

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



In the Matter of)
)
McWANE, INC.,)
a corporation, and)
)
STAR PIPE PRODUCTS, LTD.,)
a limited partnership.)

PUBLIC
DOCKET NO. 9351

**RESPONDENT MCWANE, INC.'S OBJECTIONS AND
RESPONSES TO COMPLAINT COUNSEL'S
REQUESTS FOR ADMISSION**

COMES NOW, McWane, Inc. ("McWane"), and objects and responds as follows to
Complaint Counsel's Requests for Admission ("Requests"):

GENERAL OBJECTIONS

1. McWane objects to the Definitions and Instructions to the extent they seek to
impose discovery obligations exceeding the requirements of the Federal Trade Commission's
Rules of Practice.

2. McWane submits its objections and responses without conceding the relevancy or
materiality of the subject matter of any of the Requests, and without prejudice to all objections to
the admissibility of any response. McWane's responses are made without waiving, or intending
to waive, the right to object on the grounds of incompetency, privilege, relevancy, or materiality
(or any other grounds) to the use of any documents provided in response to the Requests, in any
subsequent proceeding in this action or any other action. McWane reserves the right to object on

any and all grounds, at any time, to subsequent interrogatories and requests, or any other discovery procedures, involving or relating to the subject matter of the Requests.

3. McWane objects to the Requests to the extent that they seek (a) confidential communications between McWane or its representatives and its counsel or its counsel's representatives; (b) the work product of McWane's attorneys; (c) information compiled in anticipation of litigation by, on behalf of, or at the direction of McWane's in-house or outside counsel; (d) information protected by the common interest privilege; (e) information protected by the First Amendment associational privilege; or (f) any other applicable privilege or protection.

4. McWane objects to the Requests to the extent they improperly seek from a party legal conclusions or expert opinions, the latter of which may be discovered only through expert reports or expert depositions.

5. McWane's responses to the Requests shall not be deemed or construed to be a waiver of any privilege, right or objection. In the event privileged or work product information is inadvertently produced by McWane, such production is not and shall not be deemed or construed as a waiver of any privilege, right or objection, and McWane hereby reserves the right to claw back such inadvertently produced information.

6. McWane objects to the Requests to the extent that they are not reasonably limited in time, geographic, or subject matter scope; to the extent they seek information outside McWane's custody and control; or to the extent they seek information regarding third parties with no relationship to the claims set forth in the Federal Trade Commission's January 4, 2012 administrative complaint ("Complaint"). The disclosure of the latter information would be unduly and unnecessarily invasive of the privacy of third parties with no relationship to the Complaint.

7. McWane objects to the Requests to the extent that they seek information in the public domain, within Complaint Counsel's or the Commission's possession, or obtainable from a source other than McWane at less cost or burden to Complaint Counsel than to McWane.

8. McWane objects to the Requests to the extent they are duplicative; call for the disclosure of information irrelevant to any claim or defense in this action; are not reasonably calculated to lead to the discovery of admissible evidence; or are overly broad or unduly burdensome.

9. McWane reserves the right at any time to revise, correct, add to, or clarify its objections or responses to the Requests.

10. Each of the above General Objections shall be deemed to apply to each of McWane's specific responses set forth below.

SPECIFIC OBJECTIONS AND RESPONSES

In response to Complaint Counsel's requests that McWane admit the following, McWane responds as follows, subject to the General Objections set forth above:

1. All ARRA Waterworks Projects are subject to a Buy American requirement.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane further objects to this Request as seeking a legal conclusion, seeking information equally available to Complaint Counsel as to McWane, and prematurely and improperly seeking expert opinion. Discovery of expert opinion in this case is governed by the Court's Scheduling Order, which provides for the exchange of expert reports and depositions of experts. To the extent McWane can answer this

Request, it avers that to the best of its knowledge, ARRA provided a number of waivers and exemptions that permitted Waterworks Projects to buy non-domestic fittings and/or other products under certain circumstances and, thus, denies this Request.

2. The Environmental Protection Agency (“EPA”) must grant or approve any and all waivers to the Buy American requirement of ARRA for any ARRA Waterworks Project.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane further objects to this Request as seeking a legal conclusion, seeking information equally available to Complaint Counsel as to McWane, and prematurely and improperly seeking expert opinion. Discovery of expert opinion in this case is governed by the Court’s Scheduling Order, which provides for the exchange of expert reports and depositions of experts.

3. Respondent cannot Identify any sale of Imported Relevant Product for use in an ARRA Waterworks Projects pursuant to a Public Interest Waiver other than the three Public Interest Waivers set forth in Exhibit A.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane objects to this Request as vague, ambiguous, and misleading as to the phrase “any sale of Imported Relevant Product for use in”. McWane also objects to this Request to the extent it seeks information beyond McWane’s custody and control, and is more properly directed to third parties. Subject to

and without waiving its objections, and to the extent it understands this Request, [REDACTED]

[REDACTED] After reasonable inquiry, McWane lacks sufficient information to admit or deny whether third parties sold Imported Relevant Product pursuant to additional Public Interest Waivers, beyond the three Public Interest Waivers set forth in Exhibit A to the Requests and, thus, denies this Request.

4. Respondent is unaware of any statement or opinion by the EPA that Imported Relevant Product is an “incidental component,” as described in 74 Federal Register No. 152 (Monday, August 10, 2009) 39959-60.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane further objects to this Request as seeking a legal conclusion, seeking information equally available to Complaint Counsel as to McWane, and prematurely and improperly seeking expert opinion. Discovery of expert opinion in this case is governed by the Court’s Scheduling Order, which provides for the exchange of expert reports and depositions of experts.

5. Respondent cannot identify any sale of any Imported Relevant Product for use in any ARRA Waterworks Projects pursuant to the waiver for *de minimus* incidental components as described in 74 Federal Register No. 152 (Monday, August 10, 2009) 39959-60.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane objects to this Request as vague, ambiguous, and misleading as to the phrase “any sale of Imported Relevant Product for use in”. McWane also objects to this Request to the extent it seeks information beyond McWane’s custody and control, and is more properly directed to third parties. Subject to and without waiving its objections, and to the extent it understands this Request, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] after reasonable inquiry, lacks sufficient information to determine whether third parties sold Imported Relevant Product for use in any ARRA Waterworks Project pursuant to the waiver for *de minimus* incidental components as described in 74 Federal Register No. 152 (Monday, August 10, 2009) 39959-60, and thus denies this Request.

6. Respondent cannot Identify any sale of any Imported Relevant Product that was Manufactured in Mexico or Canada for use in any ARRA Waterworks Project.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane objects to the Complaint Counsel’s definition of “Manufactured”, which incorrectly lumps together use of one’s own foundry to produce fittings (manufacturing) with contracting with a third-party foundry to produce fittings (more accurately described as “Sourcing”). McWane further objects to this Request as vague and ambiguous as to the undefined term “any sale”. McWane also objects to this Request to the extent it seeks information beyond McWane’s custody and control,

and is more properly directed to third parties. Subject to and without waiving its objections, and to the extent it understands this Request [REDACTED]

[REDACTED] After reasonable inquiry, McWane lacks sufficient information to determine whether any third parties sold Imported Relevant Product that was Manufactured in Mexico or Canada for use in any ARRA Waterworks Project, and thus denies this Request.

7. The ARRA increased the number of Waterworks Projects being built, repaired or otherwise commissioned in the United States.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane further objects to this Request as calling for speculation, and as vague, ambiguous and unspecified in time and frame of reference with respect to the term "increased the number". McWane further objects to this Request as seeking information equally available to Complaint Counsel as to McWane, and as prematurely and improperly seeking expert opinion. Discovery of expert opinion in this case is governed by the Court's Scheduling Order, which provides for the exchange of expert reports and depositions of experts.

