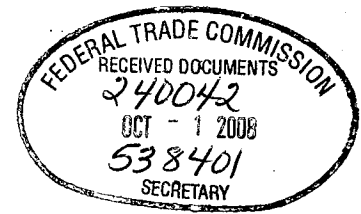


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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of)

) Docket No. 9327

) Polypore International, Inc.)
) a corporation)

) PUBLIC DOCUMENT)

MOTION TO RESCHEDULE HEARING DATE

Pursuant to Rule 4.3(b) of the Rules of Practice of the Federal Trade Commission, 16 C.F.R. § 4.3(b), Polypore International, Inc. ("Polypore") moves that the hearing on the Complaint filed in this matter be rescheduled to begin on May 18, 2009. The Complaint states that the hearing on the Complaint will begin on "December 9, 2008, or such other date as determined by the ALJ." Beginning a hearing in this matter on December 9, 2008, only eighty-four (84) days after service of the Complaint, is manifestly unfair and unjust, would materially prejudice Polypore and deprive Polypore of a reasonable opportunity to prepare its defense to this complex matter. For the reasons set forth below, Polypore requests that the hearing on this matter be set to commence on May 18, 2009:

A. Matters Preceding the Issuance of the Complaint

1. The matter grows out of Polypore's purchase of the stock of Microporous Holding Corporation ("Microporous") in a transaction that closed on February 29, 2008. FTC staff first contacted Polypore regarding this matter in March 2008.

2. Throughout the investigative period and the responses to the civil investigative demand (CID), Polypore has worked cooperatively with FTC staff to provide requested information, including the following:

- Polypore provided over one million pages of documents to the FTC.

- Polypore provided answers and supporting exhibits to interrogatories propounded by the FTC.
- Polypore produced five witnesses for investigational hearings, with some hearings taking multiple days to complete.
- During the course of the investigation, Polypore executives traveled to Washington no less than five (5) times for various meetings with FTC staff and with Commissioners.
- Polypore answered numerous inquiries through correspondence and exchanges with FTC staff.

3. During the course of its six and one-half month investigation, FTC staff conducted other investigational hearings and inquiries of third parties about which Polypore has no information at all: neither the transcripts of any hearings, copies of any documents or affidavits, nor information about the inquiries made. Polypore believes FTC staff has obtained affidavits and documents from third parties about which it has no information.¹ Complaint Counsel has indicated that they may identify ten (10) witnesses in their disclosures. At the earliest, disclosures will not be made until mid-October, less than sixty (60) days before the December 9, 2008 hearing, providing insufficient time for Polypore to review the disclosed materials or pursue independent discovery from the entities who provided materials to the FTC.

B. The Issuance of the Complaint

4. On September 9, 2008, the Commission issued the Complaint against Polypore. The Complaint was served on Polypore on September 15, 2008. The Complaint, purporting to assert three claims against Polypore under Section 7 of the Clayton Act and Section 5 of the FTC Act, is striking for its lack of clarity, its vagueness and absence of necessary allegations. Such infirmities will cause Polypore significant work and time to be able to respond to the Complaint,

¹ In Complaint Counsel's Response to Respondent's Motion to Extend Respondent's Time to Respond to Complaint (the "Response to Motion to Extend"), Complaint Counsel has stated its opposition to any delay in the hearing, arguing, in part, that "the case is not complex." Having had the advantage of over six months of investigation in this matter, and crafting its complaint to ignore, among other things, the global nature of the separator market, it is disingenuous, at best, for Complaint Counsel to object to Polypore being provided sufficient opportunity to gather evidence to assert its defense.

assert its defenses, conduct discovery and otherwise prepare to defend itself at the Hearing in this matter. Due to many serious deficiencies in the Complaint, Polypore moved the Court on September 25, 2008 for a more definite statement or clarification of the allegations in Counts II and III of the Complaint. Complaint Counsel has opposed that motion, yet failed to address in any meaningful way in its opposition the points raised by Polypore in its motion for more definite statement or clarification. See Complaint Counsel's Response to Respondent's Motion for a More Definite Statement ("Response to Motion for More Definite Statement"). Among other things, Complaint Counsel fails to address at all the serious issue raised by Polypore in its motion with respect to the pleading standard Complaint Counsel asserts it must meet for its Section 5 FTC Act claims and fails to state whether it proposes to present its monopolization and attempt to monopolize claims under Section 5 of the FTC Act without satisfying the standards required by Section 2 of the Sherman Act. Complaint Counsel also glosses over the deficiencies of its pleading related to its failure to allege monopolies in the supposed UPS, automotive and PE separator markets by simply characterizing the allegations of the Complaint, which do not say what Complaint Counsel suggests (compare Polypore's Motion, pp. 4-5 with the Response to Motion for More Definite Statement, p. 1), and by even referring to some unspecified conversations with Polypore's prior counsel (Id. at 2). Polypore's motion for more definite statement or clarification is pending with the Court.

