

**UNITED STATES OF AMERICA  
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

**KOS PHARMACEUTICALS, INC.'S MOTION FOR  
PROTECTIVE ORDER OR IN THE ALTERNATIVE FOR *IN CAMERA*  
INSPECTION OF DOCUMENTS PURSUANT TO 16 C.F.R. §4.10(g)(3)**

KOS PHARMACEUTICALS, INC. ("Kos"), by and through undersigned counsel and pursuant to 16 C.F.R. §4.10(g)(3), hereby files this Motion for Protective Order, or in the alternative for *in camera* inspection of documents, and in support thereof, states as follows:

1. During a pre-complaint investigation by the Federal Trade Commission ("FTC") of Schering-Plough Corporation, Upsher-Smith Laboratories, and American Home Products Corporation (collectively, the "Defendants"), the FTC requested that Kos produce certain documents relevant to their investigation.

2. In compliance with the FTC's request, Kos produced the responsive documents.

3. Shortly thereafter, in or about March 2001, the FTC issued an administrative complaint against the Defendants. In support of its administrative complaint, the FTC intends to offer into evidence the following documents and transcripts of testimony produced by Kos at the request of the FTC:

- a. AAA0000008;
- b. AAA0000004;
- c. AAA0000001;
- d. AAA0000159;
- e. AAA0000002;
- f. AAA0000016 - AAA0000019;
- g. AAA0000010;
- h. AAA0000027 - AAA0000028;
- i. AAA0000029;
- j. AAA0000033;
- k. AAA0000033 - AAA0000036;
- l. AAA0000037;
- m. AAA0000048 - AAA0000051;
- n. AAA0000171;
- o. AAA0000161 - AAA0000162;
- p. AAA0000038;
- q. AAA0000045 - AAA0000047;
- r. AAA0000151 - AAA0000152;
- s. AAA0000153 - AAA0000157;
- t. AAA0158;
- u. AAA0000346 - AAA0000347;
- v. AAA0000378 - AAA0000379;
- w. AAA0000380;

- x. AAA0000381;
- y. AAA0000382 - AAA0000383;
- z. AAA0000384; and
- aa. AAA0150

(collectively, the "Kos Documents"). A true and correct copy of Kos Documents on Complaint Counsel's Exhibit List is attached hereto as Exhibit 1. In addition, a true and correct copy of Kos Deposition Designations is likewise attached as Exhibit 2.

4. The Kos Documents contain both confidential commercial and/or financial information of a sensitive nature protected by 15 U.S.C. 46(f) and 16 C.F.R. §4.10(a)(2), respectively. As such, public disclosure of the Kos Documents will undoubtedly harm Kos. Public disclosure of these documents will put Kos at a competitive disadvantage. No public interest will be served by public disclosure of these sensitive and confidential documents.

WHEREFORE, Kos respectfully requests that this Court enter an Order granting Kos' Motion for Protective Order, or in the alternative for *in camera* inspection of the Kos Documents and transcripts of testimony pursuant to 16 C.F.R. §4.10(g)(3).

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that this \_\_\_\_ day of December, 2001, I caused an original, one paper copy and an electronic copy of the foregoing Kos Pharmaceuticals, Inc.'s Motion for Protective Order Or In the Alternative for In Camera Inspection of Documents Pursuant to 16 C.F.R. §4.10(g)(3) to be filed with the Secretary of the Commission, and that two paper copies were served by Federal Express upon:

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

and one paper copy was mailed to:

Yaa Apori, Esquire  
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Bureau of Competition, Health Care Division  
601 Pennsylvania Avenue, N.W.  
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Washington, D.C. 20580

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