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1. Identify each current or former employee of the Company who has or had any management or supervisory responsibilities or duties respect to pricing of any Relevant Product, including without limitation: involvement in marketing, sales, distribution, or influencing list prices, catalog prices, multiplier prices, project discounts or any form of rebates; who has had any Communication with any Competitor; and for each such current or former employee of the Company, provide:

- a. The business and home telephone numbers and telephone service providers of each voice, facsimile or cellular line assigned to or used for any business purpose by each employee (whether exclusive or not), and the period during which each such number was assigned to or used by the employee; and,
- b. Each business and home telecopier or electronic mail identifier assigned to or used for business purposes by the employee (whether exclusive or not) and the period during which each such identifier was assigned to or used by the employee.

Exh. A (Respondent's Interrogatory Responses) at 4.

Respondent initially counted the subparts in Interrogatory No. 1 as follows: (i) the identification of Respondent's employees with pricing authority; (ii) the identification of Respondent's employees with communications with Competitors; (iii) the phone numbers of those employees; and (iv) the e-mail addresses of those employees. See Exhibit C (March 27, 2012 E-Mail); Exhibit D (March 28, 2012 Letter). During subsequent conversations, Respondent conceded that the phone numbers were not a separate and discrete subpart, but continued to count four subparts by counting them as follows: (i) the identification of Respondent's employees with pricing authority; (ii) the e-mail addresses of employees with pricing authority; (iii) the identification of employees who communicate with competitors; and (iv) the e-mail addresses of employees who communicate with competitors. As discussed further below, this interrogatory consists of no more than 2 discrete subparts.

Respondent also counts two discrete subparts in Interrogatory No. 6, which states:





Servs., Inc. 174 F.R.D. 684, 685 (D. Nev. 1997)) (“Probably the best test of whether subsequent questions, within a single interrogatory, are subsumed and related, is to examine whether the first question is primary and subsequent questions are secondary to the primary question. Or, can the subsequent question stand alone? Is it independent of the first question?”).

B. Interrogatory Nos. 1, 6 and 10 of Complaint Counsel’s Interrogatories Should Be Counted As No More Than a Total of Four Interrogatories

Applying the appropriate standard for identifying discrete subparts here, Complaint Counsel’s Interrogatory No. 1 should count as two interrogatories, and Interrogatory Nos. 6 and 10 should each count a single interrogatory.

1. Interrogatory No. 1

Interrogatory No. 1 seeks two distinct areas of information and should be counted as two discrete subparts: (i) identifying employees with pricing authority; and (ii) identifying employees who have communications with competitors. The identification of employees with pricing authority can be understood and “stand alone” without reference to the identity of employees who have had communications with competitors.

Respondent counts two additional subparts for this interrogatory by separately counting the Interrogatory’s request for the employees’ e-mail addresses. In doing so, Respondent relies on the fact that the definition of “Identify” in Complaint Counsel’s Interrogatories does not explicitly call for e-mail addresses. This definition, however, does not undermine the concept that e-ma

interrogatory. E.D. R. Civ. P. 33(a) Advisory Committee's Note (1993 Amendments). In the example provided by the Advisory Committee, a "question asking about communications of a particular type should be treated as a single interrogatory even though it requests that the time, place, persons present, and contents be stated separately for each such communication." Likewise here, the request for e-mail addresses of employees identified by Respondent is "subsumed" in the identity of the employee and should not be counted as discrete subjects. See *Safeco of America v. Rawstron*, 181 F.R.D. 441, 445 (C.D. Cal. 1998) (stating that a single question asking for several bits of information relating to the same topic counts as one interrogatory. (E.g., 'State the name, address and telephone number of each person present at the meeting.')).

