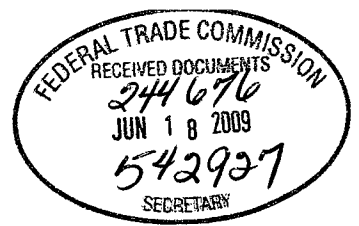


ORIGINAL



UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of)
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)
)
Polypore International, Inc.)
a corporation)
)

Docket No. 9327

PUBLIC¹

**RESPONDENT'S FOURTH MOTION FOR *IN CAMERA* TREATMENT
OF CERTAIN TRIAL EXHIBITS**

In the instant motion, Polypore International, Inc. ("Polypore") seeks *in camera* treatment for three (3) exhibits which were inadvertently not included in Respondent's prior motions seeking *in camera* treatment of certain trial exhibits.

The three exhibits identified in the instant motion are highly sensitive and proprietary in nature. Public disclosure of such information would divulge Polypore's most sensitive and confidential information to competitors and/or customers, and would cause irreparable harm and serious injury to Polypore. Accordingly, Polypore respectfully requests an order granting *in camera* status to these three exhibits.

The three exhibits at issue in this motion fall within the Commission's strict standards for *in camera* treatment as set forth in Judge Chappell's April 27, 2009 Order and the opinions of this Commission.² Each exhibit contains sensitive information that is "sufficiently secret and sufficiently material to [Polypore's] business that disclosure would result in serious competitive injury" and, even when balanced against the "importance of the information in explaining the

¹ This motion refers to and contains information subject to Respondent's Fourth Motion for *In Camera* Treatment of Certain Trial Exhibits pursuant to Rule 3.45(b) of the FTC's Rules of Practice. Such information has been redacted and labeled "[Redacted - Subject to Pending Motion for *In Camera* Treatment]" in the public version of this motion.

² See *In re Dura Lube Corp.*, 1999 FTC LEXIS 255 (Dec. 23 1999); *In re Hoechst Marion Roussel, Inc.*, 2000 FTC LEXIS 157 (Nov. 22, 2000) and 2000 FTC LEXIS 138 (Sept. 19, 2000); and *In re Basic Research, Inc.*, 2006 FTC LEXIS 14 (Jan. 25, 2006)

rationale of Commission decisions” warrants *in camera* treatment. *General Foods Corp.*, 95 FTC 352 (1980). The exhibits at issue in this Fourth Motion are listed in the index attached hereto as Exhibit A and are being provided electronically herewith on Exhibit C.

The grounds for this Fourth Motion are set forth herein, and this Fourth Motion is fully supported by the sworn Fourth Declaration of Michael Shor (“Shor Decl.”) attached hereto as Exhibit B and which individually analyzes each exhibit listed on Exhibit A.

Introduction

As Respondent will demonstrate herein and in the supporting Fourth Declaration of Michael Shor, the public disclosure of the three exhibits identified in Exhibit A hereto, will likely result in a clearly defined, serious injury to Respondent, thus justifying *in camera* treatment under the standard articulated by the Commission in *In re Dura Lube Corp.*, 1999 FTC LEXIS 255 (Dec. 23 1999); *In re Hoechst Marion Roussel, Inc.*, 2000 FTC LEXIS 157 (Nov. 22, 2000) and 2000 FTC LEXIS 138 (Sept. 19, 2000); and *In re Basic Research, Inc.*, 2006 FTC LEXIS 14 (Jan. 25, 2006).

The three exhibits identified in Exhibit A contain confidential information that is paramount to Polypore’s business, competitiveness, and profitability. Indeed, revealing such information would, among other things: (1) allow Polypore’s competitors to gain a commercial advantage through knowledge of Polypore’s pricing strategies, production capacities, technical know-how, and manufacturing processes; (2) give Polypore’s customers a tactical advantage in future negotiations with Polypore; and (3) enable suppliers to peg the prices they charge Polypore. At the very least, disclosure of the information Polypore seeks to protect would deprive Polypore of its current bargaining position with customers and suppliers; at worst, competitors would be allowed unfettered access to Respondent’s confidential and sensitive documents which will inevitably create a less competitive marketplace and harm competition.

Continued confidentiality of these documents is key to maintaining Polypore's ability to develop, market, and sell its products in this competitive market dominated by powerful buyers.

