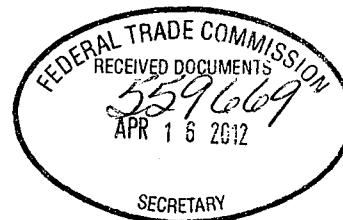


UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES

ORIGINAL



In the Matter of )

McWANE, INC., )  
a corporation, and )

STAR PIPE PRODUCTS, LTD., )  
a limited partnership, )  
Respondents. )

DOCKET NO. 9351

**ORDER GRANTING COMPLAINT COUNSEL'S MOTION TO COMPEL  
RESPONDENT'S ANSWERS TO INTERROGATORIES**

**I. Introduction**

On April 4, 2012, Complaint Counsel filed a Motion to Compel Respondent McWane, Inc. ("Respondent") to Answer Interrogatories 13 through 16 ("Motion"). Respondent filed an opposition to the Motion on April 11, 2012 ("Opposition"). Having fully considered the Motion and Opposition, and as more fully explained below, the Motion is GRANTED.

On February 21, 2012, Complaint Counsel served a set of interrogatories on McWane, numbered 1 through 16 (Motion Exhibit A). McWane refused to answer Interrogatories 13 through 16 on the ground that, counting all discrete subparts of Interrogatories 1 through 12, Complaint Counsel reached its limit of 25 interrogatories (Motion Exhibits C and D). The parties were unable to reach an agreement on this dispute, and the instant Motion followed.

**II. Applicable Legal Principles**

Commission Rule of Practice 3.35(a)(1) states in pertinent part: "Any party may serve upon any other party written interrogatories, not exceeding 25 in number, including all discrete subparts, . . ." 16 C.F.R. § 3.35 (a)(1). Rule 3.35(a)(1) is the same in this regard as Federal Rule of Civil Procedure 33(a) ("Unless otherwise stipulated or ordered by the court, a party may serve on any other party no more than 25 written interrogatories, including all discrete subparts."). Fed. R. Civ. P. 33.

"In determining whether a request is a discrete subpart, courts look to 'whether one question is subsumed and related to another or whether each question can stand alone and be answered irrespective of the answer to the others.' . . . Courts have found that a subpart is

discrete when it is logically or factually independent of the question posed by the basic interrogatory.” *In re Dynamic Health of Florida*, 2004 FTC LEXIS 254 (Dec. 9, 2004) (citations omitted); *accord In re Polypore Int’l*, 2008 FTC LEXIS 155, at \*3-4 (Nov. 14, 2008). If interrogatory subparts “are logically or factually subsumed within and necessarily related to the primary question,” they are to be counted as one interrogatory. *Safeco of America v. Rawston*, 181 F.R.D. 441, 445 (C.D. Cal. 1998), citing *Kendall v. GES Exposition Services*, 174 F.R.D. 684 (D. Nev. 1997). *See also Kendall v. GES Exposition Serv., Inc.*, 174 F.R.D. 684, 685 (D. Nev. 1997) (“Genuine subparts should not be counted as separate interrogatories.”); *Banks v. Office of the Senate Sergeant-at-Arms*, 222 F.R.D. 7, 10 (D.D.C. 2004) (noting that subparts related to a single topic are considered part of the same interrogatory).<sup>1</sup>

### III. Analysis

The only issue presented by the Motion and Opposition is the appropriate calculation of the number of interrogatories contained in Interrogatories 1, 6 and 10, which are set forth verbatim below. Complaint Counsel contends that Interrogatory No. 1 presents no more than two interrogatories, while Respondent contends that this Interrogatory presents four discrete subparts. Complaint Counsel contends that Interrogatories 6 and 10 each presents only one interrogatory, while Respondent argues that each interrogatory presents two interrogatories. Respondent contends that, if the number of discrete subparts in Interrogatories 1, 6, and 10 are properly calculated, it has no obligation to answer Interrogatories 13 through 16 because they exceed the 25 interrogatory limit.

#### A. Interrogatory No. 1

Interrogatory 1 states:

Identify each current or former employee of the Company who has or had any management or supervisory responsibilities or duties with respect to pricing of any Relevant Product, including without limitation: involvement in marketing, sales, distribution, or influencing list prices, catalog prices, multiplier prices, project discounts or any form of rebates; or who has had any Communication with any Competitor; and for each such current or former employee of the Company, provide:

- a. The business and home telephone numbers and telephone service providers of each voice, facsimile or cellular line assigned to or used for any business purpose by each employee (whether exclusive or not), and the period during which each such number was assigned to or used by the employee; and,

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<sup>1</sup> Where, as in this case, the Federal Rules of Civil Procedure are similar to the Commission’s Rules of Practice, those rules and case law interpreting them are useful, though not controlling, in adjudicating a dispute. *In re L.G. Balfour Co.*, No. 8435, 61 F.T.C. 1491, 1492, 1962 FTC LEXIS 367, \*4 (Oct. 5, 1962); *In re Gemtronics, Inc.*, 2010 FTC LEXIS 40, \*10 (April 27, 2010).

b. Each business and home telecopier and electronic mail identifier assigned to or used for business purpose by the employee (whether exclusive or not) and the period during which each such identifier was assigned to or used by the employee.

