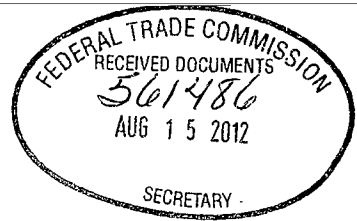


ORIGINAL

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 DENYING RESPONDENTS' MOTIONS TO DISMISS~~

Partners v. AT&T Technologies, Inc., 831 F. Supp. 1398, 1400 (N.D. Ill. 1993); see also *Sec. Exch. Comm'n v. U.S. Environmental, Inc.*, No. 94 Civ. 6608 (PKI) (AJP), 2002 U.S. Dist. LEXIS 19701 at *5-6 (S.D.N.Y. October 16, 2002).

Courts considering a motion *in limine* may reserve judgment until trial, so that the motion is placed in the appropriate factual context. *U.S. Environmental*, 2002 U.S. Dist. LEXIS 19701, at *6; see, e.g., *Veloso v. Western Bedding Supply Co., Inc.*, 281 F. Supp. 2d 743, 750 (D.N.J. 2003).

2011 FTC LEXIS 77, at *3-4 (May 5, 2011).

In addition, “[i]n *limine* rulings are not binding on the trial judge, and the judge may change his mind during the course of a trial.” *In re Daniel Chapter One*, No. 9329, 2009 FTC LEXIS 85, at *20 (Apr. 20, 2009) (citations omitted). “Denial of a motion *in limine* does not necessarily mean that all evidence contemplated by the motion will be admitted at trial. Denial merely means that without the context of trial, the court is unable to determine whether the evidence in question should be excluded.” *Id.* (quoting *Noble v. Sheahan*, 116 F. Supp. 2d 966, 969 (N.D. Ill. 2000)).

III.

Respondent states that Complaint Counsel has designated for admission at trial portions of 19 investigative hearing transcripts (IHTs). Respondent contends that all the IHTs should be excluded pursuant to Rule 3.43(b) of the Commission’s Rules of Practice because they are unreliable, cumulative, a waste of time, and/or any probative value is outweighed by the risk of confusion and prejudice to Respondent if they are admitted. In support of its argument that the IHTs are unreliable and/or present the risk of confusion and prejudice, Respondent asserts that, pursuant to Commission Rules of Practice 2.8 and 2.9, Respondent was not given notice of, and did not attend, 17 of the 19 investigative


hearings conducted pursuant to a civil investigative demand for the giving of oral testimony, the Commission investigators shall exclude from the hearing room all other persons except the person being examined, his counsel, the officer before whom the testimony is to be taken, and the stenographer recording such testimony. . . .

16 C.F.R. § 2.8(b), (c). In addition, pursuant to Rule 2.9, investigational hearing witnesses are entitled to review, correct and sign the hearing transcript; bring counsel; and be advised by counsel during questioning. However, there are only limited rights to

V.

Having fully considered the Motion and the Opposition, and for all the foregoing reasons, Respondent's Motion to Preclude Complaint Counsel's Proposed Proffer of Investigational Hearing Transcripts at Trial is DENIED. This Order is not a determination, and shall not be construed as a ruling, as to the admissibility of any particular IHT testimony that may be offered at trial.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: August 15, 2012