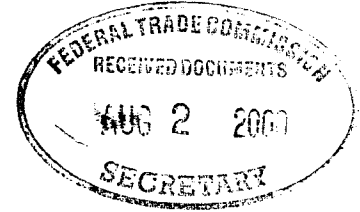


UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION



In the Matter of

HOECHST MARION ROUSSEL, INC.,  
a corporation,

CARDERM CAPITAL L.P.,  
a limited partnership,

and

ANDRX CORPORATION,  
a corporation.

Docket No. 9293

**RESPONDENT AVENTIS PHARMACEUTICALS, INC.'S  
THIRD REQUEST FOR THE PRODUCTION OF DOCUMENTS**

Pursuant to Federal Trade Commission ("FTC") Rules of Practice for Adjudicative Proceedings ("Rule of Practice") § 3.37, Respondent Aventis Pharmaceuticals, Inc., formerly known as Hoechst Marion Roussel, Inc., by counsel, submits these requests for production of documents to the FTC. Respondent requests that the FTC begin producing documents or things responsive to these requests, within its possession, custody or control, within twenty (20) business days for inspection and copying by counsel for respondent at the offices of Shook, Hardy & Bacon LLP, 600 14th Street, N.W., Suite 800, Washington, D.C. 20005, in accordance with the Instructions set forth below.

## **DEFINITIONS AND INSTRUCTIONS**

1. As used herein, “Andrx” means Andrx Pharmaceuticals, Inc., and its predecessors, successors, assigns and present and/or former affiliates and subsidiaries and any of its respective officers, directors, employees, agents, attorneys, representatives, economic consultants, lobbyists, public relations consultants or any person acting or purporting to act on its behalf.

2. As used herein, “Biovail” shall refer to Biovail Corporation with its principal place of business in Mississauga, Ontario, Canada, and its predecessors, successors, assigns and present and/or former affiliates and subsidiaries and any of its respective officers, directors, employees, agents, attorneys, representatives, economic consultants, lobbyists, public relations consultants or any person acting or purporting to act on its behalf.

3. As used herein, “document” or “documents” shall include, without limitation, originals, masters and every copy of writings and printed, typed and other graphic or photographic matter, including microfilm of any kind or nature, recordings (tape, diskette or other) of oral communications, other data compilations and every other tangible thing from which information can be obtained, including, without limitation, magnetic or electronic media, in the possession, custody or control of plaintiff or any present or former officer, employees or agents thereof, or known by plaintiff to exist. The term “document” or “documents” shall include, without limiting the generality of the foregoing, all computer files, electronic mail, letters, telegrams, teletypes, correspondence, contracts, agreements, notes to the files, notebooks, reports, memoranda, mechanical and electronic sound recordings or transcripts thereof, blueprints, flow sheets, formal or information drawings or diagrams, calendar or diary entries, memoranda of telephone or personal conversations of meetings or conferences, studies, reports, interoffice communications, price lists, bulletins, circulars, statements, manuals, summaries of

compilations, minutes of meetings, maps, charts, graphs, order papers, articles, announcements, books, catalogs, records, tables, books of account, ledgers, vouchers, canceled checks, invoices or bills. A draft or nonidentical copy is a separate document within the meaning of this term.

4. As used herein, "Faulding" means Faulding Inc. and its predecessors, successors, assigns and present and/or former affiliates and subsidiaries and any of its respective officers, directors, employees, agents, attorneys, representatives, economic consultants, lobbyists, public relations consultants or any person acting or purporting to act on its behalf.

5. As used herein, "FTC" means the United States Federal Trade Commission, including without limitations its employees, investigators, agents, consultants and special governmental employees.

6. As used herein, "HMR" means Hoechst Marion Roussel, Inc., its successors, predecessors and the officers, directors, employees, partners, subsidiaries, corporate parents, affiliates and divisions of each of the foregoing, including but not limited to Marion Merrell Dow, Inc.

7. As used herein, "person" includes any natural person, corporate entity, sole proprietorship, partnership, association, governmental entity, or trust.

