

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: William E. Kovacic, Chairman
Pamela Jones Harbour
Jon Leibowitz
J. Thomas Rosch

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

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and of the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission (the "Commission"), having reason to believe that respondent Polypore International, Inc. ("Daramic"), a Delaware corporation subject to the jurisdiction of the Commission having its principal place of business in North Carolina, entered into an agreement, in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, pursuant to which Daramic purchased 100 percent of the stock of Microporous Holding Corporation, the parent company of Microporous Products L.P. ("Microporous"), headquartered in Piney Flats, Tennessee, from Industrial Growth Partners II L.P. ("IGP") and other stockholders in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and through conduct and agreements Daramic monopolized the North American markets for deep-cycle, motive, and UPS battery separators and otherwise restrained trade significantly in the North American automotive separator market, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. RESPONDENT

1. Respondent Daramic manufactures a broad range of high-performance battery separator membranes. Daramic today develops, markets, and supplies more than 50 percent of the world's demand for high performance polyethylene ("PE") battery separators to the flooded lead-acid battery industry. Daramic operates 6 manufacturing facilities with a combined annual capacity of approximately 600 million square meters of battery

separator products. In the United States, Daramic has manufacturing plants in Owensboro, Kentucky, and Corydon, Indiana. Daramic also has facilities in Selestat, France; Norderstedt, Germany; Potenza, Italy; a controlling interest in a joint venture with Nippon Sheet Glass located in Tianjin, China, and a newly expanded operation in Prachinburi, Thailand. With the acquisition of Microporous, Daramic also adds production lines in Piney Flats, Tennessee and Feistritz, Austria.

2. The former Microporous was headquartered in Piney Flats, Tennessee, with manufacturing facilities in both Tennessee and Austria. Microporous had 170 employees, and had \$37 million in sales in 2007. Before it was acquired by Daramic, Microporous was owned by IGP, a private equity firm. Microporous' latest products included rubber separators, PE-rubber separators, and PE separators. These products are still produced in a 30,000 square-foot plant in Piney Flats, TN. Microporous had completed an expansion with a new greenfield plant in Austria, consisting of two lines, one producing a PE-rubber separator and one a PE separator (though both lines can produce either product). These lines are now in full commercial production under Daramic's control.

II. JURISDICTION

3. Daramic is, and at all times relevant herein, has been, engaged in "commerce" as defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose businesses are in or affect "commerce" as defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

III. THE TRANSACTION

4. On February 29, 2008, Daramic acquired, pursuant to agreement with Microporous, IGP, and other stockholders 100 percent of the stock of Microporous Holding Corporation, the parent company of Microporous Products L.P. (Microporous), from Industrial Growth Partners II L.P. and other stockholders for approximately \$76 million.

IV. RELEVANT PRODUCT MARKETS

5. The relevant product areas in which to analyze the transaction are separators for flooded lead-acid batteries in the following markets:
 - (a) deep-cycle;
 - (b) motive;
 - (c) automotive;
 - (d) uninterruptible power supply stationary ("UPS").
6. Alternatively, another market in which the transaction violates the antitrust laws is an all PE separator market.

7. Battery separators are porous electronic insulators placed between positively and negatively charged lead plates in flooded lead-acid batteries to prevent electrical short circuits while allowing ionic current to flow through the separator.
8. Deep-cycle separators are made of either rubber or a blend of rubber and PE and are a necessary component that enables deep-cycle batteries to be frequently exhausted then recharged again. Deep-cycle separators are primarily used in golf cart and floor scrubber batteries.
9. Motive separators are made of PE, a blend of rubber and PE, or sometimes PVC, and are used primarily in forklift batteries.
10. Automotive separators are made of PE and are used in cars for starter, lighter, and ignition (“SLI”) power. While Microporous has made and can make PE for this application, its CellForce, a blend of rubber and PE, is a potential substitute.
11. UPS separators are made of PE, and a blend of rubber and PE. These separators are used in batteries for the uninterruptible power supply market that supply short term power to critical data centers and buildings in the event of a power outage.
12. PE separators are made of either pure PE or a blend of PE and rubber. Manufacturers of PE separators for UPS, motive, or deep-cycle applications can easily and quickly switch production to automotive separators. Conversely, there are significant barriers to switching PE production to UPS, motive, or deep-cycle applications.
13. Battery separators manufactured for a particular application cannot be effectively used for other applications.

