

UNITED STATES OF AMERICA
BEFORE 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

**Emergency Motion For Leave to Allow Complaint
Counsel to Depose Mike Valazza**

Complaint Counsel seeks leave to serve Mike Valazza, an employee of International Processing Corporation ("IPC"), with a subpoena ad testificandum for a deposition in the above captioned matter.¹ Mr. Valazza was on Complaint Counsel's Preliminary Witness List in June 2001 and has remained a listed witness from that time forward. IPC does not oppose this motion.

Complaint Counsel did not depose Mr. Valazza before the close of fact discovery, because IPC was willing to permit Mr. Valazza to voluntarily speak to Complaint Counsel. As Complaint Counsel prepared for trial, it contacted Mr. Valazza to discuss his appearance as a witness. When Upsher-Smith learned of this contact, it strongly urged IPC not to have any conversations with complaint counsel, suggesting that any such conversations might breach the

¹ IPC has been acquired by R.P. Scherer. Because individuals listed on both complaint counsel's and Upsher-Smith's witness list are listed as IPC employees, this motion will refer to R.P. Scherer as IPC.

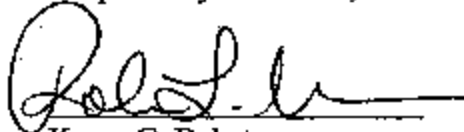
confidentiality provisions of a contract entered into between IPC and Upsher-Smith. Since the conversations with Upsher-Smith's counsel, IPC has refused Complaint Counsel access to Mr. Valazza, citing concerns that Upsher-Smith might view such conversations as a breach of contract.

Mr. Valazza has information relevant to the prosecution of complaint counsel's case and is accordingly on Complaint Counsel's witness list. Allowing the deposition would allow Complaint Counsel the wherewithal to assemble its presentation of this witness more efficiently, which would result in less time needed at trial for Mr. Valazza's testimony. Upsher-Smith would not be prejudiced by this deposition, because Mr. Valazza was identified as a witness for Complaint Counsel on June 14, 2001 and therefore could have deposed him during fact discovery. In addition, Upsher-Smith would be afforded an opportunity to examine Mr. Valazza at the deposition.² Furthermore, granting this deposition will not result in a delay in trial, since the deposition would occur concomitantly with trial.

² Upsher-Smith has also listed both Mr. Valazza and George Tomiach, another IPC employee, on its witness list. IPC has taken the position that it intends to treat Complaint Counsel and Respondents equally in this matter and intends to refuse any informal interviews with Upsher-Smith's counsel if it is precluded from speaking voluntarily with Complaint Counsel. The deposition would thus allow Upsher-Smith to more efficiently present Mr. Valazza's testimony should it choose to call him as a witness.

For the reasons stated above, Complaint Counsel requests that Your Honor grant leave to subpoena Mr. Valazza for a deposition.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Karen G. Bokar", written over a horizontal line.

Karen G. Bokar
Robin L. Moore

Bureau of Competition
Health Care Services and Products
Federal Trade Commission
601 Pennsylvania Ave., N.W., Room 3115
Washington, D.C. 20580
Counsel Supporting the Complaint

Dated: January 25, 2002

CERTIFICATE OF SERVICE

I, Robin L. Moore, hereby certify that on January 25, 2002:

I caused two copies of Complaint Counsel's Emergency Motion For Leave to Allow Complaint Counsel to Depose Mike Valazza 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 Emergency Motion For Leave to Allow Complaint Counsel to Depose Mike Valazza 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 Emergency Motion For Leave to Allow Complaint Counsel to Depose Mike Valazza to be served upon the following persons by electronic mail and Federal Express-

Laura S. Shores, Esq.
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Robin L. Moore