5. The Complaint, and its multiple vague and deficient allegations, manifest that the case the FTC intends to bring against Polypore is complex. It is evident that the FTC's allegations have broadened substantially beyond the merger concerns which were the heavy and exclusive focus of the discussions between Polypore and the Commissioners leading up to the filing of the Complaint. Indeed, the Complaint stands as an unexpected departure from the Commission's prior approach to this matter.

6. During the multiple meetings between Polypore and the FTC, there were numerous and repeated indications that FTC staff was limiting its inquiry and investigation. On the day the Complaint was voted out, Polypore's CEO was again in Washington to meet with two different Commissioners to answer questions and further explain why this small merger (which does not even trigger pre-merger notification requirements under the Hart-Scott-Rodino Antitrust Improvements Act of 1976) neither violates Section 7 of the Clayton Act nor harms any consumers. Not once during the meetings on September 9 was anything said to indicate that a complaint would be voted out that very afternoon by the FTC, let alone, that the complaint would include vague allegations purportedly grounded in Section 5 of the FTC Act and set a hearing date only ninety (90) days later. Accordingly, the abrupt change in the Commission's approach to this matter, by itself, requires an extension of time. This case cannot be ready for an efficient, effective hearing on December 9, 2008.

C. Polypore's Preparation of its Defense

7. On September 10, 2008, the undersigned and his firm (collectively "Parker Poe") were retained as trial counsel to represent Polypore with respect to the Complaint in these Part 3 proceedings. To this point, Parker Poe has had only very limited involvement in responding to the FTC investigation. While Parker Poe is working diligently to gain command of the facts and circumstances that the FTC has worked on for six months, it will obviously take it some time to reach this level, let alone move beyond that to conduct adequate discovery and prepare for the hearing. In its Response to Motion to Extend, Complaint Counsel has seriously overstated Parker Poe's prior involvement in this matter. In the investigative process, Hogan & Hartson was primary counsel. Parker Poe acted only in narrowly defined roles to provide very limited assistance to Polypore and Hogan & Hartson. Parker Poe was not involved in the development of positions in response to the FTC inquiry, or in the strategy and tactics of responding to FTC

staff. It was not involved in any investigational hearings and its narrow involvement ended in early June. Parker Poe did not collect, review or produce Polypore's documents. It only forwarded to Hogan & Hartson certain pleadings, transcripts and exhibits and from a pre-existing unrelated arbitration. Complaint Counsel in his Response to Motion to Extend is in error in asserting otherwise. A redacted copy of the May 1, 2008, letter referenced by Complaint Counsel is attached as Exhibit A to confirm Parker Poe's limited role and to illustrate the extent of Complaint Counsel's misrepresentation. Parker Poe also assisted Polypore and Hogan & Hartson in responding to eight interrogatories dealing with sales, product-specific information, development and changes, and certain information concerning Microporous, by gathering basic factual information for those interrogatories.

8. Polypore would like to bring this matter to hearing as soon as practical. Given the seriousness of the allegations in the Complaint, however, Polypore does not believe that it can present its defenses fairly and effectively without the requested extension. As evidence of Polypore's intent to try to move this matter forward expeditiously, Parker Poe initiated, and came to Washington for, an introductory, informal meeting with Complaint Counsel on September 16, 2008. Further, Polypore has moved the Court to schedule the initial scheduling conference in this matter for October 22 or 23, 2008 irrespective of the Court's decision on the motion for more definite statement. Polypore's counsel has also reviewed, revised and on September 25, provided to Complaint Counsel a proposed Protective Order which would govern the use of confidential information from the parties and third parties in this matter. Complaint Counsel has not yet provided any comment on Polypore's revised draft of the Protective Order.

9. Without the requested additional time to prepare its defenses and to conduct vital discovery, Polypore will not be afforded the fundamental right of any litigant: to develop its defenses fairly and fully and to present those defenses effectively and efficiently at a hearing.

