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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

	)	**PUBLIC**
In the Matter of	)	
	)	
McWANE, INC.,	)	
a corporation, and	)	
STAR PIPE PRODUCTS, LTD.,	)	
a limited partnership.	)	**DOCKET NO. 9351**
	)	
	)	

ANSWER OF RESPONDENT MCWANE INC. TO THE FEDERAL TRADE COMMISSION'S ADMINISTRATIVE COMPLAINT

Respondent McWane, Inc. ("McWane"), through its undersigned counsel, answers the Administrative Complaint (the "Complaint") filed by the Federal Trade Commission ("FTC") as follows. Except to the extent specifically admitted herein, McWane denies each and every allegation contained in the Complaint, including all allegations contained in headings or otherwise not contained in one of the Complaint's 70 numbered paragraphs. Specifically, McWane denies that it has engaged in conduct that violates Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and denies that this proceeding is in any way in the public interest.

NATURE OF THE CASE

1. McWane denies the allegations in paragraph 1 as they relate to it. McWane lacks sufficient knowledge to admit or deny the allegations regarding other Respondents and therefore denies them. To the extent the allegations in paragraph 1 are legal conclusions, no response is required.

2. McWane denies the allegations in paragraph 2.

3. McWane admits that the United States Congress passed the American Recovery and Reinvestment Act of 2009 ("ARRA") which established certain funds available for potential use in water infrastructure projects, but denies the remaining allegations in paragraph 3.

4. McWane admits that, at the time the ARRA was passed, it supplied ductile iron pipe fittings ("DIPF" or "fittings") made in the U.S.A. in many of the most commonly used size ranges, but denies the remaining allegations in paragraph 4 as they relate to it. McWane lacks sufficient knowledge to admit or deny the allegations regarding whether, "[a]t the time the ARRA was passed," other suppliers were offering domestic fittings in "the most commonly used size ranges," and therefore denies the allegations. McWane further avers, on information and belief, that several competing fittings suppliers, including, but not limited to, Star, Sigma, MetalFit, and Serampore were selling imported fittings "in the most commonly used size ranges" in the United States before, during, and after the effective period of ARRA.

5. McWane denies that there is a "domestic DIPF market" and lacks sufficient knowledge to admit or deny allegations regarding the efforts of Sigma, Star and unidentified others to begin sourcing or selling domestic DIPF and whether any such efforts were "in response to the passage of the ARRA," or began earlier or for other reasons.

6. McWane admits that it sold DIPF to Sigma under a distribution agreement beginning in September 2009, but denies the remaining allegations in paragraph 6.

7. McWane denies the allegations in paragraph 7.

8. McWane admits the allegations contained in paragraph 8.

9. McWane admits that it is a "corporation" as that term is commonly defined. To the extent the allegations are legal conclusions, no response is required.

10. McWane admits that it sells DIPF in interstate commerce. To the extent the allegations are legal conclusions, no response is required.

11. McWane admits that Star imports, markets and sells products for the waterworks industry, including DIPF, but otherwise lacks sufficient knowledge to admit or deny the allegations regarding Star and therefore denies them.

12. McWane lacks sufficient knowledge to admit or deny the allegations regarding Star and therefore denies them.

13. McWane lacks sufficient knowledge to admit or deny the allegations regarding Star and therefore denies them.

14. McWane admits that fittings join pipe that is used to transport drinking and wastewater and that municipalities and regional water authorities are among the end users of DIPF.

15. McWane admits that there are several thousand unique configurations of DIPF, that approximately 80 percent of demand may be serviced with only 100 or fewer commonly-used fittings sizes and configurations, and that the vast majority of DIPF configurations are purchased infrequently. McWane denies the remaining allegations in paragraph 15.