Argument

Pursuant to Commission Rule 3.45(b), the Administrative Law Judge may order material, or portions thereof, offered into evidence . . . to be placed *in camera* on a finding that their public disclosure will likely result “in a clearly defined, serious injury to the . . . corporation requesting *in camera* treatment.” 16 C.F.R. § 3.45(b)(emphasis added). Establishing that a serious injury would ensue with disclosure requires a demonstration that serious and irreparable harm will result from the Court's publication of the confidential documents. Meeting such a standard requires Respondent to make a clear showing that the information concerned is “sufficiently secret and sufficiently material to [Respondent's] business that disclosure would result in serious competitive injury.” See *Bristol-Myers Co.*, 90 FTC 455 (1977), *General Foods Corp.*, 95 FTC 352 (1980).

In *Bristol-Myers*, 90 FTC 455 (1977), the Commission outlined six factors to be weighed when determining materiality and secrecy: (1) the extent to which the information is known outside of the applicant's business; (2) the extent to which the information is known by employees and others involved in the applicant's business; (3) the extent of measures taken by the applicant to guard the secrecy of the information; (4) the value of the information to the applicant and its competitors; (5) the amount of effort or money expended by the applicant in developing the information; and (6) the ease or difficulty with which the information could be properly acquired or duplicated by others. Additionally, the Commission has expounded on the definition of “serious injury,” stating “[t]he likely loss of business advantages is a good example of a clearly defined, serious injury.” *Hoechst Marion Roussel, Inc.*, 2000 FTC LEXIS 138 (Sept. 19, 2000).

As set forth below and in the Fourth Declaration of Michael Shor, the three exhibits listed in Exhibit A contain information sufficiently secret, and sufficiently material to Polypore's business, that disclosure constitutes a serious competitive injury under the *Bristol-Myers* factors and prevailing Commission law.

I. *IN CAMERA* TREATMENT IS WARRANTED FOR THE FOLLOWING POLYPORE DOCUMENTS

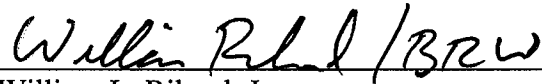
[Redacted – Subject to Pending Motion for *In Camera* Treatment].

Conclusion

[Redacted – Subject to Pending Motion for *In Camera* Treatment]. For the foregoing reasons and those articulated in the Fourth Declaration of Michael Shor, Polypore respectfully requests that this Court grant *in camera* protection to all the documents identified on Exhibit A.

Dated: June 17, 2009

Respectfully submitted,



William L. Rikard, Jr.

Eric D. Welsh

PARKER POE ADAMS & BERNSTEIN, LLP

Three Wachovia Center

401 South Tryon Street, Suite 3000

Charlotte, NC 28202

Telephone: (704) 372-9000

Facsimile: (704) 335-9689

williamrikard@parkerpoe.com

ericwelsh@parkerpoe.com

John F. Graybeal

PARKER POE ADAMS & BERNSTEIN, LLP

150 Fayetteville Street

Raleigh, NC 27602

Telephone: (919) 835-4599

Facsimile: (919) 828-0564

johngraybeal@parkerpoe.com

Attorneys for Respondent

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

In the Matter of)
)
)
Polypore International, Inc.)
a corporation)
)

Docket No. 9327

PROPOSED ORDER

Upon consideration of Respondent's Fourth Motion for *In Camera* Treatment of Certain Trial Exhibits, any opposition thereto, any hearing thereon, and the entire record in this proceeding,

IT IS HEREBY ORDERED, that Respondent's Motion is GRANTED.

IT IS FURTHER ORDERED, that pursuant to Rule 3.45(b) of the Federal Trade Commission Rules of Practice, *16 C.F.R. § 3.45(b)*, the documents identified in the index attached as Exhibit A to the Motion, and any related trial testimony, shall be subject to the requested *in camera* treatment and will be kept confidential and not placed on the public record of this proceeding.

