IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION



| | | |
|---|---|---|
| FEDERAL TRADE COMMISSION, | ) | |
| Petitioner, | ) | |
| v. | ) | Misc. No. |
| STAR PIPE PRODUCTS, LTD., | ) | 11-399 |
| Respondent. | ) | |

**PETITION OF THE FEDERAL TRADE COMMISSION FOR AN ORDER TO ENFORCE A SUBPOENA *DUCES TECUM***

***Preamble***

Petitioner, the Federal Trade Commission ("FTC" or "Commission") petitions this Court, pursuant to Sections 9 and 16 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 49, 56, and 28 U.S.C. §§ 1337 and 1345, and Fed. R. Civ. P. 81(a)(5), for an order requiring respondent, Star Pipe Products, Ltd. ("Star"), to produce documents in response to document requests, and a sworn verification as to these responses, in response to a Commission subpoena *duces tecum*, a type of administrative compulsory process, issued to Star on June 17, 2011 ("subpoena"). The Subpoena was issued in the course of a non-public investigation concerning possible violations by Star of Section 5 of the FTC Act, 15 U.S.C. § 45, or Section 7 of the Clayton Act, 15 U.S.C. § 18, with respect to potential anticompetitive behavior in the market for cast iron soil pipe and pipe fittings ("CISP"). The Commission is charged with enforcing both the FTC Act and the Clayton Act.

Although Star has produced some limited information, it has failed to comply with the subpoena and to respond to nine of thirteen specifications.

The Declaration under penalty of perjury of Christopher G. Renner, which verifies the allegations of this Petition, is attached hereto as Petition Exhibit 1.[1]

***Petition Allegations***

In support of its Petition, the Commission alleges as follows:

1. The Commission is an administrative agency of the United States, organized and existing pursuant to the FTC Act, 15 U.S.C. § 41 *et seq.* The Commission is authorized by Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), to prohibit unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce. The Commission is authorized by Section 11 of the Clayton Act, 15 U.S.C. § 21, to enforce Section 7 of that Act, 15 U.S.C. § 18.

2. Section 3 of the FTC Act, 15 U.S.C. § 43, empowers the Commission to prosecute any inquiry necessary to its duties in any part of the United States. Section 6 of the Act, 15 U.S.C. § 46, empowers the Commission to gather and compile information concerning, and to investigate from time to time, the organization, business, conduct, practices and management of, any person, partnership or corporation engaged in or whose business affects commerce, with certain exceptions not relevant here. Section 9 of the FTC Act, 15 U.S.C. § 49, empowers the Commission to require by subpoena *duces tecum* the production of documents or other information relating to any Commission law enforcement investigation.

3. This Court has authority to seek judicial enforcement of its duly issued

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[1] Exhibits to the Commission's Petition are referred to as "Pet. Exh." In addition, the Commission seeks to file the following exhibits that contain non-public information under seal: Exhibits 1, 3, 4, 6, 7. Redacted versions of these exhibits are attached to this petition.

subpoenas, including the subpoena issued to Star. Section 9 of the FTC Act provides, in pertinent part:

> Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in the case of contumacy or refusal to obey a subpoena issued to any person, partnership, or corporation issue an order requiring such person, partnership, or corporation to appear before the Commission, or to produce documentary evidence of so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as contempt thereof.

15 U.S.C. § 49.

4. Star is a manufacturer and supplier of iron products that maintains its principal place of business at 4018 Westhollow Parkway, Houston, Texas 77082. Pet. Exh. 1, ¶ 4. Through the sales of its iron products, Star engages in commerce throughout the country, including in the Southern District of Texas, as the term "commerce" is defined in Section 4 of the FTC Act. 15 U.S.C. § 44. As Star engaged in commerce in this district, and maintains documents and information responsive to the subpoena within this district, the Southern District of Texas is therefore a jurisdiction within which the Commission's inquiry is carried on. Thus venue is proper under Section 9 of the FTC Act. 15 U.S.C. § 49.

5. On May 12, 2011, the Commission issued a "Resolution Authorizing Use of Compulsory Process in a Nonpublic Investigation." The resolution authorized any and all compulsory process available to the Commission to be used to investigate

> whether . . . Star Pipe Products . . . [has] engaged in or [is] engaging in unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended, or Section 7 of the Clayton Act, 15 U.S.C. § 18, as amended, by entering into or engaging in any anticompetitive policy, agreement or program relating to the distribution, pricing or sale of cast iron soil pipe or cast iron soil pipe fittings.

Pet. Exh. 2.

6. On June 23, 2011, pursuant to the authority of the investigatory resolution, the Commission issued a subpoena to Star requiring it to produce documents relating to the subject matter of the investigation, and required full compliance by July 17, 2011. Pet. Exh. 1, ¶ 6; Pet. Exh. 2. The subpoena was served on Star on June 28, 2011. Pet. Exh. 1, ¶ 6.

7. Commission Rule 2.7(d)(1) requires the recipient of a subpoena who objects in whole or in part to the subpoena to file with the Commission a petition to quash or limit the subpoena that raises "all assertions of privilege or other factual or legal objections to the subpoena . . ." within twenty days of the date of service. 16 C.F.R. § 2.7(d)(1). Commission Rule 2.7(f) further provides that a petitioner may request review of an initial ruling on a petition to quash by the full Commission. 16 C.F.R. § 2.7(f).

8. Pursuant to Rule 2.7(d)(1), the deadline for filing a petition to quash was July 18, 2011. Pet Exh. 1, ¶ 8. Star did not file such a petition by that date, or any time thereafter, and it has also never sought an extension of the deadline for filing such a petition. *Id.*

9. Although Star did not pursue its administrative remedies, FTC staff engaged in discussions with Star regarding subpoena compliance. Pet. Exh. 1, ¶ 9. Star claimed that producing documents in response to the subpoena imposed a burden on the company. The company requested an extension of the subpoena deadline and offered to produce first those documents that were responsive to specification 14. *Id.*

10. At Star's request, on July 6, 2011, Commission staff formally extended the deadline for compliance to July 31, 2011, conditioned upon Star beginning a rolling production of documents responsive to Specification 14 of the Subpoena by that date. Pet. Exh 1, ¶ 10; Pet. Exh. 3. Following the modification, staff requested that Star to propose a schedule for rolling production of documents in response to the remaining specifications. Pet. Exh 1, ¶ 11;

Pet. Exh. 4.

