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UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Deborah Platt Majoras, Chairman**
Pamela Jones Harbour
Jon Leibowitz
William E. Kovacic
J. Thomas Rosch

In the Matter of	)	
WATSON PHARMACEUTICALS, INC., a corporation;	)	**Docket No. C-4172**
and	)	
ANDRX CORPORATION, a corporation.	)	

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act, and its authority thereunder, the Federal Trade Commission ("Commission"), having reason to believe that Respondent Watson Pharmaceuticals, Inc. ("Watson"), a corporation subject to the jurisdiction of the Commission, has agreed to acquire Andrx Corporation ("Andrx"), a corporation subject to the jurisdiction of the Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act ("FTC Act"), as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. DEFINITIONS

1. "Commission" means the Federal Trade Commission.

2. "FDA" means the United States Food and Drug Administration.

3. "Respondents" means Watson and Andrx individually and collectively.

4. "ER" means extended-release formulation.

II. RESPONDENTS

5. Respondent Watson is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Nevada, with its headquarters address at 311 Bonnie Circle, Corona, California 92880. Watson is engaged in the development, manufacture, marketing, sale, and distribution of generic pharmaceutical products.

6. Respondent Andrx is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its headquarters address at 4955 Orange Drive, Davie, Florida 33314. Andrx is engaged in the development, manufacture, marketing, sale, and distribution of generic pharmaceutical products.

7. Respondents are, and at all times relevant herein have been, engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act as amended, 15 U.S.C. § 12, and are corporations whose business is in or affects commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

III. THE PROPOSED ACQUISITION

8. On March 12, 2006, Watson and Andrx entered into an Agreement and Plan of Merger (the "Merger Agreement") whereby Watson proposes to acquire all of the outstanding shares of Andrx in a transaction valued at approximately $1.9 billion (the "Acquisition").

IV. THE RELEVANT MARKETS

9. For the purposes of this Complaint, the relevant lines of commerce in which to analyze the effects of the Acquisition are the manufacture and sale of the following generic pharmaceutical products:

a. hydrocodone bitartrate/ibuprofen tablets;

b. glipizide ER tablets;

c. norgestimate/ethinyl estradiol 0.25 mg/0.035 mg ("generic Ortho-Cyclen") tablets;

d. norgestimate/ethinyl estradiol 0.18 mg/0.035 mg, 0.215 mg/0.035 mg, 0.25 mg/0.035 mg ("generic Ortho Tri-Cyclen") tablets;

e. desogestrel/ethinyl estradiol 0.15mg/0.03 mg ("generic Ortho-cept") tablets;

f. desogestrel/ethinyl estradiol and ethinyl estradiol 0.15mg/0.02 mg and 0.01 mg ("generic Mircette") tablets;

g. levonorgestrel/ethinyl estradiol 0.05 mg/0.03 mg, 0.075 mg/0.04 mg, and 0.125 mg/0.03 mg ("generic Triphasil 28") tablets;

h. levonorgestrel and ethinyl estradiol 0.1 mg/0.02 mg ("generic Alesse") tablets;

i. norethindrone/ethinyl estradiol 0.5 mg/0.035 mg, 0.75 mg/0.035 mg, 1 mg/0.035 mg ("generic Ortho-Novum 7/7/7") tablets;

j. norethindrone/ethinyl estradiol 1 mg/0.035 mg ("generic Ortho-Novum 1/35") tablets;

k. norethindrone acetate/ethinyl estradiol and ferrous fumarate 1.5 mg/0.030 mg/75 mg ("generic Loestrin FE (1.5 mg/0.030 mg)") tablets;

l. norethindrone acetate/ethinyl estradiol and ferrous fumarate 1 mg/0.020 mg/75 mg ("generic Loestrin FE (1 mg/0.020 mg)") tablets; and

m. norethindrone/ethinyl estradiol 0.4 mg/0.035 mg ("generic Ovcon-35") tablets.

10. For the purposes of this Complaint, the United States is the relevant geographic area in which to analyze the effects of the Acquisition in the relevant lines of commerce.

V. THE STRUCTURE OF THE MARKETS

11. Hydrocodone bitartrate/ibuprofen tablets are a combination of an opioid analgesic agent, hydrocodone bitartrate, and a nonsteroidal anti-inflammatory drug, ibuprofen, used for the short-term management of acute pain. Currently, Watson, Andrx, and Teva Pharmaceuticals, Inc. ("Teva") are the only suppliers of generic hydrocodone bitartrate/ibuprofen tablets in the United States. The Acquisition would leave only Watson and Teva in this market, and increase Watson's market share to over 38 percent. The Herfindahl-Hirschman Index ("HHI") would increase by 630 points, resulting in a post-acquisition HHI of 5,264 points.

