

time for McWane to respond to April 6, 2012. The parties have been negotiating in good faith since that time in an attempt to come to an agreement, and have narrowed the scope of the Subpoena significantly, but have been unable to reach a final agreement. Specifically, SIP and McWane have been unable to reach an agreement regarding Requests 2, 3, and 5, which read:

Request No. 2: Documents sufficient to identify your purchases of all DIWF products from any Person from January 1, 2003 to the present including, but not limited to the Person from whom you purchased DIWF and the volume, units, SKU number, diameter, size, configuration, coating, finish, price, discount, or rebates attributable to your purchases.”

Request No. 3: Documents sufficient to identify your sales of all DIWF products from January 1, 2003 to present including, but not limited to the Person to whom you sold DIWF, the volume, units, SKU number, diameter, size, configuration, coating, finish, price, discount, and rebates of your sales.

Request No. 5: All Documents constituting or relating to communications between you and any Person relating to a proposed or actual sales price for DIWF, including any discounts or rebates, between January 1, 2003 to the present.

(See SIP Mot. Ex. A.)

McWane has since agreed to narrow Requests 2 and 3 to only seek summary level sales and purchase data, from January 1, 2007 to present. McWane has also agreed to narrow Request 5 to only seek emails from one custodian, the Vice President of Business Development at SIP, from January 1, 2007 to present. SIP continues to object to producing these documents on the grounds that the requests are “unreasonable, unduly burdensome, and requests proprietary or confidential information” that the January 5, 2012 Protective Order is “not sufficient under the circumstances” to protect. (SIP Mot. at 4, 9.)

ARGUMENT

SIP’s motion to quash should be denied for two reasons. First, SIP has not met its “heavy

McWane's, is directly relevant to McWane's defenses to Complaint Counsel's allegations in this case, and McWane has been reasonable in narrowing its requests to prevent any undue burden. Second, SIP's objection to producing proprietary or confidential information on the ground that the Protective Order is "not sufficient under the circumstances" is unfounded and unsupported.

A. The Law Strongly Favors Discovery of Relevant Evidence

A party moving to quash a subpoena has the burden to show the subpoena is improper. *See In the Matter of Intel Corp.*, No. 9341, 2010 WL 2143904 at *3 (F.T.C. May 19, 2010) (Chappell, J.). Due to the strong public policy in favor of broad discovery, that burden is a heavy one. *Id.* ("The law is clear that a recipient of a subpoena *duces tecum* issued in an FTC adjudicative proceeding who resists compliance therewith bears a heavy burden."); *see also Flowers Indus., Inc.*, No. 9148, 1982 FTC LEXIS 96, at *12 (F.T.C. Mar. 19, 1982). "Parties may obtain discovery to the extent that it may be reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of any respondent." 16 C.F.R. § 3.31(c)(1). "The burden of showing that the request is unreasonable is on the subpoenaed party." *FTC v. Dresser Indus.*, 1977 U.S. Dist. LEXIS 16178, at *13 (D.D.C. 1977) (internal quotations omitted).

B. McWane's Narrowed Subpoena Is Reasonable and Seeks Relevant Documents

C. The January 5, 2012 Protective Order Protects SIP's Confidential Information

Finally, SIP's claim that the Protective Order in this case is "not sufficient" to protect its information from disclosure is unfounded. As McWane's counsel informed SIP, the Protective Order mandates that confidential documents can only be disclosed to:

“(a) the Administrative Law Judge presiding over this proceeding, personnel assisting the

Dated: April 6, 2012

/s/ J. Alan Truitt

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Andreas Stargard
William

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

In the Matter of

**McWANE, INC.,
a corporation, and**

**STAR PIPE PRODUCTS, LTD.,
a limited partnership.**

PUBLIC

DOCKET NO. 9351

**[PROPOSED] ORDER DENYING SIP INDUSTRIES' MOTION TO QUASH
SUBPOENA *DUCES TECUM***

McWane, Inc. ("McWane") proposes the entry of an Order Denying SIP Industries' Motion to Quash Subpoena *Duces Tecum*, and ordering it to produce documents responsive to McWane's Subpoena by April 20, 2012.

Good cause having been shown,

IT IS SO ORDERED:

That SIP's Motion to Quash Subpoena *Duces Tecum* is DENIED; and SIP's deadline to produce documents responsive to McWane's Subpoena is April 20, 2012.

D. Michael Chappell
Administrative Law Judge

DATED: _____

Certificate of Service

I hereby certify that on April 6, 2012, I filed the foregoing document electronically in PDF format using the FTC's E-Filing System, and served a copy on the following by overnight mail:

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-106
Washington, DC 20580

I also certify that on April 6, 2012, I served the forgoing document via email on the following:

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