## 2. Interrogatory Nos. 6 and 10

Interrogatory Nos. 6 and 10 seek information related to the quantification of any efficiency claims by Respondent and should each count as a single interrogatory. Complaint Counsel propounded four separate interrogatories seeking information related to Respondent's efficiency claims: Interrogatory No. 5 asks Respondent to identify and describe any efficiencies related to Respondent's participation in the Ductile Iron Fittings Research Association ("DIFRA"); Interrogatory No. 6 asks Respondent to quantify, and describe the basis for that calculation, DIFRA-related efficiencies; Interrogatory No. 9 asks Respondent to identify and describe efficiencies related to Respondent's exclusive dealing arrangements; and Interrogatory No. 10 asks Respondent to quantify, and describe the basis for that calculation, exclusive dealing-related efficiencies. Respondent counted Interrogatory Nos. 6 and 9 as single interrogatories, but counted

Interrogatory Nos. 6 and 10 as each containing two discrete subparts for a total of four separate interrogatories.

In Interrogatory Nos. 6 and 10, Complaint Counsel seeks information about a single topic – how Respondent quantifies its efficiencies. Respondent calculates two discrete subparts for each of these interrogatories by erroneously de-coupling the quantification of an efficiency from the calculations or basis used for arriving at that calculation. Describing the basis for the component parts, that Respondent used to calculate or quantify its efficiencies is necessarily related to the main question of the interrogatory: how does Respondent quantify its efficiencies? Put simply, these are not “stand alone” questions or concepts. See *In Re Dynamic Health of Florida*, 2004 FTC Lexis 254, at \*2.

For example, in *Polypore Int'l*, this Court found that Complaint Counsel's interrogatory seeking cost data for each relevant market and in each relevant area was a single interrogatory notwithstanding the fact that Complaint Counsel had sought numerous data elements as part of the requested cost data. *Polypore Int'l*, 2008 FTC Lexis 155, at \* 3-4. The Court ruled that seeking the various data elements were “logically or factually subsumed within and necessarily related to the primary question” regarding Respondent's costs. Because the components of an efficiency calculation are similar to the data elements of an interrogatory seeking cost data, Interrogatory Nos. 6 and 10 should likewise be counted as a single interrogatory.

### III. Conclusion

By properly counting Interrogatory Nos. 6 and 10 and their discrete subparts as a total of four interrogatories (rather than eight asserted by Respondent), and by





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

	)	
In the Matter of	)	PUBLIC
	)	
McWANE, INC.,	)	DOCKET NO. 9351
a corporation, and	)	
	)	
STAR PIPE PRODUCTS, LTD.,	)	
a limited partnership.	)	
	)	

PROPOSED ORDER

On April 4, 2012, Complaint Counsel filed Complaint Counsel's Motion to Compel Respondent McWane, Inc.'s Answer to Interrogatory Nos. 13-16. Upon consideration of this motion, this Court grants Complaint Counsel's motion. Respondent is ordered to answer Complaint Counsel's Interrogatory Nos. 13 through 16.

ORDERED:

\_\_\_\_\_  
D. Michael

—



CERTIFICATE OF SERVICE

I hereby certify that on April 4, 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 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  
Andreas Stargard  
William C. Lavery  
Baker Botts L.L.P.  
The Warner  
1299 Pennsylvania Ave., N.W.  
Washington, D.C. 20004  
(202) 639-7700  
[joseph.ostoyich@bakerbotts.com](mailto:joseph.ostoyich@bakerbotts.com)  
[andreas.stargard@bakerbotts.com](mailto:andreas.stargard@bakerbotts.com)  
[william.lavery@bakerbotts.com](mailto:william.lavery@bakerbotts.com)

J. Alan Truitt  
Thomas W. Thagard III  
Maynard Cooper and Gale PC  
1901 Sixth Avenue North

\_\_\_\_\_  
\_\_\_\_\_

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William Katz  
Nicole Williams  
Brian Stoltz  
Thompson and Knight LLP  
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Dallas, TX 75201  
(214) 969-1700  
[Gregory.Huffman@tklaw.com](mailto:Gregory.Huffman@tklaw.com)  
[William.Katz@tklaw.com](mailto:William.Katz@tklaw.com)  
[Nicole.Williams@tklaw.com](mailto:Nicole.Williams@tklaw.com)  
[Brian.Stoltz@tklaw.com](mailto:Brian.Stoltz@tklaw.com)

Counsel for Respondent ~~to~~ Star Pipe Products, Ltd.

