

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION



In the Matter of )  
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)  
Schering-Plough Corporation, )  
a corporation, )  
)  
)  
Upsher-Smith Laboratories, )  
a corporation, )  
)  
)  
and )  
)  
)  
American Home Products Corporation, )  
a corporation. )

Docket No. 9297

**ORDER ON AMERICAN HOME PRODUCTS CORPORATION'S  
MOTION TO STAY ORDER, FOR CERTIFICATION FOR INTERLOCUTORY  
APPEAL AND APPLICATION FOR FULL COMMISSION REVIEW**

On January 15, 2002, an Order Denying American Home Products Corporation's ("AHP") Motion for Protective Order and to Compel Return of Materials was issued. The January 15, 2002 Order held that, to the extent any privileges attached to the nine documents and testimony thereto for which AHP sought a protective order and the return thereof, any such privileges were waived by AHP's inadvertent disclosure of the documents and failure to protect any privileges it may have had.

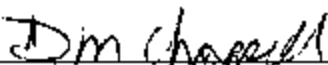
On January 16, 2002, AHP filed a Motion to Stay Order, For Certification for Interlocutory Appeal and Application for Full Commission Review. AHP's motion seeks the following relief: (1) the stay of the Order denying AHP's motion for protective order and to prohibit Complaint Counsel or Respondents from using the disputed documents in any manner pending appeal; (2) in the alternative, AHP seeks *in camera* treatment for each of the contested documents Complaint Counsel or Respondents intend to use as exhibits at the administrative hearing; (3) certification of the January 15, 2002 Order to the Commission for interlocutory review; (4) shortening of Complaint Counsel's time to respond to AHP's motion for certification; and (5) a ruling on AHP's request to stay or request for *in camera* treatment of AHP's documents by January 18, 2002.

Pursuant to Commission Rule 3.23(b), Complaint Counsel has five days for filing its opposition. 16 C.F.R. § 3.23(b). Complaint Counsel opposition is due by 12:00 p.m. on January 24, 2002. A ruling on AHP's motion for certification will not be entered until Complaint Counsel has filed its opposition.

Pursuant to Commission Rule 3.45(g), AHP's request for *in camera* treatment for the documents and testimony thereto is provisionally granted. 16 C.F.R. § 3.45(g). AHP is required to file a motion for *in camera* treatment of the documents within twenty days. Such motion must meet the standards set forth in 16 C.F.R. § 3.45 and explained in *In re Dura Lube Corp.*, 1999 FTC LEXIS 255 (Dec. 23, 1999). AHP's documents will be treated as *in camera* until a final ruling on whether *in camera* treatment of the material is appropriate pursuant to § 3.45(b).

Accordingly, AHP's request for a stay of the Order denying AHP's motion for protective order and to prohibit Complaint Counsel or Respondents from using the documents is DENIED WITHOUT PREJUDICE pending a determination on AHP's motion for *in camera* treatment.

ORDERED:

  
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D. Michael Chappell  
Administrative Law Judge

Date: January 18, 2002