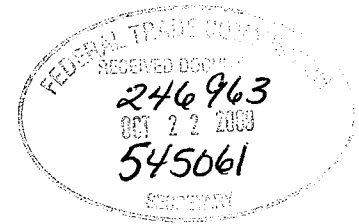


UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

ORIGINAL

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

Docket No. 9327



PUBLIC DOCUMENT

**RESPONDENT'S MOTION TO AMEND ORDER SETTING HEARING SCHEDULE**

Respondent Polypore International, Inc. ("Polypore") respectfully moves this Court to amend the Order Granting Respondent's Second Motion to Reopen the Hearing Record and Setting Hearing Schedule ("Order Setting Hearing Schedule"), to set the prehearing conference (currently scheduled to begin on November 4 at 10:00 a.m.) and the commencement date of the hearing (currently scheduled to begin on November 4 immediately following the prehearing conference) for November 9, 2009,<sup>1</sup> any other day the week of November 9, or such other suitable day and time as the Court may direct. Under Respondent's proposal, all remaining deadlines set forth in the Order Setting Hearing Schedule would remain the same. Counsel for Respondent conferred with Complaint Counsel in a good faith attempt to resolve by agreement the issues raised by the present motion, but has been unable to reach such an agreement. Neither Complaint Counsel nor any third party will be prejudiced by this minimal extension of the relevant dates and deadlines.

In support of this motion, Respondent says:

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<sup>1</sup> Respondent's Counsel previously approached Complaint Counsel about moving the hearing to November 6, 2009, but Complaint Counsel refused to consider moving the hearing date at all. Due to a conflict of Phillip Bryson, Respondent's General Counsel, on November 6, Respondent requests that the prehearing conference and commencement of the hearing be moved to November 9, 2009, beginning at 10:00 a.m.

1. On October 15, 2009, the Honorable D. Michael Chappell granted Respondent's Second Motion to Reopen the Hearing Record in order to allow the reception of additional evidence limited to Respondent's proffer as set forth in the Order Setting Hearing Schedule.

2. In addition to setting the prehearing conference and hearing dates, the Order Setting Hearing Schedule sets forth the schedule for completing limited depositions, exchanging witness and exhibit lists, exchanging objections to such lists, filing stipulations with the Court, filing objections to testimony or exhibits, filing *in camera* motions, and filing post-hearing supplemental briefs and proposed findings of fact.

3. Pursuant to the Order Setting Hearing Schedule, the prehearing conference is to begin at 10:00 a.m. on Wednesday, November 4, 2009, with the commencement of the hearing beginning immediately after the prehearing conference.

4. Unfortunately, Respondent's trial counsel, William L. Rikard, Jr., has an unavoidable conflict on November 4 and 5, 2009, which cannot be rescheduled. Moreover, one of the witnesses Respondent will call to testify as to its proffer of evidence, Mr. Robert Toth<sup>2</sup>, also has an immovable conflict and will be unavailable to testify on November 4 and 5, 2009. *See Respondent's Reply Memorandum In Support of Second Motion to Reopen the Hearing Record at p. 5* (describing the evidence Respondent intends to offer through the testimony of Mr. Toth). Mr. Toth's ability to testify at the hearing is particularly important to Respondent, and to the interests of justice, in order to ensure that the fact finder can "have all of the facts upon which it can render full justice on the merits" of the action. *See Caracci v. Brother Int'l Sewing Mach. Corp.*, 222 F. Supp. 769, 771 (E.D. La. 1963, *aff'd*, 341 F.2d 377 (5<sup>th</sup> Cir. 1965)). Mr. Rikard, Mr. Toth and Mr. Seibert are each available for a hearing on November 9, 2009.

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<sup>2</sup> On October 19, 2009, Complaint Counsel noticed the deposition of Robert Toth in relation to Respondent's proffer of new and additional evidence in this matter.