16. McWane admits that independent wholesale distributors often specialize in distributing products for waterworks infrastructure projects and are the primary channel of distribution of DIPF. McWane lacks sufficient knowledge to admit or deny whether waterworks distributors "generally" stock inventory of DIPF in relatively close proximity to project sites and therefore denies that allegation. McWane further avers, on information and belief, that DIPF suppliers, including McWane, often drop-ship the requested product(s) directly to the end customer or job site.

17. McWane denies that direct sales of DIPF to end users are "uncommon" and that DIPF suppliers "need to distribute DIPF through local waterworks distributors in each region of the country in order to compete effectively in that region." McWane avers, on information and belief, that ductile iron pipe suppliers often direct-ship large quantities of both DIPF and pipe directly to end-users or job sites and are able to compete effectively and win DIPF jobs.

18. McWane admits that imported and domestic DIPF are commercially available and that a number of companies, including all Sellers, sell imported DIPF. McWane denies that it was the "sole domestic producer of a full line of small and medium-sized DIPF" before Star began sourcing domestic DIPF in 2009 and further avers, on information and belief, that a number of companies produced small and medium-sized DIPF in the United States before 2009 including, but not limited to, U.S. Pipe, Griffin Pipe, and American Cast Iron Pipe Company.

19. McWane admits that end users of DIPF specify whether or not they prefer domestic or imported DIPF. McWane denies that this specification is "often mandated" by municipal code or by state or federal law and further avers, on information and belief, that the vast majority of end-users currently issue "open source" specifications that do not express a preference for imported or domestic DIPF, that only a small portion of jobs currently prefer domestic DIPF, and that it is atypical for municipal code, state or federal law to "mandate" the use of imported or domestic DIPF.

20. McWane admits that its sales of domestic DIPF sold for use in jobs specified as domestic only are generally sold at prices higher than imported DIPF or domestic DIPF sold for use in projects not specified as domestic only. McWane lacks sufficient knowledge to admit or deny these allegations, to the extent they relate to other sellers of domestic DIPF, and therefore denies them.

21. To the extent the allegations contained in paragraph 21 are legal conclusions, no response is required. To the extent that a response to this paragraph is deemed necessary, McWane admits, on information and belief, that "the marketing and sale of DIPF" may be a relevant product market and that all DIPF, whether imported or domestic, compete for all or virtually all jobs. McWane denies the remaining allegations in paragraph 21.

22. To the extent the allegations in paragraph 22 are legal conclusions, no response is required. McWane denies the allegations in paragraph 22.

23. To the extent the allegations in paragraph 23 are legal conclusions, no response is required. To the extent that a response to this paragraph is deemed necessary, McWane admits that there are "no widely used substitutes for DIPF," but otherwise denies the remaining allegations in paragraph 23.

24. McWane lacks knowledge sufficient to admit or deny the allegations in paragraph 24 that "some" unidentified end users were "unable" to substitute imported DIPF for domestic DIPF and therefore denies them. McWane denies the existence of a "relevant domestic DIPF

market" and lacks sufficient knowledge to admit or deny the allegation that ARRA temporarily expanded that "market" and therefore denies it.

25. To the extent the allegations contained in paragraph 25 are legal conclusions, no response is required. To the extent that a response to this paragraph is deemed necessary, McWane denies the remaining allegations and further avers, on information and belief, that all suppliers of DIPF have distribution relationships or other abilities within the United States sufficient to enable them to compete effectively throughout the country.

26. To the extent the allegations contained in paragraph 26 are legal conclusions, no response is required. To the extent that a response to this paragraph is deemed necessary, McWane admits that its DIPF prices vary depending on the competitive conditions in different regions of the country, in different states, and on different jobs, but denies that it engages in "price discrimination." McWane lacks sufficient knowledge to admit or deny whether unidentified DIPF end users "typically" do not purchase DIPF from waterworks distributors located more 200 miles away and do not resell DIPF to other distributors or end users outside their service areas in "any substantial quantity" and therefore denies them.