D. Michael Chappell
Administrative Law Judge

Date: _____

CERTIFICATE OF SERVICE

I hereby certify that on June 18, 2009, I caused to be filed via hand delivery and electronic mail delivery an original and two copies of the foregoing *Respondent's Fourth Motion for In Camera Treatment of Certain Trial Exhibits [PUBLIC]*, and that the electronic copy is a true and correct copy of the paper original and that a paper copy with an original signature is being filed with:

Donald S. Clark, Secretary
Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW, Rm. H-135
Washington, DC 20580
secretary@ftc.gov

I hereby certify that on June 17, 2009, I caused to be served one copy via electronic mail delivery and two copies via hand delivery of the foregoing *Respondent's Fourth Motion for In Camera Treatment of Certain Trial Exhibits [PUBLIC]* upon:

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
oalj@ftc.gov

I hereby certify that on June 17, 2009, I caused to be served via hand delivery and electronic mail delivery a copy of the foregoing *Respondent's Fourth Motion for In Camera Treatment of Certain Trial Exhibits [PUBLIC]* upon:

J. Robert Robertson, Esq.
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
rrobertson@ftc.gov

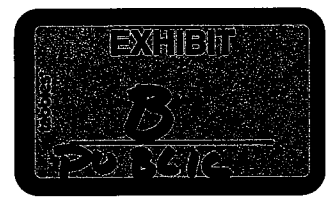
Steven Dahm, Esq.
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
sdahm@ftc.gov



Brian R. Weyhrich
Parker Poe Adams & Bernstein LLP
Three Wachovia Center
401 South Tryon Street, Suite 3000
Charlotte, NC 28202
Telephone: (704) 335-9534
Facsimile: (704) 335-9776

Exhibit Number	Description	Doc. Date	Beg. Doc. #	End Doc. #	Pages	Time Period
RX01603	REDACTED					
RX01604						
RX01605						





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

In the Matter of)	Docket No. 9327
)	
)	
)	
Polypore International, Inc. a corporation)	PUBLIC DOCUMENT¹
)	

FOURTH DECLARATION OF MICHAEL SHOR

I, Michael Shor, being duly sworn and based upon my personal knowledge, declare and state as follows:

1. I am Special Counsel of Respondent Polypore International, Inc. (“Polypore”).
2. I am familiar with the documents of Polypore and the level of confidentiality associated with the subject matter therein.
3. I submit this declaration in support of Polypore’s Fourth Motion for *In Camera* Treatment of Certain Trial Exhibits, requesting *in camera* treatment of three exhibits admitted into evidence in this matter.
4. The three exhibits identified in Exhibit A of Polypore’s Fourth Motion for *In Camera* Treatment of Certain Trial Exhibits satisfy the Commission’s strict standards for *in camera* treatment.

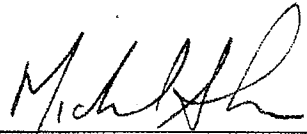
¹ This Declaration refers to and contains information subject to Respondent’s Fourth Motion for *In Camera* Treatment of Certain Trial Exhibits pursuant to Rule 3.45(b) of the FTC’s Rules of Practice. Such information has been redacted and labeled “[Redacted – Subject to Pending Motion for *In Camera* Treatment]” in the public version of this Declaration.

5. I am personally informed of the content of the individual exhibits at issue in Polypore's Fourth Motion for *In Camera* Treatment of Certain Trial Exhibits, and the specific bases upon which Polypore is moving for *in camera* treatment of such exhibits.
6. Each of the three exhibits identified in Exhibit A of Polypore's Fourth Motion for *In Camera* Treatment of Certain Trial Exhibits, and individually described herein, contains sensitive and confidential material and/or information that would result in competitive injury to Polypore should it be made public.
7. Each of these three exhibits has been maintained internally by Polypore in a confidential manner, only being shared with those individuals requiring the knowledge contained within the documents.
8. Exhibit A to Polypore's Fourth Motion for *In Camera* Treatment of Certain Trial Exhibits is an index which lists each document for which Polypore seeks *in camera* treatment. This index contains the exhibit designation (*i.e.*, "RX" or "PX"), the exhibit number, a description of the exhibit, the date of the exhibit, and the length of time for which *in camera* treatment is sought.
9. **[Redacted – Subject to Pending Motion for *In Camera* Treatment].**
10. Prior to this administrative proceeding, the information contained in the exhibits identified by Polypore for *in camera* treatment has been revealed only to appropriate Polypore personnel. General Polypore employees do not have access to the documents containing *in camera* material. Such information is not in the public domain and cannot be obtained through other means.

