

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

**COMMISSIONERS: Jon Leibowitz, Chairman
 J. Thomas Rosch
 Edith Ramirez
 Julie Brill**

In the Matter of

**McWANE, INC.,
 a corporation, and**

**STAR PIPE PRODUCTS, LTD.,
 a limited partnership.**

Docket No. 9351

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission (“Commission”), having reason to believe that Respondents McWane, Inc. (“McWane”) and Star Pipe Products, Ltd. (“Star”) have violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this Complaint stating its charges as follows:

NATURE OF THE CASE

1. This action concerns the collusive conduct of Respondents, and the exclusionary conduct of McWane, relating to the marketing and sale of ductile iron pipe fittings (“DIPF”).

2. Beginning in January 2008, McWane and Star, along with their competitor Sigma Corporation (“Sigma”), conspired to raise and stabilize the prices at which DIPF are sold in the United States. McWane, Sigma and Star (collectively, the “Sellers”) exchanged sales data in order to facilitate this price coordination.

3. The passage of the American Recovery and Reinvestment Act of 2009 (“ARRA”) in February 2009 significantly altered the competitive dynamics of the DIPF industry, and upset the terms of coordination among the Sellers. In the ARRA, the United States Congress allocated more than 6 billion dollars to water infrastructure projects, conditioned on the use of

domestically produced materials, including DIPF, in those projects (the “Buy American” requirement).

4. At the time the ARRA was passed, McWane was the sole supplier of a full line of domestically produced DIPF in the most commonly used size ranges. Federal stimulus of the domestic DIPF market potentially left McWane in a position to reap a monopoly profit.

5. In response to the passage of the ARRA and its Buy American provision, Sigma, Star and others attempted to enter the domestic DIPF market in competition with McWane.

6. McWane maintained its monopoly in the domestic DIPF market through exclusionary conduct, including (i) entering into a distribution agreement with Sigma that eliminated Sigma as an actual potential entrant into the domestic DIPF market, and (ii) excluding actual and potential competitors, including Star, through the adoption and enforcement of exclusive dealing policies.

7. Respondents’ conduct has restrained competition and led to higher prices for both imported and domestically produced DIPF.

THE RESPONDENTS

8. Respondent McWane is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 2900 Highway 280, Suite 300, Birmingham, Alabama 35223. McWane manufactures, imports, markets and sells products for the waterworks industry, including DIPF.

9. At all times relevant herein, McWane has been, and is now, a corporation as “corporation” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

10. McWane’s acts and practices, including the acts and practices alleged herein, are in or affect commerce in the United States, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

11. Respondent Star is a limited partnership organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal place of business located at 4018 Westhollow Parkway, Houston, Texas 77082. Star imports, markets and sells products for the waterworks industry, including DIPF.

12. At all times relevant herein, Star has been, and is now, a corporation as “corporation” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

13. Star’s acts and practices, including the acts and practices alleged herein, are in or affect commerce in the United States, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

THE DIPF INDUSTRY

14. DIPF are a component of pipeline systems transporting drinking and waste water under pressurized conditions in municipal distribution systems and treatment plants. DIPF are used to join pipes, valves and hydrants in straight lines, and to change, divide or direct the flow of water. The end users of DIPF are typically municipal and regional water authorities.

15. DIPF are produced in a broad product line of more than 2000 unique configurations of size, shape and coating. The industry differentiates between “A Items,” or commonly used fittings used routinely and on almost every job, and “oddball” fittings that are either of unusual configuration or size, or both. Although approximately 80 percent of market demand may be serviced with a product line of 100 fittings, DIPF suppliers must be able to supply more than 1900 additional fittings to serve the remaining 20 percent of demand.

16. Independent wholesale distributors, known as “waterworks distributors,” are the primary channel of distribution of DIPF to end users. Waterworks distributors specialize in distributing products for water infrastructure projects, and generally handle the full spectrum of waterworks products, including pipes, DIPF, valves and hydrants. Waterworks distributors employ sales personnel dedicated to servicing the needs of end users, and are generally able to satisfy the needs of end users for rapid service by stocking inventory in relatively close proximity to project sites.