5. More specifically, Mr. Rikard is attending a Board of Trustees meeting on November 4 and 5, 2009 for Union Theological Seminary – PSCE in Richmond, Virginia. Mr. Rikard is the Vice-Chairman of the Board and must attend this meeting. The Board will be addressing a number of very important items in which Mr. Rikard has been intimately involved and for which he has specific responsibilities. For example, the President’s performance review will be conducted, and a presentation concerning an issue of the Charlotte campus relocation will be made from a committee chaired by Mr. Rikard. This Board meeting has been on Mr. Rikard’s schedule for over a year and cannot be rescheduled.<sup>3</sup>

6. Mr. Toth is scheduled to prepare for and participate in Polypore’s Third Quarter earnings call on November 4 and 5, 2009. The earnings call with investors, which will take place on November 5, 2009 at 9:00 a.m., has been on Mr. Toth’s calendar since the beginning of the year. The date has been published to investors and analysts, and Respondent issued a public press release on October 5, 2009 concerning the date of the earnings call. The call cannot be rescheduled. An earnings call is an obligation that every public company, including Polypore, has to its investors, and the call is critical to investors and rating agencies and has a significant impact on the value of Polypore’s business. Polypore’s earnings release must be issued following the close of business on November 4, 2009. Because of this obligation, Mr. Toth must participate in finalizing the earnings release and preparing for the earnings call on November 4. Preparation for the earnings call is a labor-intensive process that involves, among other things, finalizing the earnings release, collecting and processing data from Polypore’s business units to support and explain the quarterly figures, finalizing the formal presentation/script for the earnings call, preparing for questions from investors and analysts in compliance with earlier (and

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<sup>3</sup> The Board only meets three times a year and Mr. Rikard missed the spring meeting because of the trial in this matter. This meeting will address many other issues in which Mr. Rikard has been closely involved.

required) disclosures, and in this particular quarter, presenting issues in a very comprehensive and understandable manner since Polypore has a number of upcoming investor presentations and meetings in November and December.

7. The scheduling order may be modified upon a showing of “good cause.” *16 C.F.R. 3.21*. Pursuant to *16 C.F.R. § 4.3(b)*, the Administrative Law Judge may, for good cause shown, extend any time limit prescribed or allowed by the rules of Chapter 16 or by order of the Commission or the Administrative Law Judge. *16 C.F.R. 4.3(b)*. Good cause has been defined to require a showing that the action sought could not have been achieved despite the diligence of the party making the request. *In re Chicago Bridge*, No. 9300, 2002 FTC LEXIS 64, at \*4 (Oct. 16, 2002).

8. Despite their diligence and best efforts to re-schedule their previously scheduled commitments, Polypore’s chief trial counsel and one of its critical witnesses expected to testify on Polypore’s behalf have been unable to resolve their scheduling conflicts. As a result, Polypore cannot effectively meet the deadlines set forth in the Order Setting Hearing Schedule.

9. Respondent contends that such scheduling conflicts constitute good cause.

10. Consequently, in light of these unavoidable and immovable scheduling conflicts, Respondent respectfully requests that the prehearing conference and commencement of the hearing be set for November 9, 2009, beginning at 10:00 a.m., or such other suitable day and time as the Court may direct. Complaint Counsel has steadfastly refused to consider moving the hearing date at all.

11. The remaining deadlines set forth in the Order Setting Hearing Schedule, both prior to the commencement of the prehearing conference and after the conclusion of the hearing, would remain unaltered by the extension sought by Respondent.

12. Moreover, the modest extension of the prehearing conference and the hearing date sought by Respondent will not prejudice Complaint Counsel or have any impact on any third parties.

### **CONCLUSION**

For the foregoing reasons, Respondent Polypore respectfully submits that it has demonstrated good cause to amend the Order Setting Hearing Schedule and therefore moves this Court to enter an order amending the Order Setting Hearing Schedule as set forth above. A proposed order has been attached to Respondent's motion.

Dated: October 22, 2009

Respectfully Submitted,

Handwritten signature of Eric D. Welsh in black ink, written over a horizontal line.

William L. Rikard, Jr.

Eric D. Welsh

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*Attorneys for Respondent*

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

**In the Matter of** )

**Docket No. 9327**

**Polypore International, Inc.** )  
**a corporation** )

**PUBLIC DOCUMENT**

**PROPOSED ORDER**

On October 22, 2009, Respondent Polypore International, Inc. ("Polypore") filed a Motion to Amend Order Setting Hearing Schedule. Polypore has demonstrated good cause for extending the specified deadlines. Accordingly, Polypore's motion is GRANTED.

