

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 GRANTING MOTION FOR *IN CAMERA* TREATMENT
OF SCHERING-PLOUGH CORPORATION**

Pursuant to Commission Rule 3.45(b), Respondent Schering-Plough Corporation ("Schering") filed a motion for *in camera* treatment for documents relating to license agreement with ICN Pharmaceuticals, Inc. No party opposes Schering's motion.

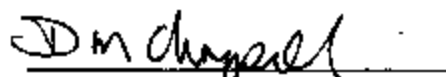
In Commission proceedings, requests for *in camera* treatment must show that the public disclosure of the documentary evidence will result in a clearly defined, serious injury to the person or corporation whose records are involved. *In re Kaiser Aluminum & Chem. Corp.*, 103 F.T.C. 500 (1984); *H.P. 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).

Schering's motion seeks indefinite *in camera* treatment for documents pertaining to licensing and supply issues for a particular drug. The declaration of Schering's antitrust counsel demonstrates that the material for which Schering seeks *in camera* treatment contains extremely

sensitive commercial and trade secret information concerning Schering's business to design, research, develop, manufacture, sell, price, distribute, market and promote pharmaceutical products. He further declares that public disclosure of these documents will cause serious and irreparable injury to Schering and result in a substantial loss of business advantage.

Schering has adequately demonstrated that public disclosure of portions of these documents would result in injury to Schering without serving any countervailing public purpose. Schering's motion is GRANTED. *In camera* treatment, for an indefinite period, is hereby GRANTED to the material identified as Complaint Counsel's exhibits CX 1613 through 1652.

ORDERED:



D. Michael Chappell
Administrative Law Judge

Date: February 12, 2002