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

In the Matter of	)	**PUBLIC**
McWANE, INC.,	)	DOCKET NO. 9351
Respondent.	)	

COMPLAINT COUNSEL'S OPPOSITION TO RESPONDENT MCWANE, INC.'S MOTION FOR RECONSIDERATION AND MOTION TO STRIKE

Respondent McWane, Inc.'s Motion for Reconsideration ("Motion for Reconsideration") and its accompanying Motion to Strike Complaint Counsel's Motion to Compel Responses to Requests for Admission as Premature and Moot, or in the Alternative, Opposition to Complaint Counsel's Motion ("Motion to Strike") should be denied. Although disguised as motions, McWane's filing is really nothing more than an untimely opposition to a motion this Court has already granted. None of the circumstances warranting reconsideration of an order are present here, and Respondent's Motion to Strike, filed well-after the deadline for a response passed – and after the Court ruled – on Complaint Counsel's Motion to Compel Respondent McWane Inc.'s Responses to Requests for Admission ("Motion to Compel"), *see* July 5, 2012 Order Granting Complaint Counsel's Motion to Compel Respondent McWane Inc.'s Responses to Requests for Admission ("Order"), is both untimely and meritless.

Moreover, Respondent engaged in no meet and confer discussions with Complaint Counsel before filing its Motion to Strike or its Motion for Reconsideration in violation of Paragraph 4 of the February 15, 2015 Scheduling Order. *See* Holleran Decl. (July 10, 2012) at ¶ 14. Both motions should therefore be denied on those grounds as

well. *See* February 15, 2015 Scheduling Order, *as amended* (June 1, 2012) ("Scheduling Order"), at 4 ("Motions that fail to include such separate statement [regarding meet and confer efforts] may be denied on that ground.").

A. The Court Should Deny Respondent's Motion for Reconsideration

Reconsideration of an Administrative Law Judge's order is only appropriate in limited circumstances involving the emergence of new facts or law, or the court's failure to consider material facts presented to it. As this Court ruled in 2010:

> A motion for reconsideration of a decision may be made *only on the grounds* of: (a) a material difference in fact or law from that presented to the administrative law judge before such decision, that in the exercise of reasonable diligence could not have been known to the party moving for reconsideration at the time of such decision; (b) the emergence of new material facts or a change of law occurring after the time of such decision; or (c) a manifest showing of a failure to consider material facts presented to the Administrative Law Judge before such decision.

In re Intel Corp., 2010 FTC LEXIS 47, at * 4 (May 28, 2010) (emphasis added) (citations omitted). Due to the significant interest in the finality of judicial decisions, it is a "heavy burden" for a party to meet the standard for reconsideration, and motions for reconsideration should be granted only "sparingly." *Id.* at *4-7; *see also In re Basic Research, LLC*, 2006 FTC LEXIS 7, *4-7 (Jan. 10, 2006) (same). McWane's one-paragraph Motion for Reconsideration does not meet that heavy burden.

Respondent does not assert that there are any new facts or any new law that "could not have been known to the party moving for reconsideration at the time of such decision." *See Intel*, 2010 FTC LEXIS 47, at *4. The facts and law on which the Respondent's Motion are premised were known to it before McWane's July 2, 2012 filing deadline and could therefore have been raised in a timely-filed opposition.

Specifically, Respondent bases its Motion for Reconsideration on the fact that Complaint Counsel allegedly failed to conclude the meet and confer discussions before filing its Motion to Compel. *See* Motion for Reconsideration at 1. Even if it were true (which it is not), Respondent certainly knew the status of those discussions when it allowed the time to oppose Complaint Counsel's motion to lapse.[1]

Respondent also does not argue that reconsideration is necessary to correct a "manifest injustice." *See Basic Research*, 2006 FTC LEXIS 7, at *4-7. Respondent offers no reason or justification for its failure to file a timely response to Complaint Counsel's Motion to Compel. Respondent is well-aware of Rule 3.38's substantive and procedural requirements: Respondent is represented by very experienced antitrust counsel who have twice availed themselves of Rule 3.38's provisions in this matter. *See* Respondent's Opposition to Complaint Counsel's Motion to Compel Answers to Interrogatory Nos. 13-16; *see also* Respondent's Motion to Compel Answers to Interrogatories. Indeed, this Court explicitly set forth the timing requirements of Rule 3.38 in its April 9, 2012 Order Denying Complaint Counsel's Motion for Expedited Briefing.

