In response to Administrative Law Judge Chappell’s (“Judge Chappell”) April 27, 2009 Order on Respondent’s Motion for In Camera Treatment (“April 27th Order”), Respondent removed 482 exhibits from its Final Proposed Exhibit List which resulted in 332 exhibits being removed from in camera consideration. Similarly, Complaint Counsel’s revisions to its Final Proposed Exhibit List allowed Respondent to remove an additional 142 exhibits from in camera consideration. Additionally, Respondent has conducted a complete and thorough review of every exhibit identified in Respondent’s original motion for in camera treatment in order to reduce the total number of exhibits for which Respondent seeks in camera protection. In total, Respondent has removed over 915 exhibits from in camera consideration, approximately 60% of the exhibits for which Respondent originally sought in camera protection.
Respondent Polypore International, Inc. ("Polypore") seeks in camera treatment for the remaining exhibits included in its original motion. These documents are highly sensitive and proprietary in nature. Public disclosure of such information would divulge Polypore's most sensitive and confidential information to competitors and/or customers, and would cause irreparable harm and serious injury to Polypore. Accordingly, Polypore respectfully requests an order requiring these materials to be used at the hearing only in camera and maintained under seal.

The specific pages and documents which have been identified by Polypore, after multiple reviews of Complaint Counsel's and Polypore's revised Final Proposed Exhibit Lists, fall within the Commission's strict standards for in camera treatment as set forth in the April 27th Order and the opinions of this Commission. Each exhibit identified by Polypore contains sensitive information that is "sufficiently secret and sufficiently material to [Polypore's] business that disclosure would result in serious competitive injury" and, even when balanced against the "importance of the information in explaining the rationale of Commission decisions" warrants in camera treatment. General Foods Corp., 95 FTC 352 (1980). The exhibits at issue in this Second Motion are listed in the index attached hereto as Exhibit A. For ease of reference, Polypore has grouped the exhibits identified in Exhibit A into the following categories:

1. Category 1 – Business Plans & Strategies
2. Category 2 – Contract Negotiations & Customer Contracts
3. Category 3 – Intellectual Property & Proprietary Information
4. Category 4 – Market Analysis Documents
5. Category 5 – Pricing Strategy Documents

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The grounds for this Second Motion are set forth herein, and this Second Motion is fully supported by the sworn Second Declaration of Michael Shor ("Shor Decl.") attached hereto as Exhibit B and which individually analyzes each item listed on Exhibit A. The documents themselves were previously provided as a DVD exhibit to Respondent’s original motion.

Introduction

In response Judge Chappell’s April 27th Order, Respondent conduct a careful re-examination of each exhibit identified in Respondent’s original motion to determine whether the confidential material met the strict standards warranting in camera treatment. As a result of this additional review, Respondent has carefully limited the number and nature of documents for which it requests in camera protection. Of the approximately 1,600 exhibits for which Respondent originally sought in camera treatment, over 915 exhibits have been removed. As Respondent will demonstrate herein and in the supporting Second Declaration of Michael Shor, the public disclosure of the remaining exhibits, identified in Exhibit A hereto, will likely result in a clearly defined, serious injury to Respondent, thus justifying in camera treatment under the standard articulated by the Commission in 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) and 2000 FTC LEXIS 138 (Sept. 19, 2000); and In re Basic Research, Inc., 2006 FTC LEXIS 14 (Jan. 25, 2006).

The exhibits identified in Exhibit A contain confidential information that is paramount to Polypore’s business, competitiveness, and profitability. Indeed, revealing such information
would, among other things: (1) allow Polypore’s competitors to gain a commercial advantage through knowledge of Polypore’s pricing strategies, production capacities, technical know-how, and manufacturing processes; (2) give Polypore’s customers a tactical advantage in future negotiations with Polypore; and (3) enable suppliers to peg the prices they charge Polypore. At the very least, disclosure of the information Polypore seeks to protect would deprive Polypore of its current bargaining position with customers and suppliers; at worst, competitors would be allowed unfettered access to Respondent’s confidential and sensitive documents which will inevitably create a less competitive marketplace and harm competition. Continued confidentiality of these documents is key to maintaining Polypore’s ability to develop, market, and sell its products in this competitive market dominated by powerful buyers.

Argument

Pursuant to Commission Rule 3.45(b), the Administrative Law Judge may order material, or portions thereof, offered into evidence . . . to be placed in camera on a finding that their public disclosure will likely result “in a clearly defined, serious injury to the .. corporation requesting in camera treatment.” 16 C.F.R. § 3.45(b)(emphasis added). Establishing that a “serious injury” would ensue with disclosure requires a demonstration that serious and irreparable harm will result from the Court’s publication of the confidential documents. Meeting such a standard requires Respondent to make a clear showing that the information concerned is “sufficiently secret and sufficiently material to [Respondent’s] business that disclosure would result in serious competitive injury.” See Bristol-Myers Co., 90 FTC 455 (1977), General Foods Corp., 95 FTC 352 (1980).

