

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION  
WASHINGTON, D.C.



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  
PUBLIC VERSION

**UPSHER-SMITH'S SECOND MOTION FOR  
THE ISSUANCE OF SUBPOENAS AD TESTIFICANDUM**

Pursuant to FTC Rule of Practice 3.34(a)(2) Upsher-Smith hereby moves for an order authorizing the issuance of nine subpoenas *ad testificandum* to be issued to witnesses identified on Schering's Witness List of December 14, 2001. These witnesses are: James Audibert; Raul Cesan; Martin Driscoll; John Hoffman; Raman Kapur; Richard Kogan; Thomas Lauda; Ray Russo; and Jeffrey Wasserstein.

As set forth in the accompanying memorandum, the testimony of each of these witnesses is reasonably relevant to Upsher-Smith's case in this proceeding. A proposed order is attached.

Dated: January 11, 2002

Respectfully submitted,

WHITE & CASE LLP

By: 

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**UPSHER-SMITH'S MEMORANDUM IN SUPPORT OF  
ITS SECOND MOTION FOR THE ISSUANCE OF SUBPOENAS AD TESTIFICANDUM**

Upsher-Smith submits this memorandum in support of its motion pursuant to FTC Rule of Practice 3.34(a)(2) for an order authorizing the issuance of nine subpoenas *ad testificandum* for certain witnesses Schering confirmed as trial witnesses on its Witness List of December 14, 2001. These witnesses are: James Audibert; Raul Cesan; Martin Driscoll; John Hoffman; Raman Kapur; Richard Kogan; Thomas Lauda; Ray Russo; and Jeffrey Wasserstein.

Upsher-Smith reserved the right, in both its Revised and Final Witness Lists, to call any witness listed as potential hearing witnesses by either of the other two parties to this proceeding. See Upsher-Smith's Revised Witness List at 8; Upsher-Smith's Final Witness List at 1. The requested subpoenas *ad testificandum* are necessary to ensure the availability of these witnesses.

**John Hoffman** is Staff Vice-President and Associate General Counsel at Schering. Upsher-Smith expects Mr. Hoffman to testify about conversations with Upsher-Smith representatives during settlement negotiations between Schering and Upsher-Smith in the case captioned *Key Pharmaceuticals, Inc. v. Upsher-Smith Laboratories, Inc.*, Case No. 95-CV-6281 (WHW) (D.N.J.).

**Raman Kapur** is President of Warrick Pharmaceuticals, Inc. Upsher-Smith expects Mr. Kapur to testify about settlement negotiations between Schering and Upsher-Smith in the case captioned *Key Pharmaceuticals, Inc. v. Upsher-Smith Laboratories, Inc.*, Case No. 95-CV-6281 (WHW) (D.N.J.). Upsher-Smith also expects Mr. Kapur to testify about Schering's assessment of and negotiations concerning the licensing opportunities for Niacor-SR, Prevalite, and other products. Upsher-Smith also expects Mr. Kapur to testify about Schering's business and decision-making practices.

**Richard Kogan** is Chairman and Chief Executive Officer of Schering. Upsher-Smith expects Mr. Kogan to testify about Schering's K-Dur and other general matters relating to Schering's operations. Upsher-Smith also expects Mr. Kogan to testify about the June 24, 1997 meeting of Schering's board of directors at which the Upsher licensing transaction was approved. Upsher-Smith also expects Mr. Kogan to testify about Schering's business and decision-making practices.

**Thomas Lauda** is Schering's Executive Vice President of Global Marketing. Upsher-Smith expects Mr. Lauda to testify about Schering's operations relating to licensing and about Schering's assessment of the licensing opportunity for Niacor-SR. Upsher-Smith also expects Mr. Lauda to testify about Schering's business and decision-making practices.

**Ray Russo** is Senior Director, Marketing, Cardiovascular, of the Acute Coronary Syndrome Unit of Schering Laboratories. Upsher-Smith expects Mr. Russo to testify about Schering's negotiations with Kos Pharmaceuticals regarding its sustained-release niacin product. Upsher-Smith also expects Mr. Russo to testify about K-Dur competition and Schering's business and decision-making practices.

**Jeffery Wasserstein** is Schering's Senior Vice-President, GMP Compliance Task Force. Upsher-Smith expects Mr. Wasserstein to testify about the settlement negotiations between Schering and Upsher-Smith in the case captioned *Key Pharmaceuticals, Inc. v. Upsher-Smith Laboratories, Inc.*, Case No. 95-CV-6281 (WHW) (D.N.J.). Upsher-Smith also expects Mr. Wasserstein to testify about Schering's assessment of the licensing opportunities presented by Niacor-SR and other products. Upsher-Smith also expects Mr. Wasserstein to testify about Schering's business and decision-making practices.

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**ORDER GRANTING UPSHER-SMITH'S SECOND MOTION  
FOR THE ISSUANCE OF SUBPOENAS *AD TESTIFICANDUM***

Upon consideration of Upsher-Smith's Second Motion For The Issuance Of Subpoenas *Ad Testificandum* any opposition thereto and the entire record herein, IT IS HEREBY ORDERED that Upsher-Smith's Motion is GRANTED, and that the Secretary shall issue to Upsher-Smith such subpoenas for the nine individuals named in Upsher-Smith's motion.

Dated: January \_\_\_\_, 2002

\_\_\_\_\_  
D. Michael Chappell  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I hereby certify that on January 11, 2002, I caused a paper original and one copy as well as an electronic version of the foregoing motion, supporting memorandum and proposed order to be filed with the Secretary of the Commission and two paper copies to be provided by hand delivery to:

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

and one paper copy to be served upon the following counsel by hand delivery:

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Sanjiv S. Kala

Dated: January 11, 2002