Respondent does not contest the fact that Complaint Counsel properly served its Motion to Compel on Respondent, and does not otherwise assert that it somehow did not receive a copy of Complaint Counsel's Motion to Compel. Moreover, Complaint Counsel raised Respondent's failure to respond to its Motion to Compel on July 3, 2012,

[1] Somewhat ironically, McWane failed to engage in any meet and confer efforts before filing its Motion for Reconsideration, which is grounds for denying this motion. *See* Scheduling Order at 4.

see Holleran Decl., Exh. E, and yet counsel for Respondent chose not to file any response for two more days, until *after* the Court had already ruled.

Respondent seeks to avail itself of a later filing deadline – 10 days under Rule 3.22 instead of 5 days under Rule 3.38 – by styling its opposition to Complaint Counsel's Motion to Compel as a Motion to Strike. But Respondent's Motion is precluded by the clear terms of Rule 3.38: *"**Any response** to the motion by the opposing party must be filed within 5 days of receipt of service of the motion."* Rule 3.38 (emphasis added). Respondent's contrivance, if allowed, would lead to nonsensical results. The Court is required to render its decision on motions to compel within three business days of the date in which the response is due. But the Court would not know if it should await a motion to strike, or once no motion is filed, immediately file a decision on the properly filed motion to compel. Accordingly, Respondent's Motion for Reconsideration should be denied.

B. Respondent's Motion to Strike Should Also Be Denied

Respondent's Motion to Strike should be denied because it is procedurally and substantively meritless. Respondent's Motion to Strike was filed 10 days after Respondent received Complaint Counsel's Motion to Compel, and it is therefore untimely under Rule 3.38. *See* Rule 3.38. Having been filed *after* the Court ruled on Complaint Counsel's Motion to Compel, and there being no grounds for reconsideration, *see supra*, Respondent's Motion to Strike should also be denied as moot. Respondent's failure to engage in any meet and confer efforts with Complaint Counsel before filing its Motion to Strike is also grounds for denial. *See* Scheduling Order at 4.

Substantively, Respondent's Motion to Strike is also without merit. Complaint Counsel fully met and conferred in good faith with Respondent before filing its Motion to Compel. *See* Motion to Compel, Meet & Confer Statement; *see also* Holleran Decl. at ¶¶ 3-12. Respondent served its Objections and Responses to Complaint Counsel's Requests for Admissions ("RFA Responses") on June 8, 2012. On Monday, June 18, 2012, Complaint Counsel asked to set a time to meet and confer regarding Respondent's RFA Responses. *See id.*, Exh. A. Counsel for Respondent was first available on the afternoon of Wednesday, June 20, 2012; and, as acknowledged by Respondent, counsel met and conferred during an hour-long telephone conference. *See id*., Exh. B; *see also* Respondent McWane, Inc.'s Response to Complaint Counsel's Statement Regarding Meet and Confer Pursuant to Scheduling Order.

During this discussion, Complaint Counsel specifically addressed each and every request for admission ("RFA") and detailed its concerns with Respondent's responses. Holleran Decl. at ¶¶ 5-7. In a good faith attempt to resolve its issues without having to file a motion to compel, Complaint Counsel negotiated and offered compromises regarding the meaning of certain terms to which counsel for Respondent had objected as vague. *Id.* Counsel for Respondent, however, did not suggest or otherwise indicate that he agreed with any of Complaint Counsel's concerns, or that any of Complaint Counsel's compromised positions would cause Respondent to amend Respondent's RFA Responses. *Id.* at ¶ 6. Before making his refusal to amend final, counsel for Respondent stated that he needed to confirm Respondent's position internally. Complaint Counsel emphasized that the deadline for filing its motion was Monday, June 25, 2012, and that it therefore needed Respondent's final answer by no later than Friday morning, June 22,

2012. *Id*. at ¶ 7. After hearing no response from Respondent on Friday morning, Complaint Counsel followed up with counsel for Respondent on Friday afternoon, and answered a question posed by Respondent's counsel. *See id.* at ¶ 8 & Exh. C.

