

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
[FILED 9/8/95]

In Re: PETITION OF) Civil No. MJG95-1270
MACCAFERRI GABIONS, INC.)
)

**UNITED STATES' MEMORANDUM STATING THE UNITED STATES'
POSITION REGARDING UNRESOLVED ISSUES RELATING
TO THE SCOPE OF CIVIL INVESTIGATIVE DEMAND 12316**

The United States Department of Justice ("the Department") respectfully submits this Memorandum in response to this Court's Memorandum and Order dated August 25, 1995.

INTRODUCTION

Since issuing the CID on March 9, 1995, the Department has repeatedly expressed to Maccaferri its willingness to negotiate the scope of the CID. The Department has also repeatedly asked Maccaferri to provide it with certain basic information about its files and employees so that the Department could identify ways that the CID could be modified consistent with the Department's need for evidence and information. Maccaferri has repeatedly refused to provide the Department with that information, and has refused to engage in negotiations with the Department.

In response to the Court's Memorandum and Order, on August 31, the Department contacted Maccaferri's counsel to arrange a meeting to attempt to negotiate the CID. See Exhibit A. The Department again asked Maccaferri to provide it with certain information concerning Maccaferri's files. After first declining to meet with the staff conducting the investigation. Maccaferri agreed to meet with the Department on September 6. See Exhibits B, C, D, E and F.

At the September 6 meeting, Maccaferri again declined to provide the Department with information concerning its files, although it agreed to produce an organizational chart by Friday, September 8. The chart was never produced. Notwithstanding Maccaferri's uncooperative approach, the Department believed that it had reached agreement with Maccaferri concerning the scope of most of the interrogatories and document requests in the CID. As agreed at the meeting, the Department summarized the agreements in a letter, which it faxed to Maccaferri's counsel on the morning of September 7. Exhibit G. Maccaferri had agreed to respond to that letter no later than 10:00 am Friday, September 8.

When the Department had not heard from Maccaferri by 11:00 September 8, Ms. Moltenbrey made several calls to Maccaferri's counsel to discuss any differences that might exist. Mr. Klayman first stated that the differences were minor, and that he would respond to the Department's letter shortly. He then sent a letter to the Department stating that he would explain his understanding of the agreements in his filing with the Court. Exhibit H. Ms. Moltenbrey telephoned again to attempt to discuss any areas of disagreement with Maccaferri's counsel, who promised to respond shortly, but never did.

In sum, despite the Department's efforts to negotiate with Maccaferri in accordance with this Court's Order, Maccaferri has refused to negotiate in good faith. In this Memorandum the Department describes those interrogatories and document requests that, based on the September 6 meeting, it believes are still at issue.

BACKGROUND

In January 1995, the Department opened an investigation into potentially anticompetitive agreements and practices in the gabion, and gabion fastening tool industries. Specifically, the

Department sought to review possible anticompetitive practices by Maccaferri, by far the largest gabion manufacturer in the U.S., and Stanley Spenax ("Spenax"), the leading or only manufacturer of a functioning pneumatic gabion fastening tool.

Gabions are flexible, rectangular, compartmented containers fabricated from hexagonal mesh of galvanized steel wire that are filled with hand-sized stones. Individual gabions are connected to one another using wire lacing or metal fasteners, and are frequently used to control erosion. Maccaferri is one of six known gabion manufacturers in the United States, and one of two known twisted wire gabion manufacturers. Based on information it has gathered to date, the Department estimates that Maccaferri manufactures at least 70% of all gabions sold in the U.S.

Spenax manufactures C-rings, also known as hog rings, which are metal rings that are used to fasten gabions together. Spenax also manufacturers the SC-50, a pneumatic tool used to close the C-rings around the gabions. The SC-50 allows contractors to assemble and fasten gabions much more quickly and efficiently than they could either by "lacing" or closing the C-rings by hand. Maccaferri and Spenax have entered into an exclusive dealing arrangement whereby Maccaferri is the only gabion manufacturer allowed to sell or purchase the Spenax SC-50, and Maccaferri purchases gabion fastening tools only from Spenax. As a result, Maccaferri's competitors have been unable to obtain the SC-50.