17. Direct sales of DIPF to end users, or to the utility contractors that often serve as the agent of the end user in purchasing and installing DIPF, are uncommon. End users and DIPF suppliers alike prefer to work through waterworks distributors with locations near project sites. As a result, DIPF suppliers need to distribute DIPF through local waterworks distributors in each region of the country in order to compete effectively in that region.

18. Both imported and domestically produced DIPF are commercially available. All of the Sellers sell imported DIPF. Before Star’s entry into domestic production in 2009, McWane was the sole domestic producer of a full line of small and medium-sized DIPF.

19. The end user of DIPF specifies whether, on a particular project, it will accept both imported and domestically produced DIPF, or only domestically produced DIPF. This specification is often mandated by municipal code, or by state or federal law.

20. Domestically produced DIPF sold for use in projects specified as domestic only are sold at higher prices than imported or domestically produced DIPF sold for use in projects not specified as domestic only.

THE RELEVANT MARKETS

21. The relevant product market in which to evaluate Respondents' conduct is the marketing and sale of DIPF, and narrower relevant markets as contained therein (collectively, the "relevant DIPF markets"), including:

- a. DIPF for projects not specified as domestic only;
- b. DIPF for projects specified as domestic only; and
- c. DIPF of certain size ranges (*e.g.*, 24" in diameter and smaller).

22. In particular, the marketing and sale of domestically produced small and medium-sized (3-24" in diameter) DIPF for use in projects specified as domestic only constitutes a separate relevant product market (the "relevant domestic DIPF market").

23. There are no widely used substitutes for DIPF, and no other product significantly constrains the prices of DIPF.

24. Before and after the passage of the ARRA, some end users purchasing DIPF for use in projects specified as domestic only were unable to substitute imported DIPF, or any other product, for domestically produced DIPF. The passage of the ARRA and its Buy American requirement temporarily expanded the relevant domestic DIPF market.

25. The relevant geographic market is no broader than the United States. To compete effectively within the United States, DIPF suppliers need distribution assets and relationships within the United States. DIPF suppliers located outside the United States that lack such assets and relationships are unable to constrain the prices of DIPF suppliers that have such assets and relationships.

26. Each and every state within the United States is also a relevant geographic market, and smaller markets within the boundaries of many states exist as well. DIPF suppliers can and do engage in price discrimination based on customers' location. DIPF end users require local and expeditious service and support, and typically do not purchase DIPF from waterworks distributors located more than 200 miles away. Waterworks distributors typically do not resell DIPF to other waterworks distributors or end users outside their service areas in any substantial quantity. As a result, DIPF suppliers charge different prices in different states, and within certain regions within many states.

THE RELEVANT DIPF MARKETS ARE CONDUCTIVE TO COLLUSION

27. The relevant DIPF markets have several features that facilitate collusion among the Sellers, including product homogeneity, market concentration of DIPF suppliers, barriers to timely entry of new DIPF suppliers, inelastic demand at competitive prices, and uniform published prices.

- a. DIPF are commodity products produced to industry-wide standards. Product homogeneity enhances the Sellers' ability to collude on prices and to detect deviations from those collusive prices.
- b. The relevant DIPF markets are highly concentrated. In 2008, the Sellers collectively made more than 90 percent of sales in the relevant DIPF markets. A highly concentrated market enhances the Sellers' ability and incentive to collude on prices.
- c. Effective *de novo* entry into the relevant DIPF markets takes several years. Barriers to entry include the need for a new entrant to develop a distribution network and a reputation for quality and service with waterworks distributors and end users. Convincing end users to allow the use of a new entrant's DIPF is often a time consuming process.
- d. Demand for DIPF is inelastic to changes in price at competitive levels. DIPF are a relatively small portion of the cost of materials of a typical waterworks project, and there are no widely used substitutes for the product.
- e. The Sellers publish nearly identical price books listing per-unit prices for each unique DIPF item carried by a given supplier, and periodically publish uniform multiplier discounts at which they offer to sell DIPF on a state-by-state basis. By simplifying and standardizing published prices, the DIPF price list/multiplier format enhances the Sellers' ability to collude on prices and to detect deviations from those collusive prices.