By 4 p.m. on Monday, June 25, 2012, Respondent still had not provided any further response to Complaint Counsel's concerns. Having received no further response, and no substantive response to its concerns, Complaint Counsel reasonably understood Respondent's initial position during meet and confer discussions to be its final position. Id. at ¶¶ 8-12. In accord with the deadline for filing motions to compel, as set forth in Paragraph Five of the Scheduling Order and Rule 4.3, Complaint Counsel then filed its Motion to Compel. *See* Scheduling Order; Rule 4.3 ("Computation of any period of time prescribed or allowed by the rules in this chapter, by order of the Commission or an Administrative Law Judge, or by any applicable statute, shall begin with the first business day following that on which the act, event, or development initiating such period of time shall have occurred.").

Thus, Complaint Counsel properly met and conferred with Respondent's counsel in a good faith effort to resolve their disagreement without resorting to motion practice. As outlined above and in further detail in the Holleran Declaration, Complaint Counsel did not engage in a mere token effort – such as sending a single email without any actual discussion with Respondent – and gave Respondent ample opportunity to respond to its concerns. *But cf. In re Lab Corp of Am.*, 2011 FTC LEXIS 26, at * (Feb. 8, 2011) (finding single email, sent on a Sunday and "only one calendar day before filing a motion to compel without awaiting a response to that e-mail, does not constitute a good faith effort to resolve by agreement the issues raised by the motion.").

Complaint Counsel is aware of no authority – and none is cited by Respondent – that defines good faith meet and confer efforts as requiring a party to miss filing deadlines while it awaits a response from a dilatory party, particularly where the dilatory party is well-aware of the deadline. Respondent's apparent position that Complaint Counsel should have missed its filing deadline to permit Respondent to merely confirm its final meet and confer position – would impermissibly allow parties to avoid their discovery obligations simply by delaying their meet and confer responses. The meet and confer process was concluded here by operation of the filing deadline – a deadline that was known by Respondent. Accordingly, Complaint Counsel's Motion to Compel was not premature.

It is apparent from the balance of Respondent's Motion to Strike that Complaint Counsel's Motion to Compel was also not moot. Respondent's arguments in support of its RFA Responses largely reiterate its improper objections and evasive interpretations of the RFAs. *See* Order (ruling McWane's RFA Responses to be evasive and its objections to be improper). Respondent could have offered to amend its responses in an effort to encourage Complaint Counsel to withdraw its motion (*see* Mot. To Strike, at 2 n. 1). Respondent choose not to make any such offer. *See* Holleran Decl. at ¶ 12. Accordingly, Respondent's Motion to Strike should be denied.

Conclusion

For the foregoing reasons, Respondent's Motion for Reconsideration and Motion to Strike should be denied.

Dated: July 10, 2012

Respectfully submitted,

s/ Linda M. Holleran
Edward D. Hassi, Esq.
Linda Holleran, Esq.
Joseph A. Baker, Esq.
Thomas H. Brock, Esq.
Michael J. Bloom, Esq.
Jeanine K. Balbach, Esq.
J. Alexander Ansaldo, Esq.
Andrew K. Mann, Esq.
Monica M. Castillo, Esq.

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

In the Matter of	)	
McWANE, INC.,	)	DOCKET NO. 9351
Respondent.	)	

PROPOSED ORDER

On July 5, 2012, Respondent McWane, Inc. filed a Motion for Reconsideration and a Motion to Strike Complaint Counsel's Motion to Compel Responses to Requests for Admission as Premature and Moot, or in the Alternative, Opposition to Complaint Counsel's Motion ("Motion to Strike"). On July 10, 2012, Complaint Counsel opposed both motions. Upon consideration of these motions and Complaint Counsel's opposition thereto, this Court denies the Motion for Reconsideration and the Motion to Strike.

