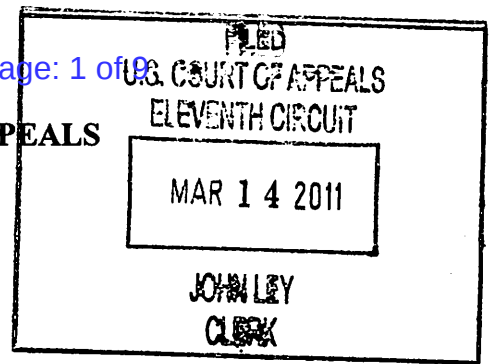


**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**



POLYPORE INTERNATIONAL, INC.,

Petitioner,

v.

FEDERAL TRADE COMMISSION,

Respondent.

No. 11-10375-E

**PETITIONER'S SUBMISSION IN RESPONSE
TO THE JURISDICTIONAL QUESTION**

Petitioner, Polypore International, Inc., submits this response to the Jurisdictional Question issued by the Court in this matter on March 7, 2011. In its Jurisdictional Question, the Court asks: "Whether the Petitioner's January 28, 2011, Petition for Review is timely as to the Federal Trade Commission's Final Order and Opinion, issued on November 5, 2010. See 15 U.S.C. § 45(c)." In his cover letter of March 7, the Clerk of the Court requested that the parties advise the Court in writing of their positions in response to this question within 14 days, or by March 21, 2011.

The Petition for Review was timely filed under 15 U.S.C. § 45(c), and this Court has proper jurisdiction over this case. In support of this submission, Petitioner states as follows:

1. Pursuant to section 45(c), a petition for review of a final order of the Federal Trade Commission ("FTC" or "Commission") may be filed in the court of appeals

“within sixty days from *the date of the service of such order.*” 15 U.S.C. § 45(c) (emphasis added).

2. Although the Final Order and Opinion under review is dated November 5, 2010, the Commission did not effect service of the order upon Petitioner until November 29, 2010. Declaration of Steven G. Bradbury ¶ 2 (appended hereto as Ex. A). In an email sent to Petitioner’s counsel on December 10, 2010, the Secretary of the Commission confirmed as follows: “Our records indicate that service of the Commission Opinion and Final Order in In the Matter of Polypore International, Inc., Docket No. 9327, was completed on November 29, 2010.” Bradbury Decl. ¶ 2.

3. Furthermore, in its official press release announcing the Final Order and Opinion in this matter, the Commission acknowledged and confirmed that service of the order occurred on November 29, 2010, for purposes of Petitioner’s right to petition for review under section 45(c). Bradbury Decl. ¶ 3. The Commission stated: “Polypore may file a petition to review the Commission’s Final Order to a U.S. Court of Appeals within 60 days from November 29, the date the decision was served.” FTC Press Release, “FTC Orders Polypore International to Divest Rival Manufacturer it Acquired in 2008,” at 2 (Dec. 13, 2010) (copy attached to Bradbury Decl.) (also available at <http://www.ftc.gov/opa/2010/12/polypore.shtm>).

4. Because no statute specifies a different method for computing the 60-day period for filing a petition for review under 15 U.S.C. § 45(c), the time period is governed by Rule 26(a)(1) of the Federal Rules of Appellate Procedure, which provides for the counting of all calendar days “exclud[ing] the day of the event that triggers the period” (here, the day the Final Order was served on Petitioner, November 29, 2010).

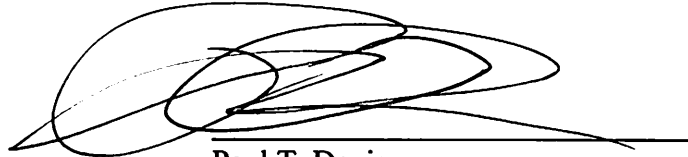
Fed. R. App. P. 26(a)(1)(A). Sixty days from November 29, 2010, as computed under Rule 26, was January 28, 2011.

5. Petitioner duly filed its Petition for Review of the FTC's Final Order and Opinion in this Court on January 28, 2011. Accordingly, the Petition for Review was timely filed pursuant to 15 U.S.C. § 45(c), and this Court has proper jurisdiction over the Petition for Review.

6. In addition, section 45(c) permits Petitioner to file its Petition for Review in a U.S. Court of Appeals for "any circuit where," *inter alia*, Petitioner "carries on business." 15 U.S.C. § 45(c). Petitioner sells products to major customers located or residing in the Eleventh Circuit and, accordingly, "carries on business" in the Eleventh Circuit for purposes of jurisdiction under section 45(c). Bradbury Decl. ¶ 4.

