

ORIGINAL

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

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| _____                         | ) |                  |
| In the Matter of              | ) |                  |
|                               | ) |                  |
| Polypore International, Inc., | ) | Docket No. 9327  |
| a corporation,                | ) | (Public Version) |
|                               | ) |                  |
| Respondent.                   | ) |                  |
|                               | ) |                  |
| _____                         | ) |                  |

**INTERVENOR HOLLINGSWORTH & VOSE COMPANY'S  
PROPOSED FINDINGS OF FACT**

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## I. EXHIBIT AND WITNESS INDICES

Hollingsworth & Vose Company (“H&V”) was not named a party to this proceeding and, therefore, did not have discovery rights or the right to offer documentary or testimonial evidence at the hearing or otherwise to participate in the hearing. H&V relied on publicly available documents and deposition transcripts of H&V witnesses in preparing these Proposed Findings of Fact. H&V did not otherwise have access to evidence in this case.

## II. HOLLINGSWORTH & VOSE COMPANY’S AGM SEPARATORS

1. H&V makes specialty, industrial and technical papers and nonwovens for a variety of applications. H&V manufactures and sells, among other products, an absorptive glass mat (“AGM”) battery separator for use in valve-regulated lead acid (“VRLA”) batteries in a variety of applications. (PX0925 at 3-5 (Porter Dep. at 15-21, *in camera*)).

2. Unlike polyethylene (“PE”) battery separators made by Daramic, H&V’s AGM battery separators are not intended for use in flooded lead acid batteries, and are used instead in VRLA batteries. (CCFOF ¶ 18; PX0925 at 5 (Porter Dep. at 21-23, *in camera*)).

Daramic’s flooded battery customers cannot substitute H&V’s AGM battery separators for Daramic’s PE battery separators, and H&V’s VRLA battery customers cannot substitute Daramic’s PE battery separator for H&V’s AGM product. (PX0925 at 7-8 (Porter Dep. at 28-31, *in camera*)). Complaint Counsel maintains that AGM battery separators do not compete with Daramic’s PE battery separators in the same markets. (*see* CC Post-Trial Br. at 25 & n.16).

## III. THE CROSS AGENCY AGREEMENT

3. In March 2001, Daramic and H&V entered into the Cross Agency Agreement. (PX0094 (hereinafter “Agreement”)). The Agreement provided for { [REDACTED]  
[REDACTED]  
[REDACTED] } (PX0917  
at 14-15, 16 (Cullen Dep. at 53-56, 60-61, *in camera*); PX0925 at 16, 17, 24-25, 31-32

(Porter Dep. at 61, 64-65, 94-97, 126-28, *in camera*); Roe, Tr. 1746).

4.

{ [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] } (PX0917 at 77 (Cullen Dep. at 321-23, *in camera*)).

5. H&V expends time and effort in developing and maintaining customer relationships and its goodwill with those customers. (PX0917 at 77 (Cullen Dep. at 320-22, *in camera*)). H&V engineers work closely with customers to solve manufacturing issues, and customers rely on H&V's technical manufacturing expertise. { [REDACTED]

[REDACTED] } (PX0917 at 77 (Cullen Dep. at 320-23, *in camera*)).

6. In order to permit the parties to exchange confidential information about their sales and distribution forces, customers and confidential technical information, know-how and pricing, the Agreement provided that { [REDACTED]

[REDACTED] } (Agreement § 4(a-b); PX0917 at 12, 14-15, 16, 18, 42 (Cullen Dep. at 48, 53-56, 60-63, 68-70, 177-78, *in camera*); PX0925 at 17-18, 31 (Porter Dep. at 65-66, 126-31, *in camera*)).

7. Section 4 of the Cross Agency Agreement states in relevant part:

{ [REDACTED]

[REDACTED]

(Agreement § 4(a-b)).

