

ORIGINAL



UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of)
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)
)
)
Polypore International, Inc.)
a corporation)
_____)

Docket No. 9327

PUBLIC¹

**RESPONDENT’S THIRD MOTION FOR *IN CAMERA* TREATMENT
OF CERTAIN TRIAL EXHIBITS**

By Order on May 13, 2009 (the “Order”), Administrative Law Judge Chappell granted, in part, Respondent’s Second Motion for *In Camera* Treatment. As to the remaining exhibits for which Respondent had sought *in camera* treatment, the Order denied Respondent’s Second Motion for *In Camera* Treatment without prejudice. As to these exhibits, Respondent has conducted a complete and thorough review in order to reduce the total number of exhibits for which Respondent seeks *in camera* protection. In the instant motion, Polypore International, Inc. (“Polypore”) seeks *in camera* treatment for the remaining exhibits it contends warrant *in camera* treatment. Additionally, Respondent seeks *in camera* treatment for a handful of exhibits which were introduced for the first time at the trial of this proceeding and which had not been previously included by Respondent in a motion for *in camera* treatment.

The exhibits identified in the instant motion 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

¹ This motion refers to and contains information subject to Respondent’s Third Motion for *In Camera* Treatment of Certain Trial Exhibits pursuant to Rule 3.45(b) of the FTC’s Rules of Practice. Such information has been redacted and labeled “[Redacted – Subject to Pending Motion for *In Camera* Treatment]” in the public version of this motion.

injury to Polypore. Accordingly, Polypore respectfully requests an order granting *in camera* status to these exhibits.

The specific pages and exhibits which have been identified by Polypore fall within the Commission's strict standards for *in camera* treatment as set forth in Judge Chappell's April 27, 2009 Order and the opinions of this Commission.² 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 Third 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
6. Category 6 – Customer-Specific Documents
7. Category 7 – Costing Data
8. Category 8 – Sales & Financial Information
9. Category 9 – Multiple Category Documents

² See *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 grounds for this Third Motion are set forth herein, and this Third Motion is fully supported by the sworn Third Declaration of Michael Shor (“Shor Decl.”) attached hereto as Exhibit B and which individually analyzes each item listed on Exhibit A.

Introduction

As Respondent will demonstrate herein and in the supporting Third Declaration of Michael Shor, the public disclosure of the 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 Third 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

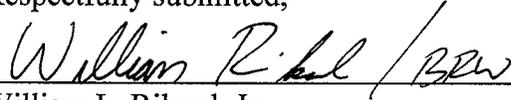
[Redacted – Subject to Pending Motion for *In Camera* Treatment]

Conclusion

[Redacted – Subject to Pending Motion for *In Camera* Treatment]. For the foregoing reasons and those articulated in the Third Declaration of Michael Shor, Polypore respectfully requests that this Court grant *in camera* protection to all the documents identified on Exhibit A.

Dated: June 11, 2009

Respectfully submitted,



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Attorneys for Respondent

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

In the Matter of)
)
)
Polypore International, Inc.)
a corporation)
_____)

Docket No. 9327

PUBLIC DOCUMENT

PROPOSED ORDER

Upon consideration of Respondent's Third 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 June 11, 2009, I caused to be filed via hand delivery and electronic mail delivery an original and two copies of the foregoing ***Respondent's Third 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 June 11, 2009, I caused to be served one copy via electronic mail delivery and two copies via hand delivery of the foregoing ***Respondent's Third 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
oalj@ftc.gov

I hereby certify that on June 11, 2009, I caused to be served via hand delivery and electronic mail delivery a copy of the foregoing ***Respondent's Third Motion for In Camera Treatment of Certain Trial Exhibits [PUBLIC]*** upon:

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Exhibit A

Polypore International, Inc., Docket 9327
Provisional In Camera Documents Requiring In Camera Treatment
06/10/2009

Exhibit#	Description	Docdate	Beginning Document #	Ending Document #	Pages	Time Period	Category
PX0077							1, 4, 6
PX0080							1, 3, 4, 5, 6, 8
PX0194							1, 4
PX0207							1, 4, 6, 7, 8
PX0215							1, 4, 5, 6
PX0223							1, 2, 5, 8
PX0243							1, 2, 5, 6, 7, 8
PX0255							1, 2, 5, 6
PX0259							6

Redacted

Polypore International, Inc., Docket 9327
Provisional In Camera Documents Requiring In Camera Treatment
06/10/2009

Exhibit#	Description	Docdate	Beginning Document #	Ending Document #	Pages	Time Period	Category
PX0263	Redacted						4, 5, 8
PX0265							1, 4, 5, 6
PX0280							1, 4, 5, 6
PX0302							1, 4, 5, 6
PX0411							1, 6
PX0428							5, 6
PX0462							1, 4, 8
PX0463							1, 4, 8
PX0625							3
PX0689							2, 5, 6
PX0835						1, 2, 5, 6	

