

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Edith Ramirez, Chairwoman**
 Julie Brill
 Maureen K. Ohlhausen
 Joshua D. Wright

)	
In the Matter of)	
)	
CHARLOTTE PIPE AND)	Docket No. C-4403
FOUNDRY COMPANY,)	
a corporation,)	
AND)	
)	
RANDOLPH HOLDING)	
COMPANY LLC,)	
)	
a corporation.)	
)	

DECISION AND ORDER

The Federal Trade Commission (“Commission”) having initiated an investigation of certain acts and practices of Charlotte Pipe and Foundry Company (“Charlotte Pipe”), and its wholly-owned subsidiary, Randolph Holding Company, LLC, (“Randolph”), hereinafter referred to jointly as “Respondents,” including the acquisition of certain assets of Star Pipe Products, Ltd., and Respondents having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued, would charge Respondents with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and Section 7 of the Clayton Act, 15 U.S.C. § 18, and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent Charlotte Pipe and Foundry Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of North Carolina with its principal place of business located at 2109 Randolph Road, Charlotte, NC 28207.
2. Respondent Randolph Holding Company, LLC is a wholly-owned subsidiary of Charlotte Pipe and is a limited liability company organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its principal place of business located at 2109 Randolph Road, Charlotte, NC 28207.
3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. “Charlotte Pipe” means Charlotte Pipe and Foundry Company, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries (including Randolph), divisions, groups and affiliates controlled by Charlotte Pipe and Foundry Company, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Randolph” means Randolph Holding Company, LLC, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Randolph Holding Company, LLC, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Star Pipe” means Star Pipe Products, Ltd., a limited partnership organized and existing under the laws of the State of Texas, with its office and principal place of business located at 4018 Westhollow Parkway, Houston, Texas 77082, and includes its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Star Pipe Products,

Ltd., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

- D. "Commission" means the Federal Trade Commission.
- E. "Asset Purchase Agreement" means the acquisition agreement between Randolph and Star Pipe executed on or about July 14, 2010.
- F. "Cast Iron Soil Pipe Products" means cast iron soil pipe and cast iron soil pipe fittings, made primarily from recycled scrap iron or pig iron, which are used to transport wastewater to sewer systems, to vent building plumbing systems, and/or to transport rainwater to storm drains.
- G. "Confidentiality and Non-Competition Agreement" means each agreement entered into by Star Pipe and Randolph, by the general partners of Star Pipe and Randolph, and by each employee of Star Pipe and Randolph, as a condition to closing the transaction contemplated by the "Asset Purchase Agreement."
- H. "Charlotte Pipe Distributor" means any Person to whom Charlotte Pipe has sold Cast Iron Soil Pipe Products having a wholesale value exceeding \$35,000 during calendar year 2012.
- I. "Distribute" means to provide a copy of the specified documents by (1) personal delivery, with a signed receipt of confirmation; (2) first-class mail with delivery confirmation or return receipt requested; (3) facsimile with return confirmation; or (4) electronic mail with electronic return confirmation.
- J. "Person" means any natural person, partnership, corporation, association, trust, joint venture, government, government agency, or other business or legal entity.

II.

IT IS FURTHER ORDERED that Respondents shall not, without providing advance written notification to the Commission in the manner described in this Paragraph II, directly or indirectly, acquire:

- A. Any stock, share capital, equity, or other interest in any Person, corporate or otherwise, other than Charlotte Pipe, that produces or manufactures Cast Iron Soil Pipe Products that are sold in or into the United States; or
- B. Any assets that are used in, or that were used during the six (6) month period prior to the acquisition in the production or manufacture of Cast Iron Soil Pipe Products that are sold in or into the United States.

Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (herein referred to as “the Notification”), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission and a contemporaneous copy with the Bureau of Competition’s Compliance Division, notification need not be made to the United States Department of Justice, and notification is required only of Respondents and not of any other party to the transaction. Respondents shall provide the Notification to the Commission at least thirty days prior to consummating the transaction (hereinafter referred to as the “first waiting period”). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondents shall not consummate the transaction until thirty days after submitting such additional information or documentary material. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition.