ORDERED:

_____
D. Michael Chappell
Administrative Law Judge

_____, 2012

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

In the Matter of	)	**PUBLIC**
McWANE, INC.,	)	DOCKET NO. 9351
Respondent.	)	

DECLARATION OF LINDA M. HOLLERAN

1. I have personal knowledge of the facts set forth in this declaration, and if called as a witness I could and would testify competently under oath to such facts.
2. I am an attorney at the Federal Trade Commission and Complaint Counsel in these proceedings. Attached to this declaration are the exhibits submitted in support of Complaint Counsel's Opposition to Respondent McWane, Inc.'s Motion for Reconsideration and its Motion to Strike Complaint Counsel's Motion to Compel Responses to Requests for Admission as Premature and Moot, or in the Alternative, Opposition to Complaint Counsel's Motion.
3. On June 8, 2012, Respondent served its Responses and Objections to Complaint Counsel's Requests for Admissions ("RFA Responses"). On Monday, June 18, 2012, I contacted William Lavery, counsel for Respondent, to schedule a time to meet and confer about Respondent's RFA Responses. This communication is reflected in Exhibit A. Exhibit A is a true and correct copy of an e-mail from L. Holleran to W. Lavery, dated June 18, 2012.
4. Mr. Lavery was first available to meet and confer on the afternoon of Wednesday, June 20, 2012. Exhibit B is a true and correct copy of an e-mail exchange

between L. Holleran and W. Lavery, dated June 19, 2012, regarding the scheduling of a meet and confer conference to discuss Respondent's RFA Responses and other issues.

5. On Wednesday, June 20, 2012, I, along with my colleague Joseph Baker, spoke with Mr. Lavery regarding Complaint Counsel's concerns relating to Respondent's RFA Responses. During this discussion, I specifically detailed each RFA in which Complaint Counsel had a concern and explained the nature of our concern. I also negotiated with Mr. Lavery regarding the definitions for certain terms to which Respondent had lodged a vague objection.

6. For example, with respect to RFA No. 18, Mr. Lavery indicated that they could not answer this request because they did not know whether offering "less Job Pricing" on Domestic Relevant Product than its Imported Relevant Product referred to a fewer number of jobs that had received job pricing (or discounts on specific, individual waterworks projects), or a reduced level of discounting. I replied that they could define the term either way, or a combination of the two, so that it was most consistent with how Respondent stored information on job pricing, provided they specified in their answer how they had defined the term. Notwithstanding Complaint Counsel's compromise position, Mr. Lavery did not agree to supplement Respondent's response to this request for admission. Likewise, Mr. Lavery did not indicate that he agreed with any of Complaint Counsel's concerns about the remaining RFAs that were the subject of Complaint Counsel's motion and he did not agree to supplement any of Respondent's responses.

7. The discussion on June 20, 2012, concluded by Mr. Lavery stating that he needed to discuss Respondent's position internally before asserting its final position with respect to Complaint Counsel's concerns. I told Mr. Lavery that we had to file our motion to compel by Monday, June 25, 2012, and that we therefore needed his final position by the morning of Friday, June 22, 2012.
8. When I had not heard from Mr. Lavery by the morning of Friday, June 22, 2012, I sent Mr. Lavery a follow-up email that afternoon and asked for his final position on our meet and confer discussions. Mr. Lavery asked me a limited question about Complaint Counsel's position with respect to one RFA, to which I responded later that day. This discussion is reflected in Exhibit C. Exhibit C is a true and correct copy of an email exchange between L. Holleran and W. Lavery, dated June 22, 2012.
9. I have been engaged in every meet and confer discussion between Complaint Counsel and Respondent. It has been the typical practice during such meet and confer discussions that Mr. Lavery (or Mr. Stargard before him) to confer internally before asserting Respondent's final position. While it is possible that there may be a limited exception to the general rule, I cannot recall a single instance where Respondent's final meet and confer position differed from its initial meet and confer position.
10. Although Mr. Lavery knew of our deadline to file a motion to compel on Monday, June 25, 2012, Mr. Lavery did not contact me again on Friday or the following Monday to confirm Respondent's final meet and confer position, or to ask for more time to consider its position. Given Respondent's knowing failure to

provide any further response before our motion to compel deadline, and our history of initial meet and confer positions being the final position, Complaint Counsel understood Respondent's silence to mean that it was refusing to supplement or further answer its RFA Responses.

11. Complaint Counsel did not believe that any additional meet and confer efforts would yield any additional compromises or otherwise resolve our dispute with respect to Respondent's RFA Responses. Accordingly, after 4 p.m. on Monday, July 25, 2012, Complaint Counsel filed its Motion to Compel.
12. My understanding that we had filed our Motion to Compel based on Respondent's ultimately final meet and confer position was confirmed by my discussion with Mr. Lavery on June 27, 2012. In this telephone conversation, I spoke to Mr. Lavery about several issues, including Complaint Counsel's Motion to Compel. During that discussion, Mr. Lavery complained that we had filed our motion before hearing back from him, but he did not express any willingness on the part of Respondent to supplement any of its RFA answers or that it was otherwise interested in engaging in additional meet and confer efforts. Exhibit D reflects part of this discussion, and is a true and correct copy of an email from L. Holleran to W. Lavery, dated June 27, 2012. Mr. Lavery did not respond to this email.
13. On July 3, 2012, I sent an email to counsel for Respondent, asking if they had filed any response to Complaint Counsel's Motion to Compel. Exhibit E is a true and correct copy of an email from L. Holleran to P. Sada, T. Thagard, J. Ostoyich, W. Lavery, and A. Truitt, dated July 3, 2012. None of Respondent's counsel replied to this email.

14. Counsel for Respondent has never contacted me -- or any other attorney on behalf of Complaint Counsel – to meet and confer or to otherwise discuss its Motion to Strike or Motion for Reconsideration.

I declare under the penalty of perjury that the foregoing is true and correct. Executed this 10th day of July, 2012, at Washington, DC.

s/ Linda M. Holleran
Linda M. Holleran
U.S. Federal Trade Commission
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600 Pennsylvania Avenue, NW
Washington, DC 20580
(202) 326-2267
lholleran@ftc.gov

Counsel Supporting the Complaint

EXHIBIT A

Holleran, Linda

From: Holleran, Linda
Sent: Monday, June 18, 2012 5:54 PM
To: william.lavery@bakerbotts.com
Subject: meet and confer

Hi Will. Are you available tomorrow afternoon or Wednesday to talk about McWane's rfa responses and the difra/thad long privilege issue?

Thanks,
Linda

****
Linda M. Holleran, Esq.
Anticompetitive Practices Division
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Federal Trade Commission
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Washington D.C. 20580
Ph: (202) 326-2267
Fax: (202) 326-3496
****

EXHIBIT B

Holleran, Linda

From: william.lavery@bakerbotts.com
Sent: Tuesday, June 19, 2012 10:33 AM
To: Holleran, Linda
Subject: RE: meet and confer

Hi Linda. Yes, tomorrow afternoon would be best for me. Does 3:30 work? Also, I'd like to add a few items to the agenda -- CC's rog responses, privilege CC asserted on some Star docs/testimony, and timing of expert depositions.

Thanks,
Will

From: Holleran, Linda [mailto:lholleran@ftc.gov]
Sent: Monday, June 18, 2012 5:54 PM
To: Lavery, William
Subject: meet and confer

Hi Will. Are you available tomorrow afternoon or Wednesday to talk about McWane's rfa responses and the difra/thad long privilege issue?

Thanks,
Linda

****
Linda M. Holleran, Esq.
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****

EXHIBIT C

Holleran, Linda

From: Holleran, Linda
Sent: Friday, June 22, 2012 5:18 PM
To: 'william.lavery@bakerbotts.com'
Subject: Re: RFA - meet and confer response???

Free-riding refers to mcwane providing services, such as promotion or training, that a third party can free ride upon. Cherry-picking does not qualify under the traditional definition. If cherry picking is all you're referring to, then we just need that clarification.

From: william.lavery@bakerbotts.com [mailto:william.lavery@bakerbotts.com]
Sent: Friday, June 22, 2012 03:30 PM
To: Holleran, Linda
Subject: RE: RFA - meet and confer response???

Still evaluating your requests. Regarding 37, we'd like clarification on how free riding differs from cherry picking before we can make a decision.