Polypore International, Inc., Docket 9327
Provisional In Camera Documents Requiring In Camera Treatment
06/10/2009

Exhibit#	Description	Docdate	Beginning Document #	Ending Document #	Pages	Time Period	Category
PX0852							5, 6
PX0853							1, 2, 5, 6
PX0857							5, 6
PX0923							1, 4
PX0924							1, 4
PX1084							6
PX1450							1, 4
PX1744							1, 5, 6
PX1781							1, 4, 5, 6, 8
PX1798							1, 5, 6, 7, 8
PX1799							6, 8

Redacted

Polypore International, Inc., Docket 9327
 Provisional In Camera Documents Requiring In Camera Treatment
 06/10/2009

Exhibit#	Description	Docdate	Beginning Document #	Ending Document #	Pages	Time Period	Category
PX2018							8
PX2080					1		
PX2086					1, 4, 5, 6, 8		
PX2099					1, 6		
PX2189					1, 3		
PX2217					8		
PX2220					3		
PX2225					1, 4, 6		
PX2226					1, 4, 5		
PX2227					2, 6		

Redacted

Polypore International, Inc., Docket 9327
Provisional In Camera Documents Requiring In Camera Treatment
06/10/2009

Exhibit#	Description	Docdate	Beginning Document #	Ending Document #	Pages	Time Period	Category
PX2228							6
PX2230							5, 6, 8
PX2231							4, 6, 8
PX2233							1, 5, 6
PX2235							1, 2, 3
PX2236							1, 3
PX2239							2
PX2240							1, 3
PX2242							1, 4, 6, 8
PX2251							1, 4, 5, 6
PX2252							2, 5, 6

Redacted

**Polypore International, Inc., Docket 9327
 Provisional In Camera Documents Requiring In Camera Treatment
 06/10/2009**

Exhibit#	Description	Docdate	Beginning Document #	Ending Document #	Pages	Time Period	Category
PX2254							7, 8
PX2255							7, 8
PX2256							7, 8
PX2285							3
PX2286							5, 7, 8
PX2288							6, 7, 8
PX2289							6, 7, 8
PX2294							5, 6, 8
PX3015							7, 8
RX00404							1, 4, 6
RX00553							1, 4, 5, 6, 7, 8
RX00554							1, 4, 5, 6, 7, 8
RX00555							1, 4, 5, 6, 7, 8

Redacted

Polypore International, Inc., Docket 9327
Provisional In Camera Documents Requiring In Camera Treatment
06/10/2009

Exhibit#	Description	Docdate	Beginning Document #	Ending Document #	Pages	Time Period	Category
RX00571							1, 4, 5, 6, 7, 8
RX00580							1, 4, 5, 6, 7, 8
RX00586							1, 4, 5, 6, 7, 8
RX00587							1, 4, 5, 6, 7, 8
RX00596							6
RX00638							1, 4, 5, 6, 7, 8
RX00640							1, 4, 5, 6, 7, 8
RX00657							6
RX00658							1, 4, 5, 6, 7, 8
RX00683							1
RX00694							1, 5, 6, 8
RX00696							1, 4, 5, 6, 7, 8

Redacted

**Polypore International, Inc., Docket 9327
 Provisional In Camera Documents Requiring In Camera Treatment
 06/10/2009**

Exhibit#	Description	Docdate	Beginning Document #	Ending Document #	Pages	Time Period	Category
RX00697							1, 4, 5, 6, 7, 8
RX00698							1, 4, 5, 6, 7, 8
RX00699							1, 4, 5, 6, 7, 8
RX00700							1, 4, 5, 6, 7, 8
RX00701							1, 4, 5, 6, 7, 8
RX00702							1, 4, 5, 6, 7, 8
RX00703							1, 4, 5, 6, 7, 8
RX00704							1, 4, 5, 6, 7, 8
RX00705							1, 4, 5, 6, 7, 8
RX00706							1, 4, 5, 6, 7, 8
RX00707							1, 4, 5, 6, 7, 8
RX00735							5, 6

Redacted

Polypore International, Inc., Docket 9327
 Provisional In Camera Documents Requiring In Camera Treatment
 06/10/2009

Exhibit#	Description	Docdate	Beginning Document #	Ending Document #	Pages	Time Period	Category
RX00772							4, 6
RX00819							1, 4, 8
RX01080							5, 6, 8
RX01133							1, 4
RX01229							1, 5, 6, 7, 8
RX01299							3
RX01340							4, 5, 6
RX01349							6
RX01497							1, 4
RX01498							1, 4
RX01615							2, 5, 6
RX01631							5, 6

Redacted

Polypore International, Inc., Docket 9327
Provisional In Camera Documents Requiring In Camera Treatment
06/10/2009

Exhibit#	Description	Docdate	Beginning Document #	Ending Document #	Pages	Time Period	Category
RX01632	Redacted				6		
RX01642					1		

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

In the Matter of)	Docket No. 9327
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)	
Polypore International, Inc.)	
a corporation)	PUBLIC DOCUMENT¹
)	

THIRD DECLARATION OF MICHAEL SHOR

I, Michael Shor, being duly sworn and based upon my personal knowledge, declare and state as follows:

1. I am Special Counsel of Respondent Polypore International, Inc. (“Polypore”).

2. I am familiar with the documents of Polypore and the level of confidentiality associated with the subject matter therein.