V. RELEVANT GEOGRAPHIC MARKET

14. The relevant geographic market in which to analyze the effects of this transaction is North America.
15. There are only two other manufacturers of motive and UPS separators in the world of any significance. Amer-Sil makes PVC separators in Europe and has negligible sales in North America. Nippon Sheet Glass makes PE motive separators in Japan, has no sales in North America, and has refused to sell any PE separators to North American customers.
16. Producers of battery separators for motive, UPS, and automotive applications outside of North America are at a cost disadvantage in the supply of these separators to North American customers. Producers outside of North America cannot economically compete with Daramic in North America.

17. North American battery makers have a strong preference for their nearest source of supply and do not import separators from abroad. Long supply chain logistics increase the chances that a battery factory could be shut down if separators are not on hand when needed. Consequently, even if there were an otherwise viable alternative source of supply, North American battery manufacturers would strongly prefer domestic sources for separators. Moreover, PE separator manufacturers from abroad, such as Asia, will not find it practical to compete in North America at either pre-merger or post-merger prices.

VI. COMPETITION & CONCENTRATION

18. Each of the relevant product markets is highly concentrated in North America.
19. Since the acquisition of Microporous by Daramic, there are just two battery separator companies that supply North America. Entek International LLC, the sole remaining competitor, operates only in the automotive market.
20. Daramic and Microporous were competitors in each relevant market. Microporous, therefore, was uniquely situated to compete with Daramic for North American customers by virtue of its location and breadth of product offerings.
21. Daramic and Microporous were direct competitors in the deep-cycle market. There are no other deep-cycle battery separator competitors in the world. Prior to the transaction, Microporous had an approximately 89 percent of the deep-cycle market, while Daramic had approximately 11 percent. Post-acquisition, Daramic has a monopoly in this market.
22. Daramic and Microporous were direct competitors in the motive market. Microporous sold PE-rubber separators, while Daramic sold PE separators. Microporous and Daramic were the only competitors in motive separators in North America. Microporous had won approximately 46 percent of the motive separator contracts for 2009 in the North American market when it was acquired.
23. Daramic and Entek are direct competitors and the only companies currently selling SLI battery separators in North America. In 2005, Microporous had produced PE separators for the automotive market. Although Microporous was not producing automotive separators at the time of the acquisition, it was preparing to compete actively in this market and was already marketing and testing its products with customers.

24. Daramic and Microporous sold separators in different segments of the UPS market. Microporous sold a rubber product to this market, while Daramic sells PE and phenolic resin separators. Microporous and Daramic were the only separator manufacturers selling into the North American UPS market. Microporous had developed a new product to compete directly with Daramic's PE and phenolic resin products and was testing its new product with customers at the time of the acquisition.
25. Daramic, Entek, and Microporous were the only manufacturers of PE separators in North America. While Microporous' share of this market was small, its expansion in Europe had freed up additional U.S. capacity, which had previously been exported to Europe. Microporous also had plans to expand its North American PE capacity in 2008 and 2009.
26. In the end, Daramic's fundamental purpose in acquiring Microporous was to restrain competition unreasonably. The acquisition also allows Daramic to exert market power.

VII. ACTUAL AND POTENTIAL COMPETITION

27. Microporous was entering the market for automotive separators prior to its acquisition by Daramic. Specifically, Microporous had signed a memorandum of understanding with an automotive battery manufacturer for the supply of its PE automotive separators to begin in January 2010. Microporous had already acquired the technology to make these separators, and its entry in the North American automotive separator market would have occurred but for the acquisition of Microporous by Daramic. In fact in 2005, Microporous had successfully manufactured and sold PE automotive separators in North America.
28. Alternatively, customers, competitors, and other industry participants in automotive separators perceived Microporous to be a uniquely positioned potential entrant that had a tempering, procompetitive effect in the automotive separator market.
29. The acquisition harms the market for automotive separators in North America by eliminating Microporous as a future source of separators for automotive lead-acid batteries.
30. Microporous had also developed a new separator that would directly compete with Daramic's separators for the UPS market in which Daramic was the predominant supplier. A major customer has been testing this new product and had contracted with Microporous for the supply of this product. Microporous had secured significant market share as a result of this contract.
31. The acquisition harms the market for UPS battery separators by eliminating this competition.

