

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.)
)
PACKAGING PERSONIFIED, INC., an)
Illinois Corporation,)
)
Respondent.)

PCB 04-16
(Enforcement – Air)

RECEIVED
CLERK'S OFFICE

OCT 25 2012

STATE OF ILLINOIS
Pollution Control Board

ORIGINAL

RETURN TO CLERK'S OFFICE

NOTICE OF FILING

TO: Christopher Grant
L. Nicole Cunningham
Assistant Attorney Generals
Environmental Bureau
69 West Washington Street, 18th Floor
Chicago, Illinois 60602

Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601

PLEASE TAKE NOTICE that on October 25, 2012, we filed the attached PACKAGING'S RESPONSE IN OPPOSITION TO COMPLAINANT'S AMENDED MOTION TO COMPEL DISCOVERY via hand delivery with the Clerk of the Illinois Pollution Control Board, copies of which are herewith served upon you.

Respectfully submitted,

PACKAGING PERSONIFIED, INC.

By: 
One of Its Attorneys

Roy M. Harsch, Esq.
John A. Simon, Esq.
Drinker Biddle & Reath LLP
191 N. Wacker Drive, Suite 3700
Chicago, Illinois 60606-1698
(312) 569-1000

THIS FILING IS SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 04-16
) (Enforcement – Air)
)
PACKAGING PERSONIFIED, INC., an)
Illinois Corporation,)
)
)
Respondent.)

RECEIVED
CLERK'S OFFICE
OCT 25 2012
STATE OF ILLINOIS
Pollution Control Board

**PACKAGING'S RESPONSE IN OPPOSITION TO
COMPLAINANT'S AMENDED MOTION TO COMPEL DISCOVERY**

Respondent Packaging Personified, Inc. ("Packaging") through counsel, responds in opposition to Complainant's Amended Motion to Compel Discovery as follows:

1. Complainant has not disclosed any opinion testimony, including specifically, any economic benefit opinion, notwithstanding the Hearing Officer's July 3, 2012 Order directing that such opinion be disclosed by August 9, 2012. Thus, Complainant cannot contend that any information contained in Packaging's federal tax returns pertains or might pertain to its undisclosed economic benefit opinion. Nor are Packaging's federal tax returns relevant to any expert testimony offered by Packaging. Packaging's tax returns were not reviewed or relied upon by any expert for Packaging. Packaging's sales, profits or costs in any year for which returns are sought have no bearing upon the calculation of economic benefit in this case. Certainly, Complainant has not articulated how they are in response to Packaging's repeated invitation for any such explanation.

2. It is not sufficient for Complainant to note that Trzupsek referenced Packaging's gross sales in his opinion, which is based upon actual ink purchase records and not gross sales. Specifically, Mr. Trzupsek states, based upon ink purchase records, that Packaging's printing

business in each of the years 1995-2002 was significantly less than in 2003, when all Packaging's printing business was performed on press 5. Richard Trzupsek does not rely upon gross sales as a basis for his opinions because gross sales figures are not specific to Packaging's printing business. As the record reflects, Packaging has a substantial extrusion business as well as a substantial bag making business, neither of which is related to its printing business.

3. Significantly, Complainant recognizes this fact and nowhere suggests that Packaging's annual gross sales are a relevant or meaningful indicator of the volume of Packaging's printing business. Rather, Complainant argues only that Packaging's tax returns are the most reliable source to verify the truth of the gross sales figures referenced by Mr. Trzupsek. Complainant also acknowledges that Packaging has already produced its redacted tax returns showing its annual gross sales which are attached to its Amended Motion. Complainant may compare Trzupsek's annual gross sales figures to Packaging's tax returns without the need for this Amended Motion to Compel. There is no basis to compel production of the remainder of Packaging's tax returns.

4. At the risk of belaboring the obvious, Packaging points out the sales, profits and costs contained in its tax returns reflect all of its sales, profits and costs from all of its business lines. As a result an increase in over sales reflected in its tax returns from one year to the next does not necessarily mean an increase in the volume of printing from the prior year. Indeed, company sales could increase even when printing volume dropped, because of larger offsetting growth in the extrusion or bag making business. The same is true for profits and costs.

5. Packaging does not claim that it could not afford to timely comply with the applicable VOM regulations. Thus, company sales, profits and costs are not relevant to the issues for the Supplemental Hearing in this case. The questions the Board invited evidence on

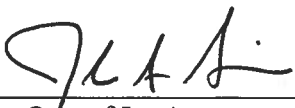
relate to whether Packaging enjoyed any economic benefit by reason of its delayed compliance, and if so what that economic benefit is, under the lowest cost alternative. Significantly, Complainant nowhere articulates how any information contained in Packaging's tax returns bear upon this issue, despite Packaging's repeated invitation to Complainant to do so.

6. It is apparent that Complainant's sole purpose in seeking Packaging's tax returns is to embarrass and harass Packaging's owners and senior officers. Repeatedly Packaging has asserted that as a Subchapter C corporation (1995-1999) and a Subchapter S corporation (2000-2004) its tax returns contain the confidential personal financial information including the compensation received by its owners and senior officers, which is entirely irrelevant to this enforcement action. Although Complainant denies this fact in its Amended Motion, line 12 of the attached redacted Packaging tax returns specifically calls for "compensation of officers." Further, given that Packaging was owned 70% by Dominic Imburgia and 30% by Phyllis Muccianti during these years, the "profit" of Packaging the company in each of these years is also the amount of money earned by Dominic Imburgia and Phyllis Muccianti in those years. Dominic Imburgia and Phyllis Muccianti, like the other corporate officers, are not parties to this enforcement action, and have a right to maintain the privacy of financial information which is not relevant to any matter in controversy at the Supplemental Hearing.

WHEREFORE, for all the foregoing reasons, Packaging respectfully requests that the Hearing Officer deny Complainant's Amended Motion to Compel.

Respectfully submitted,

PACKAGING PERSONIFIED, INC.

By: 
One of Its Attorneys

Roy M. Harsch
John A. Simon
Drinker Biddle & Reath LLP
191 North Wacker Drive, Suite 3700
Chicago, Illinois 60606-1698
(312) 569-1000

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing PACKAGING'S RESPONSE IN OPPOSITION TO COMPLAINANT'S AMENDED MOTION TO COMPEL DISCOVERY was filed via hand delivery with the Clerk of the Illinois Pollution Control Board and served upon the parties below by U.S. First Class Mail and Electronic Mail on October 25, 2012:

Christopher J. Grant
L. Nichole Cunningham
Assistant Attorneys General
Environmental Bureau
69 West Washington Street, 18th Floor
Chicago, Illinois 60602

Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601

RECEIVED
CLERK'S OFFICE

OCT 25 2012

STATE OF ILLINOIS
Pollution Control Board



John A. Simon