27. McWane denies the allegations in paragraph 27.

a) McWane admits that DIPF are commodity products commonly produced to industry-wide standards, but otherwise denies the allegations.

b) McWane lacks sufficientknowledge to admit or deny allegations regarding whether the Sellers "collectively made more than 90 percent of sales in the relevant DIPF markets" and therefore denies those allegations and the remaining allegations in sub-paragraph b).

c) To the extent the allegations are legal conclusions, no response is required. To the extent that a response to this paragraph is deemed necessary, McWane denies the allegations in sub-paragraph c).

d) McWane admits that DIPF are a relatively small portion of the cost of materials of a typical waterworks project, but otherwise denies the allegations in sub-paragraph d).

e) McWane admits that it periodically publishes price lists, as well as multiplier discounts on a state-by-state basis, but otherwise denies the allegations in sub-paragraph e).

28. McWane lacks sufficient knowledge to admit or deny these allegations, to the extent they relate to other Sellers of DIPF. McWane denies the allegations in paragraph 28 as they relate to the subject matter of communications by its own senior executives with other sellers of DIPF.

29. McWane denies the allegations in paragraph 29.

30. McWane admits that it incurred rising input costs and, as a result, desired a price increase. McWane lacks sufficient knowledge to admit or deny the allegations concerning other Sellers and therefore denies those allegations and the remaining allegations in paragraph 30.

31. McWane admits that it issued a change in its published multipliers in January 2008. McWane lacks sufficient knowledge to admit or deny allegations concerning other Sellers of DIPF and therefore denies the remaining allegations in paragraph 31.

32. McWane denies the allegations in paragraph 32.

a) McWane denies the allegations in sub-paragraph a).

b) McWane denies the allegations in sub-paragraph b).

c) McWane denies the allegations in sub-paragraph c).

d) McWane denies the allegations in sub-paragraph d).

33. McWane admits that it issued a change in its published multipliers in June 2008. McWane lacks sufficient knowledge to admit or deny allegations concerning other Sellers of DIPF and therefore denies the remainder of the allegations in paragraph 33.

34. McWane denies the allegations in paragraph 34.

a) McWane denies the allegations in sub-paragraph a).

b) McWane denies the allegations in sub-paragraph b).

c) McWane denies the allegations in sub-paragraph c).

d) McWane denies the allegations in sub-paragraph d).

e) McWane denies the allegations in sub-paragraph e).

35. McWane admits that for a roughly six month period in 2008 it submitted DIPF shipment tonnage, by diameter range (*e.g.*, 2-12"), to an accounting firm hired by DIFRA and overseen by DIFRA counsel and that the accounting firm subsequently distributed back to McWane aggregated shipment tons for all DIFRA members. McWane denies the remaining allegations in paragraph 35.

36. McWane admits that the accounting firm hired by DIFRA and overseen by DIFRA's legal counsel only operated between June 2008 and January 2009, that the data it provided purported to represent total DIPF shipments for DIFRA members, and that McWane knew its own, and only its own, shipments of DIPF and thus could determine its own share of the purported total, but otherwise denies the remaining allegations in paragraph 36.

37. McWane denies the allegations in paragraph 37.

38. McWane denies the allegations in paragraph 38.

39. McWane denies the allegations in paragraph 39.

40. McWane admits, on information and belief, that it was the only remaining domestic manufacturer of DIPF in sizes below 30" in 2009 until Star expanded its DIPF product offerings and sales to include domestic DIPF in 2009, but otherwise denies the allegations in paragraph 40.

41. McWane denies the allegations in paragraph 41.

42. McWane denies the allegations in paragraph 42.

43. McWane denies the allegations in paragraph 43.

44. McWane lacks sufficient knowledge to admit or deny allegations concerning Sigma, Star, and Serampore Industries Private, Ltd. and therefore denies these allegations.

45. McWane lacks sufficient knowledge to admit or deny allegations concerning Sigma, Star and SIP and therefore denies the allegations in paragraph 45. McWane further avers,

on information and belief, that Star sourced and began selling domestic DIPF in 2009 and continues to do so today.

