



Respondent, Polypore International, Inc. ("Polypore"), respectfully submits the following responses to Intervenor Hollingsworth & Vose Company's Proposed Findings of Fact.

## **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*)).

### **Response to H&V's Finding No. 1:**

Respondent has no specific response.

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).

### **Response to H&V's Finding No. 2:**

Respondent has no specific response.

## **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 {

} (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).

**Response to H&V's Finding No. 3:**

H&V's finding number 3 is incomplete. At the outset of the Cross Agency Agreement, Daramic had no plans to produce AGM separators, and {  
}. (RFOF 1124). Accordingly, Daramic and H&V were not actual or potential competitors upon entering into the Cross Agency Agreement. (RFOF 1124).

Daramic and H&V {  
}, but also planned potential sharing of technologies and development of new products. (H&V FOF 3; RFOF 1123). The Agreement also provided a platform for the parties to {

}. (PX0917 (Cullen, Dep. at 53-57), *in camera*).

4. {

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

**Response to Finding No. 4:**

H&V's finding number 4 is incomplete and misleading to the extent that it supports that only AGM separators involve the disclosure of technical information during the sales process. Mr. Cullen's statements regarding the highly technical nature of the sales process for battery separators are not restricted only to AGM battery separators as this finding suggests. Instead, Mr. Cullen refers to all sales of battery separators (including sales of Daramic's PE battery separators) as a "lengthy" and "highly technical complex sales process." (PX0917 (Cullen, Dep. at 321), *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. {

}

(PX0917 at 77 (Cullen Dep. at 320-23, *in camera*)).

**Response to Finding No. 5:**

H&V's finding number 4 is incomplete and misleading. For its response to H&V's finding, Respondent incorporates by reference its response to Finding No. 4.

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 {

} (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*)).

**Response to Finding No. 6:**

Respondent has no specific response.

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

{

}

(Agreement § 4(a-b)).

**Response to Finding No. 7:**

Respondent has no specific response.

8. Paragraph 4(a) of the Cross Agency Agreement {  
} Paragraph 4(b) {  
}

**Response to Finding No. 8:**

Respondent has no specific response.

9. During the course of H&V's and Daramic's business relationship under the Cross Agency Agreement, {  
} (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 {  
} (PX0917 at 14-15, 16, 18, 76, 77-78 (Cullen Dep. at 54-56, 60-63, 68-70, 317-18, 321-24)).

**Response to Finding No. 9:**

H&V's finding number 9 is incomplete and misleading to the extent that it supports that Daramic did not share with H&V confidential information regarding Daramic's business. Daramic, in fact, shared with H&V valuable confidential information {  
}. (PX0917 (Cullen, Dep. at 90-91, 94-95), *in camera*). The exchange of this confidential information facilitated the joint activities, which included significant joint marketing and promotional efforts as well as joint exhibits at trade shows and conventions. (RFOF 1126). These efforts were successful in opening doors in regions of the world where Daramic or H&V had little or no presence. (RFOF 1126).

In the United States, {

} (PX0917 (Cullen, Dep. at 61-63), *in camera*). Specifically, {

} (PX0917 (Cullen, Dep. at 63), *in camera*). {

} (PX0917 (Cullen, Dep. at 65), *in camera*). {

} (PX0917 (Cullen, Dep. at 68), *in camera*).

Overseas, {

} (PX0917 (Cullen, Dep. at 77), *in camera*). {

} (PX0917 (Cullen, Dep. at 123-126), *in*

*camera*).

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

**Response to Finding No. 10:**

H&V's finding number 10 is incomplete. Daramic not only sold H&V AGM separators  
abroad, but also made efforts to help H&V increase sales of AGM separators domestically. For  
example, {

} (PX0917 (Cullen, Dep. at 130-132), *in camera*). {

} (PX0917 (Cullen, Dep. at 130-

132), *in camera*).

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

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

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

**Response to Finding No. 11:**

H&V's finding number 11 is incomplete. {

} (PX0917 (Cullen, Dep. at 86, 91), *in camera*). {

} (PX0917

(Cullen, Dep. at 86, 91), *in camera*). {

} (PX0917

(Cullen, Dep. at 86, 91), *in camera*).

12. The Cross Agency Agreement {

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

**Response to Finding No. 12:**

Respondent has no specific response.

**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.

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<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 {

}

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)).

**Response to Finding No. 13:**

Respondent has no specific response.

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

} (Agreement § 4(a), PX0158).

**Response to Finding No. 14:**

Respondent has no specific response.

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)).

**Response to Finding No. 15:**

Respondent has no specific response.

Dated: October 9, 2009

Respectfully Submitted,



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*Attorneys for Respondent*

**CERTIFICATE OF SERVICE**

I hereby certify that on October 9, 2009, I caused to be filed via hand delivery and electronic mail delivery an original and two copies of the foregoing ***Respondent's Response to Intervenor Hollingsworth & Vose Company's Proposed Findings of Fact (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 October 9, 2009, I caused to be served one copy via electronic mail delivery and two copies via overnight delivery of the foregoing ***Respondent's Response to Intervenor Hollingsworth & Vose Company's Proposed Findings of Fact (Public)*** upon:

The Honorable D. Michael Chappell  
Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580  
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I hereby certify that on October 9, 2009, I caused to be served via electronic mail delivery and one copy via First Class mail delivery a copy of the foregoing ***Respondent's Response to Intervenor Hollingsworth & Vose Company's Proposed Findings of Fact (Public)*** upon:

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

In the Matter of )

**Docket No. 9327**

Polypore International, Inc., )  
a corporation. )

**PUBLIC DOCUMENT**

**AMENDED CERTIFICATE OF SERVICE**

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Donald S. Clark, Secretary  
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**CERTIFICATE OF SERVICE**

I hereby certify that on October 13, 2009, I caused to be filed via hand delivery and electronic mail delivery an original and two copies of the foregoing *Amended Certificate of Service*, 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:

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