8. As used herein, "relate" means concerns, refers to, describes, forms the basis for, evidences or constitutes, and the term "relating" means concerning, referring to, describing, evidencing or constituting.

9. As used herein, "Third Parties" means any person that is not a named party in FTC File No. 951-0055 and includes, but is not limited to Andrx, Biovail, Faulding, and their respective officers, directors, employees, agents, attorneys, representatives, economic

consultants, lobbyists, public relations consultants or any person acting or purporting to act on their behalf.

10. The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

11. The term “all” shall be construed as all and each, and the term “each” shall be construed as all and each.

12. The use of the singular form of any word includes the plural, and vice versa.

13. Except for privileged materials, produce each responsive document in its entirety by including all attachments and all pages, regardless of whether they directly relate to the specified subject matter. Submit any appendix, table, or other attachment by either physically attaching it to the responsive document or clearly marking it to indicate the responsive document to which it corresponds. Except for privileged material, do not mask, cut, expunge, edit, or delete any responsive document or portion thereof in any manner.

14. Unless otherwise stated, the scope of this request is from January 1, 1993 through the present and is continuing in nature. If, after producing documents, the FTC obtains or becomes aware of any further documents, or information responsive to this request for production of documents, the FTC is required to produce to HMR such additional documents and/or to provide HMR with such additional information.

15. Compliance with this document request requires a search of all documents in the possession, custody, or control of the FTC’s current or former officers, directors, employees, agents, or representatives, whether or not such documents are on the premises of the FTC. If any person is unwilling to have his or her files searched, or is unwilling to produce responsive

documents, the FTC must provide counsel serving this request with the following information as to each such person: his or her name, address, telephone number, and relationship to the FTC.

This subpoena covers documents in your possession, custody or control, wherever the documents are located.

16. If any requested documents cannot be produced in full, produce the remainder and state whatever information, knowledge, or belief the FTC has concerning the unproduced portion.

17. In addition to hard-copy documents, the search will include all the FTC's electronically stored data. Sources of such data include, but are not limited to, the following:

- (a) Desktop personal computers ("PCs") and workstations; PCs, workstations, minicomputers and mainframes used as file servers, application servers, or mail servers; laptops, notebooks, hand-held devices and other portable computers available for shared use; and home computers used for work related purposes;
- (b) Backup disks and tapes, archive disks and tapes, and other forms of offline storage, whether stored onsite with the computer used to generate them, stored offsite in another facility or stored offsite by a third-party, such as in a disaster recovery center; and
- (c) Computers and related offline storage used by agents, consultants, and other persons as defined herein, which may include persons who are not employees of the FTC or who do not work on FTC premises.

18. The FTC will submit all documents, including electronically-stored documents, in hard copy. In addition to the hard copies, the FTC will submit the electronically-stored documents in machine readable form.

19. The source and location of each responsive document shall be designated, including the person from which it was obtained. Responsive documents from each person's files shall be produced together, in file folders or with other enclosures that segregate the files by request number. If a document is responsive to more than one request, it shall be produced in

response to the request to which it is primarily responsive. An index of responsive documents is requested in hard copy and machine-readable form identifying for each document produced: (1) the identification and consecutive control number; (2) the numbered request(s) to which it is responsive; (3) the person from whom the document was obtained; and (4) for documents generated by the recipient, the person and/or file name or number from which it was obtained.

20. In the event that the FTC withholds any document on the basis that it is privileged, subject to work-product immunity, or is otherwise excludable from discovery, the FTC is requested to list such documents by request number and to provide the following information:

- (a) the identity of the authors;
- (b) the identity of all recipients;
- (c) the date of the document;
- (d) the subject matter or purpose of the document or report;
- (e) the nature of the relationship between the authors and counsel with sufficient particularity to sustain the asserted privilege;
- (f) whether direct quotes or paraphrases of advice from counsel were identified;
- (g) whether such quotes could be redacted, leaving non-privileged information; and,
- (h) any other information necessary to reveal the basis upon which the document is withheld to provide HMR with sufficient information to determine whether the stated basis for withholding the document is proper.