8. Respondent competed for sales of Domestic Relevant Product for use in ARRA Waterworks Projects after February 2010.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane objects to this request as vague and ambiguous as to what is meant by the terms “competed for sales” and “for use in”. McWane also objects to this Request to the extent it seeks information beyond McWane’s custody and control, as McWane has sold the vast majority of its domestic fittings to distributors rather than end users. Subject to and without waiving its objections, and to the extent McWane understands this Request, [REDACTED]

[REDACTED]

[REDACTED]

9. Respondent continues to compete for sales of Domestic Relevant Product for use in ARRA Waterworks Projects today.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane objects to this request as vague and ambiguous as to what is meant by the terms “continues to compete for sales” and “for use in”. McWane also objects to this Request as seeking information outside of McWane’s custody and control, and as being more properly directed to third parties. After reasonable inquiry, McWane lacks sufficient information to admit or deny whether it continues to compete for sales of Domestic Relevant Product for use in ARRA Waterworks Projects today and, thus, denies this Request.

10. The only Persons that currently Manufacture a Full-Line of Domestic Relevant Product that is 24” in diameter or smaller are Respondent and Star.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane objects to the Complaint Counsel's definition of "Manufacture", which incorrectly lumps together use of one's own foundry to produce fittings (manufacturing) with contracting with a third-party foundry to produce fittings (more accurately described as "Sourcing"). McWane also objects to Complaint Counsel's definition of "Full-Line" as vague, ambiguous and overbroad. McWane further objects to this Request as seeking information outside of McWane's custody and control, and as being more properly directed to third parties. Subject to and without waiving its objections, and based on information and belief, [REDACTED]

[REDACTED]

[REDACTED]

11. Respondent is unaware of any Person that has Plans to begin Manufacturing Domestic Relevant Product that is 24" in diameter or smaller within the next two years.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane objects to the Complaint Counsel's definition of "Manufacturing", which incorrectly lumps together use of one's own foundry to produce fittings (manufacturing) with contracting with a third-party foundry to produce fittings (more accurately described as "Sourcing"). McWane further objects to this Request as calling for rank speculation, and to the extent it seeks information beyond McWane's custody or control. Subject to and without waiving its objections, and after

reasonable inquiry, McWane lacks sufficient information to admit or deny this Request and, thus, denies this Request.

12. Prior to Star's entry in 2009 when it began Manufacturing Domestic Relevant Product, Respondent was the only Manufacturer of Full-Line of Domestic Relevant Product that was 24" in diameter or smaller.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane objects to the Complaint Counsel's definition of "Manufacturing", which incorrectly lumps together use of one's own foundry to produce fittings (manufacturing) with contracting with a third-party foundry to produce fittings (more accurately described as "Sourcing"). McWane further objects to this Request as unspecified in time scope. Subject to and without waiving its objections,

[REDACTED]

13. At least 90% of all Relevant Products sold in the United States, as measured by revenue, are 24" in diameter or smaller.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane further objects to this Request as calling for speculation, not reasonably limited in time scope, seeking information outside of McWane's custody and control, and unanswerable as written. Subject to and without waiving its objections, and after reasonable inquiry, McWane lacks sufficient knowledge to admit or deny this Request and, thus, denies this Request.

14. Any Relevant Product that meets AWWA standards and a particular specification is functionally interchangeable with any other Relevant Product that meets the same standards and specifications.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane further objects to this Request as not reasonably limited in time or geographic scope, and as vague, ambiguous and unanswerable as written as to the undefined terms "particular specification" and "functionally interchangeable". McWane further objects to this request as prematurely and improperly seeking expert opinion. Discovery of expert opinion in this case is governed by the Court's Scheduling Order, which provides for the exchange of expert reports and depositions of experts. Subject to and without waiving its objections, [REDACTED]

[REDACTED]

15. Imported Relevant Products are not a substitute for Domestic Relevant Products when the specification for a Waterworks Project has a Buy American requirement.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane further objects to this Request to the extent it seeks information beyond McWane's custody and control, and is more properly directed to third parties. McWane also objects to this Request to the extent it calls for speculation, is not reasonably limited in time scope, seeks a legal conclusion and prematurely and improperly seeks expert opinion. Discovery of expert opinion in this case is governed by the Court's Scheduling Order, which provides for the exchange of expert reports and depositions of experts. Subject to and without waiving its objections, and based on its current understanding and interpretation of Buy American requirements [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

