



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

In the Matter of)
)
)
 McWANE, INC.,)
 a corporation,)
)
 and)
)
 STAR PIPE PRODUCTS,)
 a limited partnership)
)
)
)

PUBLIC

Docket No. 9351

**COMPLAINT COUNSEL’S SUPPLEMENTED OBJECTIONS AND
RESPONSES TO RESPONDENT McWANE’S
FIRST SET OF REQUESTS FOR ADMISSIONS**

Pursuant to Rule 3.32 of the Federal Trade Commission’s Rules of Practice, Complaint Counsel hereby supplements Complaint Counsel’s Objections and Responses to Respondent McWane Inc.’s First Set of Requests for Admissions (“Complaint Counsel’s Response”), dated February 27, 2012. Complaint Counsel has endeavored to offer a good faith response to Respondent McWane, Inc.’s First Set of Requests for Admissions (“First Requests for Admissions”), but reserves the right to further supplement our responses after the close of discovery, especially insofar as Respondents may produce additional documents and information before the close of discovery, the review of which may alter our responses herein. All General and Specific Objections set forth in Complaint Counsel’s Response are incorporated herein.

REQUEST NO. 9: Admit that McWane’s annual domestic DIWF production in 2009 and 2010 was less than half of Union Foundry’s 40,000-ton capacity, due to lower demand for Domestic Fittings.

RESPONSE: In addition to the General Objections, Complaint Counsel specifically objects to the term “due to” as vague and ambiguous. Complaint Counsel further objects to this Request for failing to set forth each matter for which an admission is requested separately, as required by Rule 3.32(a), by seeking at least two separate admissions of fact. Subject to the General and Specific Objections, Complaint Counsel denies this Request, except as follows:

- a) Complaint Counsel admits that Respondent’s

REDACTED

as well as

producing additional products manufactured by Respondent; and

- b) Complaint Counsel, after reasonable inquiry, lacks sufficient information to admit or deny the reasons for McWane’s annual domestic DIWF production rates in 2009 and 2010.

REQUEST NO. 10: Admit that in its 2003 investigation of imports in the ductile iron waterworks fittings market, the U.S. International Trade Commission (ITC) reached a unanimous affirmative determination finding that “imported and domestic products are interchangeable,” that “the domestic and imported products are substitutable, and most purchasers rated them as comparable in quality,” and that Non-domestic Fittings were “being imported into the United States in such increased quantities or under such conditions as to cause market disruption to the domestic producers of like or directly competitive products,” and that Domestic Fittings accounted for 20% or less of all DIWF sales in the United States.

RESPONSE: In addition to the General Objections, Complaint Counsel specifically objects to this Request as unduly burdensome because it fails to identify the page number or general location of the quoted language in the 149-page report identified by Respondent. Complaint Counsel further objects to this Request for failing to set forth each matter for which an admission is requested separately, as required by Rule 3.32(a), by seeking at least four separate admissions

of fact. Complaint Counsel also objects to this Request to the extent it seeks Complaint Counsel to admit the truth of the underlying assertions. Subject to the General and Specific Objections, Complaint Counsel denies this Request, except as follows:

a) Complaint Counsel admits that the report from the U.S. International Trade Commission, “Certain Ductile Iron Waterworks Fittings from China,” Investigation No. TA-421-4, Publication 3657, dated December 2003, (“TA-421-4”), states that, “imported and domestic products are interchangeable;”

b) Complaint Counsel admits that TA-421-4 states that, “the domestic and imported products are substitutable and most purchasers rated them as comparable in quality;”

c) Complaint Counsel admits that TA-421-4 states that, “certain DIWF from China are being imported into the United States in such increased quantities or under such conditions as to cause, or threaten to cause market disruption of domestic producers of like or directly competitive products;” and

d) Complaint Counsel, after a reasonable inquiry, lacks sufficient information to admit or deny whether TA-421-4 states that Domestic Fittings accounted for 20% or less of all DIWF sales in the United States.

REQUEST NO. 25: Admit that Star has more Domestic Fittings SKUs, a larger sales force, and a greater number of product depots than McWane.

