

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In re

Subpoena Duces Tecum
dated April 4, 2014

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PUBLIC

File No. 131 0214

Petition of Star Pipe Products Ltd. to Limit Subpoena Duces Tecum

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Dated: April 24, 2014

I. Introduction and Summary of Petition

Pursuant to 16 C.F.R. § 2.10, Star Pipe Products Ltd. (“Star”) petitions the Federal Trade Commission to limit the subpoena *duces tecum* issued to Star on April 4, 2014 and received on April 9, 2014.

As explained below, Star is not objecting to all aspects of the subpoena or seeking to quash it in its entirety. Rather, Star’s objections are limited to those Definitions and Specifications that would require Star to produce virtually every document in its files.

Star’s counsel has had several discussions with counsel for the FTC regarding modifications for several of the Specifications. In particular, Star has proposed limiting Specifications 5 and 9 to documents containing any one of a number of relevant search terms that would capture documents related to Star’s actual competitors. Star also has proposed responding to Specifications 6 and 7 by providing its sales invoice transaction database, which shows DIPF prices and terms of sale, and its Special Pricing Request documents, which show individualized changes to Star’s announced multiplier prices to DIPF customers.

Counsel for the FTC is in the process of reviewing Star’s proposals. At this point, counsel for the FTC has agreed not to immediately seek authority to enforce the subpoena if Star is unable to produce all responsive documents on May 5, 2014. However, counsel for the FTC has refused to extend the return date, necessitating the filing of this Petition at this time.

The subpoena currently asks for responsive documents on or before May 5, 2014. Given the breadth of the subpoena and Star’s ongoing discussions with counsel for the FTC, Star files this Petition to Limit the subpoena and also requests additional time to respond.

II. Background

Star is committed to working with the FTC to produce additional reasonable and relevant documents and categories of documents required for the FTC’s work and on a reasonable

schedule. As mentioned above, Star has communicated with FTC staff to discuss a reasonable compromise to address Star's concerns that are outlined below. The problematic specifications in the subpoena are Specifications 5, 6, 7, and 9, which are overly broad, unduly burdensome, vague, ambiguous, and seek irrelevant information.

It is well established that requests of this nature for "all" or "any" documents on a subject are overly broad and unreasonable. *See McKinley v. FDIC*, 807 F. Supp. 2d 1, 7 (D.D.C. 2011) (discussing overbreadth and unreasonableness of similar requests); *Judicial Watch, Inc. v. Exp.-Imp. Bank*, 108 F. Supp. 2d 19, 27–28 (D.D.C. 2000) (requests for records about any company having contacts with two individuals and doing business with China was unreasonably broad). Counsel for the FTC has not articulated any limiting principles or protocols that would allow Star to respond to the subpoena in a reasonable manner, and depending upon the position ultimately taken by the FTC, these requests are potentially immensely burdensome, requiring an expensive review of vast numbers of documents. Thus, Star files this Petition and requests that the subpoena be limited as set forth in Star's objections set forth below.

III. Argument and Authorities

A. Legal standard.

The FTC is authorized by statute to issue subpoenas. *See* 15 U.S.C. § 45(a). However, an agency's power to compel the production of documents and information has limits. As explained in *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950), "governmental investigation into corporate matters may be of such sweeping nature and so unrelated to the matter properly under inquiry as to exceed the investigative power." Courts applying the *Morton Salt* standard have consistently held that administrative subpoenas and other investigative demands must be "reasonable." *See, e.g., United States v. Constr. Prods. Research, Inc.*, 73 F.3d 464,471 (2d Cir. 1996) ("the disclosure sought must always be reasonable"); *SEC v. Arthur*

Young & Co., 584 F.2d 1018, 1024 (D.C. Cir. 1978) (“the need for moderation in the subpoena’s call is a matter of reasonableness”); *FTC v. Texaco, Inc.*, 555 F.2d 862, 881 (“the disclosure sought shall not be unreasonable”). A subpoena that is “unduly burdensome or unreasonably broad” fails this test. *See Texaco, Inc.*, 555 F.2d at 882. In short, the FTC’s authority to request documents and information is tempered by the requirement that the requests be reasonable. *See Arthur Young & Co.*, 584 F.2d at 1031 (“while the Commission is entitled to great freedom in conducting its investigations, it is not at liberty to act unreasonably”).