16. Certain municipalities, counties, and states in the United States have regulations, codes or statutes that require publicly funded Waterworks Projects to be built or repaired with Domestic Relevant Products.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane further objects to this Request as unspecified in time scope, seeking information equally available to Complaint Counsel as to McWane, seeking information beyond McWane's custody and control, seeking legal conclusions, and as being more properly directed to third parties. Subject to and without

waiving these objections, and based on its existing understanding, information and belief,

[REDACTED]

[REDACTED]

[REDACTED]

17. When a regulation, code or statute requires Domestic Relevant Products be used for publicly funded Waterworks Projects, Imported Relevant Products generally cannot be used for those projects.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane further objects to this Request as more properly directed to third parties, seeking information equally available to Complaint Counsel as to McWane, seeking a legal conclusion, and prematurely and improperly seeking expert opinion. Discovery of expert opinion in this case is governed by the Court's Scheduling Order, which provides for the exchange of expert reports and depositions of experts. After reasonable inquiry, McWane lacks sufficient information to determine when and where Imported Relevant Products sold by third parties are "generally" used and, thus, denies this Request.

18. Respondent has historically offered less Job Pricing on its Domestic Relevant Product than its Imported Relevant Product.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane further objects to this Request as vague and ambiguous with respect to the undefined term “historically”, and as not reasonably limited in time scope. McWane also objects to Complaint Counsel’s use of “less Job Pricing” as vague and ambiguous, as it is unclear whether it is referring to a percentage of total jobs or the amount of discount on each job. McWane further objects to this Request as argumentative, misleading and assuming facts not in evidence, to the extent it implies that Job Pricing is the only type of discount available for McWane’s domestic or non-domestic fittings. In fact, such implication is factually incorrect. Subject to and without waiving its objections, to the extent it understands this Request, and after reasonable inquiry, McWane lacks sufficient information to admit or deny this Request and, thus, denies this Request.

19. Respondent has lowered its price on sales of Domestic Relevant Product in response to competition from Star’s Domestic Relevant Product.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane also objects to this Request as argumentative, misleading, assuming facts not in evidence, unspecified in time and geographic scope, and vague and ambiguous as to the term “price”. Subject to and without waiving its objections, and to the extent it understands this Request, McWane denies this Request as written. [REDACTED]

[REDACTED]

[REDACTED]

20. Respondent's share of sales of Domestic Relevant Products has been greater than 80% since at least 2007.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane further objects to this Request as calling for speculation, seeking information beyond McWane's custody and control, and as vague, ambiguous, and unanswerable as written as to the undefined term "share of sales". After reasonable inquiry, McWane lacks sufficient information to admit or deny this Request and, thus, denies this Request.

21. Demand for the Relevant Product is Inelastic.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane further objects to this Request as prematurely and improperly seeking expert opinion. Discovery of expert opinion in this case is governed by the Court's Scheduling Order, which provides for the exchange of expert reports and depositions of experts. McWane also objects to this Request to the extent it seeks information outside of McWane's custody and control.

22. The Relevant Product represents five percent (5%) or less of the cost of a typical Waterworks Project.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane objects to this Request as vague and ambiguous as to what is meant by the term “typical”, and as unspecified in time and geographic scope. McWane further objects to this Request as prematurely and improperly seeking expert opinion. Discovery of expert opinion in this case is governed by the Court’s Scheduling Order, which provides for the exchange of expert reports and depositions of experts. McWane also objects to this Request to the extent it seeks information outside of McWane’s custody and control. Subject to and without waiving its objections, and to the extent it understands this Request, [REDACTED]. Thus, after reasonable inquiry, McWane lacks sufficient information to admit or deny this Request as stated.

23. Respondent does not consider the price of any other type of fittings when it sets the price of the Relevant Product.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane objects to this request as vague and ambiguous as to the terms “price” and “any other type of fittings”. Subject to and without waiving its objections, and to the extent it understands this Request, McWane denies this Request as stated.