PROVIDED, HOWEVER, that prior notification shall not be required by this paragraph for a transaction for which Notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

III.

IT IS FURTHER ORDERED that:

- A. Respondents shall not enforce any provisions of the “Confidentiality and Non-Competition Agreement” against any signatory to that agreement.
- B. Charlotte Pipe shall:
 - 1. Within two (2) days after the date this Order became final, Distribute to each signatory of the “Confidentiality and Non-Competition Agreement,” the letter attached as Appendix A to this Order; and
 - 2. Within seven (7) days from the date this Order becomes final, certify that Charlotte Pipe has Distributed to each signatory of the “Confidentiality and Non-Competition Agreement,” the letter attached as Appendix A to this Order, as required by this Paragraph III.B1.

The purpose of this Paragraph III is to ensure that Star Pipe, and any former or current employee of Star Pipe, can manufacture, import, distribute, or sell Cast Iron Soil Pipe Products in competition with Respondents, and to remedy the lessening of competition alleged in the Commission’s Complaint.

IV.

IT IS FURTHER ORDERED that Respondents shall:

- A. Within thirty (30) days after the date this Order becomes final, distribute to each member of the Board of Directors of Charlotte Pipe a copy of this Order and the Complaint issued by the Commission, and the letter attached as Exhibit A to this Order;
- B. For a period of five years from the date this Order becomes final:
 - 1. Publish on the official web site of Charlotte Pipe a copy of this Order, the Complaint issued by the Commission, the Commission's press release regarding this Order, and the letter attached as Exhibit B to this Order as a link from Charlotte Pipe's home or menu page, entitled "Federal Trade Commission Order Regarding Star Pipe Acquisition," in the same size and font as other menu items;
 - 2. Assure that the Order can be accessed through common search terms and archives on the web site; and
 - 3. Distribute this Order and the Complaint to each person who becomes an officer or member of the Board of Directors of Charlotte Pipe within (30) days of the date that he or she becomes an officer, director, or member of the Board of Directors.

V.

IT IS FURTHER ORDERED that:

- A. No later than sixty (60) days after the date the Order becomes final, Respondents shall:
 - 1. Distribute a copy of this Order, the Complaint, and the letter attached as Exhibit B to this Order, to each Charlotte Pipe Distributor.
 - 2. Submit to the Commission a verified written report setting forth in detail the manner and form in which Respondents have complied, are complying, and will comply with this Order. Such report shall include, but not be limited to:
 - (a) The name and business address of each member of the Board of Directors of Charlotte Pipe to whom Respondents sent a copy of this Order and the Complaint, and a copy of the return receipt or return confirmation received from each; and
 - (b) The name and business address of each Charlotte Pipe Distributor to whom Respondents sent a copy of this Order, the Complaint, and the letter attached as Exhibit B to this Order, and a copy of the return receipt or return confirmation received from each; and

- (c) A description of any other action taken by Respondents to comply with this Order.
- B. Beginning twelve (12) months after the date this Order becomes final, and annually thereafter on the anniversary of the date this Order becomes final, for the next five (5) years, and at such other times as the Commission requests, Respondents shall submit to the Commission verified written reports setting forth in detail the manner and form in which they are complying and have complied with this Order. For the periods covered by these reports, these reports shall include, but not be limited to:
 - 1. The name and business address of each member of the Board of Directors of Charlotte Pipe to whom Respondents sent a copy of this Order and the Complaint, who did not previously receive them, and a copy of the return receipt or return confirmation received from each; and
 - 2. A description and explanation, in reasonable detail, of the actions taken by Respondents with regard to Paragraph IV.B of this Order; and
 - 3. A copy of the return receipt or return confirmation from any Charlotte Pipe Distributor not previously submitted; and
 - 4. A description of any other action taken by Respondents to comply with this Order.

VI.

