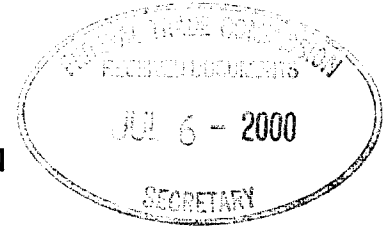


**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**



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

**RESPONDENT ANDRX'S MOTION FOR AN ORDER
CLARIFYING OR RECONSIDERING THE COURT'S JULY 5 ORDER
CONCERNING THE PROSKAUER SUBPOENA**

Pursuant to § 3.22 of the Federal Trade Commission's Rules of Practice, Respondent Andrx Corporation hereby moves for (i) clarification or reconsideration of the Court's Order, dated July 5, 2000, which granted a motion by Proskauer Rose LLP to quash a subpoena served on it; and (ii) an order enforcing the Proskauer subpoena on the condition that appropriate confidentiality protections are adopted.

The bases of this motion are set forth in Andrx's accompanying
Memorandum in Support of its Motion for an Order (dated July 6, 2000).

Dated: New York, New York
July 6, 2000

Respectfully Submitted,

SOLOMON, ZAUDERER, ELLENHORN,
FRISCHER & SHARP

By: Hal S. Shaftel, Esq.

Louis M. Solomon

Hal S. Shaftel

Jonathan D. Lupkin

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New York, New York 10111

(212) 956-3700

Counsel for Respondent Andrx
Corporation

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

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

[PROPOSED] ORDER

The motion of Respondent Andrx Corporation for an Order clarifying or reconsidering the Court's July 5 order concerning the Proskauer subpoena is hereby GRANTED, and the Proskauer subpoena shall be enforced subject to an appropriate agreement on confidentiality.

Dated: July _____, 2000

D. Michael Chappell
Administrative Law Judge

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

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

**RESPONDENT ANDRX CORPORATION'S MEMORANDUM IN
IN SUPPORT OF ITS MOTION FOR CLARIFICATION OR
RECONSIDERATION OF THE COURT'S JULY 5 ORDER
CONCERNING THE PROSKAUER SUBPOENA**

Pursuant to § 3.22 of the Federal Trade Commission's Rules of Practice, Respondent Andrx Corporation ("Andrx") respectfully submits this memorandum in support of its motion for clarification or reconsideration of the Court's Order, dated July 5, 2000 (the "July 5 Order"), which granted a motion by Proskauer Rose LLP (the "Proskauer firm") to quash a subpoena served on it. A copy of the July 5 Order is annexed hereto as Exhibit A.

Andrx served a subpoena on the Proskauer firm (the "Proskauer Subpoena"), a law firm representing Biovail Corporation, for Biovail-related documents that Biovail itself has refused to produce. The Proskauer firm previously produced documents to Andrx in the multi-district litigation (the "MDL"), in the Eastern District of Michigan, involving the Stipulation between Andrx and Hoechst Marion Roussel, Inc. ("HMR"). However, Proskauer did not produce, as the July 5 Order suggests, all documents in the MDL responsive to the Proskauer Subpoena served in this proceeding.

On June 12, 2000, the Proskauer firm served a motion raising confidentiality concerns about producing document responsive to the Proskauer Subpoena. Importantly, Proskauer did not object to making production. Proskauer never sought to quash the Proskauer Subpoena insofar as it sought production of documents and, therefore, quashing the subpoena in its entirety was not the relief sought and we believe should not have been granted. The sole basis for the motion was Proskauer's purported concerns about whether the documents "will receive the same kind of confidential treatment as is required under the protective order in the MDL." See Motion of Proskauer Rose LLP to Quash Subpoena Served By Andrx Corporation (at 1). Andrx's position was that the Protective Order governing confidentiality in this action was adopted after careful deliberation by the Court and the parties and fully satisfied Proskauer's confidentiality concerns.

