

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 GRANTING BRISTOL-MYERS SQUIBB
COMPANY'S MOTION FOR *IN CAMERA* TREATMENT**

Pursuant to Commission Rule 3.45(b), on February 5, 2002, non-party Bristol-Myers Squibb Co. ("BMS") filed a renewed motion to obtain *in camera* treatment of certain highly confidential information. By order dated January 25, 2002, BMS was ordered to provide a declaration or affidavit from a person within the company in a position to provide evidence that public disclosure of the documents would result in a clearly defined, serious injury to BMS.

In Commission proceedings, requests for *in camera* treatment must show that the public disclosure of the documentary evidence will result in a clearly defined, serious injury to the person or corporation whose records are involved. *In re Kaiser Aluminum & Chem. Corp.*, 103 F.T.C. 500 (1984); *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961). That showing can be made by establishing that the documentary evidence is "sufficiently secret and sufficiently material to the applicant's business that disclosure would result in serious competitive injury," and then balancing that factor against the importance of the information in explaining the rationale of Commission decisions. *Kaiser*, 103 F.T.C. at 500; *General Foods Corp.*, 95 F.T.C. 352, 355 (1980); *Bristol Myers Co.*, 90 F.T.C. 455, 456 (1977). Requests for indefinite *in camera* treatment must include evidence to provide justification as to why the document should be withheld from the public's purview in perpetuity and why the requestor believes the information is likely to remain sensitive or become more sensitive with the passage of time. *E.I. DuPont de Nemours & Co.*, 1990 FTC LEXIS 134, *2 (April 25, 1990).

The renewed motion of BMS seeks *in camera* treatment for a period of five years for documents that consist of confidential proprietary information pertaining to prices, profits and strategies for one of its generic products. BMS has narrowly tailored its request. The declaration of BMS's in-house counsel demonstrates that the confidential information for which BMS seeks *in camera* treatment is competitively sensitive information that BMS guards and maintains as confidential to preserve its internal decision-making processes and data from disclosure to competitors in the pharmaceutical industry. He further declares that the documents provide detailed information relating to BMS's internal pricing, strategies, competitive analyses, and sales strategies, including sales, pricing, and profit data for BMS's products, the disclosure of which would have serious and adverse competitive impacts on BMS.

BMS has adequately demonstrated that public disclosure of portions of these documents would result in injury to BMS without serving any countervailing public purpose. BMS's motion is GRANTED.

In camera treatment, for a period of five years, to expire January 1, 2007, is hereby granted to the material set forth below:

The following portions of USX 68, APOT/CRET 02644-02650:

APOT/CRET 02648: bullet point entitled "Primary Focus" and all information below that bullet point;

APOT/CRET 02649;

The following portion of USX 69, APOT/RENJ 00168:

Columns 4-6 (3 columns to the right of column entitled "NDC", including column headings;

The following portion of USX 70, APOT/RENJ 00361-365:

APOT/RENJ 00363-365

The following portions of USX 74, APOTHECON(BMS)/8-22:

APOTHECON(BMS)/0000013: Response to subpart (e) of Specification 3;

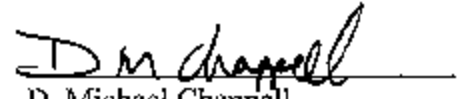
APOTHECON(BMS)/0000014 (Exhibit 3-1); and

The following portion of USX 75, APOTHECON(BMS)/23-36:

APOTHECON(BMS)/0000029 - 036 (Exhibit 4-2).

ORDERED:

Date: February 12, 2002


D. Michael Chappell
Administrative Law Judge