3. I submit this declaration in support of Polypore’s Third Motion for *In Camera* Treatment of Certain Trial Exhibits, requesting *in camera* treatment of certain documents, identified by Complaint Counsel and/or Polypore as potential trial exhibits at the hearing of this matter.

4. I am personally informed of the content of the individual documents and groups of documents that were reviewed, and the specific basis upon which Polypore is moving for *in camera* treatment of such documents.

¹ This Declaration refers to and contains information subject to Respondent’s Third Motion for *In Camera* Treatment of Certain Trial Exhibits pursuant to Rule 3.45(b) of the FTC’s Rules of Practice. Such information has been redacted and labeled “[Redacted – Subject to Pending Motion for *In Camera* Treatment]” in the public version of this Declaration.

5. Each of the documents identified in Exhibit A of Polypore's Third Motion for *In Camera* Treatment of Certain Trial Exhibits, and individually described herein, contain sensitive and confidential material and/or information that would result in competitive injury to Polypore should it be made public.
6. Each document identified by Polypore as requiring *in camera* treatment has been maintained internally by Polypore in a confidential manner, only being shared with those individuals requiring the knowledge contained within the documents. Additionally, each such document has, upon production in this case, been designated "Confidential Material" pursuant to the Protective Order entered on October 23, 2008.
7. Exhibit A to Polypore's Third Motion for *In Camera* Treatment of Certain Trial Exhibits is an index which lists each document for which Polypore seeks *in camera* treatment. This index contains the exhibit designation (*i.e.*, "RX" or "PX"), the exhibit number, a description of the exhibit, the date of the exhibit, the individual pages (if applicable) requiring *in camera* treatment, the categorical reason for seeking *in camera* treatment, and the length of time for which *in camera* treatment is sought.
8. These exhibits
[Redacted – Subject to Pending Motion for *In Camera* Treatment] The public disclosure of any of this critically sensitive information would be highly detrimental to Polypore
[Redacted – Subject to Pending Motion for *In Camera* Treatment]
Each document is individually reviewed in turn below, and for convenience's sake, organized by the following categories:

- (a) Category 1 – Business Plans & Strategies
 - (b) Category 2 – Contract Negotiations & Customer Contracts
 - (c) Category 3 – Intellectual Property & Proprietary Information
 - (d) Category 4 – Market Analysis Documents
 - (e) Category 5 – Pricing Strategy Documents
 - (f) Category 6 – Customer-Specific Documents
 - (g) Category 7 – Costing Data
 - (h) Category 8 – Sales & Financial Information
 - (i) Category 9 – Multiple Category Documents
9. Also for convenience sake, the subject documents are also summarized in the index attached as Exhibit A to Respondent’s Third Motion.

CATEGORY ONE – BUSINESS PLANS & STRATEGIES

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

CATEGORY TWO – CONTRACT NEGOTIATIONS & CUSTOMER CONTRACTS

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

CATEGORY THREE – INTELLECTUAL PROPERTY & PROPRIETARY INFORMATION

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

CATEGORY FOUR – MARKET ANALYSIS DOCUMENTS

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

CATEGORY FIVE – PRICING STRATEGY DOCUMENTS

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

CATEGORY SIX – CUSTOMER-SPECIFIC DOCUMENTS

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

CATEGORY SEVEN – COSTING DATA

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

CATEGORY EIGHT – SALES & FINANCIAL INFORMATION

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

CATEGORY NINE – MULTIPLE-CATEGORY DOCUMENTS

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

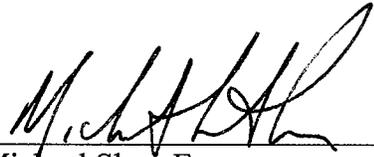
19. Prior to this administrative proceeding, the information contained in the exhibits identified by Polypore for *in camera* treatment has been revealed only to appropriate Polypore personnel and any contracting parties to the particular documents. General Polypore employees do not have access to the documents containing *in camera* material. Such information is not in the public domain and cannot be obtained through other means.

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

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

I declare, under penalty of perjury, that the above statements are true and correct.

This 11th day of June, 2009.
Charlotte, North Carolina



Michael Shor, Esq.

NOTARIZED:



Marilyn Owendoff
Notary Public, District of Columbia
My Commission Expires 02-28-10