An exclusive dealing agreement will be found unlawful if it "will foreclose competition in a substantial share of the line of commerce affected." Tampa Electric Co. v. Nashville Coal Co., 365 U.S. 320, 327 (1961). In Tampa Electric, the Supreme Court stated that the legality of an exclusive dealing agreement would depend on "the probable effect of the contract on the

relevant area of effective competition . . . and the probable immediate and future effects which pre-emption of that share of the market might have on effective competition therein." Id. at 329.

In this investigation the Department is seeking to determine, inter alia, whether the exclusive dealing agreement between Maccaferri and Spenax has either of two potential anticompetitive effects. First, the Department is investigating whether, by depriving other gabion manufacturers of access to the SC-50, the agreement will prevent those manufacturers from competing in the sale of gabions, and as a result consumers, including local, State, and the Federal governments, may pay more for gabion projects. In addition, the Department is investigating whether by preventing potential competing manufacturers of gabion fastening tools from selling to Maccaferri, the exclusive dealing agreement is restricting competition in the manufacture and sale of gabion fastening tools.

To determine whether the exclusive dealing agreement has either of these two effects, the Department must determine, among other things, whether gabions are a product market, or whether, as Maccaferri contends, they compete with other erosion control devices, whether lack of access to the SC-50 in fact limits the ability of other gabion manufacturers to compete for gabion projects, and whether it is likely that competing gabions manufacturers or other entrants would develop a competing tool to the SC-50. The Department is also investigating whether there is any efficiency justification for an exclusive dealing agreement between Maccaferri and Spenax. Accordingly, on March 9, 1995, the Department issued a CID pursuant to the Antitrust Civil Process Act, 15 U.S.C. § 1312, directing Maccaferri to produce documents and interrogatory answers by March 29, 1995. This CID was reviewed and revised by several attorneys at the Department at both the staff and supervisory levels before being presented to the

Assistant Attorney General for her review and signature. The attorneys at all levels carefully considered the scope of the CID to ensure that it was not overbroad or unduly burdensome.

UNRESOLVED ISSUES

I. Interrogatories Number 18 and 19

Interrogatory Number 18 asks for information regarding each bid that Maccaferri submitted to supply gabions since January 1, 1991, or was submitted by any other person on Maccaferri's behalf. Interrogatory Number 19 asks for information regarding the last five bids in which Maccaferri was successful. These interrogatories seek evidence relating to market structure and the state of competition in the gabion market. The Department typically seeks and obtains this type of bid information in connection with its investigations in order to identify customers, evaluate cost and pricing information, determine the types of projects that a company bids on, and determine the extent to which it faces competition for any projects. Bid documents may also be used by an economist or financial analyst in preparing expert testimony.

Maccaferri has objected to these interrogatories, stating that they are irrelevant and that they require the compilation of 7,500 to 10,000 bids per year, which would require four to five employees to work with 11 area managers for at least one year. Maccaferri has suggested that it would be willing to supply a sample of 20 bids of its choosing.

The Department has already agreed that Maccaferri may submit bid files containing the requested information in lieu of a written response. The Department also has been willing to consider ways to limit the scope of any search that needs to be done. For example, it might be sufficient to limit the search to bid files located in Maccaferri's headquarters, or in a subset of regional offices. However, Maccaferri has refused to supply the Department with information

concerning where and how its bid records are maintained. The Department is not willing to accept Maccaferri's offer of 20 bids, because this would not constitute a representative sampling from which any sound conclusion could be drawn.

Because Maccaferri has refused to cooperate with the Department in its attempt to identify ways to narrow this request, the Department requests that Maccaferri be required to respond to these requests as written.

II. Document Request Number 2

This request seeks minutes, agendas, and notes relating to each meeting of Maccaferri's board of directors, and for each such meeting, all documents distributed or exhibited at the meeting. The Department typically relies on such documents to assess issues such as product and geographic market, the likelihood of entry, and the effect of exclusive dealing agreements on competition. These documents also may produce evidence concerning Maccaferri's marketing and business strategy for the sale of gabions, and its reasons for entering into an exclusive dealing arrangement with Spenax.

At the September 6 meeting the Department offered to limit this request to responsive documents relating to the Spenax SC-50, hog rings, and gabions. Maccaferri objected to the requirement that it produce responsive documents relating to gabions. Given the importance to the Department's investigation of competition among gabion manufacturers, the Department is not prepared to accept Maccaferri's proposal limiting this interrogatory to documents relating to the SC-50 and hog rings. The Department remains willing to limit the interrogatory to responsive documents that relate to gabions, hog rings or the SC-50.

III. Document Request Number 5

This request asks for documents since January 1, 1991 relating to any attempt, by Maccaferri or another person, to acquire or manufacture a substitute tool for the Spenax SC-50 pneumatic fastening tool. This document request seeks evidence relevant to entry barriers into the manufacture of pneumatic fastening tools. The ease with which Maccaferri's competitors could acquire a substitute tool likely would be a central issue in any case that might arise from this investigation. Documents that discuss the ability of Maccaferri or other to obtain a substitute tool are extremely relevant, especially given Maccaferri's contention that the Spenax SC-50 can be easily copied at low cost. Maccaferri has failed to explain the basis for its objection. Accordingly, Maccaferri should be required to respond to this request as written.

IV. Document Request Number 11

This request seeks documents since January 1, 1991 that constitute or contain Maccaferri's business, operating or marketing plans, or strategic and long-range plans. It is intended to obtain evidence relating Maccaferri's marketing and business strategy for the sale of gabions and the effect of its exclusive dealing arrangement with Spenax. These types of documents are frequently used as evidence in civil antitrust proceedings. Accordingly, Maccaferri should be required to respond to this request as written.

V. Document Request Number 13

This request asks for Maccaferri's balance sheets and income statements since January 1, 1993. It seeks evidence concerning Maccaferri's income and profitability. Such information is frequently relevant to various defenses raised in antitrust cases, and may be relied upon by economic or financial analysts preparing expert testimony. Maccaferri has not raised any

specific objection to this request, and indeed, failed to mention its objection before the September 6, 1995 meeting. Accordingly, Maccaferri should respond to this request as written.

VI. Document Request Number 16

This request asks for documents relating to Maccaferri's market share in the gabion market. Such documents frequently provide evidence relating to market definition, market power, and might also provide evidence on the effect of the exclusive dealing agreement on Maccaferri's market share. Again, Maccaferri has failed to explain the basis for its objection to this request, and first raised its objection at the September 6, 1995 meeting.

Maccaferri should be required to respond to this request as written.

CONCLUSION

Throughout this investigation, the Department has repeatedly made efforts to work with Maccaferri to resolve issues raised by the CID. Maccaferri has consistently refused to negotiate over the CID. Indeed, Maccaferri's response to this Court's Memorandum Order is consistent with the evasive and obstructionist approach it has taken with respect to this entire investigation.

By refusing to engage in constructive negotiations with the Department, Maccaferri is seeking to further delay its compliance with the CID and thus the investigation. The Department believes that the Court should not reward this behavior by allowing Maccaferri to raise issues beyond those described in the Department's September 7, 1995 letter. The Department respectfully requests that this Court order Maccaferri to comply with the CID, as modified in the attached proposed Order, within 20 days.

Respectfully submitted,

Anne K. Bingaman
Assistant Attorney General
Antitrust Division

Joel Klein
Deputy Assistant Attorney General
Antitrust Division

Rebecca P. Dick
Deputy Director of Operations
Antitrust Division

/S/
Mary Jean Moltenbrey
Chief, Civil Task Force II

/S/
Douglas L. Hilleboe
Md. Federal Court Bar No. 05625

/S/
Jeffrey Steger

Attorneys
United States Department of Justice
Antitrust Division -Civil Task Force II
Bicentennial Building - Room 9826
600 E Street, N.W.
Washington, D.C. 20530
Telephone: (202) 616-5936

Dated: September 8, 1995

CERTIFICATE OF SERVICE

I certify that I have served, by hand delivery, a copy of the foregoing United States' Memorandum, on counsel of record for Maccaferri Gabions, Inc., at the address below on September 8, 1995:

Larry Klayman
Klayman & Associates, P.C.
501 School Street, S.W. - Suite 700
Washington, D.C. 20024

/S/
Jeffrey Steger

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

In Re: PETITION OF) Civil No. MJG95-1270
MACCAFERRI GABIONS, INC.)
)

ORDER

Upon review of Maccaferri Gabion Inc.'s Memorandum submitted pursuant to this Court's Memorandum and Order dated August 25, 1995, the United States' Memorandum, and the entire record in this case, it is

ORDERED that Civil Investigative Demand 12316 is modified as follows:

1. Interrogatory Number 2 is modified to exclude current and former employees whose only responsibilities are manufacturing, production, or clerical. Subject to further modification by agreement of the parties, Maccaferri will identify all other current and former employees from January 1, 1993 to the present.
2. Interrogatory Number 3(i) is modified to require Maccaferri to provide a general description of its methods of sales and distribution and the employees responsible for these functions. Interrogatory Number 3(ii) is modified to require that Maccaferri produce a list of its distributors or other documents that would contain that information.
3. Document Request Number 2 is modified to require Maccaferri to provide responsive documents relating to the Spenax SC-50, hog rings, and gabions.
4. Document Request Number 6 is modified to require Maccaferri to produce all documents referring to Stanley Spenax or the Tiger-Tite tool as it relates to competition with Terra Aqua.
5. Document Request Number 8 is deleted.
6. Document Request Number 11 is modified to require Maccaferri to produce all documents relating to the Spenax SC-50 or gabions dated after January 1, 1993.

7. With respect to all other interrogatories and document requests not previously complied with, Maccaferri will respond to the requests as written; and it is

FURTHER ORDERED that Maccaferri comply with Civil Investigative Demand 12316 as modified by this Court, and within 20 days from the date this Order is entered produce the documentary material and interrogatory answers required by the terms of the Civil Investigative Demand and its attached schedule as amended.

Dated: _____

United States District Court Judge

Copies to:

Larry Klayman
Klayman & Associates, P.C.
501 School Street, S.W., Suite 700
Washington, D.C. 20024

Mary Jean Moltenbrey
Douglas L. Hilleboe
Jeffrey I. Steger
United States Department of Justice
Antitrust Division
Civil Task Force II
325 7th Street, N.W.
Washington, D.C. 20530

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

In Re: PETITION OF) Civil No. MJG95-1270
MACCAFERRI GABIONS, INC.)
)

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to M.J. Moltenbrey



U. S. Department of Justice

Antitrust Division

*Liberty Place Building
Washington, DC 20530*

August 31, 1995

VIA FACSIMILE AND REGULAR MAIL
(202) 646-5199

Larry Klayman, Esq.
Klayman & Associates, P.C.
Suite 700
501 School Street, S.W.
Washington, D.C. 20024

Re: Civil Investigative Demand 12316

Dear Mr. Klayman:

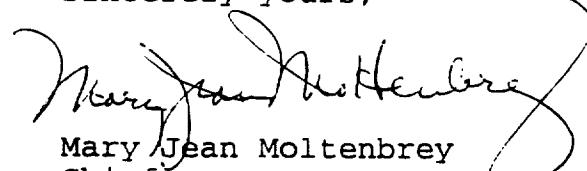
Consistent with Judge Garbis' Memorandum and Order, I propose that we meet early next week to discuss possible modifications to the CID. We have reviewed again the materials that you filed with the Court in an effort to identify areas where the CID could be modified. In order to have a productive discussion, however, we will need some information about Maccaferri's files.

1. Can you please provide us with an organizational chart depicting Maccaferri's U.S. operations? If such a chart does not exist, could you briefly describe how the company is organized, including the personnel in charge and the responsibilities of each Division or Department?
2. What are the general responsibilities of Maccaferri's eleven regional managers and where are their offices located? What records are maintained only at the regional level as opposed to Maccaferri's offices in Maryland and California?
3. What types of records are maintained at Maccaferri's headquarters in Maryland? What records are maintained at Maccaferri's Sacramento office?

