

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the matter of)
)
Perfect Fit Industries, Inc.) File No. EB-04-SE-045

ORDER

Adopted: October 14, 2004

Released: October 18, 2004

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Order* (“*Order*”), we deny in its entirety a request for confidential treatment of material submitted by Perfect Fit Industries, Inc. (“Perfect Fit”) in response to a letter of inquiry (“*LOI*”) from the Enforcement Bureau.

II. BACKGROUND

2. On March 5, 2004, the Spectrum Enforcement Division of the Enforcement Bureau sent Perfect Fit a *LOI* seeking information and documents concerning the compliance of Perfect Fit’s Heated Mattress Pads with the requirements of Part 15 of the Rules. Perfect Fit submitted a response to the *LOI* on April 19, 2004.¹ Perfect Fit’s response included a Request for Confidentiality in which Perfect Fit seeks confidential treatment of “any and all information submitted in response” to the *LOI*. Perfect Fit states that “[a]ll of the information falls into the category of trade secrets, and/or commercial, financial or technical information . . . that would customarily be guarded from disclosure to competitors.” It further avers that the information is especially sensitive because of the Commission’s ongoing investigation. Finally, Perfect Fit argues that because much of the information it provides exceeds the scope of the specific inquiries in the *LOI*, confidentiality is especially appropriate.

III. DISCUSSION

3. Section 0.459 of the Rules establishes a procedure by which parties may request that information or materials that they have submitted to the Commission not be routinely available for public inspection.² The rule requires that each such request shall contain a statement of the reasons for withholding the materials from inspection as described in Section 0.457 of the Rules,³ and of the facts on which this record is based, including in part (1) identification of the specific information, (2) an explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged, (3) an explanation of the degree to which the information concerns a service that is subject to competition, (4) an explanation of how disclosure of the information could result in substantial competitive harm, and (5) justification of the time period during which the submitting party asserts that

¹ Letter from Jack Richards, Esq., Keller and Heckman LLP to Brian Butler, Spectrum Enforcement Division, Enforcement Bureau, (April 19, 2004) (“Response.”)

² 47 C.F.R. § 0.459.

³ 47 C.F.R. § 0.457.

material should not be available for public disclosure.

4. We conclude that Perfect Fit's request for confidential treatment of the materials submitted in response to the *LOI* fails to comply with the standards set forth in Section 0.459 of the Rules.⁴ Perfect Fit did not provide an analysis of the degree to which each specific category of information meets the criteria of being commercial or financial, or contains a trade secret or is privileged. Perfect Fit provided no discussion of the degree to which the Heated Mattress Pad industry is subject to competition. Perfect Fit likewise provided no discussion of how disclosure of the information it provided could result in substantial competitive harm, nor did Perfect Fit identify, or justify, a time period during which the information should not be disclosed.

5. Section 0.459(c) of the Rules states that casual requests for confidentiality that do not comply with Sections 0.459(a) and (b) of the Rules will not be considered. The *LOI* issued to Perfect Fit by the Spectrum Enforcement Division explicitly warned Perfect Fit that any requests to treat materials responsive to the *LOI* as confidential must comply with Section 0.459 and that "blanket" requests for confidentiality of a large set of documents would be unacceptable. Nevertheless, as discussed above, Perfect Fit made a blanket request for confidentiality of all the information it provided. Accordingly, pursuant to Section 0.459(c), we deny Perfect Fit's request.

6. Section 0.459(e) of the Rules states that information submitted voluntarily may be returned upon request of the person submitting the information, if the party's request for confidentiality is denied. Perfect Fit argued that some of the information it provided in response to the *LOI* was not specifically requested by the Commission and therefore should be considered voluntary. However, Perfect Fit failed to identify the subset of information in its response for which it seeks voluntarily-provided status. Moreover, it did not request the return of such information as required by Section 0.459(e). Accordingly, we need not consider whether any materials provided by Perfect Fit should be returned at this time.

IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED**, pursuant to Sections 0.111, 0.311, and 0.459(c), that the Request for Confidentiality filed on April 19, 2004 by Perfect Fit Industries, Inc., **IS DENIED**.

8. **IT IS FURTHER ORDERED** that, pursuant to Section 0.459(g) of the Rules, that Perfect Fit Industries, Inc., may file an application for review of this denial with the Commission within five (5) working days of the release date of this *Order*.

9. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by first class mail and certified mail, return receipt requested, to counsel for Perfect Fit Industries, Inc., Jack Richards, Esq. Keller and Heckman LLP, 1001 G Street, N.W., Ste 500 West, Washington, D.C. 20005.

FEDERAL COMMUNICATIONS COMMISSION

Joseph P. Casey
Chief, Spectrum Enforcement Division
Enforcement Bureau

⁴ 47 C.F.R. § 0.459.