From: Holleran, Linda [mailto:lholleran@ftc.gov]
Sent: Friday, June 22, 2012 2:40 PM
To: Lavery, William
Subject: RFA - meet and confer response???

thx

****
Linda M. Holleran, Esq.
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****

EXHIBIT D

Holleran, Linda

From: Holleran, Linda
Sent: Wednesday, June 27, 2012 2:51 PM
To: william.lavery@bakerbotts.com
Subject: CC RFAs/Interrogatory answers

Will,
Per Paragraph 5 of the Scheduling Order (and the rules for counting of time), the deadline for filing a mtn to compel was Monday, June 25, 2012, which is why we had to file our motion to compel RFA responses by then. I had told you that we needed your final position wrt our RFAs by Friday because we had to file our motion to compel by Monday; I followed up with you when I hadn't heard back; and so we reasonably understood your position to be that you were not changing your answers since that had been your tentative position during our discussion. As far as my discussion with Andreas, during initial discussions of our document requests, we were looking for promotional and training materials, and custodians that would have such materials, and when Andreas questioned me about why we needed that, I said it would be relevant if you were raising a free-riding justification, to which he said that you weren't making that claim and so I dropped that from the discovery that McWane had to produce. This is also why I asked during our meet and confer if you were denying the RFA because you were defining free-riding to be a reference to your cherry-picking argument, in which case, as long as you confirmed that in writing, it would alleviate our concern.

Notwithstanding the fact that any motion to compel wrt our interrogatory responses would be out of time, I am nevertheless happy to discuss with you any specific examples (so that we can have a meaningful discussion) where you are genuinely confused about Complaint Counsel's position, or any specific examples where you believe that there is a gap between the information contained in the documents referenced in our interrogatory answers and the interrogatory itself.

Best regards,
Linda

****
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****

EXHIBIT E

Holleran, Linda

From: Holleran, Linda
Sent: Tuesday, July 03, 2012 2:46 PM
To: 'pouria.sadat@bakerbotts.com'; 'TThagard@maynardcooper.com'; 'joseph.ostoyich@bakerbotts.com'; 'william.lavery@bakerbotts.com'; 'ATruitt@maynardcooper.com'
Cc: Hassi, Edward
Subject: RE: FTC Docket No. 9351; In the Matter of McWane, Inc.

Let me clarify – I see that the request for oral argument is for the sjm's.... But did you file any responses to our other two motions?

****
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Washington D.C. 20580
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****

From: Holleran, Linda
Sent: Tuesday, July 03, 2012 2:42 PM
To: 'pouria.sadat@bakerbotts.com'; Hassi, Edward; Brock, Thomas H.; Bloom, Michael J.; Ansaldo, Alexander; Mann, Andrew; Green, Geoffrey; Balbach, Jeanine; Martin, Teresa; Kelly, Devon; Castillo, Monica
Cc: TThagard@maynardcooper.com; joseph.ostoyich@bakerbotts.com; william.lavery@bakerbotts.com; ATruitt@maynardcooper.com
Subject: RE: FTC Docket No. 9351; In the Matter of McWane, Inc.

Pouria – Did you file any responses to the motions? Or just this request for oral argument? If the former, we didn't receive a service copy. Thanks, Linda

****
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****

From: pouria.sadat@bakerbotts.com [mailto:pouria.sadat@bakerbotts.com]
Sent: Tuesday, July 03, 2012 2:36 PM
To: Holleran, Linda; Hassi, Edward; Brock, Thomas H.; Bloom, Michael J.; Ansaldo, Alexander; Mann, Andrew; Green, Geoffrey; Balbach, Jeanine; Martin, Teresa; Kelly, Devon; Castillo, Monica
Cc: TThagard@maynardcooper.com; joseph.ostoyich@bakerbotts.com; william.lavery@bakerbotts.com; ATruitt@maynardcooper.com
Subject: FTC Docket No. 9351; In the Matter of McWane, Inc.

Counsel,
Please see the attached, filed electronically today.

Pouria Sadat
Paralegal
Baker Botts L.L.P.
The Warner
1299 Pennsylvania Avenue, N.W.
Washington, DC 20004-2400
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202.585.1028 (fax)
pouria.sadat@bakerbotts.com

CERTIFICATE OF SERVICE

I hereby certify that on July 10, 2012, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

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

I also certify that 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

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

Joseph A. Ostoyich
William C. Lavery
Baker Botts L.L.P.
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Counsel for Respondent McWane, Inc.

CERTIFICATE FOR ELECTRONIC FILING

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

July 10, 2012 By: s/ Thomas H. Brock
Attorney