4. In what manner, if any, does Maccaferri maintain records of its bids for gabion projects? Are there any central bid files?
5. Does Maccaferri maintain a computer network system which includes electronic mail, and if so, for how long is the mail stored?

I will call you later today to discuss what would be a mutually convenient time for us to meet. As our last meeting took place at your offices, I ask that you agree to hold this meeting at our offices.

Sincerely yours,



Mary Jean Moltenbrey
Chief
Civil Task Force II

KLAYMAN & ASSOCIATES, P.C.
INTERNATIONAL LAWYERS

501 School Street, S.W.
Suite 700
Washington, D.C. 20024

Telephone 202 646-5160
Facsimile 202 646-5199

BY FIRST CLASS MAIL AND
FACSIMILE (202) 514-7308

August 31, 1995

M.J. Moltenbrey, Esq.
Civil Task Force II
Antitrust Division
US Department of Justice
325 7th Street, N.W.
Room 300
Washington, DC 20530

RE: Maccaferri Gabions, Inc. CID No. 12316

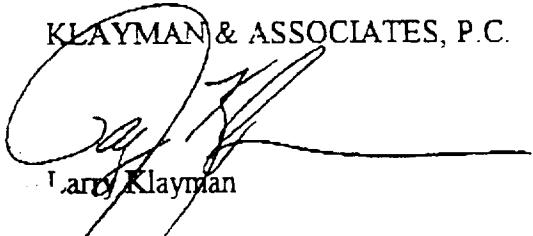
Dear Ms. Moltenbrey:

Thank you for your letter of August 31, 1995, received in our office today at 2:00 p.m. For your information, we sent the enclosed facsimile to Ms. Anne Bingaman. Our meeting with Ms. Bingaman may render moot a later meeting with the staff. Accordingly, before meeting with you, we have requested the opportunity to meet with Ms. Bingaman as set forth in our facsimile.

Thank you for your courtesy and cooperation.

Sincerely,

KLAYMAN & ASSOCIATES, P.C.


Larry Klayman

cccls.

cc: Hon. Anne Bingaman (Via facsimile and mail)
Joel Klein, Esq. (Via facsimile and mail)

North America

Washington, D.C.

New York City

Miami/W. Palm

Of Counsel

Far East

Bangkok, Thailand

Hong Kong

Seoul, Korea

Singapore

Taipei, Taiwan

Tokyo, Japan

Europe

Amsterdam, Holland

Athens, Greece

Brussels, Belgium

Frankfurt, Germany

Lisbon, Portugal

London, United Kingdom

Madrid, Spain

Milan, Italy

Paris, France

South America

Bogota, Colombia

Buenos Aires, Argentina

Caracas, Venezuela

Quito, Ecuador

Sao Paulo, Brazil

Santiago, Chile

KLAYMAN & ASSOCIATES, P.C.
INTERNATIONAL LAWYERS

501 School Street, S.W.
Suite 700
Washington, D.C. 20024

Telephone 202 646-5160
Facsimile 202 646-5199

BY HAND/FACSIMILE
202-616-2645

August 31, 1995

The Honorable Anne K. Bingaman
Assistant Attorney General
U.S. Department of Justice
Antitrust Division
Room 3109
Tenth Street and Constitution Ave, N.W.
Washington, DC 20530

Re: Maccaferri Gabions, Inc./Civil Investigative Demand No. 12316

Dear Ms. Bingaman:

As you know, on behalf of Maccaferri Gabions, Inc., I spoke with your office on August 21, 1995 to schedule a meeting to discuss this investigation, and the issuance of Civil Investigative Demand No. 12316. Your assistant stated that you would contact us to arrange for a meeting. We have not heard back from you.

Now, however, pursuant to Judge Garbis' order of August 25, 1995, we are again requesting a meeting with you to discuss Civil Investigative Demand No. 12316. At this meeting we would also like to discuss the issue of your actual or perceived conflict of interest, as well as whether this investigation can be resolved in its entirety.