11. Since modifying the subpoena, staff has repeatedly asked Star to propose a plan for coming into full compliance with the subpoena that provides staff with the information necessary to complete the Commission's investigation while reducing Star's burden. Pet. Exh. 1, ¶ 11; *see also* Pet. Exhs. 4, 5. Star has proposed modifications to the subpoena that would allow it to produce only a very limited number of documents. Pet. Exh. 1, ¶ 11; *see also* Pet. Exh. 6. Staff has evaluated Star's proposals for limited productions in good faith, but has rejected these proposals because they do not provide the information needed to complete the investigation. Pet. Exh. 1, ¶ 11; *see also* Pet. Exh. 7. At no point has Star offered a satisfactory plan to comply with the subpoena or produced the necessary documents. Pet. Exh. 1, ¶ 11; *see also* Pet Exh. 6.

12. On August 1, 2011, Star made one production of documents in response to specification 14. These documents, which also respond to specification 11, totaled only 280 pages. Pet. Exh 1, ¶ 12. On August 25, 2011, following additional discussions and negotiations with staff, Star made a subsequent production of documents it claims fully respond to specifications 2 and 3. Pet. Exh 1, ¶ 12.

13. To date, Star has failed to comply with specifications 1, 4, 5, 6, 7, 9, 10, 12, and 13 of the subpoena. Pet. Exh 1, ¶ 12.

14. Specification 1 requests organization charts for divisions of Star involved in the CISP market. Specifications 4, 5, 6 and 7 request documents that relate to competition in the CISP market, including competitor sales and marketing strategies, competitor pricing, and competitor manufacturing capacity. Specifications 9 and 10 request documents relating to communications with industry associations in the CISP market. Specification 12 requests

documents relating to allegations, investigations, lawsuits, or settlements of claims of antitrust law violations involving Star's competitors. Specification 13 requests Star's document retention and destruction policies. Pet. Exh. 2. All of these specifications are directly relevant to the Commission's investigation, as authorized by the compulsory process resolution.

15. The subpoena is within the Commission's authority, the information and documents sought are reasonably relevant to the Commission's investigation, and the subpoena does not impose an unreasonable burden on Star. Further, Star's failure to comply with the subpoena greatly impedes the Commission's ongoing investigation, and prevents the Commission from completing its investigation in a timely manner. Pet. Exh. 1, ¶ 13.

***Prayer for Relief***

WHEREFORE, the Commission invokes the aid of this Court and prays:

a. For the immediate issuance of an order directing Star Pipe Products, Ltd., to show cause within thirty days (30) why it should not comply in full with the subpoena *duces tecum*;

b. For a prompt determination of this matter and an order requiring Star Pipe Products, Ltd., to fully comply with the subpoena *duces tecum* within ten (10) days of such order;

c. For such other relief as this Court deems just and proper.

Respectfully submitted,

WILLARD K. TOM
General Counsel

JOHN F. DALY
Deputy General Counsel for Litigation

LESLIE RICE MELMAN
Assistant General Counsel for Litigation

BURKE W. KAPPLER
Attorney-in-charge
D.C. Bar No. 471936[2]
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Attorneys for Petitioner Federal Trade Commission

[2] A motion for pro hac vice admission to the bar of the Southern District of Texas will be filed following the docketing of this petition.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| FEDERAL TRADE COMMISSION,<br><br>Petitioner,<br><br>v.<br><br>STAR PIPE PRODUCTS, LTD.,<br><br>Respondent. | ) | 11-399<br><br>Misc. No. |

**(PROPOSED) ORDER FOR STAR PIPE PRODUCTS, LTD. TO COMPLY IN FULL WITH FEDERAL TRADE COMMISSION SUBPOENA *DUCES TECUM***

Pursuant to the authority conferred by Sections 9 and 16 of the Federal Trade Commission Act, 15 U.S.C. §§ 49, 56, Petitioner, the Federal Trade Commission, has invoked the aid of this Court, pursuant to Fed. R. Civ. P. 81(a)(5), for an order requiring Respondent Star Pipe Products, Ltd., to comply in full with the June 23, 2011, subpoena *duces tecum* issued to it in aid of a law enforcement investigation being conducted by the Commission (FTC File Nos. 111-0033, 111-0034).

The Court has considered the Commission's Petition for an Order to Enforce A Subpoena *Duces Tecum* and all papers and arguments in support thereof and in opposition thereto. It is by this Court hereby

ORDERED that Respondent Star Pipe Products, Ltd., comply in full with the Commission's subpoena *duces tecum* and produce, within ten days of the date of this Order, all responsive documents and information in compliance with the subpoena *duces tecum*.

IT IS FURTHER ORDERED that a certified copy of this Order be served forthwith by Petitioner upon Respondent or its counsel by personal service, or by certified or registered mail with

return receipt requested, or by overnight express delivery service.

SO ORDERED:

_____
United States District Judge

Dated: _____, Houston, Texas

PRESENTED BY:

WILLARD K. TOM
General Counsel

JOHN F. DALY
Deputy General Counsel for Litigation

LESLIE RICE MELMAN
Assistant General Counsel for Litigation

BURKE W. KAPPLER
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Attorneys for Petitioner Federal Trade Commission

JS 44 (Rev. 12/07)

# CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

Federal Trade Commission

**(b)** County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

**(c)** Attorney's (Firm Name, Address, and Telephone Number)

Burke W. Kappler, Office of General Counsel, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580; Tel.: 202-326-2043

**DEFENDANTS**

Star Pipe Products, Ltd.

11-399

County of Residence of First Listed Defendant Harris County
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

Paul Madan, Esq., Cantor Coburn LLP, 2603 Augusta Drive, Suite 700, Houston, TX 77057; Tel.: 713-266-1130

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)

| | PTF | DEF | | PTF | DEF |
|---|---|---|---|---|---|
| Citizen of This State | ☐ 1 | ☐ 1 | Incorporated *or* Principal Place of Business In This State | ☐ 4 | ☐ 4 |
| Citizen of Another State | ☐ 2 | ☐ 2 | Incorporated *and* Principal Place of Business In Another State | ☐ 5 | ☐ 5 |
| Citizen or Subject of a Foreign Country | ☐ 3 | ☐ 3 | Foreign Nation | ☐ 6 | ☐ 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

**CONTRACT**
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

**REAL PROPERTY**
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

**TORTS**

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury - Med. Malpractice
- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

**CIVIL RIGHTS**
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 440 Other Civil Rights

**PRISONER PETITIONS**
- ☐ 510 Motions to Vacate Sentence

Habeas Corpus:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition

**FORFEITURE/PENALTY**
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R.R. & Truck
- ☐ 650 Airline Regs.
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

**LABOR**
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt.Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

**IMMIGRATION**
- ☐ 462 Naturalization Application
- ☐ 463 Habeas Corpus - Alien Detainee
- ☐ 465 Other Immigration Actions

