ORIGINAL

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

In the Matter of	PUBLIC
McWane, Inc.,	DOCKET NO. 9351
Respondent	

MOTION OF NON-PARTY AMERICAN CAST IRON PIPE COMPANY FOR *IN CAMERA* TREATMENT OF PROPOSED EVIDENCE

American Cast Iron Pipe Company ("ACIPCO"), a non-party to the above styled action, respectfully moves, pursuant to 16 C.F.R. § 3.45(b), for an order granting *in camera* treatment of certain documents that it produced in response to third party subpoenas issued by Complaint Counsel and respondent McWane, Inc. ("McWane") that have been designated for possible introduction in the administrative trial in this matter.

By letter dated July 17, 2012, Complaint Counsel notified ACIPCO that it intends to introduce into evidence certain documents produced by ACIPCO in response to its subpoena, and certain excerpts from the May 17, 2012 depositions of ACIPCO employees Jerry Burns and

the exception being a few large diameter fittings that ACIPCO manufactures. ACIPCO invests significant time and resources in conducting negotiations with its customers and suppliers. [redacted]

referenced in the email string, to view and analyze ACIPCO's internal pricing and business [redacted] spreadsheets. ACIPCO considers all of the information contained on these spreadsheets, particularly the identity of its customers, the products such customers buy, and the prices paid by [redacted]

¶¶ 12, 13).

[redacted]

In this instance, the public disclosure of the Confidential Documents would be unnecessary because they are not essential to explain the rationale of the Commission's decision in the above styled matter. In addition, several factors warrant *in camera* treatment of the Confidential Documents.

A. <u>ACIPCO has preserved the confidentiality of the Confidential Documents.</u>

[redacted]

Documents, all of which were produced under a compulsory subpoena process. ACIPCO

[redacted]

the fittings business. The information contained in the Confidential Documents would be extremely valuable to ACIPCO's business partners and competitors as it would provide behind-the-scenes insight into ACIPCO's sales, pricing, customers, business strategies, and negotiation strategies, all of which are highly confidential and unavailable to the public.

For example, if ACIPCO's competitors and business partners are able to view internal discussions regarding business strategy, negotiations and pricing, such competitors could use that information to their advantage, and ACIPCO's disadvantage, in future negotiations. Furthermore, if ACIPCO's customers are able to view the prices and rates that all of ACIPCO's other customers pay, they could use that information to leverage different prices and rates for themselves. Similarly, if ACIPCO's competitors are able to view ACIPCO's customer lists and sales information, those competitors would be free to approach ACIPCO's customers armed with valuable information and possibly poach ACIPCO's customers.

Taken together, the information contained in the Confidential Documents is central to ACIPCO's business. Preserving the confidentiality of this commercially sensitive information is critical for ACIPCO to maintain its market position and competitive advantage, which are the result of substantial investment over many years. (O'Brien Aff., ¶ 18). If accorded access to this confidential information, ACIPCO's competitors and business partners could unfairly exploit the information to their advantage. Disclosure would allow ACIPCO's competitors to pinpoint ACIPCO's prices and use this non-public information to target ACIPCO's customers for their own competitive gain. Access to this information would also enable ACIPCO's competitors to gain an understanding of ACIPCO's business and negotiating strategies, all of which would have an immediate and lasting detrimental effect on ACIPCO's ability to compete in the fittings market.

The Confidential Documents, which are non-public documents of a non-party, are the types of protected materials the public -- and by extension competitors -- should not be permitted [redacted] significant harm.

C. <u>The likelihood of serious competitive harm to ACIPCO outweighs any public interest in disclosure of the Confidential Documents.</u>

[redacted]

business information from unnecessary airing"). Indefinite in camera treatment is granted under certain circumstances, including where the competitive sensitivity or the proprietary value of the information will not diminish with the passage of time. In re Coca Cola Co., 1990 FTC LEXIS 364 (Oct. 17, 1990). Examples of this information include trade secrets, secret formulas, processes, and other secret technical information, and information that is privileged. In re Hoechst Marion Roussel, Inc., 2000 FTC LEXIS 157 (Nov. 22, 2000).

[redacted]

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document by Federal [redacted]

BURR • FORMAN LLP

results matter

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September 9, 2010

Christopher Renner
Federal Trade Commission, Bureau of Competition
601 New Jersey Avenue, NW
Washington, DC 20580

Re: 2009 and 2010 Fittings Sales Summary

Dear Mr. Renner:

Enclosed is a summary of American Cast Iron Pipe Company's ("American") domestically [redacted]

REDACTED

FTC Docket No. 9351

EXHIBIT 2 (CX 1895)

BURR • FORMAN LLP

results matter

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April 7, 2011

[redacted]

Federal Trade Commission, Bureau of Competition
601 New Jersey Avenue, NW
[redacted]

Re: 2008 through 1st quarter 2011 Fittings Sales Summary

Dear Mr. Renner:

Recently, on behalf of the Federal Trade Commission, you requested that American Cast Iron Pipe Company ("American") produce certain information relating to the sale of domestically manufactured fittings.

Enclosed is a summary of American's domestically manufactured fittings sales for the year 2008 [redacted]

REDACTED

CONFIDENTIAL

REDACTED

CONFIDENTIAL

[redacted]

REDACTED

CONFIDENTIAL

REDACTED

[redacted]

[redacted]

REDACTED

REDACTED

REDACTED

REDACTED

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EXHIBIT 4 (CX 1907)

REDACTED

EXHIBIT 5 (CX 1924)

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EXHIBIT 6 (CX 2295)

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REDACTED

[redacted]

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REDACTED

REDACTED

REDACTED

EXHIBIT 7 (CX 2296)

REDACTED

REDACTED

REDACTED

REDACTED