VIII. ENTRY

32. Entry into each relevant product markets would not be timely, likely, or sufficient in its magnitude, scope, or character to deter or counteract the anticompetitive effects arising from this acquisition.
33. Testing and qualification present a significant barrier to entry. The testing required by U.S. battery manufacturers is comprehensive and lengthy. Because the individual battery makers often have their own design and testing requirements, there are no one-size-fits-all separators that can be used from one customer to the next without appropriate testing. This means that even an incumbent in the battery separator market would have to submit its product to testing, lasting from a few months to more than two years, before it could be qualified by an additional battery manufacturer.
34. Reputation presents a significant barrier to entry. The original equipment manufacturers that buy batteries from the customers of Daramic and Microporous demand warranties from the battery makers. Battery manufacturers are reluctant to seek supply from an unknown separator manufacturer because the quality of the battery is largely dependent on the quality of the separators. A new entrant into the market for flooded lead-acid battery separators would have to overcome the obstacle of convincing battery makers that its product is reliable and will be available when and where promised.
35. A new entrant into any of the relevant markets would lack Microporous' reputation for sound quality and timely delivery. Although gaining such a reputation is possible over time, it could not reasonably be obtained within two years.
36. In addition, new entry into the relevant markets is not likely due to the capital requirements and intellectual property required to do so.
37. Even the most likely future entrant would not successfully, or in a timely manner, enter any of the relevant markets within two years. Nor would any potential entrant replace the loss of Microporous' willingness, ability, and incentive to enter the automotive or UPS flooded lead-acid battery separator markets.

IX. ANTICOMPETITIVE EFFECTS

38. The acquisition and Daramic's conduct substantially lessened competition in the following ways:
 - a. it has eliminated actual, actual potential, and perceived potential competition between Daramic and Microporous as well as other potential competition such as Hollingsworth & Vose ("H&V");

- b. it removes Microporous, the only alternative source of separator supply in the deep-cycle, motive, and UPS markets;
- c. it creates a monopoly in deep-cycle and motive markets and increases the level of concentration in the automotive market;
- d. it has led and will lead to increased prices for the relevant products;
- e. it increases Daramic's market power in the deep-cycle, motive, and automotive markets;
- f. it allows Daramic to unilaterally exercise its market power in the relevant markets;
- g. it removes a rapidly expanding actual, actual potential, or perceived potential competitor in the automotive market; and
- h. it makes coordination more likely in the automotive market.

X. MONOPOLIZATION

- 39. Prior to the acquisition identified in Paragraph 1 above, Daramic attempted through anticompetitive means to maintain monopoly power against a challenge from Microporous in the markets for (1) deep-cycle battery separators; (2) motive battery separators; (3) automotive battery separators; and (4) UPS battery separators; or alternatively all PE separators.
- 40. During 2006-2007, while negotiating contractual terms with certain large customers, Daramic imposed conditions on the availability of its products that tended to exclude rivals and harm the competitive process. Daramic threatened to withhold volumes of separators requested by certain customers to pressure them to enter exclusive supply agreements with Daramic, and thereby foreclose Microporous from expanding its business with those customers.
- 41. In addition, Daramic has entered into an illegal agreement to prevent entry from another potential competitor, H&V, and attempted to do the same with Microporous.
- 42. In automotive, motive, UPS and all PE markets Daramic has historically maintained monopoly power.
- 43. In supplying these relevant markets, Daramic's remaining rival, Entek, is capacity constrained. Furthermore, high entry barriers make it unlikely that any new entrant could constrain the exercise of Daramic's monopoly power in any of the relevant products.
- 44. The conduct described above carried the dangerous probability that, if successful, it would give Daramic the ability to lessen or destroy competition in the North American market for PE separators. Daramic's coercive bargaining tactics posed a threat to the viability of Microporous and a significant threat to competition generally in the relevant markets.

45. Daramic has the market/monopoly power to exclude competition and/or increase prices and reduce innovation and has illegally and wrongfully maintained its market power.
46. Daramic engaged in the conduct described above to preclude or deter Microporous from expanding or otherwise achieving sufficient scale, and thereby destroy competition and increase its market dominance.

XI. UNFAIR METHOD OF COMPETITION

47. Daramic entered into a joint marketing agreement in 2001 with Hollingsworth & Vose, a firm that manufactures absorbed-glass-mat battery separators, in order to prevent them from entering the PE separator market. This agreement is, at a minimum, an overbroad agreement in restraint of trade, and may be an illegal market allocation agreement that is not justified by any legitimate business purpose.

