documents and in the Kuhrts deposition transcript is competitively sensitive and is held in confidence by GPP. Public disclosure of this evidence is likely to cause direct, serious harm to GPP's competitive position. Therefore, pursuant to 16 C.F.R. § 3.45(b), GPP respectfully moves for indefinite *in camera* treatment of the documents and testimony in question. GPP submits the Declaration of Mark Ayres, its Controller, attached hereto as **Exhibit A**, in further support of this Motion.

The GPP documents designated for introduction into evidence by Complaint Counsel have been marked as Exhibit Numbers CX 2258 and CX 2259. The Kuhrts deposition transcript has been marked as CX 2508. Respondent McWane, Inc.'s Counsel has designated a single document by bates-number and the Kuhrts deposition transcript by name and date. The bates-number of the document designated by Respondent McWane Inc.'s Counsel corresponds to CX 2258. Respondent McWane Inc.'s designated evidence for which GPP seeks *in camera* treatment is listed on **Exhibit B** to this Motion. Copies of all of these documents are attached hereto as **Exhibit C**.

#### **I. APPLICABLE LEGAL STANDARD**

The evidence described in this Motion warrants *in camera* treatment as provided by 16 C.F.R. § 3.45(b). Under 16 C.F.R. § 3.45(b), requests for *in camera* treatment must demonstrate that public disclosure of the evidence at issue "will result in a clearly defined, serious injury to the person or corporation whose records are involved." *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961). That showing of a clearly defined, serious injury can be made by establishing that the information in question is "sufficiently secret and sufficiently material to the applicant's

business that disclosure would result in serious competitive injury.” *In re General Foods Corp.*, 95 F.T.C. 352, 355 (1980). In this context, “the courts have generally attempted to protect confidential business information from unnecessary airing.” *Hood*, 58 F.T.C. at 1188.

The secrecy and materiality of the documents in questions are evaluated according to the following standards articulated by the Commission in *In re Bristol-Meyers Co.*, 90 F.T.C. 455, 456 (1977):

- (1) the extent to which the information is known outside the applicant’s business;
- (2) the extent to which the information is known by employees and others 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 party in developing the information; and
- (6) the ease of difficulty with which the information could be properly acquired or duplicated by others. (*Id.*)

A non-party requesting *in camera* treatment deserves “special solicitude” for its confidential business information. *In the Matter of Kaiser Aluminum & Chemical Corp.*, 103 F.T.C. 500 (1984) (order directing *in camera* treatment for sales statistics over five years old); *In the Matter of General Foods Corp.*, 96 F.T.C. 168, 169 n.4 (1980) (order noting that “[r]ecent sales and profit data generally suggest themselves as being both secret and material to the firm concerned”). Indefinite *in camera* treatment may be granted where the competitive sensitivity or other proprietary value of the information will not diminish with the passage of time. *In re Coca Cola Co.*, 1900 F.T.C. LEXIS 364 (Oct. 17, 1990).

**II. GPP'S CONFIDENTIAL DOCUMENTS AND TESTIMONY WARRANT IN CAMERA TREATMENT UNDER THE FEDERAL TRADE COMMISSION'S RULES OF PRACTICE.**

**A. Description of Documents and Testimony and Nature of Confidential Information Designated By Complaint Counsel**

CX 2258

CX 2258 is a spreadsheet

As a result, public disclosure of this information would result in significant damage to GPP's commercial interests.

CX 2259

CX 2259 is a spreadsheet

As a result, public disclosure of this document would cause substantial damage to GPP's commercial interests.

Excerpts from CX 2508

CX 2508 is the complete transcript of the deposition testimony of Douglas Kuhrts, which was taken on May 24, 2012. Ayres Declaration at ¶ 5. Complaint Counsel has designated specific page/line portions of the Kuhrts deposition transcript. If the transcript is not offered or admitted in its entirety, GPP requests *in camera* treatment of the following specifically designated sections of the transcript, all of which reflect competitively sensitive and non-public information:

**B. Description of Documents and Testimony and Nature of Confidential Information Designated By Respondent McWane, Inc.**

GPP-FTGS0002384

The bates-number of this document is identical to the bates-number of the document designated by Complaint Counsel as CX 2258. Ayres Declaration at ¶ 4. As noted above, public disclosure of CX 2258 would result in significant damage to GPP's commercial interests. (*Id.*)

CX 2508

GPP understands that Respondent McWane, Inc. has designated the entirety of the Kuhrts deposition transcript, which is eighty-nine pages long. The transcript as a whole should be afforded *in camera* treatment because numerous and extensive portions of the transcript include highly sensitive and confidential information. Ayres Declaration at ¶ 5. If the Kuhrts deposition transcript is not offered or admitted in its entirety, in addition to its above-described request for *in camera* treatment of the excerpts designated by Complaint Counsel, GPP requests *in camera* treatment of the following sections of the transcript, all of which reflect competitively sensitive and non-public information:

**C. GPP Has Preserved the Secrecy and Confidentiality of the Information in the Documents and Testimony.**

The information contained in the documents and testimony described above is maintained as confidential by GPP. Ayres Declaration at ¶ 6. In a letter accompanying the document production including documents designated by Complaint Counsel as CX 2258 and CX 2259, GPP explicitly stated that these documents were highly confidential and proprietary to GPP. Further, GPP stated that any disclosure of these documents would be of serious concern to GPP, and requested confidential treatment of the documents.

Thus, the information contained in the documents and testimony for which GPP seeks *in camera* treatment is not known outside GPP and could not be easily acquired by others.

**D. The Public Interest in Disclosure is Outweighed by the Likelihood of Serious Competitive Harm to GPP.**

As a non-party requesting *in camera* treatment for its confidential business information, GPP justifiably requires and merits receiving “special solicitude.” *In the Matter of Kaiser Aluminum & Chemical Corp.*, 103 F.T.C. 500 (1984) (order directing *in camera* treatment for sales statistics over five years old). *In camera* treatment encourages non-parties to cooperate with future discovery requests in adjudicative proceedings. *Id.* GPP has cooperated with the

discovery demands in this case. Disclosing documents and testimony containing GPP's highly confidential information will not materially promote the resolution of this matter, nor will these documents and testimony lend measureable public understanding of these proceedings. The balance of interests clearly favors *in camera* protection for the documents and testimony at issue in this Motion.

**E. Protection Should be Extended Indefinitely**

The highly confidential information in the designated documents and testimony warrants indefinite *in camera* treatment. Indefinite *in camera* treatment may be granted where the competitive sensitivity or the proprietary value of the information will not diminish with the passage of time. *In re Coca Cola Co.*, 1990 F.T.C. LEXIS 364 (Oct. 17, 1990). Unlike ordinary business records, which often receive *in camera* treatment for shortened periods of time,

are extremely sensitive and are of

such enduring and significant proprietary value to GPP's competitive position that their value will not diminish with the passage of time.

**III. CONCLUSION**

Under the Federal Trade Commission's Rules of Practice and relevant FTC precedent, indefinite *in camera* treatment of documents designated as Exhibit No. CX 2258 and Exhibit No. CX 2259 and testimony designated as Exhibit No. CX 2508 (alternate designations in Exhibit B) is warranted. GPP respectfully requests *in camera* treatment of these documents and testimony indefinitely.

Dated: July 27, 2012

Respectfully submitted,

A handwritten signature in cursive script, reading "Elizabeth R. Sheyn", is written over a horizontal line.

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing Motion was served on the following  
on September 24, 2012.

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