THE SELLERS RESTRAINED PRICE COMPETITION IN THE RELEVANT DIPF MARKETS

28. Senior executives of the Sellers frequently and privately communicate with one another. These communications often relate to DIPF price and output.
29. Beginning in January 2008, the Sellers conspired to raise and stabilize the prices at which DIPF were sold in the United States.
30. Due to rising input costs, all of the Sellers desired price increases in 2008. However, McWane was concerned that Sigma and Star would not adhere to announced price increases, which would result in lost sales for McWane. The Sellers worked together though 2008 to alleviate McWane's concerns, with the common purpose of clearing the way for McWane to support common price increases.
31. On January 11, 2008, McWane publicly announced its first DIPF price increase of 2008. Sigma and Star followed this price increase.

32. This January 2008 price increase was the result of a combination and conspiracy among the Sellers.

a. Before announcing the January 2008 price increase, McWane planned to trade its support for higher prices in exchange for specific changes to the business methods of Sigma and Star that would reduce the risk that local sales personnel for these competitors would sell DIPF at prices lower than published levels.

b. McWane communicated the terms of its plan to Sigma and Star. McWane acted with the intent of conspiring with Sigma and Star to restrain price competition.

c. Sigma and Star manifested their understanding and acceptance of McWane's offer by publicly taking steps to limit their discounting from published price levels in order to induce McWane to support higher price levels.

d. On or about March 10, 2008, McWane and Sigma executives discussed by telephone their efforts to implement the January 2008 price increase.

33. On June 17, 2008, McWane publicly announced its second DIPF price increase of 2008. Sigma and Star followed this price increase.

34. The June 2008 price increase was the result of a combination and conspiracy among the Sellers.

a. Before announcing the June 2008 price increase, McWane planned to trade its support for higher prices in exchange for information from Sigma and Star documenting the volume of their monthly sales of DIPF. This exchange of information was to be achieved under the auspices of an entity styled as the Ductile Iron Fittings Research Association ("DIFRA").

b. McWane communicated the terms of its plan to Sigma and Star, at least in part through a public letter sent by McWane to waterworks distributors, the common customers of the Sellers. A section of that letter was meaningless to distributors, but was intended to inform Sigma and Star of the terms of McWane's offer. McWane acted with the intent of conspiring with Sigma and Star to restrain price competition.

c. Sigma and Star manifested their understanding and acceptance of McWane's offer by initiating their participation in the DIFRA information exchange in order to induce McWane to support higher price levels.

d. McWane then led a price increase, and Sigma and Star followed.

e. On or about August 22, 2008, executives of McWane and Sigma discussed by telephone their efforts to implement the June 2008 price increase.

DIFRA FACILITATED PRICE COORDINATION AMONG THE SELLERS

35. The DIFRA information exchange operated as follows. The Sellers submitted a report of their previous month's sales to an accounting firm. Shipments were reported in tons shipped, subdivided by diameter size range (*e.g.*, 2-12") and by joint type. Data submissions were aggregated and distributed to the Sellers. Data submitted to the accounting firm was typically no older than 45 days, and the summary reports returned to the Sellers contained data typically no more than 2 months old.

36. During its operation between June 2008 and January 2009, the DIFRA information exchange enabled each of the Sellers to determine and to monitor its own market share and, indirectly, the output levels of its rivals. In this way, the DIFRA information exchange facilitated price coordination among the Sellers on the pricing of DIPF.