The work will take some time, but is critical and will take considerable effort even with the proposed extension. At present, the tasks to prepare for trial include, but may not be limited to:

(a) Identification of the necessary witnesses for trial. At this time, Polypore has identified fourteen (14) of its officers and employees who may have relevant information and are likely witnesses. Five of them already have been the subject of investigational hearings. Substantial work will need to be accomplished to determine the actual witnesses and the scope of their testimony. Assuredly, several of them will have to be defended at depositions taken by Complaint Counsel.

(b) Documents have to be reviewed. At this point, 1.1 million documents have been turned over to the FTC. These documents have not been reviewed by Parker Poe and must be thoroughly reviewed. Complaint Counsel has indicated that the FTC may seek more discovery from Polypore. Polypore believes that the FTC has obtained additional documents from third parties which presumably will be turned over to Polypore in discovery. The quantity of these documents is not known, yet they, too, will have to be reviewed in order to prepare effectively for trial.

(c) Discovery must occur of third parties (customers and competitors). At this time, Polypore does not know whether the customers and competitors will cooperate or whether compulsory process will be necessary to obtain the discovery.

(i) With respect to customers, Polypore has identified at this time twelve (12) domestic customers who may have relevant information. Those customers and their representatives which Polypore may call upon for deposition are located in nine (9) states across the country. The logistics of obtaining documents, scheduling and taking depositions will be substantial and take a considerable amount of time. Polypore cannot predict the amount of

document discovery that will be necessary. There are also foreign customers that Polypore likely will need to obtain discovery from in this matter.

(ii) Polypore has identified at this time eight (8) competitors who may have relevant information. All are foreign enterprises whose main offices are in the countries of the United Kingdom, Japan, China, Thailand and India. Only two of those have substantial presences in the United States. Cooperation will probably not be forthcoming and some form of compulsory process will likely be required. Polypore fully expects that it may have to utilize the Hague Convention to obtain discovery from certain of these international competitors. Compliance with the Hague Convention will take significant time. Depositions under the Hague Convention may be necessary and will likewise add complexity and time.

(d) When disclosures are made by the FTC in mid-October, Polypore will have to determine what discovery it must do with respect to such disclosures. Complaint Counsel has indicated ten (10) witnesses may be identified. The scheduling and taking of those depositions alone will take significant time. Follow-up document requests will likewise take time. Under the current hearing schedule, both of these discovery efforts will have to be done in approximately forty-five (45) days to meet a December 9, 2008 hearing date, an impossible task.

(e) Polypore intends to employ an economist to testify as an expert in this matter. Complaint Counsel has not indicated whether the FTC will use testifying experts. Even if the FTC does not use an expert, it will take significant time for Polypore to work with the expert, for the expert to develop his theories, data and report, and presumably, be deposed by Complaint Counsel. If Complaint Counsel chooses to use an expert, then Polypore will also have to engage in discovery concerning such experts' bases for opinions, theories, data and reports, and depose such expert.


10. Polypore wants this matter to be resolved in an orderly and expeditious manner, but as set forth above, that cannot be done without a fair and full opportunity for Polypore to protect its own interests. At this point, the FTC staff has had a six and one-half month opportunity to gather its information, collate, review and analyze it. The Complaint was only served on September 15, 2008, laying out the claims that the FTC will make in this proceeding. Extending the date for the hearing will not harm consumers who in this case are sophisticated purchasers. Polypore is entitled to full due process in responding to these claims.

11. Finally, it should be noted that the scheduling of this Hearing for December 9, 2008, a mere three months after issuance of the Complaint, is significantly shorter than the period suggested by FTC in its recently released proposed rules. Under the FTC's proposed rules, the time for scheduling a hearing is 5 months after issuance of the complaint for merger cases and 8 months after issuance of a complaint for non-merger cases. This is important to note in light of the fact that this rule change is being proposed because "the Part 3 process has long been criticized as being too protracted." See *FTC Seeks Comments on Proposed Amendments to its Rules of Practice Regarding Adjudicative Proceedings*, September 25, 2008, a true and correct copy of which is attached as Exhibit B. Here, in a case which appears to involve merger and non-merger claims, the extension sought is equal to 8 months from issuance of the current defective Complaint, a time equal to the period proposed by the FTC for non-merger cases.