**BANKRUPTCY**
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

**PROPERTY RIGHTS**
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

**SOCIAL SECURITY**
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

**FEDERAL TAX SUITS**
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

**OTHER STATUTES**
- ☐ 400 State Reapportionment
- ☒ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes

**V. ORIGIN** (Place an "X" in One Box Only)

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing **(Do not cite jurisdictional statutes unless diversity)**:
Section 9 of the Federal Trade Commission Act, 15 U.S.C. 49

Brief description of cause:
Subpoena enforcement proceeding

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A **CLASS ACTION** UNDER F.R.C.P. 23

**DEMAND $**

CHECK YES only if demanded in complaint:
**JURY DEMAND:** ☐ Yes ☒ No

**VIII. RELATED CASE(S) IF ANY** (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE
09/09/2011

SIGNATURE OF ATTORNEY OF RECORD

**FOR OFFICE USE ONLY**

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

**FEDERAL TRADE COMMISSION v. STAR PIPE PRODUCTS, LTD.**

**PETITION EXHIBIT 1**

**(Public Version – Non-Public Information Redacted)**

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| FEDERAL TRADE COMMISSION, | ) | |
| Petitioner, | ) | 11-399 |
| v. | ) | Misc. No. |
| STAR PIPE PRODUCTS, LTD., | ) | |
| Respondent. | ) | |

**DECLARATION OF CHRISTOPHER G. RENNER**

Pursuant to 28 U.S.C. § 1746, I declare as follows:

1. I am an attorney employed by the U.S. Federal Trade Commission ("FTC" or "Commission") in Washington, D.C., in the Anticompetitive Practices Division of the Bureau of Competition. I am assigned to the Commission's investigation of unfair methods of competition in the cast iron soil pipe ("CISP") industry, Commission File Numbers 111-0033 and111-0034.

2. I am authorized to execute a declaration verifying the facts that are set forth in the Petition of the Federal Trade Commission for an Order to Enforce a Subpoena *Duces Tecum*. I have read the petition and the exhibits thereto (hereinafter referred to as "Pet. Exh."), and verify that Pet. Exhs. 2 through 7 are true and correct copies of the original documents. The facts set forth herein are based on my personal knowledge or information made known to me in the course of my official duties.

3. The Commission is an administrative agency of the United States government, organized and existing pursuant to the FTC Act, 15 U.S.C. §§ 41 *et seq*. The Commission is

authorized by 15 U.S.C. §§ 46, 49 and 15 U.S.C. § 21 to undertake this investigation.

4. Star Pipe Products, Ltd. ("Star") is a manufacturer and supplier of iron products that maintains its principal place of business at 4018 Westhollow Parkway, Houston, Texas 77082. Through the sales of its iron products, Star engages in commerce throughout the country, including in the Southern District of Texas.

5. On May 12, 2011, the Commission issued a resolution authorizing the use of compulsory process in an investigation:

> To determine whether . . . Star Pipe Products . . . [has] engaged or [is] engaging in unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended, or Section 7 of the Clayton Act, 15 U.S.C. § 18, as amended, by entering into or engaging in any anticompetitive policy, agreement or program relating to the distribution, pricing or sale of cast iron soil pipe or cast iron soil pipe fittings.

Pet. Exh. 2. [redacted]

[redacted]

6. On June 23, 2011, the Commission issued a subpoena *duces tecum* ("subpoena") to Star, requiring it to produce documents by July 17, 2011. Pet. Exh. 2. The subpoena was served on June 28, 2011. The subpoena requests information relating to the CISP industry, Star's CISP business, competition in the CISP market, barriers to entry into the CISP market, and documents [redacted]

7. Commission Rule 2.7(d)(1) requires the recipient of a subpoena who objects in whole or in part to the subpoena to file with the Commission a petition to quash or limit the subpoena that raises "all assertions of privilege or other factual or legal objections to the

subpoena . . ." within twenty days of the date of service. 16 C.F.R. § 2.7(d)(1). Commission Rule 2.7(f) further provides that a petitioner may request review of an initial ruling on a petition to quash by the full Commission. 16 C.F.R. § 2.7(f).

8. Pursuant to Rule 2.7(d)(1), the deadline for filing a petition to quash was July 18, 2011. Star did not file such a petition by that date, or any time thereafter, and it has also never sought an extension of the deadline for filing such a petition.

9. Although Star did not pursue its administrative remedies, FTC staff nonetheless engaged in discussions with Star regarding modifications to the subpoena. Star claimed that producing documents in response to the subpoena imposed a burden on the company. Star requested an extension of the subpoena deadline and offered to produce first some documents responsive to specification 14 of the subpoena, [redacted]

10. In response to Star's request, on July 6, 2011, Commission staff modified the subpoena to extend the deadline for compliance to July 31, 2011. Pet. Exh. 3; 16 C.F.R. § 2.7(c). This extension was conditioned upon Star beginning a rolling production of documents responsive to specification 14 of the subpoena by that date. Pet. Exh. 3.

11. Since modifying the subpoena, staff has repeatedly asked Star to propose a plan for coming into full compliance with the subpoena that provides staff with the information necessary to complete the Commission's investigation while reducing Star's burden. *See, e.g.*, Pet. Exhs. 4, 5. Star has proposed modifications to the subpoena that would allow it to produce only a very limited number of documents. *See, e.g.*, Pet. Exh. 6. Staff has evaluated Star's proposals for limited productions in good faith, but has rejected these proposals because they do not provide the information needed to complete the investigation. *See, e.g.*, Pet. Exh. 7. At no point has Star offered a satisfactory plan to comply with the subpoena or produced the necessary

documents. *See, e.g.*, Pet Exh. 6.

12. On August 1, 2011, Star produced 280 pages of documents responsive to specifications 11 and 14 of the subpoena. On August 25, 2011, Star produced documents responsive to specifications 2 and 3 of the subpoena. To date Star has failed to comply with specifications 1, 4, 5, 6, 7, 9, 10, 12, and 13 of the subpoena.

13. Star's failure to comply with the subpoena has burdened, delayed, and impeded the Commission's investigation and is preventing the Commission from completing its investigation in a timely manner.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 9, 2011

Christopher G. Renner, Esq.