37. The acts and practices of Respondents, as alleged herein, have the purpose, capacity, tendency, and effect of (i) fixing, maintaining and raising prices of DIPF in the relevant DIPF markets, and (ii) facilitating collusion in the relevant DIPF markets.

38. There are no legitimate procompetitive efficiencies that justify the conduct of Respondents as alleged herein, or that outweigh its anticompetitive effects.

MCWANE MONOPOLIZED THE RELEVANT DOMESTIC DIPF MARKET

39. At the time of the enactment of the ARRA in February 2009 and thereafter, McWane possessed monopoly power in the relevant domestic DIPF market.

40. At the time of the enactment of the ARRA, McWane was the only manufacturer of a full line of DIPF in the relevant domestic DIPF market and controlled nearly 100 percent of the relevant domestic DIPF market. Despite Star's entry into the relevant domestic DIPF market in late 2009, McWane continues to make more than 90 percent of sales in the relevant domestic DIPF market.

41. McWane's monopoly power in the relevant domestic DIPF market is protected by substantial barriers to effective entry and expansion, including the unfair methods of competition of McWane and Sigma, as alleged in Paragraphs 42 through 63, below.

42. For suppliers of the relevant DIPF that have existing relationships and goodwill with waterworks distributors and established reputations for quality and service in the provision of the relevant DIPF, McWane's unfair and exclusionary methods of competition are the primary barriers to effective entry and expansion in the relevant domestic DIPF market.

43. McWane's monopoly power in the relevant domestic DIPF market is further demonstrated directly by its ability to exclude competitors, to control prices, and to coercively impose unwanted distribution policies on its customers.

44. Federal stimulus gave Sigma, Star and Serampore Industries Private, Ltd. ("SIP"), another imported DIPF supplier, an incentive to enter the domestic DIPF market.

45. Sigma, Star and SIP all attempted to enter the relevant domestic DIPF market in response to the ARRA.

46. McWane maintained its monopoly in the relevant domestic DIPF market by illegally inducing Sigma to abandon its effort to enter the domestic DIPF market, and by implementing an exclusive dealing policy to prevent other competitors from entering or expanding. Through this conduct, McWane eliminated or delayed competition from the only firms with the ability and incentive to enter the relevant domestic DIPF market in a timely fashion. McWane acted with the specific intent to monopolize the relevant domestic DIPF market.

McWane Eliminated Sigma as an Actual Potential Entrant

47. After the enactment of the ARRA, Sigma took steps to evaluate entry into domestic production of DIPF, including but not limited to (i) formulating a complete or nearly complete operational plan, (ii) arranging for an infusion of equity capital to fund domestic production, (iii) obtaining the approval of its Board of Directors for its entry plans, and (iv) casting prototype product.

48. McWane perceived that Sigma was preparing to enter the relevant domestic DIPF market. McWane sought to eliminate the risk of competition from Sigma by inducing Sigma to become a distributor of McWane's domestic DIPF rather than a competitor in the relevant domestic DIPF market.

49. McWane and Sigma executed a Master Distribution Agreement dated September 17, 2009 ("MDA"). The principal terms of the MDA were as follows:

- a. McWane would sell domestic DIPF to Sigma at a 20 percent discount off of McWane's published prices;
- b. McWane would be Sigma's exclusive source for the relevant domestic DIPF;
- c. Sigma would resell McWane's domestic DIPF at or very near McWane's published prices for domestic DIPF; and

d. Sigma would resell McWane's domestic DIPF to waterworks distributors only on the condition that the distributor agreed to purchase domestic DIPF exclusively from McWane or Sigma.

50. An unwritten term of the MDA was that McWane would also sell its domestic DIPF at or very near its published prices.

51. In the absence of a sufficiently profitable arrangement with McWane, Sigma would likely have entered the relevant domestic DIPF market in competition with McWane.

52. Under the MDA, McWane controlled the price at which Sigma could sell domestic DIPF and the customers to whom Sigma could sell domestic DIPF. Sigma's participation in the relevant domestic DIPF market under the MDA was not equivalent to, and for consumers not a substitute for, Sigma's competitive entry into the relevant domestic DIPF market.