The parties agree that the foregoing interrogatory requests identification for two distinct classes of persons – employees with responsibility for pricing decisions and employees who had any communication with competitors on any topic. Respondent maintains that the subparts a. and b., asking for both telephone numbers and electronic mail (email) addresses for each such employee that are used for “any business purpose,” present two additional discrete questions, for a total of four interrogatories. Complaint Counsel argues that the subparts in Interrogatory No. 1 are not discrete but are subsumed within the primary question of identification.

The advisory committee notes to Federal Rule 33 state in part, a “question asking about communications of a particular type should be treated as a single interrogatory even though it requests that the time, place, persons present, and contents be stated separately for each such communication.” Fed. R. Civ. P. 33(a), *Advisory Committee’s Note* (1993 Amendments). Applying a similar principle in *Polypore*, 2008 FTC LEXIS 155, it was held that an interrogatory asking for all sales, by relevant product, and relevant market, and for additional specific information as to such sales constituted a single interrogatory. “Simply asking for data elements for the same topic, as Complaint Counsel has done here, does not multiply each data element into a separate interrogatory. The interrogatories seeking various data elements for each relevant market and in each relevant area are logically or factually subsumed within and necessarily related to the primary question.” *Id.* at \*4. In the instant case, the requests in Interrogatory No. 1 for telephone numbers and email addresses are requesting various data elements that are both logically and factually subsumed within the primary request for identification. Accordingly, Interrogatory No. 1 presents two, and not four, interrogatories.

## **B. Interrogatories 6 and 10**

Interrogatory No. 6 states: “Quantify each justification, efficiency, rationale or Effect identified in response to [Interrogatory 5 as arising in connection with Respondent’s participation in the Ductile Iron Fittings Research Association (“DIFRA”)], and describe in detail the basis used in quantifying the justification, efficiency, rationale or Effect.”

Interrogatory No. 10 states: “Quantify each justification, efficiency, rationale or Effect in response to [Interrogatory 9 as arising in connection with any exclusive dealing arrangement], and describe in detail the basis used in quantifying the justification, efficiency, rationale or Effect.”

Respondent contends that the foregoing interrogatories each present two discrete subparts by requesting Respondent to “quantify” certain efficiencies, by providing a number, and then to “describe in detail the basis” for that number, which requires a narrative explanation of the underlying methodologies or models used to determine the number. Complaint Counsel contends that the request in each of these interrogatories for the component parts or basis used

for arriving at the number requested by the interrogatory is not adding discrete, or “stand alone” questions.

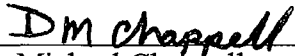
Respondent relies on *Potluri v. Yalamanchili*, 2007 U.S. Dist. LEXIS 29238 (E.D. Mich. Apr. 20, 2007), in which the court held that an interrogatory asking to set forth all business interests held by the plaintiff, as well as for the nature of the interest and the location of the business, requested discrete pieces of information. Respondent also cites *Trevino v. ABC Am., Inc.*, 232 F.R.D. 612, 614 (N.D. Cal. 2006), in which it was held that a single interrogatory requesting identification of each expert witness, the subject matter on which the expert was expected to testify, the substance of the facts and opinions to which the expert would testify, a summary of the grounds for each expert opinion, and the expert’s qualifications presented three discrete subparts.

Respondent’s cited authorities are not sufficiently analogous, on the facts or the applicable law, and, thus, are not persuasive. In this case, the primary question in both Interrogatories 6 and 10 presents a single topic – Respondent’s efficiency defenses. *See Banks*, 222 F.R.D. at 10 (noting that subparts related to a single topic are considered part of the same interrogatory). The basis for the requested quantification is logically subsumed within the primary question. A number and its basis are not “stand alone” concepts. *Compare In re Dynamic Health of Florida*, 2004 FTC LEXIS 254, at \*2 (Dec. 9, 2004) (finding interrogatory requesting the identity of certain business associates of respondent and information about their compensation presented two separate interrogatories). Accordingly, both Interrogatories 6 and 10 present only one interrogatory each.

#### IV. Conclusion

Complaint Counsel has demonstrated that Interrogatory No. 1 consists of two interrogatories and that Interrogatories 6 and 10 consist of only one interrogatory each. Because Respondent’s Opposition is based solely on its proposed higher calculation, Complaint Counsel’s Motion is GRANTED.<sup>2</sup>

ORDERED:

  
\_\_\_\_\_  
D. Michael Chappell  
Chief Administrative Law Judge

Date: April 16, 2012

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<sup>2</sup> Respondent asserts that Complaint Counsel refused to respond to certain of Respondent’s interrogatories by applying a strict counting methodology, similar to that which is proposed herein by Respondent. The nature of any dispute between Complaint Counsel and Respondent over Respondent’s Interrogatories is not dispositive as to whether Complaint Counsel’s Motion to Compel Respondent’s answers to Complaint Counsel’s interrogatories should be granted.