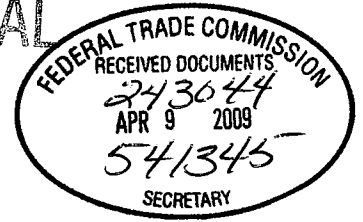


ORIGINAL



UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of)
)
)
)
)
 Polypore International, Inc.)
 a corporation)
_____)

Docket No. 9327

PUBLIC¹

**RESPONDENT'S MOTION FOR *IN CAMERA* TREATMENT
OF CERTAIN TRIAL EXHIBITS**

Pursuant to Rule 3.45(b) of the Federal Trade Commission Rules of Practice, 16 C.F.R. § 3.45(b), and the October 22, 2008 Scheduling Order² (“Scheduling Order”), Respondent Polypore International, Inc. (“Polypore”), by and through counsel, seeks *in camera* treatment for certain documents containing confidential information produced in this proceeding. These documents are highly sensitive and proprietary in nature. Public disclosure of such information would divulge Polypore’s most sensitive and confidential information to competitors and/or customers, and would cause irreparable harm and serious injury to Polypore. Accordingly, Polypore respectfully requests an order requiring these materials to be used at the hearing only *in camera* and maintained under seal.

The specific pages and documents which have been identified by Polypore, after a thorough review of Complaint Counsel’s and Polypore’s own Final Exhibit Lists, fall within the Commission’s guidelines for appropriate *in camera* treatment as set forth in the opinions of this

¹ This Motion refers to and contains information subject to Respondent’s Motion for *In Camera* Treatment of Certain Trial Exhibits pursuant to Rule 3.45(b) of the FTC’s Rules of Practice. Such information has been redacted and labeled “[Redacted – Subject to Pending Motion for *In Camera* Treatment]” in the public version of this Motion.

² As amended by Order dated February 4, 2009.

Commission.³ Each document identified by Polypore contains sensitive information that is “sufficiently secret and sufficiently material to [Polypore’s] business that disclosure would result in serious competitive injury” and, even when balanced against the “importance of the information in explaining the rationale of Commission decisions” warrants *in camera* treatment. *General Foods Corp.*, 95 FTC 352 (1980). The documents at issue in this motion are listed in the index attached hereto as Exhibit A. For ease of reference, Polypore has grouped the items identified in Exhibit A into the following categories:

1. Category 1 – Business Plans & Strategies
2. Category 2 – Contract Negotiations & Customer Contracts
3. Category 3 – Intellectual Property & Proprietary Information
4. Category 4 – Market Analysis Documents
5. Category 5 – Pricing Strategy Documents
6. Category 6 – Customer-Specific Documents
7. Category 7 – Costing Data
8. Category 8 – Sales & Financial Information
9. Category 9 – Multiple Category Documents

The grounds for this Motion are set forth herein, and this Motion is fully supported by the sworn Declaration of Michael Shor (“Shor Decl.”) attached hereto as Exhibit B and which individually analyzes each item listed on Exhibit A. The documents themselves are attached to the Motion in electronic form as Exhibit C.

³ See *In re Dura Lube Corp.*, 1999 FTC LEXIS 255 (Dec. 23 1999); *In re Hoechst Marion Roussel, Inc.*, 2000 FTC LEXIS 157 (Nov. 22, 2000) and 2000 FTC LEXIS 138 (Sept. 19, 2000); and *In re Basic Research, Inc.*, 2006 FTC LEXIS 14 (Jan. 25, 2006)

Introduction

On March 20, 2009, Complaint Counsel served Respondent with its Final Proposed Exhibit List⁴ which identified Complaint Counsel's potential trial exhibits. Complaint Counsel's Final Proposed Exhibit List included approximately 1,364 exhibits. Respondent's Final Proposed Exhibit List was served upon Complaint Counsel on March 27, 2009.⁵ Respondent's Final Proposed Exhibit List identified approximately 1,500 potential trial exhibits.

In preparation of this motion, Respondent carefully reviewed each document identified on either Complaint Counsel's or Polypore's Final Proposed Exhibit List to determine whether the confidential material warranted *in camera* treatment. From a business perspective, Respondent would prefer that any information it considers confidential remain outside the public domain. However, Respondent understands that its own treatment of that information does not mean the materials merit *in camera* protection and, consequently, Respondent has carefully limited the number and nature of documents for which it requests *in camera* protection. As Respondent will demonstrate herein and in the supporting Declaration of Michael Shor, the public disclosure of the documents identified in Exhibit A will likely result in a clearly defined, serious injury to Respondent, thus justifying *in camera* treatment under the standard articulated by the Commission in *In re Dura Lube Corp.*, 1999 FTC LEXIS 255 (Dec. 23 1999); *In re Hoechst Marion Roussel, Inc.*, 2000 FTC LEXIS 157 (Nov. 22, 2000) and 2000 FTC LEXIS 138 (Sept. 19, 2000); and *In re Basic Research, Inc.*, 2006 FTC LEXIS 14 (Jan. 25, 2006).