53. Sigma's independent, competitive entry into the relevant domestic DIPF market would likely have benefitted consumers by constraining McWane's prices for the relevant domestic DIPF and otherwise.

54. Through the MDA, McWane transferred a share of its sales and monopoly profits in the domestic DIPF market to Sigma in exchange for Sigma's commitment to abandon its plans to enter the relevant domestic DIPF market as an independent competitor.

55. Both McWane and Sigma entered into the MDA with the specific intent to maintain and share in McWane's monopoly profits in the relevant domestic DIPF market by eliminating competition among themselves and excluding their rivals.

McWane Excluded Star Through Exclusive Dealing

56. Star announced its entry into the relevant domestic DIPF market in June 2009. McWane knew that, initially, Star would have a shorter product line and a smaller inventory than McWane. Star would therefore have difficulty convincing a waterworks distributor to purchase all of its domestic DIPF from Star. McWane nevertheless projected that Star's entry into the domestic DIPF market, if unobstructed by McWane, would place downward pressure on McWane's prices for its domestic DIPF.

57. McWane responded to Star's entry into the relevant domestic DIPF market by adopting restrictive and exclusive distribution policies (collectively, "McWane's exclusive dealing policies"). McWane intended and expected that these policies would impede and delay the ability of Star to enter the domestic DIPF market.

a. McWane threatened waterworks distributors with delayed or diminished access to McWane's domestic DIPF, and the loss of accrued rebates on the purchase of McWane's domestic DIPF, if those distributors purchased domestic DIPF from Star.

b. As part of its MDA with McWane, Sigma agreed to implement a similar distribution policy, as alleged in Paragraph 49, above.

c. McWane threatened some waterworks distributors with the loss of rebates in other product categories, such as ductile iron pipe, waterworks valves, and hydrants, if those distributors purchased domestic DIPF from Star.

d. Beginning in 2011, McWane changed its rebate structure for domestic DIPF to require waterworks distributors to make certain minimum, and high, shares of their total domestic DIPF purchases from McWane in order to qualify for these rebates.

58. The purpose and effect of McWane's exclusive dealing policies has been and is to compel the majority of waterworks distributors to deal with McWane and Sigma on an exclusive or nearly exclusive basis for their domestic DIPF business.

a. Due to Star's perceived or actual status as an untested supplier of domestic DIPF with a shorter product line and smaller inventory than McWane, many distributors interested in purchasing domestic DIPF from Star were unwilling to switch all of their domestic DIPF business to Star.

b. Instead, many distributors wished to purchase domestic DIPF from both McWane/Sigma and Star, and thereby to garner the benefits of price and service competition.

c. McWane's exclusive dealing policies increased the risk of purchasing domestic DIPF from Star.

d. Distributors otherwise interested in purchasing domestic DIPF from Star were and are unwilling to do so under the terms of McWane's exclusive dealing policies, and have remained exclusive or nearly exclusive with McWane and Sigma, contrary to their preference.

59. McWane's exclusive dealing policies have foreclosed Star from a substantial volume of sales opportunities with waterworks distributors.

60. By foreclosing Star from a substantial volume of sales opportunities with waterworks distributors, McWane's exclusive dealing policies tend to minimize and delay Star's ability to compete in the domestic DIPF market and thereby to benefit consumers by constraining the prices of domestically produced DIPF charged by McWane and Sigma, and otherwise.

61. McWane's exclusive dealing policies have also raised barriers to entry into the relevant domestic DIPF market by other potential entrants, including SIP. This conduct has contributed to McWane's monopolization of the relevant domestic DIPF market.