Counsel for Respondent  
Star Pipe Products, LTD

#### CERTIFICATE FOR ELECTRONIC FILING

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

April 4, 2012

By: s/ Thomas H. Brock  
Attorney

# Exhibit A

UNITED STATES OF AMERICA•  
BEFORE THE FEDERAL TRADE COMMISSION•

In the Matter of	)	
	)	
McWANE, INC.,	)	
a corporation, and	)	DOCKET NO. 9351
	)•	
STAR PIPE PRODUCTS, LTD.,	)•	
a limited partnership.	)•	
	)•	

MCWANE, INC.'S RESPONSES AND OBJECTIONS•  
TO COMPLAINT COUNSEL'S FIRST•  
SET OF INTERROGATORIES•

COMES NOW, McWane, Inc. ("McWane"), and objects and responds as follows to  
Complaint Counsel's First Set of Interrogatories ("Interrogatories"):

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 Interrogatories, 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, relevht t(n)(EEZ m2((t 21-2)-1(i)-3(l13(e)3(v)-1)92(a)3)1(i)--2.3 Td.3 TD [(o)- o,ne, lity o the sn'(b)-1(j)-3(e)3(c)(f )-229(a

3. McWane objects to the Interrogatories to the extent that they seek information containing, revealing, discussing, or referring to: (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's responses to the Interrogatories shall not be deemed or construed to be

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7. McWane objects to the Interrogatories to the extent that they call for the production of electronically stored information that is not reasonably accessible because of undue burden or cost. McWane's counsel is available to meet and confer generally regarding issues presented by the collection of electronically stored information to insure that any such collection is completed in an efficient and cost-effective manner.

8. McWane's statement in response to any particular Interrogatory that it will undertake to produce responsive information does not constitute an admission that it has any such information.

McWane objects to the Interrogatories to the extent that they call for the production of electronically stored information that is not reasonably accessible because of undue burden or cost. McWane's counsel is available to meet and confer generally regarding issues presented by the collection of electronically stored information to insure that any such collection is completed in an efficient and cost-effective manner.

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Jansen, Leon McCullough, Ruffner Page, Vince Napoli, former employee David Green and former employee Thomas Walton. The requested contact information for these persons, to the extent available to McWane at this time, is set forth in the attached Excel spreadsheet and also available from the documents McWane has previously produced and may be contained within the documents McWane is in the process of producing to Complaint Counsel.

2. Describe each information technology, telecommunication system, and internal VoIP or network structure used by the Company, including without limitation the identity of each telecommunication service provider and each external or contract service provider.

RESPONSE TO INTERROGATORY 2:

McWane objects to this Interrogatory as overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence, and as not reasonably









responsive information is contained within the documents McWane has previously produced and may be contained within the documents McWane is in the process of producing to Complaint Counsel.

9. Identify and describe in full every act, omission, practice, instance, document, and/or Communication constituting or relating to any business justification, rationale or Effect of any Exclusive Dealing Arrangement enforced, proposed, or considered by the Company. •

RESPONSE TO INTERROGATORY 9:

McWane objects to this request as argumentative, misleading and assuming facts not in evidence with respect to the phrase “Exclusive Dealing Arrangement.” McWane denies that it has been a party to or participated in any so-called “Exclusive Dealing Arrangement,” and avers that to the best of its knowledge its customers source fittings from one or more suppliers in addition to McWane. McWane also objects to this request as not reasonably limited in time, geographic and subject matter scope. Subject to and without waiving these specific objections and its General Objections, and to the extent McWane understands this Interrogatory, McWane refers Complaint Counsel to the July 21, 2010 testimony of Rick Tatman in Federal Trade Commission Case No. 101-0080. By way of further response, McWane states that information regarding its corporate rebate programs and customer incentive programs relating to the Domestic Relevant Product, for the time period January 1, 2007 to present, is contained within





12. Separately for each month between January 1, 2002 and December 31, 2011: (a) provide Inventory Data, and (b) separately for each location of Manufacture operated by the Company, provide Raw Materials Data, and Landed Cost Data.