It is hereby ORDERED that (a) the prehearing conference shall commence on Monday, November 9, 2009 at 10:00 a.m.; (b) the hearing shall commence on Monday, November 9, 2009 immediately following the prehearing conference; and (c) all other deadlines set forth in the Order Setting Hearing Schedule shall remain unchanged.

ORDERED:

\_\_\_\_\_  
D. Michael Chappell  
Administrative Law Judge

Date: \_\_\_\_\_

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

**In the Matter of** )

**Docket No. 9327**

**Polypore International, Inc.** )  
**a corporation** )

**PUBLIC DOCUMENT**

**STATEMENT PURSUANT TO SCHEDULING ORDER**

I, Eric D. Welsh, Esq., on behalf of Parker Poe Adams & Bernstein LLP (“Parker Poe”) as counsel for Polypore International, Inc. (“Polypore”), hereby represent that Parker Poe has conferred with Complaint Counsel in an effort in good faith to resolve by agreement the issues raised by Respondent’s Motion to Amend Order Setting Hearing Schedule, and have been unable to reach such an agreement.

Parker Poe and Complaint Counsel discussed these issues by telephone on October 19, 2009. During this call, I was present for Parker Poe and J. Robert Robertson, Esq., was present for Complaint Counsel. As a result of this discussion, it was concluded that Polypore and Complaint Counsel were at an impasse with respect to the issues raised in the instant Motion.

Dated: October 22, 2009

Respectfully Submitted,



Eric D. Welsh  
PARKER POE ADAMS & BERNSTEIN, LLP  
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Telephone: (704) 372-9000  
Facsimile: (704) 335-9689  
[ericwelsh@parkerpoe.com](mailto:ericwelsh@parkerpoe.com)



**CERTIFICATE OF SERVICE**

I hereby certify that on October 22, 2009, I caused to be filed via hand delivery and electronic mail delivery an original and two copies of the foregoing ***Respondent's Motion to Amend Order Setting Hearing Schedule***, 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](mailto:secretary@ftc.gov)

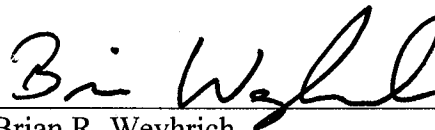
I hereby certify that on October 22, 2009, I caused to be served one copy via electronic mail delivery and two copies via overnight mail delivery of the foregoing ***Respondent's Motion to Amend Order Setting Hearing Schedule*** upon:

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

I hereby certify that on October 22, 2009, I caused to be served via first-class mail delivery and electronic mail delivery a copy of the foregoing ***Respondent's Motion to Amend Order Setting Hearing Schedule*** upon:

J. Robert Robertson, Esq.  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580  
[rrobertson@ftc.gov](mailto:rrobertson@ftc.gov)

Steven Dahm, Esq.  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580  
[sdahm@ftc.gov](mailto:sdahm@ftc.gov)



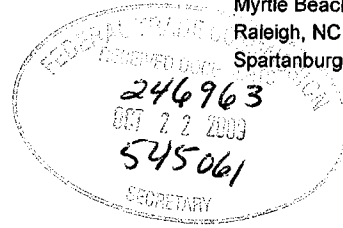
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ORIGINAL

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Charleston, SC  
Columbia, SC  
Myrtle Beach, SC  
Raleigh, NC  
Spartanburg, SC



October 22, 2009

**VIA HAND DELIVERY AND E-MAIL**

Donald S. Clark, Esq.  
Secretary  
Office of the Secretary of The Federal Trade  
Commission  
600 Pennsylvania Avenue, N.W.  
Room H-135  
Washington, DC 20580

Re: **In the Matter of Polypore International, Inc.**  
**Docket No. 9327**

Dear Secretary Clark:

On behalf of Respondent Polypore International, Inc., I enclose for filing a paper original and two (2) copies of the following document with regard to the above-referenced matter:

1. Respondent's Motion to Amend Order Setting Hearing Schedule.

Sincerely,

Handwritten signature of Brian R. Weyhrich.

Brian R. Weyhrich

BRW/mnb  
Enclosures