For the reasons stated, Polypore requests that the hearing be extended until May 18, 2009, and that at the scheduling conference, the parties set forth and agree upon the appropriate discovery schedule that will facilitate and enable the efficient and effective trying of this matter at that time. Polypore requests the opportunity to discuss this motion with the Court at any time it deems appropriate, or at the scheduling conference (which Polypore has requested be set for either October 22 or 23, 2008).

Dated: October 1, 2008

Respectfully Submitted,



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Eric D. Welsh

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Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that on October 1, 2008, I caused to be filed via hand delivery and electronic mail delivery an original and two copies of the foregoing *Motion to Reschedule Hearing Date*, and that the electronic copy is a true and correct copy of the paper original and that a paper copy with an original signature is being filed on the same day by other means with:

Donald S. Clark, Secretary
Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW, Rm. H-135
Washington, DC 20580
secretary@ftc.gov


I hereby certify that on October 1, 2008, I served via hand delivery and first-class mail delivery a copy of the foregoing *Motion to Reschedule Hearing Date* with:

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

I hereby certify that on October 1, 2008, I served via first-class mail delivery and electronic mail delivery a copy of the foregoing *Motion to Reschedule Hearing Date* with:

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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

<hr/>)	
In the Matter of)	Docket No. 9327
)	
Polypore International, Inc.)	
a corporation.)	PUBLIC DOCUMENT
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ORDER

Upon consideration of Respondent's Motion to Reschedule Hearing Date and Complaint Counsel's response thereto, and the Court being fully informed, it is this ____ day of _____, 2008, hereby

ORDERED, that the Motion is GRANTED; and it is further

ORDERED, that the hearing on the Complaint will begin on May 18, 2009.

The Honorable D. Michael Chappell
Chief Administrative Law Judge (Acting)
Federal Trade Commission

EXHIBIT A

HOGAN &
HARTSON

REDACTED

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May 1, 2008

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
**Re: Supplemental Production for Polypore International, Inc.'s First Response to the
Subpoena Duces Tecum, FTC File No. 0810131**

Dear Steve:

Steven A. Dahm
May 1, 2008
Page 2

Finally, as I discussed with Benjamin Gris on April 30, 2008, we have produced all of the documents related to the arbitration in PDF files in an effort to provide them to you as quickly as possible. These documents were scanned into PDF files from the hard copy files of Polypore's local counsel, Parker Poe Adams & Bertsein LLP.

Sincerely,


Michaelynn R. Ware

Enclosures

cc: Phillip Bryson, Esq.
Benjamin Gris, Esq.
Adam Shearer, Esq.
Michael Shor, Esq.

EXHIBIT B



Federal Trade Commission Protecting America's Consumers

For Release: September 25, 2008

FTC Seeks Comments on Proposed Amendments to its Rules of Practice Regarding Adjudicative Proceedings

Changes Proposed to Ensure the High Quality of Commission Decision-making

The Federal Trade Commission today issued a Notice of Proposed Rulemaking (NPRM) seeking public comment on proposed rule revisions that would amend Parts 3 and 4 of the agency's Rules of Practice, with the goal of further expediting its adjudicative proceedings, improving the quality of adjudicative decision-making, and clarifying the respective roles of the Administrative Law Judge (ALJ) and the Commission in Part 3 proceedings. The FTC currently is seeking public comment on the proposed amendments as part of the rulemaking process.

The Administrative Process

Part 3 and sections of Part 4 of the Commission's Rules of Practice concern the process of administrative adjudication at the agency. While some Commission law enforcement actions are brought in federal district court, others are brought through the administrative process – commonly referred to as Part 3. In such cases, the FTC's action typically is tried before an ALJ, who then issues an initial decision and order in the matter. This decision can be appealed to the full Commission. The Commission then issues its decision and order, which can be appealed to the U.S. Court of Appeals (and subsequently the U.S. Supreme Court) by the respondents. If the Commission rules against complaint counsel – the FTC staff who prosecuted the matter – the case is over and cannot be appealed outside the agency.

The Part 3 process has long been criticized as being too protracted, leading to at least three undesirable consequences. First, in merger cases, drawn-out proceedings may result in parties abandoning transactions before their merits can be adjudicated. Second, protracted Part 3 proceedings may lead to substantially increased litigation costs, both for the Commission and for private parties. Third, protracted proceedings do not necessarily lead to decisions that are more just or fair.

