

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



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

DOCKET NO. 9351

ORDER ON RESPONDENT'S MOTION FOR *IN CAMERA* TREATMENT

I.

Pursuant to Rule 3.45(b) of the Commission's Rules of Practice and the Scheduling Order entered in this matter, Respondent McWane, Inc. ("McWane"), on July 31, 2012, filed a motion for *in camera* treatment for materials that might be introduced at trial in this matter ("Motion"). Respondent's Motion states that counsel for McWane has conferred with Complaint Counsel regarding the issues raised in the Motion, and has been authorized to state that Complaint Counsel takes no position with respect to the Motion and does not intend to file an opposition. Complaint Counsel has not filed an opposition to the Motion.

As set forth below, Respondent's Motion is GRANTED.

II.

The standard for evaluating Respondent's motion for *in camera* treatment is set forth in the Order on Non-Parties' Motions for *In Camera* Treatment, issued on August 17, 2012.

Respondent seeks *in camera* treatment for a narrow set of documents that the parties intend to introduce at trial. Of the 2,612 exhibits identified by the parties, Respondent seeks *in camera* treatment for only 26 documents. Respondent states that 21 of the 26 documents are Tyler/Union's¹ "Blue Books," which contain detailed financial statements, and the General Manager's Report, which discusses pending and potential litigation and other liabilities. Respondent asserts that the disclosure of these documents would substantially harm McWane by

¹ McWane's ductile iron fittings business is known as Tyler/Union, named after McWane's now-closed Tyler, Texas facility and Union Foundry in Anniston, Alabama.

providing its competitors a wide open look into its innermost financial strengths and weaknesses, which competitors could use to unfair advantage over McWane. Respondent states that the remaining 5 documents consist of monthly statements during the year 2011; Tyler/Union's current non-public job pricing information; and two of Tyler/Union's 2012 customer-specific rebate programs. Respondent asserts that disclosure of current customer-specific price and rebate plans would enable McWane's competitors to leverage more favorable prices and plans for themselves.

Although 7 of the 26 documents contain information that is over three years old, Respondent has demonstrated that the information should be protected because the information either: (1) relates to ongoing jobs, and would provide competitors with the identities of customers, locations of specific jobs, and sensitive pricing information not otherwise available to the public, which competitors could use to undermine McWane's internal pricing and business strategy and its relationships with customers; or (2) discusses pending and potential litigation wholly unrelated to this action, the exposure of which could expose McWane to liability, undermine McWane's reputation, or otherwise harm McWane.

Respondent's motion is supported by the affidavit of Rick Tatman, Vice President and General Manager of Tyler/Union, who reviewed the documents and averred that the documents subject to Respondent's motion are kept confidential and remain competitively sensitive in the marketplace. The affidavit further supports Respondent's claims that the documents are sufficiently secret and sufficiently material to its businesses that disclosure would result in serious competitive injury.

III.

Respondent has met the standards for *in camera* treatment. Accordingly, Respondent's Motion is GRANTED.

Respondent's Motion does not specify the length of time for which it seeks *in camera* treatment. Where *in camera* treatment is granted for ordinary business records, such as business strategies, marketing plans, pricing policies, or sales documents, it is typically provided for two to five years. *E.g.*, *In re Union Oil Co. of Cal.*, 2004 FTC LEXIS 223, at *2 (Nov. 22, 2004); *In re Int'l Ass'n of Conference Interpreters*, 1996 FTC LEXIS 298, at *13-14 (June 26, 1996); *Champion Spark Plug*, 1982 FTC LEXIS 85 at *2 and 1982 FTC LEXIS 92, at *2 (March 4, 1982). In this case, numerous non-parties filed motions for *in camera* treatment. By Order issued August 17, 2012, those non-parties' motions were granted and *in camera* treatment was extended for a period of five years. So that the expiration date of *in camera* treatment is consistent across exhibits to be introduced at trial, which establishes consistency and furthers administrative efficiency, *in camera* treatment for a period of five years, to expire on September 1, 2017, is GRANTED for the following exhibits: CX2135, CX2138, CX2394, CX2395, CX2396, CX2397, CX2398, CX2399, CX2400, CX2401, CX2402, CX2403, CX2404, CX2405, CX2406, CX2415, CX2416, CX2417, CX2418, CX2419, RX0319, RX0361, RX0396, RX0630, RX0631, and RX0632.

Respondent shall inform its testifying current or former employees that *in camera* treatment has been extended to the exhibits listed in this Order. At the time that any documents that have been granted *in camera* treatment are offered into evidence, or before any of the information contained therein is referred to in court, Respondent shall identify such documents and the subject matter therein as *in camera*, inform the court reporter of the trial exhibit number(s) of such documents, and request that the hearing go into an *in camera* session

ORDERED:

Dm Chappell
D. Michael Chappell
Chief Administrative Law Judge

Date: August 17, 2012