

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

JUN 1, 1998
B 238914

In the Matter of
R.J. REYNOLDS TOBACCO COMPANY,
a corporation.

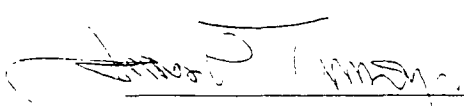
DOCKET NO. 9285

ORDER DENYING MOTION TO QUASH

Dr. John Pierce moves to quash a subpoena directed to him by respondent. The motion is denied.

Complaint counsel intend to rely on Dr. Pierce's research at the forthcoming trial, including, apparently, his most recent research. Respondent is entitled to see the back-up information. The "researcher's privilege" does not apply to evidence from studies which will be introduced as evidence. Burka v. U.S. Dept. of Health and Human Services, 87 F.3d 508, 519, 521 (D.C. Cir. 1996). It is no defense that the same data has been subpoenaed in another case. And the procedural step required by Rule 3.54(c), when a subpoena is directed to a governmental agency other than the Commission, is a requirement where such employee works for the federal, not the state, government. 5 U.S.C. § 551(1) (1996); St. Michael's Convalescent Hospital v. State of Calif., 643 F.2d 1369, 1373 (9th Cir. 1981).

It is ORDERED that John P. Pierce produce all documents responsive to the subpoena duces tecum noticed on May 5, 1998, within 10 days of the date of this Order.


James P. Timony
Administrative Law Judge

Date: June 1, 1998