24. No other product constrains the price of the Relevant Product.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane further also objects to the undefined terms “product” “price” and “constrains” as vague and ambiguous. McWane further objections to this Request prematurely and improperly seeking expert opinion. Discovery of expert opinion in this case is governed by the Court’s Scheduling Order, which provides for the exchange of expert reports and depositions of experts. Subject to and without waiving its objections, and to the extent it understands this Request, McWane denies this Request as stated.

25. Respondent sells all, or nearly all, of its Relevant Product to distributors.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. Subject to and without waiving its objections [REDACTED]

[REDACTED]

26. Distributors are critical to the success of Respondent.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane further objects to this Request as vague and ambiguous as to the undefined terms “critical” and “success” and as calling for speculation, given that McWane has not attempted to sell fittings other than through distribution and thus does not know if such an attempt would be “success[ful]” (as McWane understands the meaning of that term). Subject to and without waiving its objections, and to the extent it understands this Request, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

27. Distributors sell Relevant Products in local geographic markets.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane also objects to this Request because it seeks information beyond McWane's custody or control, and is more properly directed to third parties (namely, distributors). McWane further objects to this request as vague and ambiguous as to the undefined term "local geographic markets". Subject to and without waiving its objections, McWane denies this Request. On information and belief, national distributors such as HD Supply and Ferguson sell fittings across the entire United States.

28. Distributors typically sell to end users all of the products needed for a specific Waterworks Project (e.g., pipe, hydrants, valves, fittings, etc.).

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane also objects to this Request because it seeks information beyond McWane's custody or control, and is more properly directed to third parties (namely, distributors). McWane further objects to this request as vague and ambiguous as to the undefined term "typically". Subject to and without waiving its objections, McWane denies this Request. On information and belief, distributors "typically" (as

McWane understands the meaning of that term) sell to contractors, rather than end users.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

29. To begin selling Relevant Product in the United States, a new entrant must secure Manufacturing through one or more foundries.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane objects to the Complaint Counsel's definition of "Manufacturing", which incorrectly lumps together use of one's own foundry to produce fittings (manufacturing) with contracting with a third-party foundry to produce fittings (more accurately described as "Sourcing"). Subject to and without waiving its objections, [REDACTED]

[REDACTED]

30. To begin selling Relevant Product in the United States, a new entrant must develop, purchase or otherwise obtain forms for casting numerous fittings in different shapes and sizes.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane objects to this Request as calling for speculation, and as vague and ambiguous as to the undefined term “numerous fittings in different shapes and sizes” - which fails to identify the specific SKUs to which that term is referring. Subject to and without waiving its objections, and to the extent it understands this Request, [REDACTED]

[REDACTED]

[REDACTED]

31. To sell Relevant Product Successfully in the United States, a new entrant must develop a distribution network with a sufficient number of distributors that allows the entrant to sell a minimum amount of Relevant Product to be efficient.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane objects to Complaint Counsel’s definition of “Successfully” as argumentative, arbitrary and capricious. McWane further objects to this Request as calling for rank speculation, and as vague and ambiguous as to what is meant by the undefined terms “minimum amount” and “efficient”. McWane further objects to this Request as improperly and prematurely seeking expert opinion. Discovery of expert opinion in this case is governed by the Court’s Scheduling Order, which provides for the exchange of expert reports and depositions of experts. After reasonable inquiry, McWane lacks sufficient information to admit or deny this Request and, thus, denies this Request.

32. To sell Relevant Product Successfully in the United States, a new entrant must develop a reputation for quality and service with distributors and end users.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane objects to Complaint Counsel's definition of "Successfully" as argumentative, arbitrary and capricious. McWane further objects to this Request as calling for rank speculation, and as improperly and prematurely seeking expert opinion. Discovery of expert opinion in this case is governed by the Court's Scheduling Order, which provides for the exchange of expert reports and depositions of experts.