Dated: March 10, 2011

Respectfully submitted,



Paul T. Denis
Steven G. Bradbury
Gorav Jindal
Irene Ayzenberg-Lyman
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ATTORNEYS FOR PETITIONER

EXHIBIT A

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

POLYPORE INTERNATIONAL, INC.,

Petitioner,

v.

No. 11-10375-E

FEDERAL TRADE COMMISSION,

Respondent.

**DECLARATION OF STEVEN G. BRADBURY
IN SUPPORT OF PETITIONER'S SUBMISSION
IN RESPONSE TO THE JURISDICTIONAL QUESTION**

I, Steven G. Bradbury, declare as follows:

1. I am a partner in the law firm Dechert LLP and I represent Petitioner in this case. I am personally familiar with the facts set forth herein, and I submit this declaration in support of Petitioner's Submission in Response to the Jurisdictional Question.

2. The Final Order and Opinion of the Federal Trade Commission under review is dated November 5, 2010; however, the Commission did not effect service of the Final Order and Opinion upon Petitioner until November 29, 2010. In an email sent to Petitioner's counsel on December 10, 2010, the Secretary of the Commission confirmed as follows: "Our records indicate that service of the Commission Opinion and Final Order in In the Matter of Polypore International, Inc., Docket No. 9327, was completed on November 29, 2010."

3. Also, in its official press release announcing the Final Order and Opinion in this matter, the Commission acknowledged and confirmed that service of the Final Order and Opinion occurred on November 29, 2010, for purposes of Petitioner's right to petition for review under 15 U.S.C. § 45(c). In its press release, the Commission stated: "Polypore may file a petition to review the Commission's Final Order to a U.S. Court of Appeals within 60 days from November 29, the date the decision was served." FTC Press Release, "FTC Orders Polypore International to Divest Rival Manufacturer it Acquired in 2008," at 2 (Dec. 12, 2010) (a true and correct copy of this press release is attached to this Declaration).

4. In addition, Petitioner sells products to major customers located or residing in the Eleventh Circuit and thus "carries on business" in this Circuit for purposes of 15 U.S.C. § 45(c).

I declare under penalty of perjury that the foregoing is true and correct.

Dated: March 10, 2011


Steven G. Bradbury



Federal Trade Commission Protecting America's Consumers

For Release: 12/13/2010

FTC Orders Polypore International to Divest Rival Manufacturer it Acquired in 2008

Requires that Microporous Products L.P. be Sold to an FTC-Approved Buyer

The Federal Trade Commission has ruled unanimously that Polypore International, Inc.'s 2008 acquisition of a rival manufacturer of battery components was anticompetitive, and ordered Polypore to divest the company to an FTC-approved buyer within six months. The Commission today made public its final Order and a provisional public version of the Commission Opinion. A final public version of the Commission Opinion will be released after the Commission resolves a motion filed by Polypore objecting to the disclosure of certain information in the opinion.

The FTC's five Commissioners voted to uphold in large part a March 2010 Initial Decision by Chief Administrative Law Judge D. Michael Chappell. Judge Chappell found that Polypore's February 2008 acquisition of Microporous Products L.P. violated the antitrust laws by reducing competition in four North American markets for flooded lead-acid battery separators - membranes that are placed between the positive and negative plates of flooded lead-acid batteries.

The Commission held that the acquisition harmed competition in three of the four relevant markets, and agreed with Judge Chappell that complete divestiture of the acquired assets was the appropriate remedy. The Commission reversed the Administrative Law Judge and ruled in favor of Polypore with regard to one market. The Commission found that the FTC staff who prosecuted the complaint, known as complaint counsel, did not prove that Microporous participated sufficiently in that market for the transaction to have reduced competition.

The FTC issued its Opinion and Final Order on November 5, 2010, meeting new self-imposed deadlines designed to expedite the agency's administrative trial process. Under the new Rules, which were finalized in April 2009, and which the Commission applied retroactively to the issuance of its decision in this matter, the Commission must issue its ruling to the parties within 100 days after a case is argued before the Commission.

Case History. In September 2008, the FTC issued an administrative complaint alleging that the transaction, as well as some of Polypore's business tactics, were anticompetitive and violated the federal antitrust laws. According to the complaint, Polypore had competed with Microporous, and the combination decreased competition and raised prices for four types of battery separators sold to customers in North America:

- Deep-cycle separators for batteries used primarily in golf carts;
- Motive separators for batteries used primarily in forklifts;
- Automotive separators used in car batteries for starters, lighting, and ignition; and
- Uninterruptible power supply separators used in batteries that provide backup power in the event of power outages.

The complaint also charged that Polypore's 2001 joint marketing agreement with a potential competitor, Hollingsworth & Vose, unlawfully prevented Hollingsworth & Vose from selling polyethylene separators. Finally, the complaint alleged that Polypore maintained its monopoly power in several battery separator markets through anticompetitive means.