**FEDERAL TRADE COMMISSION v. STAR PIPE PRODUCTS, LTD.**

**PETITION EXHIBIT 2**

**(Public Version – Non-Public Information Redacted)**

# SUBPOENA DUCES TECUM

| 1. TO | 2. FROM |
|---|---|
| Star Pipe Products, Ltd.<br>c/o Shanker A. Singham<br>Squire, Sanders & Dempsey<br>1201 Pennsylvania Avenue, NW., Suite 500<br>Washington, D.C. 20004 | UNITED STATES OF AMERICA<br>FEDERAL TRADE COMMISSION |

This subpoena requires you to appear and testify at the request of the Federal Trade Commission at a hearing [or deposition] in the proceeding described in Item 6.

| 3. LOCATION OF HEARING | 4. YOUR APPEARANCE WILL BE BEFORE |
|---|---|
| Federal Trade Commission<br>Bureau of Competition<br>601 New Jersey Avenue, N.W.<br>Room 6249<br>Washington, DC 20001 | No appearance required.<br><br>5. DATE AND TIME OF HEARING OR DEPOSITION<br>July 17, 2011 at 5:00 pm |

6. SUBJECT OF INVESTIGATION

FTC File Nos. 111-0033, 111-0034

7. RECORDS YOU MUST BRING WITH YOU

See attached Definitions, Instructions, and Specifications.

| 8. RECORDS CUSTODIAN/DEPUTY RECORDS CUSTODIAN | 9. COMMISSION COUNSEL |
|---|---|
| Melanie Sabo, Custodian<br>Christopher Renner, Deputy Custodian | Christopher Renner, Esq.<br>202-326-3173 |

| DATE ISSUED | COMMISSIONER'S SIGNATURE |
|---|---|
| 6/23/11 | A. Tim Ros |

## GENERAL INSTRUCTIONS

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

**PETITION TO LIMIT OR QUASH**

The Commission's Rules of Practice require that any petition to limit or quash this subpoena be filed within 20 days after service or, if the return date is less than 20 days after service, prior to the return date. The original and ten copies of the petition must be filed with the Secretary of the Federal Trade Commission. Send one copy to the Commission Counsel named in Item 9.

**TRAVEL EXPENSES**

Use the enclosed travel voucher to claim compensation to which you are entitled as a witness for the Commission. The completed travel voucher and this subpoena should be presented to Commission Counsel for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Commission Counsel.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

FTC Form 68-B (rev. 9/92)

**RETURN OF SERVICE**

*I hereby certify that a duplicate original of the within subpoena was duly served:* (check the method used)

○ *in person.*

○ *by registered mail.*

○ *by leaving copy at principal office or place of business, to wit:*

*on the person named herein on:*

(Month, day, and year)

(Name of person making service)

(Official title)

## SCHEDULE

For the purpose of this subpoena, the following definitions and instructions apply:

## DEFINITIONS

1. The terms "the Company" and "Star" mean Star Pipe Products, Ltd., its directors, officers, trustees, employees, attorneys, agents, consultants, and representatives, its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and the directors, officers, trustees, employees, attorneys, agents, consultants, and representatives of its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, and partnerships and joint ventures.

2. The term "Competitor" means any Person, including the Company, actually or potentially engaged in the manufacture or sale of any Relevant Product within the United States.

3. The term "Relevant Product" means cast iron soil pipe or pipe fittings.

4. The term "CISPI" means the Cast Iron Soil Pipe Institute, its current and former members, directors, officers, trustees, employees, attorneys, agents, consultants, and representatives, its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and the directors, officers, trustees, employees, attorneys, agents, consultants, and representatives of its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, and partnerships and joint ventures.

5. The term "ASTM" means the American Society for Testing and Materials, its current and former members, directors, officers, trustees, employees, attorneys, agents, consultants, and representatives, its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and the directors, officers, trustees, employees, attorneys, agents, consultants, and representatives of its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, and partnerships and joint ventures.

6. The term "communication" means any direct or indirect transmittal, exchange, transfer, or dissemination of information, regardless of the means by which it is accomplished, and includes all communications, whether written or oral, and all discussions, meetings, telephone communications, or email contacts.

7. The term "containing" means containing, describing, or interpreting in whole or in part.

8. The terms "discuss" or "discussing" mean in whole or in part constituting, containing, describing, analyzing, explaining, or addressing the designated subject matter,

regardless of the length of the treatment or detail of analysis of the subject matter, but not merely referring to the designated subject matter without elaboration. A document that "discusses" another document includes the other document itself.

9. The term "documents" means all written, recorded, transcribed, or graphic matter of every type and description, however and by whomever prepared, produced, reproduced, disseminated, or made, including, but not limited to, analyses, letters, telegrams, memoranda, reports, bills, receipts, telexes, contracts, invoices, books, accounts, statements, studies, surveys, pamphlets, notes, charts, maps, plats, tabulations, graphs, tapes, data sheets, data processing cards, printouts, net sites, microfilm, indices, calendar or diary entries, manuals, guides, outlines, abstracts, histories, agendas, minutes or records of meetings, conferences, electronic mail, and telephone or other conversations or communications, as well as films, tapes, or slides, and all other data compilations in the possession, custody, or control of the Company, or to which the Company has access. The term "documents" includes the complete original document (or a copy thereof if the original is not available), all drafts (whether or not they resulted in a final document), and all copies that differ in any respect from the original, including any notation, underlining, marking, or information not on the original. The term "other data compilations" includes information stored in, or accessible through, computer or other information retrieval systems, together with instructions and all other material necessary to use or interpret such data compilations as set out in Attachment 1.2. If the name of the person or persons who prepared, reviewed, or received the document and the date of preparation, review, or receipt are not clear on the face of any document, such information should be provided separately. Documents shall be produced in accordance with the instructions set out in Attachment 1.2.

10. The terms "documents sufficient to show" and "documents sufficient to identify" mean both documents that are necessary and documents that are sufficient to provide the specified information. If summaries, compilations, lists, or synopses are available that provide the information being requested, these may be provided in lieu of the underlying documents.

11. The term "effect" means the actual, intended, forecast, desired, predicted, or contemplated consequence or result of an action or plan.

12. The term "Person" includes the Company and means any natural person, corporate entity, partnership, association, joint venture, or any other organization or entity engaged in commerce, its current and former members, directors, officers, trustees, employees, attorneys, agents, consultants, and representatives, its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and the directors, officers, trustees, employees, attorneys, agents, consultants, and representatives of its domestic and foreign parents, predecessors,

divisions, subsidiaries, affiliates, and partnerships and joint ventures.

13. The terms "plan" or "plans" mean tentative and preliminary proposals, strategies, recommendations, analyses, reports, or considerations, whether or not precisely formulated, finalized, authorized, or adopted.

14. The term "relating to" means in whole or in part constituting, containing, concerning, embodying, reflecting, discussing, explaining, describing, analyzing, identifying, stating, referring to, dealing with, or in any way pertaining to.