In Bristol-Myers, 90 FTC 455 (1977), the Commission outlined six factors to be weighed when determining materiality and secrecy: (1) the extent to which the information is known outside of 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 applicant in
developing the information; and (6) the ease or difficulty with which the information could be
properly acquired or duplicated by others. Additionally, the Commission has expounded on the
definition of “serious injury,” stating “[t]he likely loss of business advantages is a good example
of a clearly defined, serious injury.” Hoechst Marion Roussel, Inc., 2000 FTC LEXIS 138 (Sept.
19, 2000).

As set forth below and in the Second Declaration of Michael Shor, the documents list in
Exhibit A, and grouped by the previously identified nine categories, contain information
sufficiently secret, and sufficiently material to Polypore’s business, that disclosure constitutes a
serious competitive injury under the Bristol-Myers factors and prevailing Commission law.

I. IN CAMERA TREATMENT IS WARRANTED FOR THE FOLLOWING
POLYPORE DOCUMENTS

A. Category One – Business Plans & Strategies
[Redacted – Subject to Pending Motion for In Camera Treatment]

B. Category Two – Contract Negotiations & Customer Contracts
[Redacted – Subject to Pending Motion for In Camera Treatment]

C. Category Three – Intellectual Property & Proprietary Information
[Redacted – Subject to Pending Motion for In Camera Treatment]

D. Category Four – Market Analysis Documents
[Redacted – Subject to Pending Motion for In Camera Treatment]

E. Category Five – Pricing Strategy Documents
[Redacted – Subject to Pending Motion for In Camera Treatment]
F. Category Six – Customer-Specific Documents

[Redacted – Subject to Pending Motion for In Camera Treatment]

G. Category Seven – Costing Data

[Redacted – Subject to Pending Motion for In Camera Treatment]

H. Category Eight – Sales and Financial Information

[Redacted – Subject to Pending Motion for In Camera Treatment]

I. Category Nine – Multiple-Category Documents

[Redacted – Subject to Pending Motion for In Camera Treatment]

II. IN CAMERA TREATMENT IS ALSO WARRANTED FOR POSSIBLE TRIAL TESTIMONY BY POLYPORE’S WITNESSES

Both Respondent and Complaint Counsel have designated several Polypore employees as potential trial witnesses. Polypore’s employees will likely be questioned about the topics covered by this motion. Testimony on all of these topics could result in the disclosure of the same information contained in the documents described above. Thus, Polypore also requests that any trial testimony, either upon direct examination or cross examination by either party on any of these topics, be subject to in camera treatment for a period of three (3) to five (5) years from the date of this motion.

Conclusion

[Redacted – Subject to Pending Motion for In Camera Treatment]. For the foregoing reasons and those articulated in the Second Declaration of Michael Shor, Polypore respectfully requests that this Court grant in camera protection to all the documents identified on Exhibit A and any trial testimony related to the topics covered by the documents in Exhibit A.
Dated: May 5, 2009

Respectfully submitted,

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Attorneys for Respondent
UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of

Docket No. 9327

Polypore International, Inc.
a corporation

PUBLIC DOCUMENT

PROPOSED ORDER

Upon consideration of Respondent’s Second Motion for In Camera Treatment of Certain Trial Exhibits, any opposition thereto, any hearing thereon, and the entire record in this proceeding,

IT IS HEREBY ORDERED, that Respondent’s Motion is GRANTED.

IT IS FURTHER ORDERED, that pursuant to Rule 3.45(b) of the Federal Trade Commission Rules of Practice, 16 C.F.R.§ 3.45(b), the documents identified in the index attached as Exhibit A to the Motion, and any related trial testimony, shall be subject to the requested in camera treatment and will be kept confidential and not placed on the public record of this proceeding.

D. Michael Chappell
Administrative Law Judge

Date: ____________________
CERTIFICATE OF SERVICE

I hereby certify that on May 5, 2009, I caused to be filed via hand delivery and electronic mail delivery an original and two copies of the foregoing Respondent’s Second Motion for In Camera Treatment of Certain Trial Exhibits [PUBLIC], and that the electronic copy is a true and correct copy of the paper original and that a paper copy with an original signature is being filed with:

Donald S. Clark, Secretary
Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW, Rm. H-135
Washington, DC 20580
secretary@ftc.gov

I hereby certify that on May 5, 2009, I caused to be served one copy via electronic mail delivery and two copies via overnight mail delivery of the foregoing Respondent’s Second Motion for In Camera Treatment of Certain Trial Exhibits [PUBLIC] upon:

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
oali@ftc.gov

I hereby certify that on May 5, 2009, I caused to be served via first-class mail delivery and electronic mail delivery a copy of the foregoing Respondent’s Second Motion for In Camera Treatment of Certain Trial Exhibits [PUBLIC] upon:

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Exhibits A-C
Redacted