After service of the Proskauer firm's motion, counsel for Andrx and Proskauer reached agreement on confidentiality. The parties thereby resolved the sole issue implicated on Proskauer's motion. Although the July 5 Order states that Andrx did not "notif[y] the Court that the underlying dispute has been resolved", Biovail itself communicated to the Court that the agreement was reached. In Biovail's motion to quash subpoenas served on other law firms, it stated that

"A subpoena was also served on the law firm of Proskauer Rose LLP, another firm that has represented Biovail. The issues involving that subpoena were resolved by an agreement between Andrx and Proskauer Rose" (emphasis added).

See Biovail's Memorandum In Support of Motion to Quash Subpoenas (6/20/00)
at 2 n.2.¹

In light of that agreement, the Proskauer firm's objections on confidentiality grounds were made moot. The parties agreed on specific language to include in a confidentiality stipulation. However, the language has not been presented to the Court in order to allow coordination with language that co-respondent HMR is contemplating using in possible confidentiality stipulations with other third parties.

In light of the voluminous submissions made on various pending motions before the ALJ, Andrx did not file an opposition to the Proskauer firm's motion regarding confidentiality because (i) Proskauer did not object to complying with the Proskauer Subpoena provided agreement on confidentiality; and (ii) the confidentiality issue was resolved by agreement. By technically "granting" Proskauer's motion, the ALJ granted relief in the form of blanketly "quashing" a subpoena, which was not requested and would have the effect of quashing a subpoena in its entirety rather than just conditioning production on the agreement concerning confidentiality.

In light of the foregoing, Andrx believes the proper relief should have been to enforce the Proskauer Subpoena subject to the confidentiality agreement. Accordingly, we respectfully submit that the ALJ should grant clarification and/or reconsideration of the July 5 Order and, on so doing, enforce

¹ A copy of the excerpt is annexed hereto as Exhibit B.

the Proskauer Subpoena on the condition that appropriate confidentiality
protections are adopted.

Dated: New York, New York
July 6, 2000

Respectfully Submitted,

SOLOMON, ZAUDERER, ELLENHORN,
FRISCHER & SHARP

By: Hal S. Shaftel, Esq.

Louis M. Solomon

Hal S. Shaftel

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(212) 956-3700

Counsel for Respondent Andrx
Corporation

EXHIBIT A

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of

HOECHST MARION ROUSSEL, INC.,
a corporation,

CARDERM CAPITAL L.P.,
a limited partnership,

and

ANDRX CORPORATION,
a corporation.

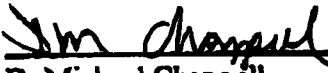
Docket No. 9293

**ORDER GRANTING MOTION OF PROSKAUER ROSE LLP
TO QUASH SUBPOENA SERVED BY ANDRX CORPORATION**

On June 12, 2000, Proskauer Rose LLP ("Proskauer") filed a motion to quash the subpoena served on it by Andrx Corporation ("Andrx") on the grounds that Andrx has been unwilling to consent to an order assuring Proskauer, or its client Biovail Corporation International, that the documents at issue, all of which have already been obtained by Andrx in multi-district litigation pending in the Eastern District of Michigan (the "MDL"), will receive the same level of confidential treatment as is required under the protective order in the MDL.

Respondent Andrx has not filed an opposition or otherwise notified the Court that the underlying dispute has been resolved. Pursuant to Commission Rule 3.22(c), Andrx shall be deemed to have consented to the granting of the relief requested in the motion. Accordingly, the motion is GRANTED.

ORDERED:


D. Michael Chappell
Administrative Law Judge

Date: July 5, 2000

EXHIBIT B

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

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

To: The Honorable D. Michael Chappell
Administrative Law Judge

BIOVAIL'S MEMORANDUM IN SUPPORT OF MOTION TO QUASH SUBPOENAS

Biovail Corporation International ("Biovail") hereby moves to quash the subpoenas served by Andrx Corporation ("Andrx") on May 30 and May 31, 2000 on Keller and Heckman LLP; Verner, Liipfert, Bernhard, McPherson and Hand, Chartered; Cleary, Gottlieb, Steen & Hamilton; George Cary and Steve Kaiser (collectively the "law firms"). The law firms are concurrently filing motions to quash the subpoenas issued on each of them. However, because the law firms are being targeted as a result of their representation of Biovail, Biovail believes it is necessary to file its own motion demonstrating the inappropriateness of Andrx's subpoenas.