In an Initial Decision announced on March 8, 2010, Judge Chappell found that Polypore's acquisition of Microporous was anticompetitive and ordered Polypore to divest Microporous to an FTC-approved buyer within six months after the divestiture provisions of the Order become final.

Judge Chappell also ruled that Polypore and Hollingsworth & Vose had illegally agreed to divide markets for certain types of battery separators in North America, and ordered Polypore to void a covenant not-to-compete that was contained in the agreement. Polypore did not appeal this ruling. Finally, Judge Chappell dismissed a separate count charging Polypore with monopolization in specific battery separator markets. FTC complaint counsel did not appeal that ruling.

The Commission Opinion. In its Opinion, the Commission ruled that Polypore's acquisition of Microporous is illegal in three of

Case: 11-10375 Date Filed: 03/14/2011 Page: 7 of 9

the four North American markets identified in the complaint. The Commission found that the acquisition was not likely to harm competition in a fourth market for separators used to make batteries for backup power supply.

The Commission disagreed with Polypore's argument that any anticompetitive effects of the deal would be offset by entry from Entek, another U.S. battery separator maker, or Asian suppliers. It also disagreed with Polypore's contention that large, powerful buyers would prevent Polypore from exercising market power.

The Final Order. The Commission's Final Order requires Polypore to divest assets including Microporous's former plants in Piney Flats, Tennessee, and Feistritz, Austria; a "line in boxes" containing unassembled manufacturing equipment; and technology and intellectual property that Microporous owned at the time of the acquisition.

In addition to other ancillary relief necessary to support the divestiture, the Final Order requires Polypore to "take all reasonable actions necessary" to help the acquirer evaluate, recruit, and employ personnel that it needs to be successful, and prohibits Polypore from hiring any Microporous employee who is working for the acquirer for two years from the date of the divestiture. The Final Order also directs Polypore to grant the acquirer a license to any intellectual property Polypore chose to use or incorporate in Microporous's products and to provide the acquirer with confidential business information relating to the Microporous business.

The Commission vote approving the Opinion and Final Order was 5-0, with Commissioner J. Thomas Rosch issuing a concurring opinion that can be found on the FTC's website and as a link to this press release. Polypore may file a petition to review the Commission's Final Order to a U.S. Court of Appeals within 60 days from November 29, the date the decision was served.

In his separate concurring opinion, Commissioner Rosch explained that even though it is essential to define the relevant market at some point in the process, there was no need in this case to follow the traditional Section 7 framework that begins with defining the relevant market and only then considers the transaction's competitive effects. Rather, in a consummated merger, "it is generally preferable to determine whether a merger has had anticompetitive effects by reference to the parties' motives for the transaction and the actual effects resulting from the merger instead of trying first to define with precision the dimensions of relevant market." According to Commissioner Rosch, the key facts establishing the transaction's effects and Polypore's liability were the company's pre-merger documents describing the transaction's anticompetitive purposes and the company's post-merger price increases.

Copies of the public version of the Commission's Opinion and Final Order are available from the FTC's website at <http://www.ftc.gov> and also from the FTC's Consumer Response Center, Room 130, 600 Pennsylvania Avenue, N.W., Washington, DC 20580.

MEDIA CONTACT:

Peter Kaplan
Office of Public Affairs
202-326-2334

(FTC Docket No. 9327)
(Polypore Final Order.wpd)

E-mail this News Release

If you send this link to someone else, the FTC will not collect any personal information about you or the recipient.

Related Items:

Opinion of the Commission, By Commissioner Ramirez For A Unanimous Commission [Provisionally Redacted Public Version]

Concurring Opinion of Commissioner Rosch

Final Order

Last Modified: Monday, December 13, 2010

IN THE UNITED STATES COURT OF APPEALS
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POLYPORE INTERNATIONAL, INC.,

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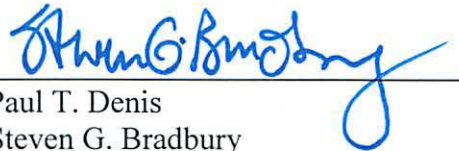
FEDERAL TRADE COMMISSION,

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Pursuant to Fed. R. App. P. 26.1, Petitioner states that Warburg Pincus LLC and FMR LLC each own more than 10% of Petitioner's stock.

Respectfully submitted,



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Facsimile No.: 202 261 3333

ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

Pursuant to Fed. R. App. P. 25 and the corresponding circuit rules, I hereby certify that on March 11, 2011, a true and correct copy of the foregoing was served on the following persons via hand delivery:

Donald S. Clark
Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Michele Arington, Esq.
John F. Daly, Esq.
Catharine M. Moscatelli, Esq.
Federal Trade Commission
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Washington, D.C. 20580



Steven G. Bradbury