The goal of the rulemaking is to address these concerns by making appropriate changes to streamline and otherwise improve the Part 3 process, while balancing three factors: 1) the public interest in a high-quality decision-making process; 2) the interests of justice in an expeditious review of litigated matters; and 3) the very real interest of the parties in litigating matters economically without unnecessary expense.

The Proposed Amendments

Each of the proposed rule revisions is detailed in the NPRM, and considered together they are designed to ensure an administrative process that brings the Commission's expertise into play earlier and more often during Part 3 proceedings. The revisions include: 1) setting tighter time limits on the adjudicative process; 2) making the discovery and motion practice more efficient; 3) expediting and streamlining evidentiary hearings; and 4) making changes to the process for issuing initial decisions by the ALJ and subsequent Commission review.

First, the NPRM would allow the ALJ or the Commission to impose tighter time periods during the adjudicative process. It would allow the ALJ or the Commission to shorten any time periods set in the rules, provided that the change does not unfairly prejudice any party. It also would require that the date of the evidentiary hearing be set in a notice accompanying issuance of the complaint. This hearing would be held five months from the date of the complaint in merger cases and eight months from this date in non-merger cases, unless the Commission decides that a different date would be appropriate. Respondents would be required to file answers to the complaint within 14 days of service, instead of the current 20, and deadlines would be imposed on pre-hearing procedures, such as the initial meet and confer session and the scheduling conference. The rule also would be amended to eliminate the unilateral authority of the ALJ to extend the one-year deadline for filing the initial decision, requiring instead Commission approval for extensions.

Next, the amendments would provide the Commission with the authority to decide in the first instance all dispositive pre-hearing motions, including motions for summary decision, unless it refers the motion to the ALJ. The amendments also would expressly provide authority for the Commission or an individual Commissioner to preside over discovery and other pre-hearing

proceedings before the matter is transferred to the ALJ.

Other proposed rule changes would impose word-count limits on all motions; would limit the scope of the search for discoverable materials for complaint counsel, respondents and third parties to minimize the burden of search costs; would expressly limit waivers resulting from the inadvertent disclosure of privileged materials; and would require the ALJ to issue a standard protective order designed to limit delays and ensure that privileged or confidential information is treated consistently in all Part 3 cases. A new rule governing expert discovery would impose deadlines to identify expert witnesses and to submit expert reports and would limit the number of expert witnesses. Deadlines would be imposed on the discovery process and procedures would be specified concerning the exchange of relevant "electronically stored information."

To expedite and streamline evidentiary hearings, the length of hearings would be limited to 210 hours, the equivalent of 30 seven-hour trial days, and each side would be limited to one half of the trial time. Hearsay evidence at the hearings – including prior testimony – would be expressly permitted if deemed sufficiently reliable. The amendments would require that witness testimony be video recorded and made part of the official record, and deadlines would be imposed for the simultaneous filing of proposed findings, conclusions, and supporting briefs after the hearing.

Finally, the one-year initial decision filing deadline would be maintained, but with the requirement that the decision be issued within 70 days of the last proposed findings. The lengths of principal briefs on appeal to the Commission would be limited to 14,000 words, and reply briefs to 7,000 words, unless otherwise allowed by the Commission. Additional proposed rule amendments are detailed in the notice.

To expedite proposed reforms to the adjudicative process, the notice states the Commission's intention to establish an internal Standing Rules Committee to address potential rule changes that may be needed in the future. The Commission would review the Committee's recommendations annually to determine whether additional rule changes are appropriate. The Commission also announces that it will make best efforts to expedite its review of initial decisions on appeal.

Opportunity for Public Comment

The FTC is seeking public comment on the proposed rule revisions. Comments must be received within 30 days after publication in the Federal Register. Instructions for submitting comments are found in the Addresses section of the NPRM.

The Commission vote to issue the NPRM was 3-0, with Commissioner J. Thomas Rosch not participating. The notice will be on the FTC's Web site and likely will be published in the Federal Register next week.

Copies of the Notice of Proposed Rulemaking are available from the FTC's Web site at <http://www.ftc.gov> and from the FTC's Consumer Response Center, Room 130, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

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(FTC File No. P072104)
(Part 3 NPR final.wpd)

E-mail this News Release

If you send this link to someone else, the FTC will not collect any personal information about you or the recipient.

Related Items:

16 CFR Parts 3 and 4: Rules of Practice Regarding Adjudicative Proceedings

- Text of the Federal Register Notice

Last Modified: Friday, 26-Sep-2008 11:54:00 EDT