

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

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In the Matter of )  
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 )  
 Schering-Plough Corporation, )  
 a corporation, )  
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 Upsher-Smith Laboratories, ) Docket No. 9297  
 a corporation, )  
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 and )  
 )  
 American Home Products Corporation, )  
 a corporation. )  
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**SCHERING-PLOUGH CORPORATION’S REPLY MEMORANDUM IN  
SUPPORT OF ITS MOTION TO COMPEL INTERROGATORY RESPONSES**

Respondent Schering-Plough Corporation (“Schering”) respectfully submits this reply memorandum in support of its motion to compel complaint counsel to supplement its responses to Schering’s First Set of Interrogatories. Schering’s motion requests an order compelling complaint counsel to supplement its interrogatory answers to provide responsive answers, and to provide the requested factual support for complaint counsel’s contentions.

Complaint counsel opposes Schering’s motion to compel, first, by asserting that its interrogatory answers are responsive to Schering’s interrogatories. To support its argument, complaint counsel provides eight excerpts from its supplemental response to Interrogatory No. 1. The first three “excerpts” are not contained anywhere in complaint counsel’s response to Interrogatory No. 1, however. And they do not seem to answer the

interrogatory at all. The remaining five excerpts do appear in complaint counsel's response, but do not respond to the interrogatory. As noted in Schering's motion, Interrogatory No. 1 asks if complaint counsel contends that consumers are worse off under the Schering/Upsher settlement than they would have been if Schering and Upsher had litigated their case to conclusion. A review of complaint counsel's excerpts shows that complaint counsel's response concerns whether consumers are worse off under the Schering/Upsher settlement than under some alternative settlement. But that does not answer the interrogatory posed.

A review of the remaining supplemental responses also supports Schering's motion.

Second, complaint counsel opposes Schering's motion by asserting that its supplemental response provides the factual basis for its contentions. For example, complaint counsel asserts that:

The supplemental responses have identified facts we intend to rely upon and have described them with the degree of specificity demanded by the current case law. In the Supplement responses, complaint counsel cite to various documents by bates number and to specific investigational hearing transcripts by page . . .

Opposition at 6.

In fact, however, *there is not a single citation to a document or investigational hearing transcript anywhere in the supplemental response*. In its opposition, complaint counsel includes such citations in the first three alleged excerpts from complaint counsel's supplemental response to Interrogatory No. 1. But as pointed out, *none of those excerpts appears in complaint counsel's supplemental interrogatory answer*. Complaint counsel's only citations in its entire supplemental response are to the Bresnahan and Levy expert reports. Expert reports are not facts, however, and neither report's internal

citations provide factual support for the contentions set forth in the interrogatory responses.

Schering respectfully requests that the Court grant its motion to compel supplemental responses to Schering's First Set of Interrogatories.

Respectfully submitted,

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(202) 783-0800

Attorneys for Respondent  
Schering-Plough Corporation

Dated: November 30, 2001

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**RESPONDENT’S MOTION FOR LEAVE TO FILE A REPLY MEMORANDUM  
IN SUPPORT OF ITS MOTION TO COMPEL INTERROGATORY RESPONSES**

Pursuant to Rule 3.22(c) of the Commission's Rules of Practice, 16 C.F.R. § 3.22(c), Schering-Plough Corporation (“Respondent”) hereby respectfully requests leave to file a brief reply to complaint counsel’s opposition to Respondent’s motion to compel interrogatory responses.

Respondent believes that this reply will be helpful to the Court in determining that complaint counsel has failed to supplement its interrogatory answers to provide responsive answers, and to provide the requested factual support for complaint counsel’s contentions.

Respectfully submitted,

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John W. Nields, Jr.  
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(202) 783-0800

Attorneys for Respondent  
Schering-Plough Corporation

Dated: November 30, 2001

## CERTIFICATE OF SERVICE

I hereby certify that this 30th day of November, 2001, I caused an original, one paper copy and an electronic copy of the foregoing Respondent's Motion for Leave to File A Reply Memorandum in Support of its Motion to Compel Interrogatory Responses and Memorandum In Support of its Motion to Compel to be filed with the Secretary of the Commission, and that two paper copies were served by hand upon:

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

and one paper copy was hand delivered upon:

Karen Bokat  
Bureau of Competition  
Federal Trade Commission  
Washington, D.C.  
601 Pennsylvania Ave, N.W.  
Washington, D.C. 20580

Christopher Curran  
White & Case LLP  
601 13th St., N.W.  
Washington, D.C. 20005

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Erik T. Koons

## **CERTIFICATION**

I hereby certify that this 30th day of November, 2001, I caused an electronic copy of Respondent's Motion for Leave to File A Reply Memorandum in Support of its Motion to Compel Interrogatory Responses and Memorandum In Support of its Motion to Compel to be filed with the Secretary of the Commission. I further certify that these are true and correct copies of the paper original and that a paper copy with an original signature is being filed with the Secretary of the Commission.

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Erik T. Koons