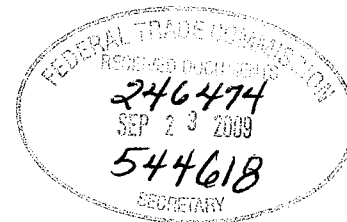


ORIGINAL



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

_____)
In the Matter of _____)
POLYPORE INTERNATIONAL, INC., _____)
Respondent. _____)
_____)

Docket No. 9327

**ORDER ON MOTION FOR LEAVE TO INTERVENE
BY NON-PARTY HOLLINGSWORTH & VOSE COMPANY**

I.

On September 2, 2009, non-party Hollingsworth & Vose (H&V) filed a motion seeking leave to intervene in this action for the limited purpose of opposing any order or remedy affecting its rights and in particular its contractual rights arising under the March 23, 2001 Cross Agency Agreement between H&V and Daramic, Inc. (the "Cross Agency Agreement"). The deadline for the parties to file a response or opposition to the motion to intervene was September 14, 2009. Neither party filed an opposition or objection. For the reasons set forth below, H&V's motion is GRANTED in part and DENIED in part.

II.

H&V states that Complaint Counsel has asserted in this case that Daramic, as part of an unlawful pattern of anticompetitive conduct, entered into the Cross Agency Agreement in order to prevent H&V from entering the PE separator market. H&V further states that, as a remedy for Daramic's alleged unfair competition with respect to the Cross Agency Agreement, Complaint Counsel seeks an order compelling Respondent to modify the Cross Agency Agreement in order to rescind H&V's rights arising under it.

H&V urges, "[a]bsent a full and fair opportunity to be heard, including through the presentation of evidence and the right of cross-examination, H&V's contractual rights may not be adjudicated." H&V argues that it should be permitted to intervene to be heard on the merits of the proposed remedy because the proposed remedy affects H&V's rights.

III.

Pursuant to Rule 3.14(a) of the Commission's Rules of Practice, the Administrative Law Judge "may by order permit the intervention to such extent and upon such terms as are provided by law or as otherwise may be deemed proper." 16 C.F.R. § 3.14(a). By law, good cause must be shown to allow intervention. *In re Kentucky Movers Household Goods Carriers Ass'n*, Dkt.

9309, 2004 FTC LEXIS 84, at *3 (citing 5 U.S.C. § 45(b)). Before the Commission will allow intervention into its proceedings, it must be demonstrated that the persons seeking such intervention desire to raise substantial issues of law or fact which would not otherwise be properly raised or argued; and that the issues raised are of sufficient importance to warrant additional expenditure of Commission resources on a necessarily longer and more complicated proceeding. *Id.* (citing *In re Firestone Tire & Rubber Co.*, Dkt. 8818, 77 F.T.C. 1666 (1970)). In considering a motion to intervene, Administrative Law Judges shall also take into account the need to conclude the proceedings as expeditiously as possible. *Id.* at * 4 (citing *In re Kellogg Co.*, Dkt. 8883, 1979 FTC LEXIS 89, *3 (1979)).

Part VIII of the order for relief proposed by Complaint Counsel would require Respondent to do the following:

1. Within fifteen (15) days after the date this Order becomes final: (a) modify and amend the H&V Agreement in writing to terminate and declare null and void, and (b) cease and desist from, directly or indirectly, or through any corporate or other device, implementing or enforcing, the covenant not to compete set forth in Section 4 of the H&V Agreement, and all related terms and definitions, as that covenant applies to North America and to actual and potential customers within North America.
2. Within thirty (30) days after the date this Order becomes final, file with the Commission the written amendment to the H&V Agreement ("Amendment") that complies with the requirements of Paragraph VI.A.1 [sic]

H&V urges contends that, if Complaint Counsel prevails with respect to the relief sought by Part VIII of its proposed order, H&V's contractual rights will have been adjudicated without H&V having been a party to this action.

H&V has demonstrated that it will raise substantial issues pertaining to its rights under the Cross Agency Agreement and that the issues are of sufficient importance. Further, no party has opposed the motion for intervention. For these reasons, the H&V's motion to intervene is GRANTED IN PART, as described below.

IV.

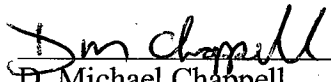
The trial in this matter was concluded on June 12, 2009. The record was closed on June 22, 2009. The parties submitted their post trial briefs on July 10, 2009 and their replies to each other's post trial briefs on July 31, 2009.

The Complaint in this case, which included allegations about the Cross Agency Agreement, was issued on September 9, 2008. It cannot reasonably be disputed that H&V was aware of the allegations of the Complaint well before filing this motion to intervene. Indeed, on

February 4, 2009, H&V filed a stipulation regarding the treatment under the Protective Order Governing Discovery of certain of H&V's confidential information. H&V submitted three motions for *in camera* treatment of its materials on April 9, 2009, May 28, 2009, and June 16, 2009 respectively. In addition, on May 12, 2009, H&V filed a motion to quash the subpoenas *ad testificandum* served on H&V employees, Robert Cullen and Kevin Porter. These H&V employees appeared through deposition testimony, as agreed to by the parties and approved by the Administrative Law Judge. H&V's motion to intervene, filed on September 2, 2009, is untimely for purposes of allowing H&V to present evidence or conduct cross-examination at the trial in this matter. Accordingly, in this respect, H&V's motion to intervene is DENIED.

H&V's motion to intervene is GRANTED only for the limited purpose of providing a brief and any proposed findings of fact on the issue of how the proposed remedy might affect H&V's rights under the Cross Agency Agreement. Any such brief and proposed findings shall be filed and served on the parties no later than September 30, 2009. The parties may file any response or opposition no later than October 9, 2009.

ORDERED:


D. Michael Chappell
Chief Administrative Law Judge

Date: September 23, 2009