21. If any document responsive to these requests once existed but has been destroyed, lost, discarded or is otherwise not available for production, the recipient shall identify in writing each such document, including the date of the document's creation, a description of the document's subject matter, the name and address of each person who prepared, received, viewed,

or had possession, custody or control of the document or otherwise had knowledge of its subject matter, and a statement of the circumstances under which the document was destroyed, lost, discarded or why such document is otherwise not available for production.

22. If the FTC has produced documents to HMR responsive to this request as part of the Third Party materials collected during the course of the pre-complaint investigation of this matter, FTC File No. 981-0368, those documents need not be produced again, provided that the FTC clearly indicates in its answers to the document request the location within the Third Party materials where responsive information resides.

23. If the FTC believes documents responsive to this request originated from HMR, the FTC need not produce those documents, provided that the FTC provides the location within the HMR materials where responsive information resides.

#### **DOCUMENT REQUESTS**

**Request No. 1:** All documents submitted to the FTC voluntarily or through compulsory process by any Third Party in connection with or relating in any manner to Hoechst Marion Roussel, Inc., FTC File No. 951-0057.

**Request No. 2:** All transcripts of all depositions, investigational hearings, or formal, informal or sworn statements, including all exhibits thereto, taken by the FTC of or from Third Parties in connection with or relating in any manner to Hoechst Marion Roussel, Inc., FTC File No. 951-0057.

**Request No. 3:** All statements, including but not limited to responses to interrogatories, responses to civil investigative demands and subpoenas, statements, memoranda and white papers, and affidavits and declarations provided to the FTC by Third Parties in connection with or relating in any manner to Hoechst Marion Roussel, Inc., FTC File No. 951-0057.

**Request No. 4:** All communications, including but not limited to letters, notes, documents relating to telephonic communications or meetings, electronic mail messages or voice mail messages, between the FTC and any Third Party in connection with or relating in any manner to Hoechst Marion Roussel, Inc., FTC File No. 951-0057.

**Request No. 5:** All documents sufficient to identify each person with whom the FTC communicated in connection with or relating in any manner to Hoechst Marion Roussel, Inc., FTC File No. 951-0057.

**Request No. 6:** All documents reflecting statements made by third parties in meetings, interviews, or other communications with the FTC in connection with or relating in any manner to Hoechst Marion Roussel, Inc., FTC File No. 951-0057.

**Request No. 7:** All civil investigative demands, subpoenas or other formal or informal requests for materials and information issued by the FTC to Third Parties in connection with or relating in any manner to Hoechst Marion Roussel, Inc., FTC File No. 951-0057.



**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

In the Matter of

**Hoechst Marion Roussel, Inc., et al.,**

**Respondents.**

Docket No. 9293

**CERTIFICATE OF SERVICE**

I, Peter D. Bernstein, hereby certify that on August 2, 2000, a copy of Aventis Pharmaceuticals, Inc.'s Third Request for Production was served upon the following persons by hand delivery and/or Federal Express as follows:

Donald S. Clark, Secretary  
Federal Trade Commission  
Room 172  
600 Pennsylvania Ave., N.W.  
Washington, D.C. 20580


Markus Meier  
Federal Trade Commission  
Room 3017  
601 Pennsylvania Ave., N.W.  
Washington, D.C. 20580

Richard Feinstein  
Federal Trade Commission  
Room 3114  
601 Pennsylvania Ave., N.W.  
Washington, D.C. 20580

Louis M. Solomon [By FedEx]  
Solomon, Zauderer, Ellenhorn,  
Frischer & Sharp  
45 Rockefeller Plaza  
New York, NY 10111

Hon. D. Michael Chappell  
Administrative Law Judge  
Federal Trade Commission  
Room 104  
600 Pennsylvania Ave., N.W.  
Washington, D.C. 20580

Peter O. Safir  
Kleinfeld, Kaplan and Becker  
1140 19th St., N.W.  
Washington, D.C. 20036

  
Peter D. Bernstein