[Redacted – Subject to Pending Motion for *In Camera* Treatment]

⁴ As subsequently amended.

⁵ As subsequently amended.

Argument

Pursuant to Commission Rule 3.45(b), the Administrative Law Judge may order material, or portions thereof, offered into evidence . . . to be placed *in camera* on a finding that their public disclosure will likely result “in a clearly defined, serious injury to the . . . corporation requesting *in camera* treatment.” 16 C.F.R. § 3.45(b)(emphasis added). Establishing that a “serious injury” would ensue with disclosure requires a demonstration that serious and irreparable harm will result from the Court’s publication of the confidential documents. Meeting such a standard requires Respondent to make a clear showing that the information concerned is “sufficiently secret and sufficiently material to [Respondent’s] business that disclosure would result in serious competitive injury.” See *Bristol-Myers Co.*, 90 FTC 455 (1977), *General Foods Corp.*, 95 FTC 352 (1980).

In *Bristol-Myers*, 90 FTC 455 (1977), the Commission outlined six factors to be weighed when determining materiality and secrecy: (1) the extent to which the information is known outside of the applicant's business; (2) the extent to which the information is known by employees and others involved in the applicant's business; (3) the extent of measures taken by the applicant to guard the secrecy of the information; (4) the value of the information to the applicant and its competitors; (5) the amount of effort or money expended by the applicant in developing the information; and (6) the ease or difficulty with which the information could be properly acquired or duplicated by others. Additionally, the Commission has expounded on the definition of “serious injury,” stating “[t]he likely loss of business advantages is a good example of a clearly defined, serious injury.” *Hoechst Marion Roussel, Inc.*, 2000 FTC LEXIS 138 (Sept. 19, 2000).

As set forth below and in the Declaration of Michael Shor, the documents list in Exhibit A, and grouped by the previously identified nine categories, contain information sufficiently

secret, and sufficiently material to Polypore's business, that disclosure constitutes a serious competitive injury under the *Bristol-Myers* factors and prevailing Commission law.

I. IN CAMERA TREATMENT IS WARRANTED FOR THE FOLLOWING POLYPORE DOCUMENTS

A. Category One – Business Plans & Strategies

[Redacted – Subject to Pending Motion for *In Camera* Treatment]

B. Category Two – Contract Negotiations & Customer Contracts

[Redacted – Subject to Pending Motion for *In Camera* Treatment]

C. Category Three – Intellectual Property & Proprietary Information

[Redacted – Subject to Pending Motion for *In Camera* Treatment]

D. Category Four – Market Analysis Documents

[Redacted – Subject to Pending Motion for *In Camera* Treatment]

E. Category Five – Pricing Strategy Documents

[Redacted – Subject to Pending Motion for *In Camera* Treatment]

F. Category Six – Customer-Specific Documents

[Redacted – Subject to Pending Motion for *In Camera* Treatment]

G. Category Seven – Costing Data

[Redacted – Subject to Pending Motion for *In Camera* Treatment]

H. Category Eight – Sales and Financial Information

[Redacted – Subject to Pending Motion for *In Camera* Treatment]

I. Category Nine – Multiple-Category Documents

[Redacted – Subject to Pending Motion for *In Camera* Treatment]

II. IN CAMERA TREATMENT IS ALSO WARRANTED FOR POSSIBLE TRIAL TESTIMONY BY POLYPORE'S WITNESSES

Both Respondent and Complaint Counsel have designated several Polypore employees as potential trial witnesses. Polypore's employees will likely be questioned about the topics covered by this motion. Testimony on all of these topics could result in the disclosure of the same information contained in the documents described above. Thus, Polypore also requests that any trial testimony, either upon direct examination or cross examination by either party on any of these topics, be subject to *in camera* treatment for a period of three (3) to five (5) years from the date of this motion.

Conclusion

[Redacted – Subject to Pending Motion for *In Camera* Treatment]. For the foregoing reasons and those articulated in the Declaration of Michael Shor, Polypore respectfully requests that this Court grant *in camera* protection to all the documents identified on Exhibit A and any trial testimony related to the topics covered by the documents in Exhibit A.

Dated: April 9, 2009

Respectfully submitted,

Handwritten signature of William L. Rikard, Jr. and Eric D. Welsh, with the initials BRW.

William L. Rikard, Jr.