At this time, we do not believe that a meeting with staff attorneys would be productive.

We look forward to hearing from you and scheduling a prompt and mutually convenient meeting.

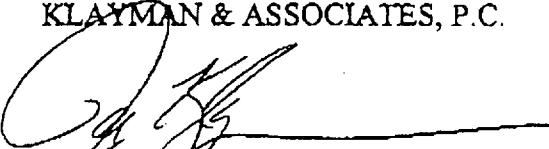
Thank you for your cooperation.

North America
<u>Washington, D.C.</u>
<u>New York City</u>
<u>Miami/W. Palm</u>
Of Counsel
Far East
<u>Bangkok, Thailand</u>
<u>Hong Kong</u>
<u>Seoul, Korea</u>
<u>Singapore</u>
<u>Taipei, Taiwan</u>
<u>Tokyo, Japan</u>
Europe
<u>Amsterdam, Holland</u>
<u>Athens, Greece</u>
<u>Brussels, Belgium</u>
<u>Frankfurt, Germany</u>
<u>Lisbon, Portugal</u>
<u>London, United Kingdom</u>
<u>Madrid, Spain</u>
<u>Milan, Italy</u>
<u>Paris, France</u>
South America
<u>Bogota, Colombia</u>
<u>Buenos Aires, Argentina</u>
<u>Caracas, Venezuela</u>
<u>Quito, Ecuador</u>
<u>Sao Paulo, Brazil</u>
<u>Santiago, Chile</u>

CLAYMAN & ASSOCIATES, P.C.
INTERNATIONAL LAWYERS

Sincerely,

CLAYMAN & ASSOCIATES, P.C.



Larry Klayman

cc: Joel Klein, Esq.
Deputy Assistant Attorney General
Antitrust Division
Fax: 202-616-7320

SEP. -01' 95(FRI) 18:26 DOJ

TEL: 202514151

P. 002

FROM AAG BINGAMAN 2026162645

(FRI) 09. 01' 95 16:44/ST. 16:43/NO. 3561242433 P 2/2



DEPARTMENT OF JUSTICE
Antitrust Division

ANNE K. BINGAMAN
Assistant Attorney General

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Washington, D.C. 20530
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antitrust@justice.usdoj.gov (e-mail)
http://www.usdoj.gov (World Wide Web)*

September 1, 1995

VIA FAX

Mr. Larry Klayman
Klayman & Associates, PC
501 School Street, SW, #700
Washington, DC 20024

RE: Maccaferri Gabions, Inc./C.I.D. #12316

Dear Mr. Klayman:

In response to your request for a meeting with the Assistant Attorney General concerning the above matter, I wish to advise that, in our view, there is no need for such a meeting at present. The Court's order requires only that the scope of the CID be negotiated in good faith and that is a matter that is routinely handled by our staff; the Assistant Attorney General, as you call well understand, cannot get involved in negotiating CIDs in individual cases.

I trust you will contact Ms. Moltenbrey directly so that the terms of the order can be carried out.

Sincerely,

Joel Klein
Joel Klein
Principal Deputy

JK:slg 95-09\klayman
cc: Anne K. Bingaman
M.J. Moltenbrey

KLAYMAN & ASSOCIATES, P.C.
INTERNATIONAL LAWYERS

501 School Street, S.W.
Suite 700
Washington, D.C. 20024

Telephone 202 646-5160
Telex 323683 KLAY DC
Facsimile 202 646-5199

Via Facsimile (202/616-7320) and Mail

September 4, 1995

Joel Klein, Esq.
Principal Deputy
U.S. Department of Justice
Main Justice Building
10th and Constitution Avenue, N.W.
Washington, D.C. 20530

Re: Civil Investigative Demand No. 12316/
Maccaferri Gabions Inc.

Dear Mr. Klein:

Your letter of September 1, 1995, which is in response to our various requests to meet with you and Ms. Bingaman, does not address our serious concerns about Ms. Bingaman's actual and perceived conflict of interest, as well as her role in and the possible use of undue political influence, in the commencement of this investigation. In addition to issues involving the validity of this investigation, and the scope of the CID, we had hoped that these related issues could be discussed, and resolved, during our proposed meeting.