33. Distributors need access to a Full-Line of Domestic Relevant Product that can be delivered in a timely fashion, *i.e.* generally less than 12 weeks.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane further objects to this Request as misleading, argumentative, assuming facts not in evidence, and vague and ambiguous with regard to the undefined term "need". McWane further objects to this Request on the basis that Complaint Counsel has defined "Full Line of Domestic Relevant Product" to limit the definition to "A" items only. McWane also objects to this Request as unspecified in time and geographic scope. After reasonable inquiry, McWane lacks sufficient information to admit or deny this Request and, thus, denies this Request.

34. In 2009, Respondent perceived that Sigma had an incentive to begin Manufacturing Domestic Relevant Product.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane objects to the Complaint Counsel's definition of "Manufacturing", which incorrectly lumps together use of one's own foundry to produce fittings (manufacturing) with contracting with a third-party foundry to produce fittings (more accurately described as "Sourcing"). McWane further objects to this Request as vague, ambiguous, speculative, argumentative and assuming facts not in evidence with respect to the undefined terms "perceived" and "incentive." Subject to and without waiving its objections, [REDACTED]

[REDACTED]

[REDACTED]

35. One factor that Respondent considered when deciding to enter into the Master Distribution Agreement ("MDA") with Sigma was the likelihood of Sigma Manufacturing its own Domestic Relevant Product.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane objects to the Complaint Counsel's definition of "Manufacturing", which incorrectly lumps together use of one's own foundry to produce fittings (manufacturing) with contracting with a third-party foundry to produce fittings (more accurately described as "Sourcing"). Subject to and without

waiving its objections, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] By way of further response, [REDACTED]

[REDACTED]

[REDACTED]

36. On or about November 23, 2009, Respondent put all Hajoca orders for Domestic Relevant Product on hold.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane objects to this request as not reasonably limited in time or subject matter scope, and as vague and ambiguous as to the term "on hold". Subject to and without waiving its objections, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

37. Respondent does not assert a free-riding justification for its Exclusive Dealing Arrangements.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane objects to Complaint Counsel's definition of Exclusive Dealing Arrangement and denies that it had any exclusive agreements. McWane also objects to Complaint Counsel's use of "free-riding" as vague and ambiguous. McWane further objects to this Request as seeking a legal conclusion, rather than an admission of fact or the application of law to fact. McWane also objects to this Request to the extent it improperly and prematurely calls for expert opinion. Discovery of expert opinion in this case is governed by the Court's Scheduling Order, which provides for the exchange of expert reports and depositions of experts. Subject to and without waiving its objections, and to the extent it understands this Request, McWane denies this Request.

38. The MDA between Respondent and Sigma did not lower the price of Domestic Relevant Product.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. Subject to and without waiving its objections, McWane lacks sufficient information to admit or deny this Request and, thus, denies this Request. [REDACTED]

[REDACTED]

[REDACTED]

39. The MDA between Respondent and Sigma did not increase the output of Domestic Relevant Product.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane further objections to this Request prematurely and improperly seeking expert opinion. Discovery of expert opinion in this case is governed by the Court's Scheduling Order, which provides for the exchange of expert reports and depositions of experts. Subject to and without waiving its objections, McWane denies this Request.

40. Sigma, Star and Respondent together account for 90% or more of the sales in Imported Relevant Product in the United States.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane further objects to this Request as unspecified in time frame. Subject to and without waiving its objections,

[REDACTED]

[REDACTED]. By way of further response,
[REDACTED]
[REDACTED]
[REDACTED]

41. In the first half of 2008, the costs of the raw materials used to Manufacture Imported Relevant Product were increasing faster than the costs of the raw materials used to Manufacture Domestic Relevant Product.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane further objections to this Request prematurely and improperly seeking expert opinion. Discovery of expert opinion in this case is governed by the Court's Scheduling Order, which provides for the exchange of expert reports and depositions of experts. After reasonable inquiry, McWane lacks sufficient information to admit or deny this Request as stated.

42. In 2008, Respondent, Sigma and Star sold Imported Relevant Product pursuant to nearly identical list prices.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane also objects to this Request to the extent it seeks information beyond McWane's custody and control, and is more properly directed to third parties. McWane further objects to this Request as misleading,

argumentative, vague and ambiguous, because it does not identify a specific list price, does not define “nearly identical”, and does not account for all of the methods of discounting available to and employed by all of the competitors in the market.