Eric D. Welsh

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johngraybeal@parkerpoe.com

Attorneys for Respondent

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

In the Matter of)

Docket No. 9327

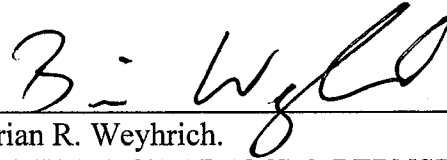
Polypore International, Inc.)
a corporation)

PUBLIC DOCUMENT

STATEMENT PURSUANT TO SCHEDULING ORDER

I, Brian R. Weyhrich., Esq., on behalf of Parker Poe Adams & Bernstein LLP (“Parker Poe”) as counsel for Polypore International, Inc. (“Polypore”), hereby represent that Parker Poe has conferred with Complaint Counsel in an effort in good faith to resolve by agreement the issues raised by its Motion for *In Camera* Treatment of Certain Trial Exhibits and have been unable to reach such an agreement. Parker Poe and Complaint Counsel discussed these issues in e-mail communication on April 8, 2009 and April 9, 2009. As a result of these communications it was concluded that Polypore and Complaint Counsel were at an impasse with respect to the issue raised in Respondent’s motion.

Dated: April 9, 2009



Brian R. Weyhrich.
PARKER POE ADAMS & BERNSTEIN, LLP
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401 South Tryon Street, Suite 3000
Charlotte, NC 28202
Telephone: (704) 372-9000
Facsimile: (704) 335-9689
brianweyhrich@parkerpoe.com

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

In the Matter of _____)
)
)

Docket No. 9327

Polypore International, Inc.)
a corporation)
_____)

PUBLIC DOCUMENT

PROPOSED ORDER

Upon consideration of Respondent's Motion for *In Camera* Treatment of Certain Trial Exhibits, any opposition thereto, any hearing thereon, and the entire record in this proceeding,

IT IS HEREBY ORDERED, that Respondent's Motion is GRANTED.

IT IS FURTHER ORDERED, that pursuant to Rule 3.45(b) of the Federal Trade Commission Rules of Practice, *16 C.F.R. § 3.45(b)*, the documents identified in the index attached as Exhibit A to the Motion, and any related trial testimony, shall be subject to the requested *in camera* treatment and will be kept confidential and not placed on the public record of this proceeding.

D. Michael Chappell
Administrative Law Judge

Date: _____

CERTIFICATE OF SERVICE

I hereby certify that on April 9, 2009, I caused to be filed via hand delivery and electronic mail delivery an original and two copies of the foregoing ***Respondent's Motion for In Camera Treatment of Certain Trial Exhibits [PUBLIC]***, 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 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

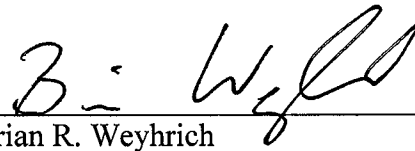
I hereby certify that on April 9, 2009, I caused to be served one copy via electronic mail delivery and two copies via overnight mail delivery of the foregoing ***Respondent's Motion for In Camera Treatment of Certain Trial Exhibits [PUBLIC]*** upon:

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

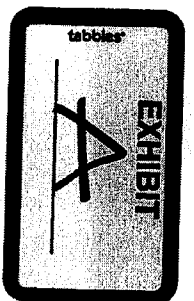
I hereby certify that on April 9, 2009, I caused to be served via first-class mail delivery and electronic mail delivery a copy of the foregoing ***Respondent's Motion for In Camera Treatment of Certain Trial Exhibits [PUBLIC]*** upon:

J. Robert Robertson, Esq.
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
rrobertson@ftc.gov

Steven Dahm, Esq.
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
sdahm@ftc.gov



Brian R. Weyrich
Parker Poe Adams & Bernstein LLP
Three Wachovia Center
401 South Tryon Street, Suite 3000
Charlotte, NC 28202
Telephone: (704) 335-9050
Facsimile: (704) 334-4706



Resp. Ex. No.	CCEN No.	1. Subj. Description	Date	Begin Doc. No.	End Doc. No.	Pages Requiring Protection for Camera	Time Period of In Camera Protection	Category
RX00330								1
RX00402								1
RX00404								1
RX01450								1
RX00546								1
RX00548	PX0741							1
RX00549								1
RX00550								1
RX00551								1
RX00553	PX0704							1
RX00554								1
RX00555								1
RX00562								1
RX00571								1
RX00580								1
RX00586								1
RX00587								1
RX00627								1
RX00628								1
RX00638								1
RX00640								1
RX00658								1
RX00683	PX0659							1
RX00692	PX0642							1
RX00695	PX0652							1
RX00696								1
RX00697								1
RX00698								1
RX00699								1
RX00700								1
RX00701								1
RX00702								1

REDACTED

REDACTED

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of determining which designated exhibits contain confidential information, the public disclosure of which would cause a clearly defined, serious injury to Polypore.