15. The terms "and" and "or" have both conjunctive and disjunctive meanings.

16. The terms "each," "any," and "all" mean "each and every."

## INSTRUCTIONS

The response to this subpoena shall be submitted in the following manner:

1. Unless modified by agreement with the staff of the Federal Trade Commission, each Specification of this subpoena *duces tecum* ("subpoena") requires a complete search of all the files of the Company as defined in Definition 1 above. If the Company believes that the scope of either the required search or the subpoena itself can be narrowed in any way that is consistent with the Commission's need for documents and information, you are encouraged to discuss such questions and possible modifications with the Commission representative identified in Instruction 16 of this subpoena. All such modifications to this subpoena must be agreed to in writing by the Commission through its delegated staff.

2. Documents covered by this subpoena include all responsive documents in the Company's possession, custody, or control, including documents that its officers, directors, employees, agents, or representatives are holding, whether or not such documents are on the Company's premises. If any such person is unwilling to produce responsive documents, state individually as to each person: name, address, telephone number, and relationship to the Company.

3. Unless otherwise stated, each Specification calls for the production of all documents prepared, received, circulated, transmitted, or in use on or after January 1, 2007, and each Specification refers to each of the years during the relevant time period. Where data, rather than documents, is requested, it shall be provided separately for each year. All references herein to year refer to calendar year. If calendar year information is not available, supply the Company's fiscal year data indicating the twelve-month period covered, and provide the Company's best estimate of calendar year data.

4. This subpoena shall be deemed continuing in nature so as to require production of all documents responsive to any Specification included in this subpoena produced or obtained by the Company up to fourteen (14) calendar days prior to the date of the Company's full compliance with this subpoena. Responsive documents generated after that date should be preserved so that they may be provided later if requested.

5. The geographic scope of each Specification is the United States.

6. In each Specification, the present tense shall be construed to include the past tense, and the past tense shall be construed to include the present tense. The singular shall be construed to include the plural, and the plural shall be construed to include the singular.

7. Each document submitted shall be marked with document identification and consecutive document control numbers. The Company shall submit a master list showing all documents, identified by control number, the name of each person from whose files the document was obtained, and the Specification number to which the document responds.

8. Documents provided shall be complete and submitted as found in the Company's files, even if only a portion of the document relates to the specified subject matter (*e.g.*, documents are to be stapled together if they are fastened together in the files). With the exception of privileged material, do not mask or delete any portion of any document in any manner.

9. Documents supplied in response to one Specification or subpart need not be supplied again in response to another subsequent Specification or subpart. However, the responses should be clearly marked as to which Specification(s) or subpart(s) the document relates.

10. If documents responsive to the Specification no longer exist, but the Company has reason to believe such documents have been in existence, state the circumstances under which they were lost or destroyed, describe the documents to the fullest extent possible, state the Specification(s) to which they are responsive, and identify persons having knowledge of the contents of such documents.

11. If the Company is unable to answer any Specification fully, supply such information as is available. Explain why such answer is incomplete, the efforts made by the Company to obtain the information, and the source from which the complete answer may be obtained. If books and records that provide accurate answers are not available, enter best estimates and describe how the estimates were derived, including the sources or bases of such estimates. Estimated data shall be followed by the notation "est." If there is no reasonable way for the Company to make an estimate, provide an

explanation.

12. If any document called for by this subpoena is withheld based on a claim of privilege or any similar claim, the claim must be asserted no later than the return date of this subpoena. In addition, pursuant to 16 C.F.R. § 2.8A(a), submit, together with the claim, a schedule of the items withheld stating individually as to each such item:

    a. the type, title, specific subject matter, and date of the item;

    b. the names, addresses, positions, and organizations of all authors and recipients of the item;

    c. the bates number(s) of the item; and

    d. the specific grounds for claiming that the item is privileged.

    For each document withheld under a claim that it constitutes or contains attorney work product, also state whether the Company asserts that the document was prepared in anticipation of litigation or for trial, and, if so, identify the anticipated litigation or trial upon which the assertion is based. If only some portion(s) of any responsive document is (are) privileged, all non-privileged portions of the document must be submitted. The addressee shall comply with the requirement of 16 C.F.R. § 2.8A(a) in lieu of filing a petition to limit or quash this subpoena solely for the purposes of asserting claims of privilege. 16 C.F.R. § 2.8A(b).

13. All documents provided in response to the subpoena must be produced in the format described in Attachment 1.2 and accompanied by the documentation described in Attachment 1.2.

14. All documentary materials used in the preparation of responses to the Specifications of this subpoena shall be retained by the Company. The Commission may require the submission of additional documents at a later time. Accordingly, you should suspend any routine procedures for document destruction and take other measures to prevent the destruction of documents that are in any way relevant to this investigation during its pendency, irrespective of whether you believe such documents are protected from discovery by privilege or otherwise. *See* 15 U.S.C. § 50. *See also* 18 U.S.C. § 1505.

15. To furnish a complete response, the person supervising compliance with this subpoena must submit a signed and notarized copy of the attached verification form, Attachment 1.1, along with the responsive materials. The Company need not send a representative to testify with the documents, but the Commission reserves the right to have the Company provide a person to testify as to the adequacy of return at a later date.

16. Any questions you have relating to this subpoena should be directed to Christopher Renner at (202) 326-3173. The response to this subpoena should be directed to the attention of Christopher Renner and delivered between 9:00 a.m. and 5:00 p.m. on any business day to the Federal Trade Commission, Bureau of Competition, 601 New Jersey Avenue, N.W., Room 6249, Washington, DC 20001. Hand delivery by courier will be acceptable, but please advise Mr. Renner in advance of hand delivery if a signature will be required.

17. The Company may comply with this subpoena by making a full return of all documents requested in this subpoena prior to the return date and by notifying Christopher Renner, at (202) 326-3173, not less than ten days prior to the formal return date, of the Company's intention to comply with this subpoena.

18. All information submitted pursuant to this subpoena is subject to the confidentiality provisions of Section 21(f) of the Federal Trade Commission Act, 15 U.S.C. § 57b-2(f), and Rule 4.10 of the Federal Trade Commission Rules of Practice, 16 C.F.R. § 4.10.

## SPECIFICATIONS

1. A current organization chart for each division of the Company that manufactures, sells or distributes, or supervises the manufacture, sale or distribution of, any Relevant Product.

2. Documents sufficient to show the Company's sales in the United States, in units, dollars and any other regularly kept measurements, of any Relevant Product, for each and every size, shape and configuration, on a quarterly basis.