XII. VIOLATIONS

COUNT I– ILLEGAL ACQUISITION

48. The allegations contained in Paragraphs 1-47 are repeated and realleged as though fully set forth here.
49. The effect of the Acquisition may be substantially to lessen competition or tend to create a monopoly in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45.

COUNT II– UNFAIR METHOD OF COMPETITION

50. The allegations contained in Paragraphs 1-47 are repeated and realleged as though fully set forth here.
51. Daramic has, through the acquisition of Microporous, and the other conduct alleged herein, engaged in unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45.

COUNT III – MONOPOLIZATION

52. The allegations contained in Paragraphs 1-47 are repeated and realleged as though fully set forth here.

53. Daramic has, through the acquisition of Microporous, and the other conduct alleged herein, engaged in unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45.

XIII. NOTICE

Proceedings on the charges asserted against you in this complaint will be held before an Administrative Law Judge (ALJ) of the Federal Trade Commission, under Part 3 of the Commission's Rules of Practice, 16 C.F.R. § 3.1, *et seq.* A copy of Part 3 of the Rules is enclosed with this complaint.

You may file an answer to this complaint. Any such answer must be filed within 20 days after service of the complaint on you. If you contest the complaint's allegations of fact, your answer must concisely state the facts constituting each ground of defense, and must specifically admit, deny, explain, or disclaim knowledge of each fact alleged in the complaint. You will be deemed to have admitted any allegations of the complaint that you do not so answer.

If you elect not to contest the allegations of fact set forth in the complaint, your answer shall state that you admit all of the material allegations to be true. Such an answer will constitute a waiver of hearings as to the facts alleged in the complaint and, together with the complaint, will provide a record basis on which the ALJ will file an initial decision containing appropriate findings and conclusions and an appropriate order disposing of the proceeding. Such an answer may, however, reserve the right to submit proposed findings and conclusions and the right to appeal the initial decision to the Commission under Section 3.52 of the Commission's Rules of Practice.

If you do not answer within the specified time, you waive your right to appear and contest the allegations of the complaint. The ALJ is then authorized, without further notice to you, to find that the facts are as alleged in the complaint and to enter an initial decision and an order.

The ALJ will schedule an initial prehearing scheduling conference to be held not later than 14 days after the last answer is filed by any party named as a respondent in the complaint. Unless otherwise directed by the ALJ, the scheduling conference and further proceedings will take place at the Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Rule 3.21(a) requires a meeting of the parties' counsel as early as practicable before the prehearing scheduling conference, and Rule 3.31(b) obligates counsel for each party, within 5 days of service of respondent's answer, to make certain initial disclosures without awaiting a formal discovery request.

A hearing on the complaint will begin on December 9, 2008, or such other date as determined by the ALJ. At the hearing, you will have the right to contest the allegations of the complaint and to show cause why a cease and desist order should not be entered against you.

XIV. NOTICE OF CONTEMPLATED RELIEF

Should the Commission conclude from the record developed in any adjudicative proceedings in this matter that the acquisition challenged in this proceeding violates Section 7 of the Clayton Act, as amended, or Section 5 of the Federal Trade Commission Act, as amended, the Commission may order such relief against respondents as is supported by the record and is necessary and appropriate, including, but not limited to an order intended to restore Microporous as a viable competitor, and to require divestiture of the reconstituted entity, constitution of a competitive entity that would have existed in all of the relevant markets but for Daramic's anticompetitive conduct, rescission of contracts entered into subsequent to the acquisition, assignment or licensing of all intellectual property and know-how associated with the relevant markets, or whatever the Commission deems necessary to restore competition lost as a result of Daramic's acquisition and other anticompetitive conduct, and an order that requires Daramic to cease and desist from the conduct, agreements, and attempts to enter agreements alleged in the Complaint, and to take all such measures as are appropriate to correct or remedy, or to prevent the recurrence of the anticompetitive practices engaged in by Daramic. The notice also contemplates that the Commission will enjoin any integration activities that have not occurred as of the date the Commission issues its order to prevent further integration of Microporous by Daramic and the possible appointment of a monitor and a divestiture trustee, as may be required to accomplish the Commission's ordered relief.

THEREFORE, the Federal Trade Commission this ninth day of September, 2008, has issued this complaint against Respondent.

By the Commission.

Donald S. Clark
Secretary

SEAL: