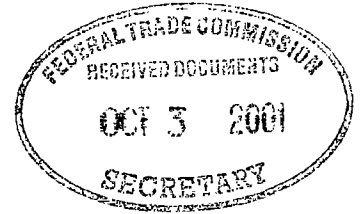


UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION



In the Matter of)
)
)

Schering-Plough Corporation,)
a corporation,)
)

Upsher-Smith Laboratories,)
a corporation,)
)

and)
)

American Home Products Corporation,)
a corporation.)
_____)

Docket No. 9297

**ORDER DENYING COMPLAINT COUNSEL'S MOTION TO COMPEL
RESPONDENT AMERICAN HOME PRODUCTS CORPORATION
TO PRODUCE DOCUMENTS AND TESTIMONY**

I.

On September 17, 2001, Complaint Counsel filed a motion to compel Respondent American Home Products Corporation ("AHP") to comply with Complaint Counsel's first and second requests for production of documents issued to AHP and to designate and produce for deposition a document custodian. On September 27, 2001, AHP filed a response to the motion to compel.

For the reasons set forth below, Complaint Counsel's motion is DENIED.


II.

Complaint Counsel asserts that AHP has not fully complied with its first and second requests for production of documents and has refused to produce for deposition a document custodian. Complaint Counsel provides a lengthy recitation of the steps it has taken to urge AHP to produce responsive documents and a document custodian deponent. Complaint Counsel states that it has negotiated with AHP to narrow the scope of the requests and that the parties have reached agreement as to most of the specifications contained therein. Accordingly, "the scope and substance of the production are not at issue here." Complaint Counsel Memorandum at 5.

AHP responds by stating that it has been producing documents to Complaint Counsel on a rolling basis since June and detailing the lengths to which it has gone to comply with Complaint Counsel's broad and extensive document requests. AHP states that it expects to fully complete its production before October 3, 2001 and that it will make a custodian of documents available for deposition during the week of October 8, 2001.

If AHP abides by these representations, Complaint Counsel's motion is moot. Accordingly, the motion to compel is DENIED.

ORDERED:



D. Michael Chappell
Administrative Law Judge

Date: October 3, 2001