12. Glipizide ER tablets correct the effects of type 2 diabetes by stimulating the release of insulin in the pancreas, thereby reducing blood sugar levels in the body. Watson is the leading supplier in the market for the manufacture and sale of generic glipizide ER tablets in the United States, with over 45 percent of the market. Andrx and Greenstone Ltd. are the only other suppliers of this generic product in the United States. The Acquisition would create a duopoly,

with Watson accounting for approximately 80 percent of the generic glipizide ER market. The HHI would increase by 3,162 points, resulting in a post-acquisition HHI of 6,824 points.

13. Oral contraceptives are forms of birth control that contain varying ratios of synthetic estrogen and synthetic progestin to prevent ovulation and pregnancy. In each of the eleven relevant oral contraceptive markets, Watson and Andrx/Teva are two of a limited number of suppliers or potential entrants. Andrx and Teva have an agreement whereby Andrx develops and manufactures these oral contraceptives and Teva markets the products. Andrx also receives a royalty payment on Teva's sales of the products.

14. The U.S. market for the manufacture and sale of generic Ortho-Cyclen tablets is already highly concentrated, with a pre-acquisition HHI of 5,818 points. Watson, Andrx/Teva, and Barr Pharmaceuticals, Inc. ("Barr") are the only suppliers of this generic oral contraceptive in the United States. After the Acquisition, the HHI would increase by 150 points, resulting in a post-acquisition HHI of 5,968 points, and Watson would account for 28 percent of the market.

15. Watson is the leading supplier in the U.S. market for the manufacture and sale of generic Ortho Tri-Cyclen tablets. Andrx/Teva and Barr are the only other suppliers of this generic oral contraceptive in the United States. The market for generic Ortho Tri-Cyclen is already highly concentrated, with a pre-acquisition HHI of 4,856 points. After the Acquisition, the HHI would increase by 216 points, resulting in a post-acquisition HHI of 5,072 points, and Watson would account for 56 percent of the market.

16. Watson currently competes in seven additional oral contraceptive markets where Andrx/Teva is developing competitive products. These seven markets represent generic products that are equivalent to Ortho-cept, Triphasil 28, Alesse, Ortho-Novum 1/35, Ortho-Novum 7/7/7, Loestrin FE (1 mg/0.020 mg), and Loestrin FE (1.5 mg/0.030 mg). In each of these highly concentrated markets, Watson is one of only two or three suppliers. Andrx/Teva is one of a limited number of firms developing generic oral contraceptives that would compete in each of these markets, and is well-positioned to enter the markets in a timely manner.

17. Both Watson and Andrx are developing generic Mircette tablets and generic Ovcon-35 tablets. They are two of a limited number of suppliers capable of entering these future generic markets in a timely manner.

VI. ENTRY CONDITIONS

18. Entry into each of the relevant product markets described in Paragraph 9 would not be timely, likely, or sufficient in its magnitude, character, and scope to deter or counteract the anticompetitive effects of the Acquisition. Developing and obtaining FDA approval for the manufacture and sale of each of these products takes at least two years due to substantial regulatory, technological, and intellectual property barriers.

VII. EFFECTS OF THE ACQUISITION

19. The effects of the Acquisition, if consummated, may be to substantially lessen competition and to tend to create a monopoly in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, in the following ways, among others:

a. by eliminating actual, direct, and substantial competition between Watson and Andrx, and reducing the number of competitors in the markets for the manufacture and sale of generic hydrocodone bitartrate/ibuprofen tablets, generic glipizide ER tablets, generic Ortho-Cyclen tablets, and generic Ortho Tri-Cyclen tablets thereby: (1) increasing the likelihood that Watson will be able to unilaterally exercise market power in these markets, (2) increasing the likelihood and degree of coordinated interaction between or among the remaining competitors, and (3) increasing the likelihood that customers would be forced to pay higher prices;

b. by eliminating potential competition between Watson and Andrx in the markets for the manufacture and sale of generic Ortho-Cept tablets, generic Triphasil 28 tablets, generic Alesse tablets, generic OrthoNovum 1/35 tablets, generic OrthoNovum 7/7/7 tablets, generic Loestrin FE (1 mg/0.020 mg) tablets, and generic Loestrin FE (1.5 mg/0.030 mg) tablets, thereby: (1) increasing the likelihood that the combined entity would forego or delay the launch of Andrx's products in these markets, and (2) increasing the likelihood that the combined entity would delay or eliminate the substantial additional price competition that would have resulted from Andrx's independent entry into the markets; and

c. by eliminating future competition between Watson and Andrx in the market for the manufacture and sale of generic Mircette tablets and generic Ovcon-35 tablets, thereby: (1) increasing the likelihood that the combined entity would forego or delay the launch of Watson's or Andrx's products in these markets, and (2) increasing the likelihood that the combined entity would delay or eliminate the substantial additional price competition that would have resulted from Watson's and Andrx's independent entry into the markets.

VIII. VIOLATIONS CHARGED

20. The Merger Agreement described in Paragraph 8 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

21. The Acquisition described in Paragraph 8, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this thirty-first day of October, 2006, issues its Complaint against said Respondents.

By the Commission, Commissioner Rosch recused.

Donald S. Clark
Secretary

SEAL: