

8. Complaint Counsel objects to the First Rests for Admission to the extent the

REQUEST NO. 4: Admit that Non-domestic Fittings have accounted for the majority of all sales of DIWF in the United States in the last five years.

RESPONSE:

RESPONSE: In addition to the General Objections, Complaint Counsel specifically objects to the term "average price" as vague and ambiguous. Complaint Counsel further objects to this Request as premature to the extent it seeks information relating to issues that may be the subject of expert testimony in this case. Complaint Counsel also objects to this Request inasmuch as the cited document does not list or identify "average

b) Complaint Counsel, after reasonable inquiry, lacks sufficient information to admit or deny whether the BLS cast iron pipe price series indicates that

location of the quoted language in the 149-page report identified by Respondent. Complaint Counsel further objects to this Request for failure to set forth each matter for which an admission is requested separately, as required by Rule 3.32(a), by seeking affirmative separate admissions of fact. Complaint Counsel also objects to the Request to the extent it seeks Complaint Counsel to admit the truth of the underlying assertions. Subject to the General and Specific Objections, Complaint Counsel denies the Request, except as follows:

- a) Complaint Counsel admits that the report from the U.S. International Trade Commission, "Certain Ductile Iron Waterworks Fittings from China" Investigation No. TA-421-4, Publication 3657, dated December 2003, ("TA-421-4") states that, "imported and domestic products are interchangeable;"
- b) Complaint Counsel admits that TA-421-4 states that, "the domestic and imported products are substitutable and most purchasers treat them as comparable in quality;"
- c) Complaint Counsel admits that TA-421-4 states that, "certain DIWF from China are being imported into the United States in increased quantities under such conditions as to cause, or threaten to cause market disruption of domestic producers of like or directly competitive products;"
- d) Complaint Counsel, after a reasonable inquiry, lacks sufficient information to admit or deny whether TA-421-4 states that Domestic Fittings accounted for 20% or less of all DIWF sales in the United States; and
- e) Complaint Counsel admits that TA-421-4 refers to an investigation of Certain Ductile Iron Waterworks Fittings from China, and was a unanimous and affirmative determination.

required by Rule 3.32(a), by seeking at least three separate admissions of fact. Subject to the General and Specific Objections, Complaint Counsel denies this Request, except as follows:

- a) Complaint Counsel admits that DIFRA began gathering DIWF shipment tonnage data in the Spring of 2008;
- b) Complaint Counsel admits that DIFRA first published aggregated DIWF shipment tonnage data to DIFRA members in June 2008; and
- c) Complaint Counsel admits that the most recent report issued by DIFRA regarding aggregated DIWF shipment tonnage data to DIFRA members was in December 2008.

c) Complaint Counsel denies that there is no evidence that DIFRA will become operational again or will gather and disseminate DIWF sales and any other volume data at any point in the future.

REQUEST NO. 14: Admit that DIFRA and its members were counseled by antitrust lawyers regarding compliance with the antitrust laws and that antitrust counsel attended and oversaw all communications and meetings of the DIFRA members and that a third-party accounting firm, SHRW, gathered, aggregated, and disseminated only DIWF shipment tonnage data from the DIFRA members between mid-2008 and Spring 2009 and at no other time.

RESPONSE: In addition to the General Objections, Complaint Counsel specifically objects to the terms “counseled” and “oversaw” as vague and ambiguous. Complaint Counsel further objects to this Request for failing to set forth each matter for which an admission is requested separately, as required by Rule 3.32(a), by seeking separate admissions of fact. Complaint Counsel also objects to this Request as irrelevant and not likely to lead to the discovery of admissible evidence because Respondent has not asserted advice of counsel defense. Subject to the General Objections and Specific Objections, Complaint Counsel denies this Request, except as follows:

a) Complaint Counsel admits that the third-party accounting firm, SHRW, gathered, aggregated, and disseminated DIWF shipment tonnage data for at least the time period of mid-2008 through to the end of 2008;

b) Complaint Counsel denies that antitrust counsel attended and oversaw all communications and meetings of the DIFRA members; and

c) Complaint Counsel, after a reasonable inquiry, lacks sufficient information to admit or deny the subjects about which DIFRA and its members received counsel.

REQUEST NO. 15: Admit that the DIWF shipment tonnage data gathered by SRHW was aggregated across broad size ranges that mirrored major size groupings of pipe: 3-12," 14-24," and over 24", that there was no geographic breakdown of where the tonnage was sold, and that there was no breakdown of tonnage sold in any of the thousands of different casting diameters, configurations, or finishes, other than joint type.

