

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION



In the Matter of)
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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 RESPONSES
TO INTERROGATORIES AND ADMISSIONS FROM UPSHER-SMITH**

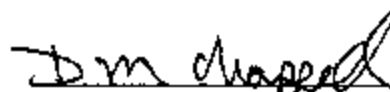
On December 26, 2001, Complaint Counsel filed a motion to compel responses to interrogatories and requests for admission from Respondent Upsher-Smith Laboratories, Corp. ("Upsher-Smith"). Upsher-Smith filed an opposition on January 7, 2002.

Complaint Counsel seeks an order compelling Upsher-Smith to provide more complete answers to a subset of Complaint Counsel's First Set of Interrogatories, Complaint Counsel's First Set of Requests for Admission, and Complaint Counsel's Revised Third Set of Requests for Admission. Upsher-Smith served responses to the First Set of Interrogatories on October 22, 2001, and a Supplemental Response on December 21, 2001. Upsher-Smith served responses to the First Set of Requests for Admission on September 10, 2001. Upsher-Smith served responses to the Third Revised Set of Requests for Admission on November 14, 2001.

Under the Second Revised Scheduling Order issued October 19, 2001, the close of discovery was November 1, 2001. Compliance with the scheduled end of discovery requires that the parties serve discovery requests sufficiently in advance of the discovery cut-off and that any motion to compel responses shall be filed within 5 days of impasse if the parties are negotiating in good faith and are not able to resolve their dispute. Scheduling Order, May 3, 2001, Additional Provision ¶ 2. The parties were apparently negotiating some of the disputed responses until December 19, 2002.

Trial in this matter is set for January 23, 2002. At this late date, with numerous depositions already taken, thousands of pages of documents already exchanged, interrogatories and requests for admissions already answered, and trial exhibits already listed, while Upsher-Smith's responses may not be perfect, they are adequate. Accordingly, Complaint Counsel's motion is DENIED.

ORDERED:


D. Michael Chappell
Administrative Law Judge

Date: January 22, 2002