5. I am personally informed of the content of the individual documents and groups of documents that were reviewed, and the specific bases upon which Polypore is moving for *in camera* treatment of such documents.
6. Each of the documents identified in Exhibit A of Polypore's Motion for *In Camera* Treatment of Certain Trial Exhibits, and individually described herein, contains sensitive and confidential material and/or information that would result in competitive injury to Polypore should it be made public.
7. Each document identified by Polypore as requiring *in camera* treatment has been maintained internally by Polypore in a confidential manner, only being shared with those individuals requiring the knowledge contained within the documents. Additionally, each such document has, upon production in this case, been designated "Confidential Material" pursuant to the Protective Order entered on October 23, 2008.
8. Exhibit A to Polypore's Motion for *In Camera* Treatment of Certain Trial Exhibits is an index which lists each document for which Polypore seeks *in camera* treatment. This index contains the exhibit designation (*i.e.*, "RX" or "PX"), the exhibit number, a description of the exhibit, the date of the exhibit, the individual pages (if applicable) requiring *in camera* treatment, the categorical reason for seeking *in camera* treatment, and the length of time for which *in camera* treatment is sought.
9. The documents identified in Polypore's Motion for *In Camera* Treatment of Certain Trial Exhibits contain **[Redacted – Subject to Pending Motion for *In Camera* Treatment]**.

The public disclosure of any of this critically sensitive information would be highly detrimental to Polypore [Redacted – Subject to Pending Motion for *In Camera* Treatment]. Each document is individually reviewed in turn below, and for convenience's sake, organized by the following categories:

- (a) Category 1 – Business Plans & Strategies
- (b) Category 2 – Contract Negotiations & Customer Contracts
- (c) Category 3 – Intellectual Property & Proprietary Information
- (d) Category 4 – Market Analysis Documents
- (e) Category 5 – Pricing Strategy Documents
- (f) Category 6 – Customer-Specific Documents
- (g) Category 7 – Costing Data
- (h) Category 8 – Sales & Financial Information
- (i) Category 9 – Multiple Category Documents

10. Also for convenience sake, the subject documents are also summarized in the index attached as Exhibit A to Respondent's Motion.

CATEGORY ONE – BUSINESS PLANS & STRATEGIES

11. [Redacted – Subject to Pending Motion for *In Camera* Treatment].

CATEGORY TWO – CONTRACT NEGOTIATIONS & CUSTOMER CONTRACTS

12. [Redacted – Subject to Pending Motion for *In Camera* Treatment].

CATEGORY THREE – INTELLECTUAL PROPERTY & PROPRIETARY INFORMATION

13. [Redacted – Subject to Pending Motion for *In Camera* Treatment].

CATEGORY FOUR – MARKET ANALYSIS DOCUMENTS

14. [Redacted – Subject to Pending Motion for *In Camera* Treatment].

CATEGORY FIVE – PRICING STRATEGY DOCUMENTS

15. [Redacted – Subject to Pending Motion for *In Camera* Treatment].

CATEGORY SIX – CUSTOMER-SPECIFIC DOCUMENTS

16. [Redacted – Subject to Pending Motion for *In Camera* Treatment].

CATEGORY SEVEN – COSTING DATA

17. [Redacted – Subject to Pending Motion for *In Camera* Treatment].

CATEGORY EIGHT – SALES & FINANCIAL INFORMATION

18. [Redacted – Subject to Pending Motion for *In Camera* Treatment].

CATEGORY NINE – MULTIPLE-CATEGORY DOCUMENTS

19. [Redacted – Subject to Pending Motion for *In Camera* Treatment].

20. Prior to this administrative proceeding, the information contained in the documents identified by Polypore for *in camera* treatment has been revealed only to appropriate Polypore personnel and any contracting parties to the particular documents. General Polypore employees do not have access to the documents containing *in camera* material.

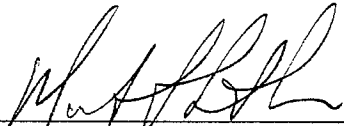
Such information is not in the public domain and cannot be obtained through other means.

21. [Redacted – Subject to Pending Motion for *In Camera* Treatment].

22. [Redacted – Subject to Pending Motion for *In Camera* Treatment].

I declare, under penalty of perjury, that the above statements are true and correct.

This 8th day of April, 2009.
Charlotte, North Carolina



Michael Shor, Esq.


NOTARIZED:

STATE OF NORTH CAROLINA

COUNTY OF UNION

I, Marsha Barnes, a Notary Public of Union County, State of North Carolina, do hereby certify that Michael Shor personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and seal, this 8 day of April, 2009.

My Commission Expires: 5/8/2012

Notary Public

[NOTARY SEAL]