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

Evidence from April 2009 when Complaint Counsel cited the evidence in its June 1, 2012 Motion for Partial Summary Decision

[redacted]

Challenged Evidence from June 2010 when Complaint Counsel referred to that evidence in its August 17, 2012 Pre-Trial Brief. Accordingly, Respondent states, it did not obtain "full" discovery on the April 2009 evidence and obtained no discovery on the June 2010 evidence during the discovery phase of this case, which terminated June 1, 2012. Respondent argues that, under these circumstances, admitting the Challenged Evidence at trial would be unfair, prejudicial, and a denial of Respondent's due process rights.

Complaint Counsel responds that the Challenged Evidence shows that in April 2009, Respondent and Stone exchanged mutual assurances that they would [redacted]

[redacted]

considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

16 C.F.R. § 3.43(b).

This action charges, *inter alia*, that beginning in January 2008, McWane, with others [redacted]

"conspired to raise and stabilize" prices, thereby restraining price competition in violation of [redacted]

Section 5 of the FTC Act. Complaint ¶¶ 29, 65. According to Complaint Counsel, the Challenged Evidence is offered to show that in April 2009, Respondent and Star exchanged

Complaint does not allege that the conspiracy "ended" in early 2009.[2] Respondent cites allegations in the Complaint that the Ductile Iron Fittings Research Association ("DIFRA"), an alleged instrument of Respondent's conspiracy, operated between "June 2008 and January 2009," Complaint ¶ 36, and that the passage of the American Recovery and Reinvestment Act of 2009 ("ARRA") "upset the terms of the coordination" among the alleged co-conspirators. *Id.* ¶ 3. The foregoing allegations are not fairly read as alleging that the conspiracy ended in early 2009. Rather, the Complaint alleges that the conspiracy began in January 2008 and [redacted]

[redacted]

allege any end date. The cases cited by Respondent for the proposition that fair notice requires [redacted]

of broad-based interrogatory that would inevitably lead to the disclosure of *all* evidence upon which Complaint Counsel would rely to prove the underlying conspiracy, such as any price-related communications and conduct by and/or among Respondent, Sigma and Star that occurred in April 2009 and June 2010. In any event, however, Complaint Counsel stated at oral argument, and Respondent did not dispute, that Complaint Counsel answered the interrogatory by

discovery period. Moreover, it is unclear why Respondent waited nearly three months after receiving Complaint Counsel's Answer to Interrogatory Number 9 to seek additional discovery. Therefore, Respondent has not demonstrated good cause to reopen discovery under Rule 3.21(c)(2). Moreover, Respondent's allegations of unspecified, "potential" discovery needs do not support a recess of 60 days under Rule 3.41(b). Respondent presents no basis for concluding that such a suspension of proceedings "will materially expedite the ultimate disposition" of the case, as required under Rule 3.41(b), and would also conflict with the requirements in the Rules