11. As such, the documents at issue in Polypore's Fourth Motion for *In Camera* Treatment of Certain Trial Exhibits, and identified in Exhibit A thereto, are sensitive material to Polypore's business, competitiveness, and profitability. Disclosure of the information contained in these documents will result in the loss of business advantages by Polypore and will cause Polypore serious irreparable injury.

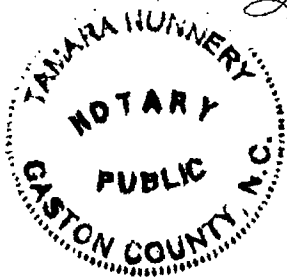
I declare, under penalty of perjury, that the above statements are true and correct.

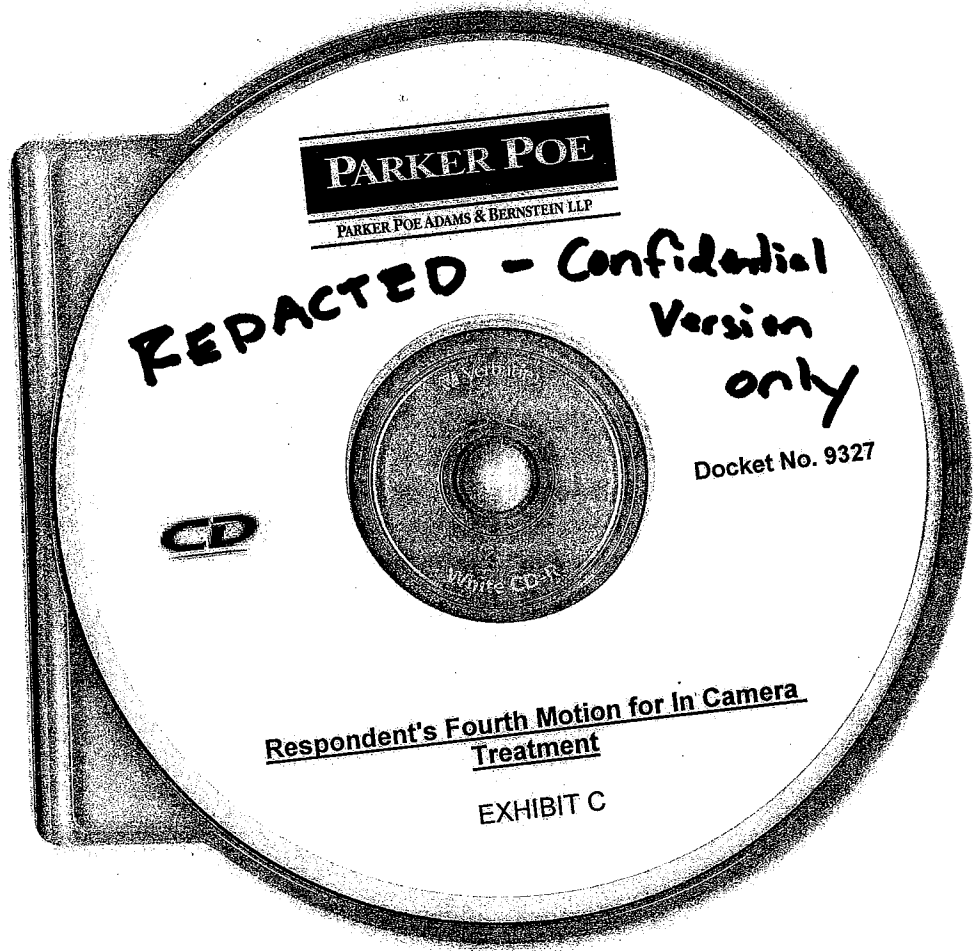
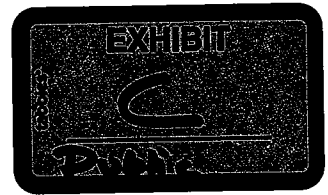
This 17th day of June, 2009.
Charlotte, North Carolina



Michael Shor, Esq.

NOTARIZED: *Tamara D. Hunnery*
2/20/11





PARKER POE
PARKER POE ADAMS & BERNSTEIN LLP

**REDACTED - Confidential
Version
only**

Docket No. 9327

Respondent's Fourth Motion for In Camera
Treatment

EXHIBIT C