3. Documents sufficient to show the Company's average monthly transaction price of any Relevant Product, for each and every size, shape and configuration, net of all discounts, including but not limited to prompt payment discounts, volume discounts, price matching discounts, prorated rebates, and freight allowances.

4. All documents relating to any Competitor's sales or marketing strategy for any Relevant Product, including without limitation all strategic plans, business plans, marketing plans, advertising plans, market studies, and presentations to management committees, executive committees, and boards of directors.

5. All documents relating to any Competitor's prices, pricing plans, pricing policies, pricing forecasts, pricing strategies, and pricing decisions relating to any Relevant Product, including without limitation all documents relating to the terms, conditions, structure and purpose of discounts or rebates paid, offered or contemplated for any Relevant Product.

6. All documents relating to competition in the manufacture, distribution or sale of any Relevant Product, including without limitation all documents relating to:

   a. the market share or competitive position of any Competitor;

   b. the relative strength or weakness of Persons manufacturing, distributing or selling any Relevant Product;

   c. market supply and demand conditions;

   d. any Competitor's willingness, ability, policy, plans, or strategies to compete or not to compete for the business of particular customers, types of customers, or customers in a particular geography or area;

   e. the price or terms on which any Competitor proposes, plans, or intends to sell, or has sold, any Relevant Product;

f. any actual or potential substitute product for any Relevant Product, including any actual or potential effect on the supply, demand, cost, or price of any Relevant Product as a result of competition from any other actual or possible substitute product;

g. any actual or potential effect on the supply, demand, cost, or price of any Relevant Product as a result of any standard, specification, certification or other approval considered, urged, proposed or promulgated by ASTM, CISPI, or any other Person;

h. the geographic scope of markets for any Relevant Product; and

i. the entry, expansion, acquisition or exit of any Competitor.

7. All documents relating to any Competitor's manufacturing capacity for any Relevant Product, including without limitation documents discussing capacity utilization, capacity planning, the cost or effect of unused capacity, and the ability and response time to increase capacity or capacity utilization.

8. [Intentionally omitted]

9. All documents relating to any communications with ASTM, CISPI, or any other Person concerning any standard, specification, certification or other approvals considered, urged, proposed or promulgated, relating to any Relevant Product.

10. All documents submitted by the Company to, or received by the Company from, CISPI.

11. All documents relating to any communication between or among any Competitors.

12. All documents relating to any allegation, investigation, lawsuit, or settlement relating to any claim that any Competitor violated any federal, state, or foreign antitrust law in connection the manufacture, sale, marketing, or provision of any Relevant Product.

13. Documents sufficient to show the Company's document retention and document destruction policies.

14. All documents relating to any proposed, contemplated, attempted or completed acquisition, merger, collaboration, purchase of stock or assets, alliance, or joint venture involving any Competitor's cast iron soil pipe or pipe fittings operations, including without limitation all documents relating to:

a. any actual or potential benefits, efficiencies, cost savings or any other actual or

potential effects of the transaction; and

b. the disposition, integration or post-transaction use of any assets, inventory, or trademarks involved in the transaction.

**Attachment 1.1**

**VERIFICATION**

I personally supervised the preparation and assembly of this response on behalf of Star Pipe Products, Ltd., in accordance with the definitions and instructions set forth in the subpoena *duces tecum* issued in FTC File Numbers 111-0033 and 111-0034. All copies submitted in lieu of originals are true, correct and complete copies of the original documents. This response is complete and correct to the best of my knowledge and belief.

Signed:_____

Name: _____

Title: _____

Date: _____

Subscribed and sworn to before me this ____ day of _____, 2011 .

Notary Public

My Commission expires

**Attachment 1.2**

## PRODUCTION FORMS AND METHODS

1. Forms of Production: The Company shall submit documents as instructed below absent written consent signed by an Assistant Director.

   (a) Documents stored in electronic or hard copy formats in the ordinary course of business shall be submitted in electronic format provided that such copies are true, correct, and complete copies of the original documents:

      (i) submit Microsoft Access, Excel, and PowerPoint in native format with extracted text and metadata; and

      (ii) submit all documents other than those provided pursuant to subparts (a)(i) or (a)(iii) in image format with extracted text and metadata.

      (iii) electronic format: documents stored in hard copy form may be submitted in image format accompanied by OCR.

   (b) For each document submitted in electronic format, include the following metadata fields and information:

      (i) for documents stored in electronic format other than email: beginning Bates or document identification number, ending Bates or document identification number, page count, custodian, creation date and time, modification date and time, last accessed date and time, size, location or path file name, and SHA Hash value;

      (ii) for emails: beginning Bates or document identification number, ending Bates or document identification number, page count, custodian, to, from, Cc, Bcc, subject, date and time sent, Outlook Message ID (if applicable), child records (the beginning Bates or document identification number of attachments delimited by a semicolon);

      (iii) for email attachments: beginning Bates or document identification number, ending Bates or document identification number, page count, custodian, creation date and time, modification date and time, last accessed date and time, size, location or path file name, parent record (beginning Bates or document identification number of parent email), and SHA Hash value; and

      (iv) for hard copy documents: beginning Bates or document identification

number, ending Bates or document identification number, page count, and custodian.

(c) If the Company intends to utilize any de-duplication or email threading software or services when collecting or reviewing information that is stored in the Company's computer systems or electronic storage media, or if the Company's computer systems contain or utilize such software, the Company must contact a Commission representative to determine, with the assistance of the appropriate government technical officials, whether and in what manner the Company may use of such software or services when producing materials in response to this Request.

(d) Submit data compilations in Excel spreadsheet or in delimited text formats, with all underlying data un-redacted and all underlying formulas and algorithms intact.

