

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

FEDERAL TRADE COMMISSION,	§	
	§	
Petitioner,	§	
VS.	§	MISC. ACTION NO. H-11-399
	§	
STAR PIPE PRODUCTS, LTD,	§	
	§	
Respondent.	§	

ORDER ON PETITION TO ENFORCE SUBPOENA

I.

Before the Court is the Federal Trade Commission’s (“FTC”) petition for an order to enforce a subpoena *duces tecum* (Doc. No. 1). Also before the Court are the respondent, Star Pipe Products, Ltd.’s, response in opposition to such an order (Doc. No. 10) and the FTC’s reply and motion for leave to file a status memorandum (Doc. Nos. 11 and 13, respectively). Pursuant to the Court’s Order to Show Cause, the parties appeared before the Court and presented their respective arguments. The Court, being fully advised, is of the opinion that the petition is premature and that the motion should be denied without prejudice.

II.

The respondent is/was a manufacturer and supplier of iron products, usually in the form of soil pipes. The arguments to the Court and e-mail productions reveal that the respondent sold its soil pipe assets to Charlotte Pipe and Foundary Company, which sale appears to have triggered the FTC’s investigation into what effect that sale is having on the marketing of cast iron pipe and cast iron soil pipe fittings. According to an e-mail or letter, the investigation seeks to “determine whether McWane, Inc., Charlotte Pipe and Foundary Company and [the respondent] . . . have engaged, or are engaging, in unfair methods of competition in or affecting

commerce in violation of Section 5 of the FTC Act 15 U.S.C. § 54 . . . , or Section 7 of the Clayton Act, 15 U.S.C. § 18” through policies, programs or agreements relating to pricing and sale of soil pipe and fittings.

On or about June 17, 2011, the FTC issued the respondent an administrative compulsory process subpoena *duces tecum*, pursuant to its statutory authority under Section 3 of the FTC Act, 15 U.S.C. §§ 43, 46 and 49. According to the respondent, counsel accepted the subpoena and contacted the FTC on July 6, to discuss the scope of the subpoena, agree on modifications and obtain an extension of the return date. The FTC agreed to a return date of July 31, and expressed that it did not expect the respondent to comply by July 31, in light of ongoing discussions between the FTC and the respondent.

On August 1, documents were produced. As well, an agreement was reached to extend compliance to October 3. In the meantime, additional documents were produced. Nevertheless, disputes arose concerning the scope and extent of the produced documents. By October 3, the respondent had produced some 41,000 pages of documents and declared that production was completed. The FTC disagreed, asserting that the respondent’s production and compliance were insufficient in four (4) respects: (a) the respondent has made unilateral determinations of the relevance of certain documents or the information contained therein; (b) the respondent has not searched back-up tapes for other relevant data; (c) the respondent has not searched the e-mail account of a key employee; and (d) the respondent has produced an inadequate privilege log.

Since the FTC filed its petition, and prior to the hearing this day, the FTC filed a status memorandum advising the Court that additional data had been produced and/or promised. As well, the respondent argues, and the FTC acknowledges, that as late as the day prior to this hearing, the respondent modified its privilege log and engaged a contractor with the appropriate

equipment to search its back-up tapes. In addition, the respondent argues that the e-mail account of the “key employee” has been or is being produced.

In light of these ongoing productions by the respondent, the Court is loathe to interfere in the process. Production of documents, pursuant to a subpoena, such as that issued by the FTC, necessarily brings about a reciprocation in the dialogue and process that must be refined to a point that a court may determine issues of scope, relevance and privilege. The Court is of the opinion that the parties have not reached that final point as communications and the production of information continue.

The Court is of the opinion that to issue an order enforcing compliance with the FTC’s subpoena at this time would have a dilatory effect, causing the parties to move from conciliatory efforts to complete the process to a purely legal modality.

Therefore, it is ORDERED that the FTC’s petition to enforce is Denied without prejudice.

SIGNED at Houston, Texas this 3rd day of November, 2011.

A handwritten signature in black ink, appearing to read "Kenneth M. Hoyt", with a stylized flourish extending to the right.

Kenneth M. Hoyt
United States District Judge