BACKGROUND

According to the complaint in this action, respondents Hoechst Marion Roussel, Inc. ("Hoechst"), Carderm Capital L.P., and Andrx entered into a Stipulation and Settlement in September 1997 that violates Section 5 of the Federal Trade Commission Act. Pursuant to the

agreement, Andrx received \$10 million per quarter as payment for not introducing into the marketplace a generic version of Cardizem CD. The agreement not only deprived consumers of Andrx's product, but also, through operation of the Hatch-Waxman Act, 21 U.S.C. § 355, prevented any other pharmaceutical company from entering the relevant market with its own generic version of Cardizem CD. Accordingly, the Commission brought this action alleging that the purpose and effect of this agreement was to preclude competition for Cardizem CD.¹

Biovail is alleged to be relevant to two aspects of this action. First, Biovail participated in the relevant product market. Compl. ¶¶ 12, 16, 20. In June 1997 Biovail sought FDA approval for a generic version of Hoechst's Cardizem CD drug. *Id.* ¶¶ 16, 20. Second, in August 1997 Biovail rejected Hoechst's offer to compensate Biovail for delaying the introduction of its generic Cardizem CD drug, a proposed deal similar to the one accepted by Andrx. *Id.* ¶ 21. The Commission apparently intends to use this predicate act as evidence of Hoechst's "specific intent to preserve its monopoly in the relevant market." *Id.* ¶ 37.

On May 30 and 31, 2000, Andrx served its subpoenas on the law firms.² Some of the subpoenas sought only testimony, while others sought documents as well. As is clear from the subpoenas (which are attached to the law firms' Motion to Quash), Andrx is not seeking information relevant to the allegations in the complaint. Rather, Andrx seeks information that purportedly would support its legally impermissible affirmative defenses that the Commissioners were somehow coerced by FTC staff, Biovail and the media into unanimously voting to issue the Complaint.

According to the agreed upon schedule (as evidenced by correspondence copied to the ALJ), motions to quash the subpoena were due to be filed on June 20, 2000.

¹ In fact, in a lawsuit arising out of this agreement brought by purchasers of Cardizem CD, Judge Edmunds of the Eastern District of Michigan has granted partial summary judgment in favor of the consumers, ruling that the agreement was a per se violation of the antitrust laws. *See In re: Cardizem CD Antitrust Litigation*, MDL No. 1278, Order No. 13 (E.D. Mich. June 6, 2000).

² A subpoena was also served on the law firm of Proskauer Rose LLP, another firm that has represented Biovail. The issues involving that subpoena were resolved by an agreement between Andrx and Proskauer Rose.

CERTIFICATE OF SERVICE

I, Peter M. Todaro, hereby certify that on July 6, 2000, I caused to be served upon the following persons, by overnight mail, next business day delivery, the following document: Respondent Andrx Corporation's Motion for an Order Clarifying or Reconsidering the Court's July 5 Order Concerning the Proskauer Motion, Proposed Order, and Memorandum in Support of its Motion for an Order for Clarification or Reconsideration of the Court's July 5 Order Concerning the Proskauer Motion (dated July 6, 2000):

Hon. D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
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600 Pennsylvania Ave., N.W.
Washington, D.C. 20580

Richard Feinstein, Esq.
Markus Meier, Esq.
Federal Trade Commission
Room 3114
601 Pennsylvania Ave., N.W.
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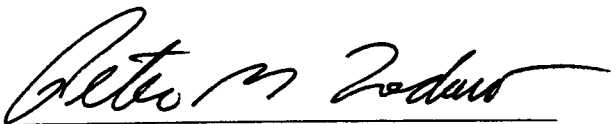
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Donald S. Clark, Secretary
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Dated: July 6, 2000


PETER M. TODARO