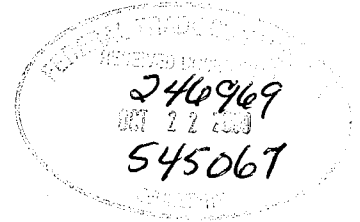


ORIGINAL

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



\_\_\_\_\_)  
In the Matter of \_\_\_\_\_)  
POLYPORE INTERNATIONAL, INC., \_\_\_\_\_)  
Respondent. \_\_\_\_\_)  
\_\_\_\_\_)

Docket No. 9327

**ORDER DENYING COMPLAINT COUNSEL'S  
MOTION TO COMPEL DISCOVERY RESPONSES**

**I.**

On October 20, 2009, Complaint Counsel submitted a motion to compel Respondent to produce documents, answer interrogatories, and respond to requests for admissions ("motion to compel"). Pursuant to an order issued on October 20, 2009, Respondent submitted an expedited opposition response on October 21, 2009 which opposed the motion to compel.

Upon full consideration of all the arguments of the parties, and as more fully set forth below, Complaint Counsel's motion to compel is DENIED.

**II.**

On October 15, 2009, after full briefing by the parties and for good cause having been shown<sup>1</sup>, an order was issued granting Respondent's Second Motion to Reopen the Record (the "Order"). The Order reopened the record to consider evidence limited to Respondent's proffer, as set forth in the Order.

The Order set a hearing date of November 4, 2009 and provided a prehearing schedule which included, among other things, a deadline of October 27, 2009 for the completion of depositions, limited to the individuals to be called at the hearing and limited to the proffered evidence, and a deadline of October 28, 2009, for the exchange of witness lists, exhibit lists, and exhibits. Order, October 15, 2009 at 7, 8. The Order included no other prehearing discovery.

<sup>1</sup> Specifically, the Order of October 15, 2009 held that "Respondent has demonstrated good cause for reopening the record prior to the filing of the Initial Decision. In addition, Respondent has provided a bona fide explanation for the failure to introduce the proffered evidence at trial, demonstrated that the proffered evidence is probative and is not cumulative, and shown that the reopening of the record would not unduly prejudice Complaint Counsel." Order, October 15, 2009 at 7.

On October 16, 2009, Complaint Counsel served upon Respondent 12 document requests, 14 interrogatories, and 19 requests for admissions, and directed Respondent to respond to the written discovery within seven days, by October 23, 2009. On October 20, 2009, Respondent advised Complaint Counsel that it would not comply with Complaint Counsel's requested discovery, and the motion to compel followed.

### III.

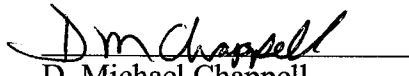
The Order reopening the record is intentionally narrow in scope. It reopens the record for the limited purpose of considering Respondent's proffered evidence. To enable the parties to prepare for this limited evidentiary proffer, the Order also authorizes limited depositions, and requires that any exhibits to be introduced at the hearing be provided in advance. The Order did not reopen discovery for all purposes, and did not authorize requests for production, interrogatories, or requests for admission. Accordingly, because Complaint Counsel's requests for written discovery were not authorized, its motion to compel such discovery is without merit.

Moreover, Complaint Counsel has failed to demonstrate that it will be unable to adequately prepare for the hearing and, thus, prejudiced if it does not obtain the unauthorized discovery. In connection with the motion to reopen, Respondent provided a detailed proffer, an affidavit, and numerous documents, which placed Complaint Counsel on notice of the facts and documents upon which Respondent intends to rely. Further, Complaint Counsel's opposition included the affidavit of Douglas Gillespie of Exide Technologies to dispute points in the proffer. Accordingly, Complaint Counsel has failed to show that the depositions and exhibit exchange provided for in the Order constitute inadequate discovery.

Finally, as pointed out in the Order, the hearing will be strictly limited to the proffered evidence. Efforts by the parties to expand the scope of the hearing beyond the proffer, or to introduce documents that have not been exchanged in advance in compliance with the October 15, 2009 Order will be rejected.

### IV.

For the foregoing reasons, Complaint Counsel's motion to compel discovery responses is DENIED.

  
D. Michael Chappell  
Chief Administrative Law Judge

Date: October 22, 2009