Accordingly, on behalf of Maccaferri Gabions Inc., since you have rejected our request for a meeting, we have no choice but to proceed as is appropriate under the circumstances.

If you and Ms. Bingaman wish to reconsider meeting to discuss these issues, please contact me with an affirmative response by noon, Wednesday, September 5, 1995. We will forebear with any further action until that time.

Thank you for your courtesy and cooperation.

North America

Washington, D.C.

New York City

Miami/W. Palm

Of Counsel

Far East

Bangkok, Thailand

Hong Kong

Seoul, Korea

Singapore

Taipei, Taiwan

Tokyo, Japan

Europe

Amsterdam, Holland

Athens, Greece

Brussels, Belgium

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Milan, Italy

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Quito, Ecuador

Sao Paulo, Brazil

Santiago, Chile

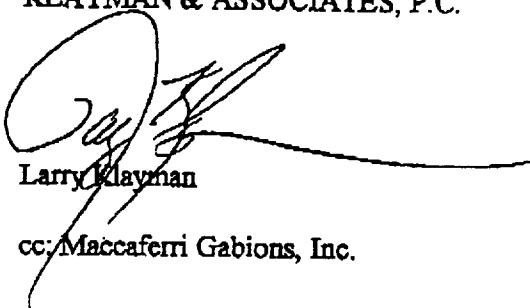
Middle East

CLAYMAN & ASSOCIATES, P.C.
INTERNATIONAL LAWYERS

Joel Klein, Esq.
September 4, 1995
Page 2

Sincerely,

CLAYMAN & ASSOCIATES, P.C.



Larry Clayman

cc: Maccaferri Gabions, Inc.

KLAYMAN & ASSOCIATES, P.C.
INTERNATIONAL LAWYERS

501 School Street, S.W.
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Washington, D.C. 20024

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Facsimile 202 646-5199

VIA FACSIMILE: 202-514-7308

September 5, 1995

M.J. Moltenbrey, Esq.
Civil Task Force II
Antitrust Division
U.S. Department of Justice
325 7th Street, N.W.
Room 300
Washington, DC 20530

Re: Maccaferri Gabions, Inc/ Civil Investigative Demand 12316

Dear Ms. Moltenbrey:

This letter serves to confirm our meeting for tomorrow, September 6, 1995, at 9:00 a.m. to be held at your office. The purpose of the meeting is to discuss Civil Investigative Demand No. 12316 which was issued to Maccaferri Gabions, Inc.

We look forward to meeting with you and your staff.

Sincerely,

KLAYMAN & ASSOCIATES, P.C.

Larry Klayman

North America

Washington, D.C.

New York City

Miami/W. Palm

Of Counsel

Far East

Bangkok, Thailand

Hong Kong

Seoul, Korea

Singapore

Taipei, Taiwan

Tokyo, Japan

Europe

Amsterdam, Holland

Athens, Greece

Brussels, Belgium

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Milan, Italy

Paris, France

South America

Bogota, Colombia

Buenos Aires, Argentina

Caracas, Venezuela

Quito, Ecuador

Sao Paulo, Brazil

Santiago, Chile



U. S. Department of Justice

Antitrust Division

Liberty Place Building
325 7th Street, N.W.
Washington, DC 20530

September 7, 1995

VIA FACSIMILE AND REGULAR MAIL
(202) 646-5199

Larry Klayman, Esq.
Klayman & Associates, P.C.
Suite 700
501 School Street, S.W.
Washington, D.C. 20024

Re: Civil Investigative Demand 12316

Dear Mr. Klayman:

The following summarizes the Department's understanding of the agreements reached during our meeting on September 6 to discuss possible modifications to CID 12316.

Interrogatory No. 2: We agreed to exclude current and former employees whose only responsibilities are manufacturing, production, or clerical. The Department is also willing to consider excluding additional categories of employees that Maccaferri may subsequently identify that are unlikely to have knowledge or information relevant to the investigation. Subject to further modification, Maccaferri will identify all other current and former employees from January 1, 1993 to the present.