43. In 2008, Respondent, Sigma and Star sold Imported Relevant Product pursuant to nearly identical multiplier maps.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane also objects to this Request to the extent it seeks information beyond McWane’s custody and control, and is more properly directed to third parties. McWane further objects to this Request as misleading, argumentative, vague and ambiguous, because it does not identify a specific multiplier map, does not define “nearly identical”, and does not account for all of the methods of discounting available to and employed by all of the competitors in the market.

44. In January 2008, Respondent announced its intention to reduce or eliminate the Job Pricing it offered to customers.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. Subject to and without waiving its objections, McWane denies this Request.

45. Job Pricing is a form of competition among or between Sigma, Star and Respondent.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. Subject to and without waiving its objections, [REDACTED]

[REDACTED]

46. Job Pricing reduces the stability of pricing of Relevant Product.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane also objects to this Request as vague and ambiguous as to the undefined term "stability", which has been used in different ways by different witnesses in this proceeding. Subject to and without waiving its objections, [REDACTED]

[REDACTED]

47. Job Pricing reduces the transparency of pricing of Relevant Product.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane also objects to this Request as vague and ambiguous as to the undefined term “transparency of pricing”. McWane further objects to this Request as vague and ambiguous in that it does not identify to whom the “transparency of pricing” is allegedly “reduce[d].” [REDACTED]

[REDACTED]

[REDACTED] Subject to and without waiving its objections [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] As a matter of common sense, selling at any price that is not published is less transparent to others than selling at a price that is published.

48. Respondent did not use data obtained from the DIFRA Information Exchange to manage its inventory.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane objects, as misleading, argumentative, and assuming facts not in evidence, to Complaint Counsel’s

characterization of DIFRA as an “Information Exchange.” [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Subject to and without waiving its objections, McWane denies this Request.

49. Respondent did not use data obtained from the DIFRA Information Exchange to manage its production schedules.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane objects, as misleading, argumentative, and assuming facts not in evidence, to Complaint Counsel’s characterization of DIFRA as an “Information Exchange.” [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Subject to and without waiving its objections, McWane denies this Request.

50. Respondent did not use data obtained from the DIFRA Information Exchange to reduce its costs.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane objects, as misleading, argumentative, and assuming facts not in evidence, to Complaint Counsel's characterization of DIFRA as an "Information Exchange." [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

denies this Request.

/s. Joseph A. Ostoyich
Joseph A. Ostoyich
One of the Attorneys for McWane, Inc.

OF COUNSEL:

Joseph A. Ostoyich
William C. Lavery
Baker Botts L.L.P.
The Warner
1299 Pennsylvania Ave., N.W.
Washington, D.C. 20004-2420
Phone: 202.639.7700
Fax: 202.639.7890
joseph.ostoyich@bakerbotts.com
andreas.stargard@bakerbotts.com

J. Alan Truitt
Thomas W. Thagard, III
Julie S. Elmer
Maynard, Cooper & Gale, P.C.
1901 Sixth Avenue North
2400 AmSouth/Harbert Plaza
Birmingham, AL 35203-2608
(205) 254-1000
(205) 254-1999 (facsimile)
atruitt@maynardcooper.com
tthagard@maynardcooper.com
jelmer@maynardcooper.com

CERTIFICATE OF SERVICE

I hereby certify that on June 15, 2012, I delivered via electronic mail and hand delivery a copy of the foregoing document to:

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580

Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-113
Washington, DC 20580

I further certify that I delivered via electronic mail a copy of the foregoing document to:

Edward Hassi, Esq.
Geoffrey M. Green, Esq.
Linda Holleran, Esq.
Thomas H. Brock, Esq.
Michael L. Bloom, Esq.
Jeanine K. Balbach, Esq.
J. Alexander Ansaldo, Esq.
Andrew K. Mann, Esq.

By: /s/ William C. Lavery
One of the Attorneys for McWane