(e) Submit electronic files and images as follows:

(i) for productions over 10 gigabytes, use IDE and EIDE hard disk drives, formatted in Microsoft Windows-compatible, uncompressed data in USB 2.0 external enclosure;

(ii) for productions under 10 gigabytes, CD-R CD-ROM and DVD-ROM for Windows-compatible personal computers, and USB 2.0 Flash Drives are also acceptable storage formats.; and

(iii) **All documents produced in electronic format shall be scanned for and free of viruses. The Commission will return any infected media for replacement, which may affect the timing of the Company's compliance with this Request.**

2. All documents responsive to this Request, regardless of format or form and regardless of whether submitted in hard copy or electronic format:

(a) shall be produced in complete form, un-redacted unless privileged, and in the order in which they appear in the Company's files, and shall not be shuffled or otherwise rearranged. For example:

(i) if in their original condition hard copy documents were stapled, clipped, or otherwise fastened together or maintained in file folders, binders, covers, or containers, they shall be produced in such form, and any documents that must be removed from their original folders, binders, covers, or containers in order to be produced shall be identified in a manner so as to clearly specify the folder, binder, cover, or container from

which such documents came; and

(ii) if in their original condition electronic documents were maintained in folders or otherwise organized, they shall be produced in such form and information shall be produced so as to clearly specify the folder or organization format;

(b) shall be marked on each page with corporate identification and consecutive document control numbers;

(c) shall be produced in color where necessary to interpret the document (if the coloring of any document communicates any substantive information, or if black-and-white photocopying or conversion to TIFF format of any document (*e.g.*, a chart or graph), makes any substantive information contained in the document unintelligible, the Company must submit the original document, a like-colored photocopy, or a JPEG format image);

(d) shall be accompanied by an affidavit of an officer of the Company stating that the copies are true, correct, and complete copies of the original documents; and

(e) shall be accompanied by an index that identifies: (i) the name of each person from whom responsive documents are submitted; and (ii) the corresponding consecutive document control number(s) used to identify that person's documents, and if submitted in paper form, the box number containing such documents. If the index exists as a computer file(s), provide the index both as a printed hard copy and in machine-readable form (provided that Commission representatives determine prior to submission that the machine-readable form would be in a format that allows the agency to use the computer files). The Commission representative will provide a sample index upon request.

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

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

**RESOLUTION AUTHORIZING USE OF COMPULSORY PROCESS IN A NONPUBLIC INVESTIGATION**

File No. 111-0033 and File No. 111-0034

Nature and Scope of Investigation:

To determine whether REDACTED Star Pipe Products, REDACTED have engaged or are engaging in unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended, or Section 7 of the Clayton Act, 15 U.S.C. § 18, as amended, by entering into or engaging in any anticompetitive policy, agreement or program relating to the distribution, pricing or sale of cast iron soil pipe or cast iron soil pipe fittings.

The Federal Trade Commission hereby resolves and authorizes that any and all compulsory processes available to it be used in connection with this investigation.

Authority to Conduct Investigation:

Sections 6, 9, 10 and 20 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 49, 50 and 57b-1, as amended; FTC Procedures and Rules of Practice, 16 C.F.R. § 1.1 et seq., and supplements thereto.

By direction of the Commission.

Donald S. Clark
Secretary

ISSUED: May 12, 2011

**FEDERAL TRADE COMMISSION v. STAR PIPE PRODUCTS, LTD.**

**PETITION EXHIBIT 3**

**(Public Version – Non-Public Information Redacted)**

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Bureau of Competition

July 6, 2011

**VIA ELECTRONIC MAIL**

Christopher H. Gordon, Esq.
Squire, Sanders & Dempsey (US) LLP
Suite 500
1201 Pennsylvania Avenue, N.W.
Washington, DC 20004

Re: FTC File Numbers 111-0033 & 111-0034

Dear Chris:

This letter addresses your request for a time extension to the subpoena *duces tecum* issued to Star Pipe Products, Ltd. ("Star") by the Federal Trade Commission on June 17, 2011 in the above referenced matter (the "subpoena").

We agree to extend the time for Star's compliance with the subpoena to July 31, 2011, based on Star's agreement to begin a rolling production of documents relating to Specification 14[1] no later than July 31, 2011.

Sincerely,

Tejasvi Srimushnam, Esq.
Attorney

APPROVED:

Melanie Sabo, Esq.
Assistant Director

cc: Christopher G. Renner, Esq.

REDACTED

**FEDERAL TRADE COMMISSION v. STAR PIPE PRODUCTS, LTD.**

**PETITION EXHIBIT 4**

**(Public Version – Non-Public Information Redacted)**

**Srimushnam, Tejasvi**

**From:** Srimushnam, Tejasvi
**Sent:** Monday, July 18, 2011 3:55 PM
**To:** 'Gordon, Christopher H.'
**Cc:** 'Madan, Paul'
**Subject:** RE: CISP

Chris,

Under the modification letter, Star is obligated to begin a rolling production of documents related to Specification 14 by July 31, 2011. Our understanding is that such a production will include documents relating to REDACTED REDACTED

Our understanding coming out of the July 6 con-call was that Star would suggest modifications to the subpoena as part of an overall plan to achieve full compliance; such a plan would also include concrete benchmarks (e.g. Specification X by Y date). However, at this time, Specification 14 has not been modified. While we do not expect Star to provide all documents by July 31, it is still required to produce all documents that are responsive to Specification 14 of the subpoena.

Please let me know if you have any questions.

Thanks,

Tej

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**From:** Gordon, Christopher H. [mailto:Christopher.Gordon@ssd.com]
**Sent:** Monday, July 18, 2011 2:40 PM
**To:** Srimushnam, Tejasvi
**Cc:** Madan, Paul
**Subject:** RE: CISP

Tej,

Star is in the process of gathering the initial set of documents responsive to the CISP subpoena as modified by your July 6 letter. Per that modification letter, our understanding is that Star will produce by July 31, 2011 documents relating to REDACTED . It is also our understanding that at this time, Star is not required to produce all documents in its possession, custody or control that are responsive to Specification 14 of the subpoena.

Could you please confirm this for us? Star's outside general counsel, Paul Madan, is supervising the gathering of the documents identified in your July 6 letter, and he wanted to make sure of the scope of production for the July 31 deadline. Thanks.

Regards,
Chris

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**From:** Srimushnam, Tejasvi [mailto:tsrimushnam@ftc.gov]
**Sent:** Wednesday, July 06, 2011 4:45 PM
**To:** Gordon, Christopher H.
**Cc:** Renner, Christopher; Srimushnam, Tejasvi
**Subject:** CISP

Chris-

Please see the attached subpoena modification letter.

Best,

Tej

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**FEDERAL TRADE COMMISSION v. STAR PIPE PRODUCTS, LTD.**

**PETITION EXHIBIT 5**

**Srimushnam, Tejasvi**

**From:** Srimushnam, Tejasvi
**Sent:** Tuesday, August 02, 2011 2:07 PM
**To:** 'Madan, Paul'
**Cc:** Srimushnam, Tejasvi
**Subject:** CISP

Good afternoon Paul,

As you are aware, Star was served with a binding subpoena by the FTC on June 17, 2011. A modification letter dated July 6 extended the time for Star's compliance with the subpoena to July 31, 2011. At this time, Star is in default under the subpoena.

Staff has negotiated with Star to develop a plan to achieve full compliance, but no agreement has been reached. Most recently, we proposed another time extension, until August 15, in return for Star's agreement to begin compiling data necessary to respond to Specifications 2 and 3. We feel that this proposal balances our need for responsive documents with Star's preference to focus on other exigent matters and your preference to take vacation during the first two weeks of August.

