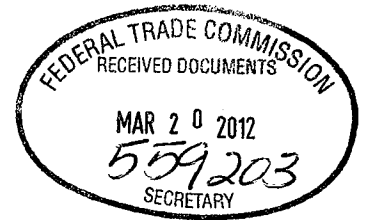


ORIGINAL



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.
Docket No. 9351
PUBLIC DOCUMENT

THE C.I. THORNBURG CO., INC.'S MOTION TO LIMIT SUBPOENA AND INCORPORATED MEMORANDUM IN SUPPORT

Pursuant to 16 C.F.R. § 3.32(c), third party, The C.I. Thornburg Co., Inc. ("Thornburg") hereby respectfully requests that the Federal Trade Commission (this "Agency") limit and modify the subpoena duces tecum issued in the above matter to lessen the burden of compliance. In support of this motion, Thornburg respectfully states as follows:

- 1. Thornburg is a third-party and is not the subject of this investigation. Nevertheless, it was served with a subpoena requesting a corporate designee deposition and a subpoena compelling a burdensome production of documents, including confidential pricing, discount, and rebate information, disclosure of trade secrets, and production of profit and loss statements, for nearly the past decade. The subpoena sweeps so broadly that Thornburg would be unduly burdened by the time and expense required to produce the documents in the manner requested.
2. In compliance with 16 C.F.R. § 3.22(g), counsel for Thornburg, David Allen Barnette, certifies that on March 12, 2012, he called and spoke with J. Allen Truitt, counsel for McWane, Inc., in a good faith effort to resolve by agreement the issues raised by this motion, and in particular the scope of production. Although the issue has not been resolved, the parties

agreed to further negotiate the scope of the requests to reach a compromise. This motion is filed as a protective measure to preserve Thornburg's rights in light of the applicable time limitations.

3. Thornburg generally objects to the subpoena and states that it is insufficient in that it fails to make a showing that the materials sought are generally or reasonably relevant. See 16 C.F.R. § 3.34(b) (2009). Moreover, the subpoena should not be enforced because, notwithstanding the protective order, it provides inadequate protection because the requests require disclosure of Thornburg's privileged information and trade secrets.

4. With regard to the seven enumerated requests contained in the subpoena, Thornburg states as follows:

a. Request No. 1.: No objection.

b. Request Nos. 2, 3, 4, 5, 6 and 7.: On grounds that the requests identified are unreasonably broad, unduly burdensome, and/or seek the disclosure of privileged information and trade secrets, Thornburg objects to Request Nos. 2, 3, 4, 5, 6 and 7.

Request No. 2 seeks production 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, unites, SKU number, diameter, size, configuration, coating, finish, price, discount, or rebates attributable to your purchases." Thornburg especially objects to the request for price, discount, and rebate data attributable to its purchases, and states that the information requested is not readily available or accessible, and thus, compliance would threaten to unduly disrupt or seriously hinder Thornburg's normal operations in that such data would have to be generated. Furthermore, the scope of the request, dating back nearly a decade, is unreasonably broad and unduly burdensome. Where, as here, a subpoena requires disclosure of a trade secret or other confidential information, or requires disclosure of data not reasonably accessible

because of undue burden or cost, this Agency may limit the subpoena to protect the party subject to its demands.

Request No. 3 likewise seeks disclosure of trade secrets and confidential business information, including “[d]ocuments 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.” The sweeping request seeks information since 2003.

With respect to Request No. 4, Thornburg objects to the production of “[a]ll profit and loss statements, income statements, and balance sheets related to [its] sales of DIWF from January 1, 2003 to the present,” as these materials do not exist and would thus impose unreasonable and undue burden and cost on Thornburg to generate.

Request Nos. 5, 6, and 7 also seek confidential “communications” and business information — including “any decision [Thornburg] made to cease or curtail manufacturing or selling DIWF in the United States” — that involve trade secrets. Furthermore, Thornburg states that it is not a manufacturer of products.

Based on the foregoing, Thornburg respectfully requests that this Agency modify and limit the scope of the requests contained in the subpoena, so as to lessen the burden of compliance, to protect Thornburg from production or data that is not reasonably accessible, and to prevent disclosure of privileged information and trade secrets.

Respectfully submitted,

**THE C.I. THORNBURG CO., INC.**

By Counsel

/s/ David Allen Barnette

David Allen Barnette

Vivian H. Basdekis

JACKSON KELLY, PLLC

P.O. Box 553

Charleston, WV 25322

Tel: (304) 340-1327

Fax: (304) 340-1272

Email: [dbarnette@jacksonkelly.com](mailto:dbarnette@jacksonkelly.com)

[vhbasdekis@jacksonkelly.com](mailto:vhbasdekis@jacksonkelly.com)

**CERTIFICATE OF SERVICE**

I certify that on March 20, 2012, I filed the foregoing document electronically in PDF format using the FTC's E-Filing System, which will send notification of such filing to:

Donald S. Clark, Secretary  
Federal Trade Commission  
600 Pennsylvania Avenue NW, Room H-113  
Washington, DC 20580

I certify that on March 19, 2012, I caused to be served one copy via electronic mail delivery and one copy via overnight mail delivery of the foregoing document upon:

The Honorable D. Michael Chappell  
Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Avenue NW, Room H-106  
Washington, DC 20580  
[oyalj@ftc.gov](mailto:oyalj@ftc.gov)

I certify that on March 20, 2012, I caused to be served one copy via electronic mail delivery and one copy via first-class mail delivery of the foregoing document upon:

Thomas Brock  
U.S. Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580  
[tbrock@ftc.gov](mailto:tbrock@ftc.gov)

Joseph A. Ostoyich  
Andreas Stargard  
William C. Lavery  
Baker Botts LLP  
1299 Pennsylvania Ave. NW  
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)  
*Counsel for McWane, Inc.*

J. Alan Truit  
Thomas W. Thagard, III  
Maynard, Cooper & Gale, P.C.  
1901 Sixth Avenue North  
2400 Regions Harbert Plaza  
Birmingham, AL 35203  
(205)-254-1000  
[atruitt@maynardcooper.com](mailto:atruitt@maynardcooper.com)  
[tthagard@maynardcooper.com](mailto:tthagard@maynardcooper.com)  
*Counsel for McWane, Inc.*

Gregory S.C. Huffman  
William Katz  
Nicole Williams  
Brian Stolz  
Thompson and Knight LLP  
One Arts Plaza, Suite 1500  
1722 Routh Street  
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 Star Pipe Products, Ltd.*

I also certify that the electronic PDF copy of the foregoing document sent to the Secretary of the Commission via the FTC E-Filing System is a true and correct copy of the original in my possession, which is available for review by the parties and the adjudicator.

March 20, 2012

By: /s/ David Allen Barnette  
David Allen Barnette