RESPONSE: In addition to the General Objections, Complaint Counsel specifically objects to the term "broad size ranges" as vague and ambiguous. Complaint Counsel further objects to this Request for failing to set forth each matter for which an admission is requested separately, as required by Rule 3.32(a), by seeking at least three separate admissions of fact. Subject to the General and Specific Objections, Complaint Counsel denies this Request, except as follows:

a) Complaint Counsel admits that the DIWF shipment tonnage data gathered by SRHW was aggregated across size ranges that mirrored major size groupings of pipe: 3-12", 14-24", and over 24";

b) Complaint Counsel admits that the aggregated DIWF shipment tonnage data did not report the geographic area to which the tonnage was sold other than specifying that the data was limited to the United States and Puerto Rico; and

c) Complaint Counsel admits that the aggregated DIWF shipment tonnage data did not breakdown tonnage by casting diameters, configurations, or finishes, other than joint type.

REQUEST NO. 16: Admit that the shipment tonnage data gathered by SRHW did not distinguish between Domestic Fittings and Non-domestic Fittings and did not indicate whether the tonnage was sold into Open Pref

a) Complaint Counsel admits that the shipment tonnage data gathered by SRHW did not distinguish between Domestic Fittings and Non-domestic Fittings; and

b) Complaint Counsel admits that the shipment tonnage data gathered by SRHW did not indicate whether the tonnage was sold into Preference or Domestic Preference jobs.

REQUEST NO. 17: Admit that the shipment tonnage data gathered by SRHW was historic; each DIFRA member reported its shipment tonnage several weeks after compiling its monthly sales, the shipment tonnage reflected jobs that were bid months earlier, and SRHW then spent weeks combining the shipment tonnage data provided by each member and subsequently disseminated the aggregated volume data back to the DIFRA members.

RESPONSE: In addition to the General Objections, Complaint Counsel specifically objects to the terms “historic,” “several weeks,” “months earlier” and “fits” as vague and ambiguous. Complaint Counsel further objects to this Request failing to set forth each matter for which an admission is requested separately, as required by Rule 3.32(a), by seeking at least four admissions of fact. Subject to the General and Specific Objections, Complaint Counsel denies this Request, except as follows:

a) Complaint Counsel, after reasonable inquiry, lacks sufficient information to admit or deny whether each DIFRA member reported its shipment tonnage several weeks after compiling its monthly sales;

b) Complaint Counsel, after reasonable inquiry, lacks sufficient information to admit or deny whether the shipment tonnage reflected jobs that were bid months earlier;

c) Complaint Counsel, after reasonable inquiry, lacks sufficient information to admit or deny whether SRHW then spent weeks combining the shipment tonnage data provided by each member; and

d) Complaint Counsel admits that, subject to DIFRA members reporting their shipment tonnage to DIFRA, SRHW disseminated aggregated volume data to the DIFRA members.

REQUEST NO. 18: Admit that the aggregated shipment tonnage data reported by DIFRA could not be used to determine a DIWF manufacturer's or supplier's DIWF prices.

RESPONSE: In addition to the General Objections, Complaint Counsel specifically objects to the terms "determine" and "prices" as vague and ambiguous. Subject to the General and Specific Objections, Complaint Counsel admits that aggregated tonnage data reported by DIFRA did not specify a DIWF manufacturer's or DIWF supplier's prices, but denies that the aggregated shipment tonnage data reported by DIFRA could not be used by Respondent or others to ascertain information about a DIWF manufacturer's or supplier's DIWF prices.

REQUEST NO. 19: Admit that there is no evidence that McWane directly communicated its prices to any other DIWF manufacturer or supplier in advance of communicating them to its customers or potential customers.

RESPONSE: In addition to the General Objections, Complaint Counsel specifically objects to the terms "directly communicated," "prices" and "in advance of" as vague and ambiguous. Subject to the General and Specific Objections, Complaint Counsel, after a reasonable inquiry, lacks sufficient information to admit or deny this Request.

REQUEST NO. 20: Admit that there is no evidence that any other DIWF manufacturer or supplier learned of McWane's prices in advance of McWane informing its customers.

RESPONSE: In addition to the General Objections, Complaint Counsel specifically objects to the terms "in advance of" and "prices" as vague and ambiguous. Subject to the General and Specific Objections, Complaint Counsel, after a reasonable inquiry, lacks sufficient information to admit or deny this Request.

