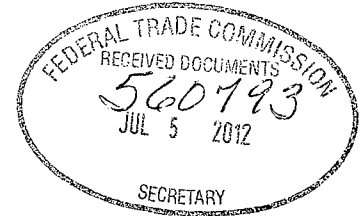


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UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of)

McWANE, INC.,)
a corporation, and)

STAR PIPE PRODUCTS, LTD.,)
a limited partnership,)
Respondents.)

DOCKET NO. 9351

**ORDER GRANTING COMPLAINT COUNSEL'S
MOTION TO COMPEL RESPONDENT MCWANE, INC.'S
RESPONSES TO REQUESTS FOR ADMISSION**

I.

On June 25, 2012, Complaint Counsel, pursuant to Commission Rule of Practice 3.38, filed a Motion to Compel Respondent McWane, Inc.'s ("McWane" or "Respondent") Responses to Requests for Admissions ("Motion"). Complaint Counsel seeks an order directing Respondent to provide "adequate and complete" responses to Complaint Counsel's Requests for Admissions ("RFA") Nos. 1-12, 15, 17-18, 22, 33, 37, 38, 40, 42-43, and 48-50, and to produce any evidence in Respondent's possession relating to Respondent's denial of RFAs 37 and 48-50. Specifically, Complaint Counsel contends that: (A) Respondent's objections are improper as to RFAs 1-11, 15, 17-18, 22, 33, 37, and 42-43; (B) Respondent's responses to RFAs 1, 3-6, 8, and 10-12 are nonresponsive and evasive; (C) Respondent improperly claims insufficient information to admit or deny RFAs 9, 18, 22, 33, 38 and 40; and (D) Respondent's denials of RFAs 37 and 48-50 are improper because they are contrary to discovery produced to date and therefore the denials are "unsupported." If Respondent has evidence in support of the denials, Complaint Counsel argues, it has not produced it in discovery and therefore must be ordered to do so.

Respondent has not filed any response to the Motion within the 5-day time period allowed under Commission Rule 3.38.

For the reasons set forth below, the Motion is GRANTED.

II.

Commission Rule 3.32 provides in pertinent part:

- (a) . . . any party may serve on any other party a written request for admission of the truth of any matters relevant to the pending proceeding set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. . . .
- (b) The matter is admitted unless, . . . the party to whom the request is directed serves upon the party requesting the admission, . . . a sworn written answer or objection addressed to the matter. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify its answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that it has made reasonable inquiry and that the information known to or readily obtainable by the party is insufficient to enable it to admit or deny. . . .

16 C.F.R. § 3.32 (a),(b).

The purpose of requests for admission “is to narrow the issues for trial by relieving the parties of the need to prove facts that will not be disputed at trial and the truth of which can be easily ascertained. *In re Aspen Technology, Inc.*, 2003 FTC LEXIS 178, at *1 (Dec. 2, 2003); *In re General Motors Corp.*, 1977 FTC LEXIS 293, at *3 (Jan. 28, 1977).” *In re Basic Research LLC*, 2004 FTC LEXIS 225, at *2-3 (Nov. 30, 2004). “The purpose of admissions is not to obtain extensive discovery of facts but to reach agreement as to facts which are not in dispute. It is, therefore, proper to request admissions as to facts which are in one’s possession.” *In re Trans Union Corp.*, 1993 FTC LEXIS 116, at *2 (May 24, 1993). *See also In re General Motors Corp.*, 1977 FTC LEXIS 293, at *4 (stating that purpose of requests for admissions is to expedite the trial and to relieve the parties of the costs of proving facts that will not be disputed at the trial, and the truth of which can be easily ascertained by reasonable inquiry).¹

¹ The provisions governing admissions under Commission Rule 3.32 are substantially similar to those under Federal Rule of Civil Procedure 36, except that the Federal Rules further provide for the imposition of costs and attorney’s fees upon the answering party, in certain circumstances, if a party fails to admit what is requested under Rule 36 and the requesting party at trial proves the matter to be true. *See Fed. R. Civ. P. 37 (c)(2)*. It has been stated that because such potential sanction is lacking in Commission Rule 3.32, “the usefulness of [requests for] admissions is questionable at best, and largely turns on the willingness of parties to remove certain facts from the case because it is in their own self-interest to avoid time-consuming and expensive trial time.” *In re General Motors Corp.*, 1977 FTC LEXIS 293, at *6.