46. McWane denies the allegations in paragraph 46.

47. McWane lacks sufficient knowledge to admit or deny allegations concerning Sigma and therefore denies the allegations in paragraph 47.

48. McWane denies the allegations in paragraph 48.

49. McWane admits that it executed a Master Distribution Agreement with Sigma in September 2009, but otherwise responds as follows to the allegations in paragraph 49:

a) McWane admits the allegations in sub-paragraph a).

b) McWane denies the allegations in sub-paragraph b).

c) McWane denies the allegations in sub-paragraph c).

d) McWane denies the allegations in sub-paragraph d).

50. McWane denies the allegations in paragraph 50.

51. McWane lacks sufficient knowledge to admit or deny allegations concerning Sigma and therefore denies them.

52. McWane denies the allegations in paragraph 52.

53. McWane denies the allegations in paragraph 53.

54. McWane denies the allegations in paragraph 54.

55. McWane denies the allegations in paragraph 55.

56. McWane admits that Star Pipe announced in June 2009 that it was offering domestic DIPF for sale in the United States. McWane denies the remainder of the allegations in paragraph 56.

57. McWane denies the allegations in paragraph 57.

a) McWane denies the allegations in sub-paragraph a).

b) McWane denies the allegations in sub-paragraph b).

c) McWane denies the allegations in sub-paragraph c).

d) McWane denies the allegations in sub-paragraph d).

58. McWane denies the allegations in paragraph 58.

a) McWane lacks sufficient knowledge toadmit or deny allegations concerning unidentified distributors and therefore denies the allegations in sub-paragraph a).

b) McWane lacks sufficientknowledge to admit or deny allegations concerning unidentified distributors and therefore denies the allegations in sub-paragraph b).

c) McWane denies the allegations in sub-paragraph c).

d) McWane lacks sufficientknowledge to admit or deny allegations concerning unidentified distributors and therefore denies the allegations in sub-paragraph d).

59. McWane denies the allegations in paragraph 59.

60. McWane denies the allegations in paragraph 60.

61. McWane denies the allegations in paragraph 61.

62. McWane denies the allegations in paragraph 62.

63. McWane denies the allegations in paragraph 63.

64. McWane denies the allegations in paragraph 64.

65. McWane denies the allegations in paragraph 65.

66. McWane denies the allegations in paragraph 66.

67. McWane denies the allegations in paragraph 67.

68. McWane denies the allegations in paragraph 68.

69. McWane denies the allegations in paragraph 69.

70. McWane denies the allegations in paragraph 70.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

1. The Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

2. Neither the filing of this administrative action nor the contemplated relief are in the public interest, pursuant to 15 U.S.C. § 45.

THIRD DEFENSE

3. The alleged conduct has substantial pro-competitive justifications and benefits consumers and the public interest.

FOURTH DEFENSE

4. The causes of action alleged in the Complaint are barred by mootness on their face, because the Complaint alleges that the ARRA expired more than a year ago, that DIFRA ceased operations and that its information-gathering and dissemination activities ended more than three years ago, that the Master Distributorship Agreement between McWane and Sigma terminated more than a year ago, and the Complaint fails to allege any likelihood that any of these are likely to recur.

OTHER DEFENSES

5. McWane reserves the right to assert other defenses as discovery proceeds.

McWane respectfully requests that the Administrative Law Judge (i) deny the FTC's contemplated relief, (ii) dismiss the Complaint in its entirety with prejudice, (iii) award McWane its costs of suit, and (iv) award such other and further relief as the Administrative Law Judge may deem proper.

Respectfully submitted,

Date: February 2, 2012

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Certificate of Service and Regarding Electronic Submission

I hereby certify that on February 2, 2012, I filed the foregoing document electronically in PDF format using the FTC's E-Filing System, and served a copy on the following by first-class mail:

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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.

/s/ William C. Lavery
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