REQUEST NO. 21: Admit that there is no evidence that the conduct under or terms of the MDA will recur or become effective again or that McWane and Sigma will enter into any such supplier-purchaser agreement at any point in the future.

customer partners. We are committed to manufacture both domestically and globally for the Waterworks Industry for a long time to come,” and that Star has offered for sale and actually sold Domestic Fittings.

RESPONSE: In addition to the General Objections, Complaint Counsel specifically objects to this Request for failing to set forth each matter for which an admission is requested separately, as required by Rule 3.32(a), by seeking at least separate admissions of fact. Subject to the General and Specific Objections, Complaint Counsel denies this Request, except as follows:

a) Complaint Counsel, after reasonable inquiry, lacks sufficient information to admit or deny whether Star announced in June 2009 at a WWA industry conference in San Diego that it would begin selling fittings made by a number of unidentified third party foundries in the United States;

b) Complaint Counsel, after reasonable inquiry, lacks sufficient information to admit or deny whether by September 2009, Star had issued a price list containing at least 4,500 Domestic Fittings and 4,500 Non-domestic Fittings;

c) Complaint Counsel admits that a demonstrative used by Counsel for Respondent McWane at the February 13, 2012 Hearing in this matter, which Counsel for Respondent identified as a screen shot from Star’s website, states “We are very proud of what we have been able to achieve in such a short period. And we could have not done it without the support and backing of our customer partners. We are committed to manufacture both domestically and globally for the Waterworks Industry for a long time to come;” and

d) Complaint Counsel admits that Star has offered for sale and actually sold Domestic Fittings.

REQUEST NO. 25: Admit that Star has more Domestic Fittings SKUs, a larger sales force, and a greater number of product depots than McWane.

RESPONSE: In addition to the General Objections, Complaint Counsel specifically objects to this Request for failing to set forth each matter for which an admission is requested separately, as required by Rule 3.32(a), by seeking at least three separate admissions of fact. Subject to the General and Specific Objection, Complaint Counsel denies this Request, except as follows:

- a) Complaint Counsel, after reasonable inquiry, lacks sufficient information to admit or deny whether Star has more Domestic Fittings SKUs than McWane;
- b) Complaint Counsel, after reasonable inquiry, lacks sufficient information to admit or deny whether Star has a larger sales force than McWane; and
- c) Complaint Counsel, after reasonable inquiry, lacks sufficient information to admit or deny whether Star has a greater number of product depots than McWane.

REQUEST NO. 26: Admit that there are more than 100 waterworks distributors in the United States that purchased few or no Domestic Fittings from McWane between September 2009 and September 2010.

RESPONSE: In addition to the General Objections, Complaint Counsel specifically objects to the term “few” as vague and ambiguous. Complaint Counsel further objects to this Request because Respondent has exceeded its allotted number of requests for admission, including all subparts, as specified in Paragraph 10 of the February 15, 2012, Scheduling Order, and therefore denies this Request in its entirety.

REQUEST NO. 27: Admit that McWane’s average price for DIWF products in the second half of 2008 was flat or declining despite a significant increase in scrap prices in the first six months of 2008.

RESPONSE: In addition to the General Objections, Complaint Counsel specifically objects to the terms “average price” and “significant increase” as vague and ambiguous. Complaint Counsel further objects to this Request because Respondent has exceeded its allotted number of

REQUEST NO. 30: Admit that fittings suppliers sell DIWF to distributors, pipe manufacturers, pipe fabricators, contractors, and municipalities.

RESPONSE: In addition to the General Objections, Complaint Counsel specifically objects to the term "pipe fabricators" as vague and ambiguous. Complaint Counsel further objects to this Request because Respondent has exceeded the allotted number of requests for admission, including all subparts, as specified in Paragraph 10 of the February 15, 2012, Scheduling Order, and therefore denies the Request in its entirety.

I state under penalty of perjury that the above Complaint Counsel's Objections and Responses to Respondent McWane's First Set of Admissions was prepared and assembled under my supervision, and that the information contained herein is, to the best of my knowledge, true and correct.

CERTIFICATE OF SERVICE

I hereby certify that on February 28, 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

Federal Trade Commission
600 Pennsylvania Ave
Washington, DC 20580

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Washington, DC 20004)TjEMC eSpan MCID92 B
ilialaTj-8.laiver@bahrbon

CoopholndGale PC2

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ngh(a)6(m, AL 352030)TJEMC eSpan MCID182 B

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Gregory S.C. Huffman
William Katz
Nicole Williams
Brian Stoltz

