

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

In the Matter of)
)
)

POLYPORE INTERNATIONAL, INC.,)
Respondent.)
_____)

Docket No. 9327

ORDER DENYING MOTION FOR A MORE DEFINITE STATEMENT

I.

On September 25, 2008, Respondent Polypore International, Inc. (“Polypore,” “Daramic” or “Respondent”), filed a Motion for More Definite Statement or In the Alternative, for an Order Requiring Clarification of the Allegations of and Related to Counts II and III of the Complaint. (“motion for more definite statement”). Complaint Counsel filed its Response on September 30, 2008.

For the reasons set forth below, the motion for more definite statement is DENIED.

II.

Respondent claims that it must have a more definite statement or clarification of the charges contained in Counts II and III of the Complaint because Respondent cannot determine on the face of the existing Complaint whether the monopolization claim, although asserted on the basis of Section 5 of the FTC Act, is grounded (1) on the elements of the monopolization offense that has been developed under Section 2 of the Sherman Act, (2) on unknown elements of an unknown monopolization offense that the FTC intends to assert by way of a freestanding Section 5 claim, (3) on elements of the attempt to monopolize offense that have been developed under Section 2 of the Sherman Act, (4) on unknown elements of an unknown attempt to monopolize offense that the FTC intends to assert by way of a standalone Section 5 claim, or (5) all or some of the above.

Complaint Counsel responds that the Complaint plainly sets forth Respondent’s unlawful conduct. Complaint Counsel definitively states “that there is no claim under the Sherman Act in this complaint, which is brought solely” under Section 5 of the FTC Act, 15 U.S.C. § 45, and Section 7 of the Clayton Act, 15 U.S.C. § 18. Complaint Counsel Brief at 3. Complaint Counsel further states that the Complaint follows traditional Section 5 and Section 7 law and that no more is required.

III.

Respondent's motion for more definite statement is filed pursuant to Section 3.11(c) of the Commission's Rules of Practice which authorizes the filing of a motion for more definite statement. 16 C.F.R. § 3.11(c). See, e.g., *In re Weight Watchers Int'l, Inc.*, 1993 FTC LEXIS 300, *1 (Oct. 27, 1993); *In re Diran M. Seropian*, 1991 FTC LEXIS 306, * 1 (July 3, 1991).

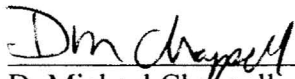
Section 3.11(b)(2) of the Rules sets forth that the Commission's complaint shall contain a "clear and concise factual statement sufficient to inform each respondent with reasonable definiteness of the type of acts or practices alleged to be in violation of the law." 16 C.F.R. § 3.11(b)(2). This rule requires only that the complaint contain a factual statement sufficiently clear and concise to inform respondent with reasonable definiteness of the types of acts or practices alleged to be in violation of law, and to enable respondent to frame a responsive answer. *In re Schering-Plough Corp.*, 2001 FTC LEXIS 198, *11 (Oct. 31, 2001). "Commission complaints, like those in the federal courts, are designed only to give a respondent 'fair notice of what . . . the claim is and the grounds upon which it rests.'" *Id.* (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)).

"Under Section 3.11(b) of the Federal Trade Commission's Rules of Practice, a motion for a more definite statement is not granted unless the complaint is ambiguous or more information is necessary in order to enable the respondents to prepare a responsive answer to the complaint." *In re Red Apple Companies, Inc.*, 1994 FTC LEXIS 90, *1 (June 21, 1994); see also *In re Fruehauf Trailer Co.*, 53 F.T.C. 1269, 1270 (1956); *In re Kroger Company*, 1977 FTC LEXIS 133, *1 (Aug. 12, 1977). Rule 3.11(c) is similar to Federal Rule of Civil Procedure 12(e), which allows for a more definite statement only where the pleading "is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading." Fed. R. Civ. P. 12(e).

IV.

Although Respondent avers it cannot determine whether the Complaint marks an unsuccessful attempt to allege a Sherman Act attempt to monopolize, Complaint Counsel has stated clearly that there is no claim under the Sherman Act. The Complaint in this matter is sufficiently clear that Respondent can frame a responsive answer based upon the allegations contained in the Complaint. Accordingly, Respondent's motion for a more definite statement or, in the alternative, for an order requiring clarification of the allegations of, and related to, Counts II and III of the Complaint is DENIED. Pursuant to Commission Rule 3.12(a), Respondent's Answer shall be filed by October 15, 2008.

ORDERED:



D. Michael Chappell
Administrative Law Judge

Date: October 2, 2008