Interrogatory No. 3: We agreed that in response to Interrogatory No. 3(i), Maccaferri will provide a general description of its methods of sales and distribution and the employees responsible for these functions. In response to 3(ii), if Maccaferri maintains a list of its distributors, Maccaferri will produce the list. Otherwise, it will produce documents that contain that information.

Interrogatory No. 18: Maccaferri contends this interrogatory is irrelevant and no response is required. Without waiving that objection, Maccaferri suggested narrowing to a sample of 20 bids. We are willing to accept production of bid records in lieu of an interrogatory response. We are not, however, prepared to accept 20 bids. We are willing to consider other ways to narrow the request, but we need to know where and how bid files are maintained before we can make a specific proposal. We may be willing to limit the search for responsive files to specific offices, but you could not tell us where these files are maintained. You agreed to tell us before Friday how many regional offices Maccaferri has.

Interrogatory No. 19: Maccaferri objected on the ground of relevance. No agreement was reached.

Document Request No. 2: Maccaferri offered to provide responsive documents relating to the Spenax SC-50 and hog rings. The Department offered to limit the request to responsive documents relating to the Spenax SC-50, hog rings, and gabions. No agreement was reached.

Document Request No. 5: Maccaferri will review what documents exist and make a proposal to the Department by Friday.

Document Request No. 6: We agreed that Maccaferri will produce all documents referring to Stanley Spenax or the Tiger-Tite tool as it relates to competition with Terra Aqua.

Document Request No. 8: We agreed to delete this request.

Document Request No. 11: Maccaferri offered to provide documents that mention the Spenax SC-50. The Department offered to narrow the request to documents relating to the Spenax SC-50 or gabions. The Department also offered to limit the search to documents dated after January 1, 1993. No agreement was reached.

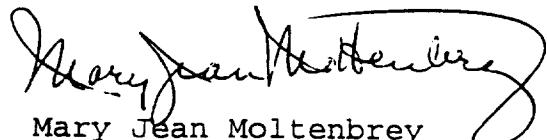
Document Request No. 13: Maccaferri objected to this request. No agreement was reached.

Document Request No. 16: Maccaferri objected to this request. No agreement was reached.

With respect to all other interrogatories and document requests not previously complied with,¹ Maccaferrri will respond to the requests as written. You agreed to let me know by Friday at 10:00 if you do not think this letter accurately sets forth our agreements.

Thank you for your cooperation. Please do not hesitate to call with any questions.

Sincerely yours,



Mary Jean Moltenbrey
Chief
Civil Task Force II

¹ The Department acknowledges that Maccaferrri has already responded to Interrogatory Nos. 8, 10, 14, 15 and 22; and Document Request Nos. 3, 4, 7, 9 and 10.

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September 8, 1995

M.J. Moltenbrey, Esq.
Chief
Civil Task Force II
U.S. Department of Justice
Antitrust Division
325 7th Street, N.W.
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Re: Civil Investigative Demand No. 12316

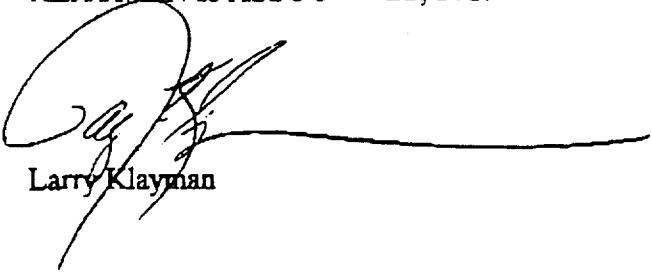
Dear Ms. Moltenbrey:

We will respond to your letter of September 7, 1995, in our Memorandum with the Court today. While there are some inaccuracies in your letter; given the fact that we do not wish to be adversarial, nor is it our practice to embarrass the Department, we will simply explain our understanding of our agreements in the Memorandum to the Court.

Thank you for your cooperation with this matter.

Sincerely,

KLAYMAN & ASSOCIATES, P.C.


Larry Klayman

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Miami/W. Palm

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