III.

Commission Rule 3.38, which governs motions to compel, provides in pertinent part:

(a) Motion for order to compel. A party may apply by motion to the Administrative Law Judge for an order compelling disclosure or discovery, including . . . a request for admission under § 3.32, . . . Any response to the motion by the opposing party must be filed within 5 days of receipt of service of the motion The Administrative Law Judge shall rule on a motion to compel within 3 business days of the date in which the response is due. Unless the Administrative Law Judge determines that the objection is justified, the Administrative Law Judge shall order that . . . an answer to any requests for admissions, . . . be made.

16 C.F.R. § 3.38(a) (emphasis added).

The Motion was filed and, according to Complaint Counsel's Certificate of Service, served electronically on Respondent on June 25, 2012. Pursuant to Rule 3.38(a), Respondent's response to the Motion was due July 2, 2012. No response was filed.

Having fully reviewed Complaint Counsel's Motion and the Requests for Admissions at issue, and in accordance with applicable law, Complaint Counsel's Motion is GRANTED, and it is hereby ORDERED, as follows:

A. As to RFAs 1-11, 15, 17, 18, 22, 33, 37, and 42-43, Respondent has failed to demonstrate that its objections are justified and, accordingly, a response is required in accordance with Rule 3.32(b). *See* Rule 3.38(a).²

B. As to RFAs 1, 3, 5-6, 8 and 10-12, Respondent has failed to demonstrate that its objections are justified. *See* Rule 3.38(a). Moreover, the responses are evasive or non-responsive to the substance of the question. *See* Rule 3.32(b); Rule 3.38(a); *In re General Motors*, 1977 FTC LEXIS 293, at *11 (holding that request "may not be evaded by responding to a question which was not asked"). Accordingly, Respondent shall clearly and directly admit, deny, or explain that it is unable to admit or deny RFAs 1, 3, 5-6, 8 and 10-12 because of a lack of sufficient information after reasonable inquiry, in accordance with Rule 3.32(b).

C. As to RFAs 9, 18, 22, 33, 38 and 40, Respondent has failed to demonstrate that its objections are justified. *See* Rule 3.38(a). Respondent's various assertions of insufficient information to admit or deny, followed by denial, renders the denial a legal nullity. *See*

² Although Respondent objected to each of RFAs 1-11, 15, 17, 18, 22, 33, 37, and 42-43, Respondent raised objections and refused to answer only RFAs 2, 4, 7, 42 and 43. Except as to RFAs 2, 4, 7, 42 and 43, Respondent proceeded to answer. Where the answer has been challenged by the Motion as insufficient, further answer is being required under Sections B and C above. The Motion did not challenge Respondent's answers to RFA 15 or 17.

Dulansky v. Iowa-Illinois Gas & Elec. Co., 92 F. Supp. 118 (D. Iowa 1950) (interpreting Federal Rule on requests for admission and concluding that the use of the word “denied” qualified by a statement that the responding party does not have knowledge or information upon which to form a belief is a nullity and has the legal effect of an admission). Respondent shall clearly and directly admit, deny, or explain that it is unable to admit or deny RFAs 9, 18, 22, 33, 38 and 40 because of a lack of sufficient information after reasonable inquiry, in accordance with Rule 3.32(b).

D. Respondent shall produce any evidence in its possession relating to its denial of RFAs 37 and 48-50. Evidence that is not produced will not be admitted at the administrative hearing.

E. Respondent shall comply with the terms of this Order no later than 5:00 p.m. on July 16, 2012.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: July 5, 2012