62. The acts and practices of McWane, as alleged herein, have the purpose, capacity, tendency, and effect of (i) maintaining and stabilizing prices of DIPF in the relevant DIPF markets, (ii) eliminating potential competition from Sigma in the relevant domestic DIPF market, (iii) impairing the competitive effectiveness of Star in the relevant domestic DIPF market, and (iv) raising barriers to entry for potential rivals in the relevant domestic DIPF market. The conduct of McWane is reasonably capable of making a significant contribution to the enhancement or maintenance of McWane's monopoly power in the relevant domestic DIPF market.

63. There are no legitimate procompetitive efficiencies that justify the conduct of McWane as alleged herein, or that outweigh its anticompetitive effects.

**FIRST VIOLATION ALLEGED
RESTRAINT OF TRADE**

64. As alleged herein, McWane and Star conspired, along with their competitor Sigma, to restrain price competition. These concerted actions unreasonably restrain trade and constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. Such acts and practices, or the effects thereof, will continue or recur in the absence of appropriate relief.

**SECOND VIOLATION ALLEGED
RESTRAINT OF TRADE**

65. As alleged herein, McWane and Star conspired, along with their competitor Sigma, to exchange competitively sensitive sales information. These concerted actions unreasonably restrain trade in and constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. Such acts and practices, or the effects thereof, will continue or recur in the absence of appropriate relief.

**THIRD VIOLATION ALLEGED
UNFAIR METHODS OF COMPETITION**

66. As alleged herein, McWane invited its competitors to collude with McWane to restrain price competition. These actions constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. Such acts and practices, or the effects thereof, will continue or recur in the absence of appropriate relief.

**FOURTH VIOLATION ALLEGED
RESTRAINT OF TRADE**

67. As alleged herein, McWane and Sigma entered into the MDA. The agreement unreasonably restrains trade and constitutes an unfair method of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. Such acts and practices, or the effects thereof, will continue or recur in the absence of appropriate relief.

**FIFTH VIOLATION ALLEGED
CONSPIRACY TO MONOPOLIZE**

68. As alleged herein, McWane and Sigma entered into the MDA with the specific intent to monopolize the relevant domestic DIPF market, and took overt acts to exclude their rivals in furtherance of their conspiracy, constituting an unfair method of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. Such acts and practices, or the effects thereof, will continue or recur in the absence of appropriate relief.

**SIXTH VIOLATION ALLEGED
MONOPOLIZATION**

69. As alleged herein, McWane has willfully engaged in anticompetitive and exclusionary acts and practices to acquire, enhance or maintain its monopoly power in the relevant domestic DIPF market, constituting unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. Such acts and practices, or the effects thereof, will continue or recur in the absence of appropriate relief.

**SEVENTH VIOLATION ALLEGED
ATTEMPTED MONOPOLIZATION**

70. As alleged herein, McWane has willfully engaged in anticompetitive and exclusionary acts and practices, with the specific intent to monopolize the relevant domestic DIPF market, resulting, at a minimum, in a dangerous probability of monopolizing the relevant domestic DIPF market, constituting unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. Such acts and practices, or the effects thereof, will continue or recur in the absence of appropriate relief.

NOTICE

Notice is hereby given to Respondents that the fourth day of September, 2012, at 10:00 a.m., is hereby fixed as the time and Federal Trade Commission offices, 600 Pennsylvania Avenue, NW, Washington D.C. 20580, as the place when and where a hearing will be had before an Administrative Law Judge of the Federal Trade Commission, on the charges set forth in this complaint, at which time and place you will have the right under the Federal Trade Commission Act to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in the complaint.

You are notified that the opportunity is afforded you to file with the Commission an answer to this complaint on or before the fourteenth (14th) day after service of it upon you. An answer in which the allegations of the complaint are contested shall contain a concise statement of the facts constituting each ground of defense; and specific admission, denial, or explanation of each fact alleged in the complaint or, if you are without knowledge thereof, a statement to that effect. Allegations of the complaint not thus answered shall be deemed to have been admitted.