IT IS FURTHER ORDERED that each Respondent shall notify the Commission at least thirty (30) days prior to:

- A. Any proposed dissolution of such Respondent;
- B. Any proposed acquisition, merger, or consolidation of such Respondent; or
- C. Any other change in such Respondent, including but not limited to assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

VII.

IT IS FURTHER ORDERED that for the purpose of determining or securing compliance with this order, upon written request, each Respondent shall permit any duly authorized representative of the Commission:

- A. Access, during office hours of such Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession or under the control of such Respondent related to compliance with this Order, which copying services shall be provided by such Respondent at the request of the authorized representative(s) of the Commission and at the expense of such Respondent; and
- B. Upon five (5) days' notice to such Respondent and without restraint or interference from such Respondent, to interview officers, directors, or employees of such Respondent, who may have counsel present, regarding such matters.

VIII.

IT IS FURTHER ORDERED that this Order shall terminate on May 9, 2023.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED: May 9, 2013

EXHIBIT A
[COMPANY LETTERHEAD]

Dear [Recipient]:

Charlotte Pipe and Foundry Company (“Charlotte Pipe”), and Randolph Holding Company, LLC (“Randolph”), have consented to an order issued by the Federal Trade Commission that prohibits Charlotte Pipe and Randolph from enforcing Section 5.9 of the Asset Purchase Agreement executed on or about July 14, 2010 between Star Pipe Products, Ltd. (“Star Pipe”) and Randolph, or the Confidentiality and Non-Competition Agreement (the “CNC Agreement”), attached as Exhibit D thereto, against Star Pipe or any signatory to the CNC Agreement.

In light of the above, neither Star Pipe nor any signatory to the CNC Agreement has an obligation to comply with Section 5.9 or the CNC Agreement. Charlotte Pipe and Randolph further waive all rights to seek relief for breach of contract based on any provision of Section 5.9 or the CNC Agreement.

Because Charlotte Pipe and Randolph are prohibited from enforcing Section 5.9 or the CNC Agreement, Star Pipe, or any signatory to the CNC Agreement, is free to compete with Charlotte Pipe in the manufacture, distribution, and sale of cast iron soil pipe products in the United States. These parties may also disclose or publicize that Star Pipe’s cast iron soil pipe division was acquired by Charlotte Pipe.

Sincerely,

Roddey Dowd, Jr.
Chief Executive Officer
Charlotte Pipe and Foundry Company

EXHIBIT B
[COMPANY LETTERHEAD]

Dear [Recipient]:

Charlotte Pipe and Foundry Company, (“Charlotte Pipe”), is sending this letter pursuant to a Decision and Order issued by the Federal Trade Commission to inform you that the cast iron soil pipe division of Star Pipe Products, Ltd. (“Star Pipe”), was acquired by Randolph Holding Company, LLC (“Randolph”), a wholly owned subsidiary of Charlotte Pipe, pursuant to an Asset Purchase Agreement executed in July 2010.

As a condition of closing the transaction, Star Pipe agreed to send a letter to its distributors, customers, and suppliers stating that Star Pipe had decided to exit the cast iron soil pipe business.

Randolph and Star Pipe also entered a “Confidentiality and Non-Competition Agreement” as set forth in the Asset Purchase Agreement. Pursuant to this agreement, Star Pipe agreed to keep the acquisition of Star Pipe confidential. In addition, Star Pipe and certain employees of Star Pipe agreed to not compete with Charlotte Pipe and Randolph in the manufacture, distribution, and sale of cast iron soil pipe products in the United States, Mexico, and Canada for a period of six years.

Since 2002, Charlotte Pipe has purchased certain assets of other firms that sold cast iron soil pipe in the United States. At least one other seller, like Star Pipe, agreed to send a letter to customers stating the firm had decided to exit the cast iron soil pipe business in the United States.

For further information, the Federal Trade Commission’s Decision and Order, Complaint, Analysis to Aid Public Comment, and Press Release can be found at [cite - ftc.gov] on the Federal Trade Commission’s website.

Sincerely,

Roddey Dowd, Jr.
Chief Executive Officer
Charlotte Pipe and Foundry, Company