

**UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION**

COMMISSIONERS:

Robert Pitofsky, Chairman  
Sheila F. Anthony  
Mozelle W. Thompson  
Orson Swindle  
Thomas Leary

In the Matter of

HOECHST MARION ROUSSEL, INC.,  
a corporation,

CARDERM CAPITAL L.P.,  
a limited partnership,

and

ANDRX CORPORATION,  
a corporation.

Docket No. 9293

**AGREEMENT CONTAINING CONSENT ORDER**

The Federal Trade Commission (“Commission”), has conducted an investigation of certain acts and practices of Hoechst Marion Roussel, Inc. (“Respondent Hoechst”), Carderm Capital, L.P. (“Respondent Carderm”), and Andrx Pharmaceuticals, Inc. (“Respondent Andrx”). Respondent Andrx, having been represented by counsel, is willing to enter into this Agreement Containing Consent Order (“Consent Agreement”) resolving the allegations contained in the attached complaint. Therefore,

IT IS HEREBY AGREED by and between Respondent Andrx, by its duly authorized officers and its attorneys, and counsel for the Commission that:

1. Respondent Andrx is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 4001 S.W. 47<sup>th</sup> Avenue, Fort Lauderdale, Florida, 33314.
2. Respondent Andrx has been served with a copy of the complaint issued by the Federal Trade Commission charging it with violations of Section 5(a) of the Federal Trade Commission Act, and has filed an answer to the complaint.
3. Except as stated in paragraph 1 above, Respondent Andrx admits all the jurisdictional facts relating to it set forth in paragraphs 5 and 6 of the complaint.
4. Respondent Andrx waives:
  - (a) any further procedural steps;
  - (b) the requirement that the Commission's Decision and Order ("Decision and Order"), here attached and made a part hereof, contain a statement of findings of fact and conclusions of law;
  - (c) all rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this Consent Agreement; and
  - (d) any claim under the Equal Access to Justice Act.
5. This Consent Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Consent Agreement is accepted by the Commission it, together with the complaint, will be placed on the public record for a period of thirty (30) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Consent Agreement and so notify Respondent Andrx, in which event it will take such action as it may consider appropriate, or issue and serve its decision in disposition of the proceeding.
6. This Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent Andrx that the law has been violated as alleged in the complaint here attached or that any of the facts alleged in the complaint, other than the jurisdictional facts relating to it in paragraphs 5 and 6 of the complaint (except as set forth in paragraph 1 above), are true. Respondent Andrx denies the other allegations in the complaint and specifically denies that there was any delay in the entry into the market of a generic version of Cardizem CD by Andrx or any other potential manufacturer, or that the conduct, or the September 1997 stipulation and agreement between Hoechst and Andrx, at issue in this matter delayed consumer access to a generic version of Cardizem CD.
7. This Consent Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the

provisions of Commission Rule 3.25(f), 16 C.F.R. § 3.25(f), the Commission may, without further notice to Respondent Andrx, (1) issue its decision containing the following Order in disposition of the proceeding, and (2) make information about it public. When so entered, the Order will have the same force and effect and may be altered, modified or set aside in the same manner provided by statute for Commission orders issued on a litigated or stipulated record. The Order shall become final upon service. Delivery of the Decision and Order to Respondent Andrx's counsel by any means specified in Commission Rule 4.4(a), 16 C.F.R. § 4.4(a), shall constitute service. Respondent Andrx waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, statement, or interpretation not contained in the Decision and Order or the Consent Agreement may be used to vary or contradict the terms of the Consent Agreement or the Decision and Order.

8. Respondent Andrx has read the complaint and Decision and Order. Respondent Andrx understands that once the Decision and Order has been issued, it will be required to file one or more compliance reports showing how it has complied with the Decision and Order. Respondent Andrx further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Decision and Order after the Decision and Order becomes final.

9. Respondent Andrx is fully authorized to sign on behalf of the entities described in paragraph I.A. of the Decision and Order.

Signed this 27th day of November, 2000.

Andrx Corporation

By: \_\_\_\_\_  
Scott Lodin  
Vice President and General Counsel

Counsel for Andrx Corporation

By: \_\_\_\_\_  
Louis M. Solomon  
Solomon, Zauderer, Ellenhorn,  
Frischer & Sharp

Federal Trade Commission

By: \_\_\_\_\_  
Markus H. Meier  
Bradley S. Albert  
Daniel Kotchen  
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Approved:

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Deputy Assistant Director

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