8. Paragraph 4(a) of the Cross Agency Agreement { [REDACTED]

[REDACTED] } Paragraph 4(b) { [REDACTED]  
[REDACTED] }

9. During the course of H&V's and Daramic's business relationship under the Cross Agency Agreement, { [REDACTED]  
[REDACTED] } (PX0917 at 024-025 (Cullen Dep. at 99-102, *in camera*); PX0925 at 024 (Porter Dep. at 94-96, *in camera*)). Daramic and H&V { [REDACTED]  
[REDACTED] } (PX0917 at 14-15, 16, 18, 76, 77-78 (Cullen Dep. at 54-56, 60-63, 68-70, 317-18, 321-24)).

10. During the term of the Cross Agency Agreement, Daramic { [REDACTED]  
[REDACTED] } As a result of Daramic's sales activities on behalf of H&V, Daramic { [REDACTED]  
[REDACTED] } (PX0917 at 075 (Cullen Dep. at 313-14, *in camera*)).

11. In the course of making sales calls on behalf of H&V, Daramic representatives { [REDACTED] } (PX0917 at 077-078 (Cullen Dep. at 322-24, *in camera*)). H&V also disclosed { [REDACTED]

[REDACTED] } (PX0917 at 077 (Cullen Dep. at 322-23, *in camera*)). { [REDACTED]

[REDACTED] } (PX0917 at 077-078 (Cullen Dep. at 321-23, *in camera*)).

12. The Cross Agency Agreement { [REDACTED]

[REDACTED] } (PX0158, *in camera*).<sup>1</sup>

#### IV. COMPLAINT COUNSEL'S PROPOSED REMEDY AND EFFECTS TO H&V

13. Complaint Counsel seeks an order requiring Daramic to modify the Cross Agency Agreement by declaring Sections 4(a) and (b) void and by ordering Daramic to refrain from "implementing or enforcing" either sub-sections 4(a) or 4(b). The requested relief requires the Respondent to do as follows:

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]* .

...

(CC Proposed Order VIII.A, at 26-27 (emphasis added)).

14. H&V has a valuable property right arising under Section 4(a) of the Cross

<sup>1</sup> Aside from deposition testimony of H&V employees and exhibits taken from H&V's document production, H&V has not been provided access to *in camera* exhibits. The citation to PX0158 is taken from Complaint Counsel's Exhibit List (PX0001 at 004), which is described as "Cross Agency Agreement - Renewal and Daramic Correspondence." H&V does not know what is meant by "Daramic Correspondence" and understands the Renewal to the Cross Agency Agreement to be { [REDACTED] }

Agency Agreement to {

} (Agreement § 4(a), PX0158).

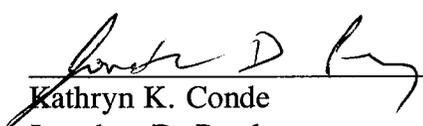
15. If the requested relief were to be awarded with respect to H&V's rights under Section 4(a), Daramic would be entitled to { } within fifteen days of the Commission's final order. (Agreement § 4(a); CC Proposed Order VIII.A(1)).

Dated: September 30, 2009

Respectfully submitted,

HOLLINGSWORTH & VOSE COMPANY

By its attorneys,

  
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CERTIFICATE OF SERVICE

I hereby certify that on September 30, 2009, I filed via overnight delivery and electronic mail delivery an original and two copies of the foregoing Intervenor Hollingsworth & Vose Company's Proposed Findings of Fact (Public Version) 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  
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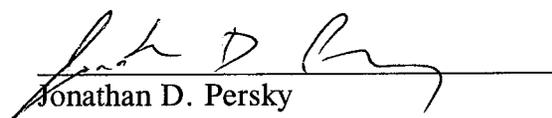
I hereby certify that on September 30, 2009, I filed via overnight delivery and electronic mail delivery two copies of the foregoing Intervenor Hollingsworth & Vose Company's Proposed Findings of Fact (Public Version) with:

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 September 30, 2009, I caused to be served via electronic delivery and first-class mail delivery a copy of the foregoing Intervenor Hollingsworth & Vose Company's Proposed Findings of Fact (Public Version) on:

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