

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

**COMMISSIONERS:**      **Edith Ramirez, Chairwoman**  
                                 **Julie Brill**  
                                 **Maureen K. Ohlhausen**  
                                 **Joshua D. Wright**

**In the Matter of**

**MCWANE, INC.,  
a corporation, and**

**STAR PIPE PRODUCTS, LTD.  
a limited partnership.**

**Docket No. 9351**

**FINAL ORDER**

The Commission has heard this matter upon the appeals of Respondent and Complaint Counsel from the Initial Decision, and upon briefs and oral argument in support thereof and in opposition thereto. For the reasons stated in the accompanying Opinion of the Commission, the Commission has determined to dismiss Counts 1, 2, 4, 5, and 7 of the Complaint in this proceeding and issue an order to cease and desist in disposition of Count 6. The Initial Decision dismissed Count 3; that ruling was neither appealed nor placed on the Commission’s docket for review, and the dismissal of Count 3 consequently became the Commission’s final decision. 16 C.F.R. § 3.51(a). Accordingly,

**IT IS ORDERED** that Counts 1, 2, 4, 5, and 7 of the Complaint issued in this proceeding be, and hereby are, dismissed.

**IT IS FURTHER ORDERED** that the following Order to cease and desist be, and it hereby is, entered:

**ORDER**

**I.**

**IT IS ORDERED** that, as used in this Order, the following definitions shall apply:

- A. “Commission” means the Federal Trade Commission.
- B. “Respondent” means McWane, Inc., its officers, directors, employees, agents, representatives, successors, and assigns; and the United States based subsidiaries,

divisions, groups, and affiliates controlled by it, and the respective officers, directors, employees, agents, representatives, successors, and assigns of each.

- C. “Competitor” means Respondent and any person that, for the purpose of sale, or resale within the United States: (1) manufactures DIPF or Domestic DIPF; (2) causes DIPF or Domestic DIPF to be manufactured; or (3) imports DIPF.
- D. “Customer” means any person that purchases any DIPF from Respondent.
- E. “Designated Manager” means the Executive Vice President, General Manager, National Sales Manager, Pricing Coordinator, Regional Manager, or the OEM Manager for sales of DIPF in and into the United States, and any employee performing any job function relating to the setting of Prices (including offering any discounts) for DIPF sold in or into the United States.
- F. “Domestic DIPF” means DIPF that is manufactured in the United States of America.
- G. “Ductile Iron Pipe Fittings” or “DIPF” means any iron casting produced in conformity with the C153/A21 or C110/A21 standards promulgated by the American Water Works Association, including all revisions and amendments to those standards and any successor standards incorporating the C153/A21 or C110/A21 standards by reference.
- H. “Exclusivity” or “Exclusive” means any requirement, whether formal or informal, or direct or indirect, by the Respondent that a Customer purchase all of their Domestic DIPF from Respondent, or any other requirement that a Customer restrain, refrain from, or limit its future purchases of Domestic DIPF from any Competitor.

**PROVIDED, HOWEVER,** that the terms “Exclusivity” or “Exclusive” do not:

- a. apply to Respondent’s sales of non-Domestic DIPF or any product other than Domestic DIPF; and
  - b. apply to individual bids of Domestic DIPF for specific jobs or refer to the sale by Respondent to a Customer of any specified number of units during any term, without more. For the avoidance of doubt, the fact that a Customer purchases its full requirements of Domestic DIPF from Respondent does not establish that Respondent has engaged in Exclusivity and is not prohibited by this Order unless the Customer does so because Respondent imposes a requirement of Exclusivity.
- I. “Person” means any natural person or artificial person, including, but not limited to, any corporation, unincorporated entity, or government. For the purpose of this Order, any corporation includes the subsidiaries, divisions, groups, and affiliates controlled by it.

- J. "Price" means the retail or wholesale price, resale price, purchase price, list price, multiplier price, job price, credit term, freight term, delivery term, service term, or any other monetary term defining, setting forth, or relating to the money, compensation, or service paid by a Customer to Respondent, or received by a Customer in connection with the purchase or sale of DIPF or Domestic DIPF.
- K. "Retroactive Incentive" means any flat or lump-sum payment of monies or any other item(s) of pecuniary value to a customer based upon the Customer's sales or purchases of Respondent's Domestic DIPF reaching a specified threshold (in units, revenues, or any other measure), or otherwise reducing the Price of one unit of Respondent's Domestic DIPF because of the purchase or sale of an additional unit of that product. This definition excludes discounts or providing other item of pecuniary value to a customer based upon sales or purchases of Domestic DIPF beyond a specified threshold.
  - a. By way of example, Respondent may offer or provide a discount of X% on all sales of Domestic DIPF in excess of Y units, but it may not offer or provide a discount of X% on all units of Domestic DIPF if sales exceed Y units.
- L. "Service" means any service, assistance or other support provided by Respondent to a Customer, including without limitation, responsiveness to requests for bids, responsiveness in filling purchase orders, product availability, handling of warranty claims, and handling of returns.