RESPONSE: In addition to the General Objections, Complaint Counsel specifically objects to this Request for failing to set forth each matter for which an admission is requested separately, as required by Rule 3.32(a), by seeking at least three separate admissions of fact. Subject to the General and Specific Objection, Complaint Counsel denies this Request, except as follows:

- a) Complaint Counsel denies that Star currently has more Domestic Fittings SKUs than Respondent;
- b) Complaint Counsel, after reasonable inquiry, lacks sufficient information to admit or deny whether Star has, or has ever had, a larger sales force than Respondent; and
- c) Complaint Counsel admits that Star has had more product depots than Respondent.

REQUEST NO. 26: Admit that there are more than 100 waterworks distributors in the United States that purchased few or no Domestic Fittings from McWane between September 2009 and September 2010.

RESPONSE: In addition to the General Objections, Complaint Counsel specifically objects to the term “few” as vague and ambiguous. Subject to the General and Specific Objections, Complaint Counsel, after reasonable inquiry, lacks sufficient information to admit or deny this Request.

REQUEST NO. 27: Admit that McWane’s average price for DIWF products in the second half of 2008 was flat or declining despite a significant increase in scrap prices in the first six months of 2008.

RESPONSE: In addition to the General Objections, Complaint Counsel specifically objects to the terms “average price,” “significant increase,” and “scrap prices” as vague and ambiguous. Complaint Counsel further objects to this Request as premature to the extent it seeks information that relates to issues that may be the subject of expert testimony in this case. Complaint Counsel further objects to this Request for failing to set forth each matter for which an admission is requested separately, as required by Rule 3.32(a), by seeking at least two separate admissions of fact. Subject to the General and Specific Objections, Complaint Counsel denies this Request, except as follows:

a) Complaint Counsel, after reasonable inquiry, lacks sufficient information to admit or deny whether Respondent's average price for DIWF products in the second half of 2008 was flat or declining;

b) Complaint Counsel, after reasonable inquiry, lacks sufficient information to admit or deny whether Respondent's costs for scrap metals used in its production of DIWF were increasing in the first six months of 2008.

I state under penalty of perjury that the above Complaint Counsel's Objections and Responses to Respondent McWane's First Set of Requests for Admissions was prepared and assembled under my supervision, and that the information contained herein is, to the best of my knowledge, true and correct.

Dated: March 26, 2012

Respectfully submitted,

s/ Linda M. Holleran
Edward Hassi, Esq.
Geoffrey M. Green, Esq.
Linda Holleran, Esq.
Thomas H. Brock, Esq.
Michael J. Bloom, Esq.
Jeanine K. Balbach, Esq.
J. Alexander Ansaldo, Esq.
Andrew K. Mann, Esq.
Monica M. Castillo, Esq.

Counsel Supporting the Complaint
Bureau of Competition
Federal Trade Commission
Washington, DC 20580
Telephone: (202) 326-2470
Facsimile: (202) 326-3496
Electronic Mail: ehassi@ftc.gov

CERTIFICATE OF SERVICE

I hereby certify that on March 26, 2012, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-113
Washington, DC 20580

I also certify that I delivered via electronic mail and hand delivery a copy of the foregoing document to:

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580

I further certify that I delivered via electronic mail a copy of the foregoing document to:

Joseph A. Ostoyich
Andreas Stargard
William C. Lavery
Baker Botts L.L.P.
The Warner
1299 Pennsylvania Ave., N.W.
Washington, D.C. 20004
(202) 639-7700
joseph.ostoyich@bakerbotts.com
andreas.stargard@bakerbotts.com
william.lavery@bakerbotts.com

J. Alan Truitt
Thomas W. Thagard III
Maynard Cooper and Gale PC
1901 Sixth Avenue North
2400 Regions Harbert Plaza
Birmingham, AL 35203
(205) 254-1000
atruitt@maynardcooper.com
tthagard@maynardcooper.com

Counsel for Respondent McWane, Inc.

Gregory S.C. Huffman
William Katz
Nicole Williams
Brian Stoltz
Thompson and Knight LLP
One Arts Plaza
1722 Routh Street, Suite 1500
Dallas, TX 75201
(214) 969-1700
Gregory.Huffman@tklaw.com
William.Katz@tklaw.com
Nicole.Williams@tklaw.com
Brian.Stoltz@tklaw.com

Counsel for Respondent Star Pipe Products, Ltd.

March 26, 2012

By: s/ Linda Holleran
Linda Holleran, Esq.
Attorney