If you elect not to contest the allegations of fact set forth in the complaint, the answer shall consist of a statement that you admit all of the material allegations to be true. Such an answer shall constitute a waiver of hearings as to the facts alleged in the complaint and, together with the complaint, will provide a record basis on which the Commission shall issue a final decision containing appropriate findings and conclusions and a final order disposing of the proceeding. In such answer, you may, however, reserve the right to submit proposed findings of fact and conclusions of law under § 3.46 of said Rules.

Failure to file an answer within the time above provided shall be deemed to constitute a waiver of your right to appear and to contest the allegations of the complaint, and shall authorize the Commission, without further notice to you, to find the facts to be as alleged in the complaint and to enter a final decision containing appropriate findings and conclusions and a final order disposing of the proceeding.

The Administrative Law Judge shall hold a prehearing scheduling conference not later than ten (10) days after an answer is filed by the last answering Respondent. Unless otherwise directed by the Administrative Law Judge, the scheduling conference and further proceedings will take place at the Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington DC 20580. Rule 3.21(a) requires a meeting of the parties' counsel as early as practicable before the prehearing scheduling conference, and Rule 3.31(b) obligates counsel for each party, within five days of receiving the answer of the last answering Respondent, to make certain initial disclosures without awaiting a formal discovery request.

NOTICE OF CONTEMPLATED RELIEF

Should the Commission conclude from the record developed in any adjudicative proceedings in this matter that Respondents have violated or are violating Section 5 of the FTC Act, as amended, as alleged in the Complaint, the Commission may order such relief against Respondents as is supported by the record and is necessary and appropriate, including, but not limited to:

1. Ordering Respondents to cease and desist from the conduct alleged in the Complaint to violate Section 5 of the FTC Act, and to take all such measures as are appropriate to correct or remedy, or to prevent the recurrence of, the anticompetitive practices engaged in by Respondents.
2. Prohibiting Respondents from agreeing with any competitor to fix prices or to allocate markets, or from soliciting any competitor to enter into such an agreement.
3. Prohibiting Respondents from agreeing with any competitor to exchange competitively sensitive information unless that information exchange meets sufficient criteria to assure that the information exchange will not facilitate collusion among Respondents and their competitors, such conditions to be determined by the Commission, or soliciting any competitor to enter into such an agreement.
4. Prohibiting Respondents from communicating competitively sensitive information to any competitor, except where such communications are the unavoidable result of announcing the terms on which Respondents propose to sell their products to their customers, or where the information communicated by Respondents relates solely to the terms on which Respondents propose to sell any product to, or purchase any product from, the person to whom the information is communicated by Respondents.
5. Requiring, for a period of time, that Respondents document all communications with any competitor, including by identifying the persons involved, the nature of the communication, and its duration, and that Respondents submit such documentation to the Commission.
6. Requiring that Respondents, upon request, provide the Commission with notification of any public price change relating to DIPP, including copies of pricing letters.
7. Prohibiting McWane from conditioning the sale, or any term of sale (including invoice price, delivery terms, credit allowances, rebates, or discounts), of any product on a customer's dealing, refusal to deal, or terms of dealing with any other supplier of domestically produced DIPP.
8. Prohibiting McWane, for a period of time, from providing any discounts or other incentives that retroactively reduce the price of previously purchased units of McWane's domestically produced DIPP because of the purchase or sale of an additional unit of that product.

Provided, however, that McWane shall be permitted to offer discounts or lower prices based solely on volume, provided that these discounts or lower prices are otherwise in accordance with the law.

9. Prohibiting McWane, for a period of time, from offering bundled rebates involving domestically produced DIPF.

10. Requiring that Respondents' compliance with the order shall be monitored at its expense by an independent monitor, for a term to be determined by the Commission.

11. Requiring that Respondents file periodic compliance reports with the Commission.

12. Any other relief appropriate to correct or remedy the anticompetitive effects in their incipency of any or all of the conduct alleged in the complaint.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this fourth day of January, 2012, issues its complaint against Respondents.

By the Commission.

Donald S. Clark
Secretary

SEAL: