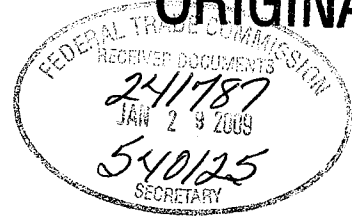


ORIGINAL



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

\_\_\_\_\_  
In the Matter of \_\_\_\_\_  
POLYPORE INTERNATIONAL, INC., \_\_\_\_\_  
Respondent. \_\_\_\_\_

Docket No. 9327

**ORDER GRANTING COMPLAINT COUNSEL'S MOTION FOR  
CERTIFICATION TO THE COMMISSION FOR COURT ENFORCEMENT**

**I.**

On January 23, 2009, Complaint Counsel filed a Motion for Certification to the Commission for Court Enforcement of a subpoena in order for Complaint Counsel to conduct a deposition of Nippon Sheet Glass ("NSG") in Japan. On January 28, 2009, Complaint Counsel filed a Supplemental Statement of Counsel. By email to the Office of Administrative Law Judges, dated January 29, 2009, Respondent indicated that it does not oppose Complaint Counsel's motion. For the reasons set forth below, Complaint Counsel's motion for certification is **GRANTED**.

**II.**

Pursuant to Commission Rule 3.38(c), Complaint Counsel moves for certification to the Commission to seek an order from a United States federal court authorizing the taking of a voluntary deposition of NSG in Japan. Complaint Counsel states that the FTC Act allows only the Commission to bring this requested enforcement action before a United States federal court. 15 U.S.C. §§ 9-10 (2008).

Complaint Counsel represents that, on January 21, 2009, it served NSG, a Japanese company with businesses in North America, with a Rule 3.33(c) subpoena asking NSG to designate one or more persons to testify about, among other things, any present or future plans NSG has to supply battery separators to customers located in North America. Complaint Counsel further represents that, on January 22, 2009, NSG's General Counsel responded to the Federal Trade Commission's subpoena by stating that the person most knowledgeable about the matter on which examination is requested is in Japan, and that its corporate representative is available to appear voluntarily to answer questions in Japan on February 27, 2009.

Complaint Counsel states that the United States - Japan Bilateral Consular Convention permits the taking of a deposition in Japan of a willing witness for use in a United States court proceeding provided that a United States federal court authorizes the taking of such voluntary deposition. Complaint Counsel further states that under the United States - Japan Bilateral Consular Convention and the All Writs Act, once the Commission authorizes enforcement of the subpoena from a United States federal court, the Commission's General Counsel will be able to ask a federal court to authorize a consul or vice-consul of the United States to take a voluntary deposition of NSG's representative in Japan. Complaint Counsel also states that agreed upon interpretations of the United States - Japan Bilateral Consular Convention and Japanese law and practice permit the taking of a deposition of a willing witness for use in a court in the United States only:

- 1) if the deposition is presided over by a U.S. consular officer;
- 2) if the deposition is conducted on U.S. consular premises;
- 3) if the deposition is taken pursuant to an American court order or commission; and
- 4) if any non-Japanese participant traveling to Japan applies for and obtains a Japanese Special Deposition visa.

Complaint Counsel asserts that, in order for Complaint Counsel to satisfy the above listed third and fourth steps, Complaint Counsel's Motion for Certification to the Commission for Court Enforcement of NSG's Rule 3.33 subpoena must be granted.

### III.

The Complaint in this action charges that Polypore's acquisition of Microporous and other conduct by Polypore substantially lessens competition in numerous ways in the alleged product area of separators for flooded lead-acid batteries in the deep-cycle, motive, automotive, and uninterruptible power supply stationary markets. Complaint ¶¶ 5, 38. The Complaint further alleges that there are significant barriers to entry into these markets. *Id.* ¶¶ 32-37. According to Complaint Counsel, NSG has information on NSG's present or future plans to supply battery separators to customers located in North America. Thus, the information sought is relevant to the Complaint's allegations or to the Respondent's defenses.

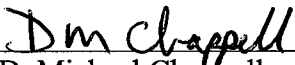
Rule 3.38(c) of the Commission's Rules of Practice states that "in instances where a nonparty fails to comply with a subpoena or order, [the ALJ] shall certify to the Commission a request that court enforcement of the subpoena or order be sought." 16 C.F.R. § 3.38(c). It is apparent that an Administrative Law Judge of the Federal Trade Commission does not have authority to compel a witness in Japan to comply with a 3.33(c) subpoena. Based upon NSG's failure to comply with the subpoena served on it in the United States and based upon Complaint Counsel's request for certification to the Commission for court enforcement of its subpoena, this motion is hereby certified.

Numerous procedures must be followed for the requested deposition to be conducted in Japan. This certification is made with the recommendation that the Commission facilitate those procedures. This recommendation is based on the relevance of the information sought, the limited nature of the discovery sought, and the representations of Complaint Counsel.

**IV.**

For the above stated reasons, it is hereby **ORDERED** that Complaint Counsel's motion is **CERTIFIED** to the Commission with the recommendation that the Commission facilitate the procedures necessary to conduct a voluntary deposition of NSG's corporate representative in Japan.

ORDERED:

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

Date: January 29, 2009