

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION



In the Matter of

SCHERING-PLOUGH CORPORATION,
a corporation,

UPSHER-SMITH LABORATORIES, INC.,
a corporation,

and

AMERICAN HOME PRODUCTS
CORPORATION,
a corporation.

Docket No. 9297

**COMPLAINT COUNSEL'S MOTION FOR EXTENSION OF TIME TO ANSWER
RESPONDENTS SCHERING-PLOUGH'S AND UPSHER-SMITH'S MOTION *IN
LIMINE***

Complaint counsel moves for a brief extension of two business days until January 14, 2002, to respond to respondents' motions *in limine*.

On Thursday, January 3, Respondents Schering-Plough and Upsher-Smith filed nine motions *in limine* totaling one hundred and nineteen pages. Together, the nine motions seek to:

- limit or exclude the testimony of six of the eight expert witnesses listed by complaint counsel;
- bar the use of transcript excerpts in trial, which would greatly increase the length of complaint counsel's case-in-chief and rebuttal;
- prevent complaint counsel and its experts from asserting that Schering made "A \$60 million non-contingent payment" to Upsher, one of the critical issues in this case.

The issues addressed by these motions are central to complaint counsel's ability to put forth its case. With the current Scheduling Order, we have only five business days to respond to these

nine motions. Complaint counsel conferred with Respondents but were unable to reach an agreement for an extension of time to respond to the motions. In light of the number of filings and the ongoing demands of trial preparation, complaint counsel respectfully requests this Court to grant a brief extension of time to respond until January 14, 2002.

Respectfully submitted,



Karen G. Bokart
Bradley S. Albert

Complaint Counsel

Dated: January 4, 2002

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**ORDER GRANTING COMPLAINT COUNSEL'S MOTION FOR EXTENSION OF
TIME ANSWER RESPONDENTS SCHIERING-PLOUGH'S AND UPSHER-SMITH'S
MOTIONS *IN LIMINE***

Upon consideration of Complaint Counsel's Motion for Extension of Time to Answer Respondents Schering-Plough's and Upsher-Smith's Motions *in Limine*, IT IS HEREBY ORDERED that Complaint Counsel's Motion is GRANTED, and it is further ORDERED that Complaint Counsel will have until Monday, January 14, 2002, to answer Repondents Schering-Plough's and Upsher-Smith's motions *in limine*;

D. Michael Chappell
Administrative Law Judge

Dated: _____, 2001

CERTIFICATE OF SERVICE

I, Clifton L. Smith, hereby certify that on January 4, 2002:

I caused two copies of Complaint Counsel's Motion for Extension of Time to Answer Respondents Schering-Plough's and Upsher-Smith's Motions *in Limine* to be served upon the following person by hand delivery-

Hon. D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
Room 104
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

I caused one original and one copy of Complaint Counsel's Motion for Extension of Time to Answer Respondents Schering-Plough's and Upsher-Smith's Motions *in Limine* to be served by hand delivery and one copy to be served by electronic mail upon the following person-

Office of the Secretary
Federal Trade Commission
Room H-159
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

I caused copies of Complaint Counsel's Motion for Extension of Time to Answer Respondents Schering-Plough's and Upsher-Smith's Motions *in Limine* to be served upon the following persons by electronic mail and Federal Express-

Laura S. Shores, Esq.
Howrey Simon Arnold & White
1299 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2402

Christopher M. Curran, Esq.
White & Case LLP
601 13th Street, N.W.
Washington, D.C. 20005


Clifton L. Smith