RESPONSE TO INTERROGATORY 12:

McWane objects to this Interrogatory as not reasonably limited in time scope. Subject to and without waiving this specific objection and its General Objections, McWane states responsive information for the time period January 1, 2007 to present is contained within the documents McWane has previously produced and may be contained within the documents McWane is in the process of producing to Complaint Counsel.

13. Separately for each facility at which any Relevant Product is Manufactured by or for the Company, and separately for each of the last five years, describe: each piece of equipment used in the Manufacture of any Relevant Product having a capital cost of \$5,000 U.S. dollars or more. Such description shall include: the identity of the Manufacturer of the piece of equipment, its function, its capacity, each item (e.g., SKU) of Relevant Product Manufactured using that piece of equipment, the number of units of each such item Manufactured using that piece of equipment, the revenues derived by the Company therefrom, each other product Manufactured using that piece of equipment, the number of units of each such product Manufactured using that piece of equipment, and the revenues derived by the Company therefrom.

RESPONSE TO INTERROGATORY 13:

In addition to its General Objections, McWane specifically objects to this

Interrogatory because Complaint Counsel has exceeded its allotted number of interrogatories, including all subparts, as specified in Rule 3.35(a) and in Paragraph 10 of



(205) 254-1000

(205) 254-1999 (facsimile)

[atruitt@maynardcooper.com](mailto:atruitt@maynardcooper.com)

[tthagard@maynardcooper.com](mailto:tthagard@maynardcooper.com)

[jelmer@maynardcooper.com](mailto:jelmer@maynardcooper.com)

CERTIFICATE OF SERVICE

This is to certify that on March 22, 2012, I served via electronic mail delivery 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 Lavery            
One of the Attorneys for McWane  
William Lavery

# Exhibit B

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

---

In the Matter of	)	
	)	PUBLIC
	)	
McWANE, INC.,	)	DOCKET NO. 9351
a corporation, and	)	
	)	
STAR PIPE PRODUCTS, LTD.,	)	
a limited partnership.	)	

---

COMPLAINT COUNSEL'S STATEMENT REGARDING MEET AND CONFERENCE

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Respectfully submitted,

s/Linda Holleran  
Linda Holleran  
Counsel Supporting the Complaint  
Bureau of Competition  
Federal Trade Commission  
Washington, DC 20580

Dated: April 3, 2012





Federal Trade Commission  
601 New Jersey Ave, NW  
Washington D.C. 20580  
Ph: (202) 326-2267  
Fax: (202) 326-3496  
\*\*\*\*\*

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From: Holleran, Linda  
Sent: Tuesday, March 27, 2012 9:53 AM  
To: Ansaldo, Alexander  
Cc: 'william.lavery@bakerbotts.com'  
Subject: McWane Interrogatory Response

Andreas, I need the information about how McWane counted our interrogatory subparts, which you promised you would get me yesterday afternoon. If you'd rather do it by telephone, that's okay, but then we need to talk this morning. Thanks, Linda

\*\*\*\*\*

Linda M. Holleran, Esq.  
Anticompetitive Practices Division  
Bureau of Competition  
Federal Trade Commission  
601 New Jersey Ave, P6

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# Exhibit D



United States of America  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20540

Linda M. Pullera..  
Antitrust and Competition

10/12/2011

10/12/2011

10/12/2011

10/12/2011

7

[The following text is heavily obscured by noise and artifacts, making it largely illegible. It appears to be a series of lines of text, possibly a list or a set of notes.]