To date, Star has not even responded to our proposal. Unless Star responds to our plan or proposes another one, we will begin the process of formally documenting Star's default as the first step in referring this matter to the Office of General Counsel for a subpoena enforcement action, if necessary.

Best,

Tej

**FEDERAL TRADE COMMISSION v. STAR PIPE PRODUCTS, LTD.**

**PETITION EXHIBIT 6**

**(Public Version – Non-Public Information Redacted)**

**Star Pipe's Proposal for Production re Specifications 2 and 3**

When we met on July 26, I told you that based on my understanding of the agreement made by Shanker Singham with Chris Renner, we would be producing the REDACTED REDACTED

In addition to REDACTED , we will be searching for documents relating to communications between REDACTED relating to REDACTED REDACTED . We hope to be able to produce responsive, non-privileged documents by August 22, 2011.

As to the next step, my understanding is that Chris Renner proposed that Star provide a proposal for the production of documents specified only in Specifications 2 and 3 of the Subpoena. Subsequent to our meeting of July 27, Shanker Singham informed me that he discussed with Chris Renner a two-phase approach to the production under the Subpoena.

First, the produced transaction documents will have demonstrated that Star REDACTED REDACTED and hence does not violate Section 1.

Second: Once it has been demonstrated that there is no REDACTED section 1 claim against Star, then Star should be regarded as a third party and the burden on Star for production should be very low, in terms of length of time, custodians and the scope of the production.

Star accordingly would be willing to produce the following information relating to Specifications 2 and 3.

Total sales (dollars, units and weight) and average sales price by quarter of the soil pipe products subject to REDACTED REDACTED , to the extent such information is reasonably and readily available. In addition, we will provide information relating to total cash discounts and rebates to the extent such information is reasonably and readily available. Please note that there are over 2500 SKU's for soil pipe products and providing detailed information relating to individual transactions, net pricing and other information specified in Specification 2 and 3 may either not be available because Star exited such business over a year ago or be extremely burdensome to produce.

We expect to provide this limited information by August 31, 2011.

Please let me know if you agree with this proposal for Star's full compliance with the subpoena.

Paul Madan
August 3, 2011

**FEDERAL TRADE COMMISSION v. STAR PIPE PRODUCTS, LTD.**

**PETITION EXHIBIT 7**

**(Public Version – Non-Public Information Redacted)**

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Bureau of Competition

August 5, 2011

**VIA ELECTRONIC MAIL**

Paul S. Madan, Esq.
Cantor Colburn LLP
2603 Augusta Drive, Suite 700
Houston, TX 77057-5662
PMadan@CantorColburn.com

Re: FTC File Numbers 111-0033 & 111-0034

Dear Paul:

On June 17, 2011, the Federal Trade Commission ("Commission") issued a subpoena *duces tecum* (the "subpoena") to Star Pipe Products, Ltd. ("Star"). Pursuant to Commission Rule 2.7(d), Star had until July 7, 2011, to file a motion to limit or quash the subpoena.[1] Star did not file such a motion.

On July 6, 2011, and at Star's request, Commission Staff issued a modification letter extending the time for Star's compliance with the subpoena to July 31, 2011 (the "modified subpoena"). Star is now in default of the modified subpoena.

At our meeting on July 26, 2011, Staff proposed another time extension, this time until August 15, 2011, in return for Star's agreement to begin compiling data necessary to respond to Specifications Two and Three of the modified subpoena. We viewed this proposal as a courtesy to Star because we are aware that Star's management is currently focused on other exigent matters and that you are planning a vacation during the first two weeks of August.

Star made a counter-proposal on August 3, 2011. Under this proposal, Star would produce documents relating to REDACTED REDACTED by August 22, 2011. In addition, Star proposed to produce by August 31, 2011, the following information, to the extent it is "reasonably and readily available": (i) total sales and average sales price by quarter of the soil pipe products subject to REDACTED ; and (ii)

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[1] Rule 2.7 states, in pertinent part: "Any petition to limit or quash an investigational subpoena or civil investigative demand shall be filed with the Secretary of the Commission within twenty (20) days after service of the subpoena or civil investigative demand, or, if the return date is less that twenty (20) days after service, prior to the return date." 16 C.F.R. §2.7.

information relating to total cash discounts and rebates for Star's soil pipe products. Star noted that the other information sought in Specification Two and Three would not be produced because it was either "not ... available" or "extremely burdensome to produce." Finally, Star's August 3 proposal contemplated that the production of the enumerated documents would constitute full compliance with the modified subpoena.

Although we welcome Star's offer to submit at least some additional documents by August 22, 2011, Star's August 3 counter-proposal is not acceptable. With respect to Specifications Two and Three, Star has not explained what "reasonably and readily available" means in terms of how and where it will search for responsive documents. Furthermore, we do not agree with Star's conclusory assertion that complying with these specifications would impose an undue burden on Star. In our experience, information responsive to Specifications Two and Three is of the sort generated and maintained in the ordinary course of business.[2] More generally, we decline to limit the scope of the modified subpoena in the drastic manner contemplated by Star's request. As we have explained to you and your colleagues on numerous occasions, the Commission's modified subpoena requires the production of documents relating to competitive conditions in the cast iron soil pipe market REDACTED REDACTED , and these documents are integral to Staff's investigation in the above-captioned matters.

We reiterate our offer of July 26: an extension of time until August 15, 2011, in exchange for Star's production of the information required by Specifications Two and Three by that date. In the alternative, we extend to Star another offer. We will recommend an extension of time for Star's full compliance with the subpoena until October 3, 2011, in exchange for Star's agreement to produce - by that date - all responsive documents from its central files and databases, as well as from the files maintained by and accessible to Messrs. Ramesh Bhutada, Rishi Bhutada, Dan McCutcheon, Navin Bhargava, Kirthi Jain, Vijay Pollod, Ravi Pollod, and Jason O'Nan. Star must also provide a production schedule with concrete benchmarks (*e.g.* Specification X by Y date) by August 22, 2011.

Star's default under the modified subpoena is ongoing. If we do not agree on a mutually acceptable proposal by August 15, 2011, we will refer this matter to the Commission's Office of the General Counsel for the commencement of a subpoena enforcement action.

Sincerely,

Tejasvi Srimushnam, Esq.
Attorney

cc: Christopher G. Renner, Esq.

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[2]. The argument is in any event untimely, coming almost a month after the deadline for a motion to limit or quash the subpoena.