## II.

**IT IS FURTHER ORDERED** that in connection with the business of manufacturing, marketing or selling Domestic DIPF in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, Respondent shall cease and desist from, either directly or indirectly, or through any corporate or other device:

- A. Inviting, entering into, adhering to, maintaining, implementing, enforcing, or attempting thereto any condition, policy, practice, agreement, contract, or understanding that requires Exclusivity with a Customer, including but not limited to:
  - 1. Conditioning the sale or purchase of any product, including Respondent's Domestic DIPF, on a Customer's Exclusivity;
  - 2. Conditioning any term of Price or Service offered or provided by Respondent to a Customer relating to any product, including Respondent's Domestic DIPF, on a Customer's Exclusivity;
  - 3. Conditioning any term of Price or Service offered or provided to a Customer based upon a requirement that the Customer purchase 50% or more of its purchases (in units, revenues, or any other measure) of Domestic DIPF from Respondent over any period of time; and

4. Conditioning any term of Price or Service offered or provided to a Customer relating to any product marketed by Respondent upon that Customer's purchases or sales of Respondent's Domestic DIPF.
- B. For ten (10) years from the date this Order becomes final, inviting, entering into, adhering to, maintaining, implementing, enforcing, or attempting thereto any condition, policy, practice, agreement, contract, or understanding that offers or provides any Retroactive Incentive.
- C. Discriminating against, penalizing, or otherwise retaliating against any Customer, for the reason, in whole or in part, that the Customer engaged in, or intends to engage in, the distribution, purchase or sale of a Competitor's Domestic DIPF, or otherwise refuses to enter into or continue any condition, agreement, contract, or understanding that requires Exclusivity. Examples of prohibited discrimination or retaliation against a Customer shall include, but not be limited to:
1. Terminating, suspending, or threatening or proposing thereto, sales of any product marketed by the Respondent to the Customer;
  2. Auditing the Customer's purchases or sales of Domestic DIPF to determine the extent of purchases or sales of competing Domestic DIPF;
  3. Withdrawing or modifying, or threatening or proposing thereto, any terms of Price or Service offered or provided by Respondent to a Customer relating to any product marketed by Respondent; and
  4. Refusing to deal with a Customer on terms and conditions generally available to other Customers.
- D. After ninety (90) days from the date this Order becomes final, from enforcing any condition, requirement, policy, agreement, contract or understanding that is inconsistent with the terms of this Order.

**PROVIDED, HOWEVER,** that nothing in Paragraphs II A-D of this Order prohibits Respondent from providing discounts, rebates, or other Price or non-Price incentives to purchase Domestic DIPF that are (i) volume-based, above average variable cost, and not Retroactive Incentives as defined herein; or (ii) designed to meet competition, if Respondent determines in good faith that one or more Competitors are offering terms of sale for their Domestic DIPF that Respondent needs to match in order to win contested business.

**PROVIDED, FURTHER,** that nothing in Paragraph II.D of this Order prohibits Respondent from honoring or providing discounts, rebates, or other Price or non-Price incentives to purchase its Domestic DIPF that a Customer contracted for prior to the date this Order becomes final even if paid or provided by Respondent subsequent to that date.

### III.

**IT IS FURTHER ORDERED** that Respondent shall:

- A. Within sixty (60) days from the date this Order becomes final distribute by first-class mail, return receipt requested, or by electronic mail with return confirmation, a copy of this Order with the Complaint, to each of its officers, directors, and Designated Managers;
- B. Within sixty (60) days from the date this Order becomes final, distribute by first-class mail, return receipt requested, or by electronic mail with return confirmation, a copy of this Order with the Complaint, to each Customer of Respondent that has purchased DIPF or Domestic DIPF at any time since September 1, 2012;
- C. For ten (10) years from the date this Order becomes final, distribute by first-class mail, return receipt requested, or by electronic mail with return confirmation, a copy of this Order with the Complaint, within sixty (60) days, to each Person who becomes its officer, director, or Designated Manager and who did not previously receive a copy of this Order and Complaint; and
- D. Require each person to whom a copy of this Order is furnished pursuant to Paragraphs III.A and III.C of this Order to sign and submit to Respondent within sixty (60) days of the receipt thereof a statement that: (1) represents that the undersigned has read and understand the Order; and (2) acknowledges that the undersigned has been advised and understands that non-compliance with the Order may subject Respondent to penalties for violation of the Order.

### IV.

**IT IS FURTHER ORDERED** that Respondent shall file verified written reports within ninety (90) days from the date this Order becomes final, annually thereafter for ten (10) years on the anniversary of the date this Order becomes final, and at such other times as the Commission may by written notice require. Each report shall include, among other information that may be necessary:

- A. Copies of the signed return receipts or electronic mail with return confirmations required by Paragraphs III.A-D of this Order;
- B. A detailed description of the manner and form in which Respondent has complied and is complying with this Order.

**V.**

**IT IS FURTHER ORDERED** that Respondent shall notify the Commission:

- A. Of any change in its principal address within twenty (20) days of such change in address; and
- B. At least thirty (30) days prior to any proposed: (1) dissolution of Respondent; (2) acquisition, merger, or consolidation of Respondent; or (3) any other change in Respondent including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

**VI.**

**IT IS FURTHER ORDERED** that, for the purpose of determining or securing compliance with this Order, Respondent shall permit any duly authorized representative of the Commission:

- A. Access, during office hours of Respondent, and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession, or under the control, of Respondent relating to compliance with this Order, which copying services shall be provided by Respondent at its expense; and
- B. Upon fifteen (15) days notice, and in the presence of counsel, and without restraint or interference from it, to interview officers, directors, or employees of Respondent.

**VII.**

**IT IS FURTHER ORDERED** that this Order shall terminate twenty (20) years from the date it becomes final.

By the Commission.

Donald S. Clark  
Secretary

SEAL:  
ISSUED: January 30, 2014