

UNITED STATES OF AMERICA
BEFORE THE 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



**MOTION OF MERCK-MEDCO MANAGED CARE, L.L.C.
FOR EXTENSION OF TIME IN WHICH TO FILE MOTION
FOR IN CAMERA TREATMENT OF PROPOSED TRIAL EXHIBITS**

Third party Merck-Medco Managed Care, L.L.C. ("Merck-Medco"), hereby respectfully requests an extension of time in which to file a motion for *in camera* treatment of certain trial exhibits to be used by Upsher-Smith Laboratories, Inc. ("Upsher-Smith"), in this proceeding. In support of this motion, Merck-Medco states as follows:

1. The Third Revised Scheduling Order sets December 27, 2001 as the deadline for filing motions for *in camera* treatment of proposed trial exhibits.
2. Merck-Medco received Upsher-Smith's proposed trial exhibit list – or at least that portion containing documents previously produced by Merck-Medco pursuant to subpoena – on December 26, 2001.
3. Federal Trade Commission Rule of Practice 3.45(b) provides that a third party should have ten (10) days notice of the proposed use of such material in which to

file a motion for *in camera* treatment. Under Rule 3.45(b), Merck-Medco's motion is due to be filed on Monday, January 7, 2002, as the tenth day, January 5, falls on a weekend.

4. There are several documents on Upsher-Smith's proposed exhibit list for which Merck-Medco may seek *in camera* treatment. Most of these were previously produced pursuant to subpoena bearing the designation, "RESTRICTED CONFIDENTIAL - ATTORNEY EYES ONLY."
5. The documents in question originate from different areas of Merck-Medco and, thus, there are several individuals who need to be consulted before we may determine whether to make a motion for *in camera* treatment for some or all of the documents in question. Unfortunately, because Merck-Medco did not receive Upsher-Smith's proposed exhibit list until December 26, 2001, in the middle of a popular vacation time, some of those individuals were and are currently on vacation. In addition, those returning on January 2, 2002, may not be immediately available to address the issues raised by Upsher-Smith's proposed exhibit list. Thus, there will not be sufficient time to discuss the issues, prepare the motion, and have it filed with the Commission by January 7, 2002.
6. Accordingly, Merck-Medco requests an extension of four (4) days, to January 11,

2002, in which to file a motion for *in camera* treatment of Upsher-Smith's proposed exhibits. A proposed form of Order is attached.

Respectfully submitted,

Anthony Palmisano Jr.
Senior Attorney
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(201) 269-5258

Dated: December 31, 2001

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a corporation,)
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Upsher-Smith Laboratories,)
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Docket No. 9297

**ORDER GRANTING MOTION OF MERCK-MEDCO MANAGED CARE, L.L.C.
FOR EXTENSION OF TIME IN WHICH TO FILE MOTION
FOR IN CAMERA TREATMENT OF PROPOSED TRIAL EXHIBITS**

IT IS HEREBY ORDERED that Merck-Medco Managed Care, L.L.C.'s Motion for Extension of Time In Which To File Motion for In Camera Treatment of Proposed Trial Exhibits is hereby GRANTED. Merck-Medco shall file any such motion not later than January 11, 2002.

D. Michael Chappell
Administrative Law Judge

January ____, 2002

CERTIFICATION

I hereby certify that the electronic copy of the Motion of Merck-Medco Managed Care, L.L.C. For Extension Of Time In Which To File Motion For In Camera Treatment Of Proposed Trial Exhibits being filed with the Secretary of the Commission is a true and correct copy of the paper original, and that a paper copy with an original signature is being filed with the Secretary of the Commission.


Anthony Palmisano Jr.

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of December, 2001, I caused to have served on the following persons a true copy of the Motion of Merck-Medco Managed Care, L.L.C. For Extension Of Time In Which To File Motion For In Camera Treatment of Proposed Trial Exhibits:

(1) Two (2) copies via Federal Express:

Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
Room 304
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

(2) One (1) copy via U.S. Regular Mail:

Karen G. Bokar, Esq.
Bureau of Competition
Federal Trade Commission
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Washington, D.C. 20580

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Anthony Palmisano Jr.