B. Objections.

1. Star objects to the subpoena’s compliance date as unduly burdensome given the breadth of the specifications.

2. Star objects to the specifications to the extent they seek documents outside of Star’s possession, custody, or control.

3. Star objects to the specifications to the extent they seek documents protected by the attorney-client privilege, the work-product privilege, or any other applicable privilege, protection, or exemption from disclosure, and specifically including the definitions of Star, The Company, and Person, which include “attorneys, agents, consultants, and representatives.”

4. Star objects to the definition of “Designated Manager” to mean “a Regional Manager or the OEM Manager for sales of DIPF in and into the United States, and any employee performing any job function of a Regional Manager or the OEM Manager with responsibility for sales of DIPF in or into the United States.” This Definition is vague, ambiguous, and improper because Star does not use the job title of “Regional Manager” or “OEM Manager.” For each Specification that this Definition applies to, Star has identified, among others, proposed custodians that have job titles that Star believes would be equivalent to “Regional Manager” or

“OEM Manager,” and has proposed to provide responsive information regarding these individuals.

5. **Specification 5 and 9:** Star objects to these Specifications because they are overly broad, unduly burdensome, and seek irrelevant information. First, the Specifications request “all” documents and contain no subject matter limitation. Second, using the supplied definition of “Competitor,” which includes Star, these Specifications essentially ask for all of Star’s internal communications. Further, these Specifications are vague and ambiguous to the extent that the definition of “Competitor” includes entities “potentially engaged” in the manufacture of the Relevant Product, because Star has no means to identify those entities. As a way of responding to these Specifications in a reasonable manner, Star has suggested that it search particular custodians for a defined list of search terms related to Star’s actual competitors.

6. **Specification 6 and 7:** Star objects to these Specifications because they are overly broad, unduly burdensome, and seek irrelevant information. First, these Specifications request “all” documents and contains no subject matter limitation. Second, using the supplied definition of “Competitor,” which includes Star, these Specifications essentially ask for all of Star’s documents that discuss pricing or sale terms, which would be a vast number of documents. Further, these Specifications are vague and ambiguous to the extent that the definition of “Competitor” includes entities “potentially engaged” in the manufacture of the Relevant Product, because Star has no means to identify those entities. As a way of responding to these Specifications in a reasonable manner, Star has offered to produce its DIPF sales transaction database for the relevant time period, along with DIPF Special Pricing Request documents, which will show DIPF sales and pricing during the relevant time period.

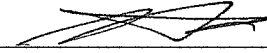
IV. Conclusion

Star respectfully requests that the FTC extend the date for compliance and objection to the subpoena so that Star and staff can continue to confer and try to reach agreement; or alternatively, to grant this petition, limit the subpoena issued to Star based on the objections set forth herein, and modify the subpoena's return date to provide a reasonable time for compliance. Star also requests any other relief to which it may be entitled.

Dated: April 24, 2014.

Respectfully submitted,

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Statement of Conference

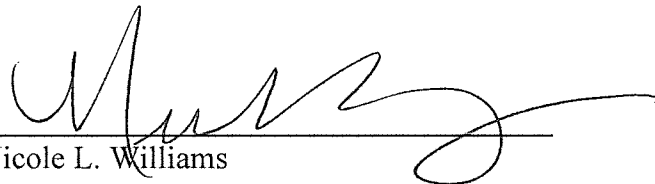
This is to certify that counsel for Star has conferred with FTC staff in good faith to resolve by agreement the issue raised by this petition and have been unable yet to reach agreement on the issues noted in this petition.



Gregory S. C. Huffman

Certificate of Service and Regarding Electronic Copy

This is to certify that on April 24, 2014, I caused the original and 12 copies of the foregoing document (and all attachments), along with a CD containing an electronic copy of the same, to be sent for delivery by delivery service to the Federal Trade Commission, Office of the Secretary, Room H-113, 600 Pennsylvania Avenue, NW, Washington, DC 20580, and one copy to Commission Counsel at the Federal Trade Commission, Bureau of Competition, 601 New Jersey Ave., NW, Washington, D.C. 20580. I certify that the electronic copy is the same as the paper original copy.



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