

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES



_____)	PUBLIC
In the Matter of)	
)	
McWANE, INC.,)	DOCKET NO. 9351
Respondent.)	
_____)	

JOINT STIPULATIONS OF LAW AND FACT

Pursuant to this Court's February 15, 2012 Scheduling Order, *as amended*, Complaint Counsel and Respondent McWane, Inc. stipulate to the following:

JOINT STIPULATIONS OF FACT

1. Respondent McWane, Inc. manufactures, markets and sells products for the waterworks industry, including ductile iron pipe fittings that are 3" to 24" in diameter ("Fittings").
2. Sigma, Inc. imports and sells Fittings and other waterworks products.
3. Star Pipe Products Ltd. ("Star") imports and sells Fittings and other waterworks products.
4. Beginning in 2009, Star has contracted with foundries in the United States to manufacture Domestic Fittings.
5. Non-domestic Fittings have accounted for the majority of sales of Fittings in the last five years.
6. Fittings are used in pressurized water distribution and treatment systems to join pipes, valves and hydrants, and to change, divide or direct the flow of water.
7. Fittings are commodity products produced to American Water Works Association ("AWWA") standards and specifications.

8. There are several thousand unique configurations of Fittings in different sizes, shapes and coatings.
9. Approximately 80 percent of the demand for Fittings may be serviced with only 100 or fewer commonly used sizes and configurations of Fittings. These Fittings are commonly referred to in the industry as “A” or “B” Fittings.
10. Fittings typically comprise five (5) percent or less of the total cost of a typical waterworks project.
11. Demand for Fittings is largely driven by housing-related infrastructure construction and by construction of wastewater treatment plants, which in turn are driven by such factors as the rate of housing growth, and the age and condition of existing systems.
12. The end users of Fittings are typically municipalities, regional water authorities, and the contractors they engage to construct waterworks projects (collectively, “End Users”).
13. At times, some waterworks projects require that only Domestic Fittings be used because of either End User preference or because it is required by municipal, state, or federal law (“Domestic-only projects”).
14. McWane, Sigma, Star, and others sell Fittings directly to Distributors, which then re-sell the Fittings to End Users.
15. All or virtually all of McWane’s sales of Fitting are to Distributors.
16. At times, McWane, Sigma, and Star have provided additional discounts and price concessions to Distributors in the form of rebates, reductions in freight charges, and/or extensions of credit or payment terms.
17. The Ductile Iron Fittings Research Association (“DIFRA”) had four members: McWane; Sigma; Star; and U.S. Pipe.

18. The shipment tonnage data gathered by DIFRA's accounting firm, Sellers Richardson Holman & West, did not distinguish between domestic fittings and non-domestic fittings and did not indicate whether the tonnage was sold into open preference or domestic preference jobs.
19. In February 2009, Congress passed the American Recovery and Reinvestment Act of 2009, known as "ARRA."
20. ARRA allocated more than \$6 billion to water infrastructure products.
21. ARRA contained certain Buy-American provisions applicable to Fittings.
22. The total number of waterworks projects being built, repaired, or otherwise commissioned in the United States generally increased during the period that ARRA funding was available.
23. At a June 2009 AWWA industry conference, Star publicly announced that it would offer Domestic Fittings starting in September 2009.
24. HD Supply is the largest waterworks distributor in terms of sales in the United States.
25. Ferguson is the second largest waterworks distributor in terms of sales in the United States.

JOINT STIPULATIONS OF LAW

1. McWane is a corporation as "corporation" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

For Counsel Supporting the Complaint:

For Respondent:

/s/ Linda Holleran
Linda Holleran
Federal Trade Commission
Washington, DC

/s/ William C. Lavery
William C. Lavery
Baker Botts LLP
Washington, DC

Date: August 28, 2012

CERTIFICATE OF SERVICE

I hereby certify that on August 28, 2012, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

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

I also certify that I delivered via hand delivery a copy of the foregoing document to:

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580

I further certify that I delivered via electronic mail a copy of the foregoing document to:

Edward Hassi, Esq.
Geoffrey M. Green, Esq.
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Jeanine K. Balbach, Esq.
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Andrew K. Mann, Esq.

By: /s/ William C. Lavery
William C. Lavery
Counsel for McWane, Inc.