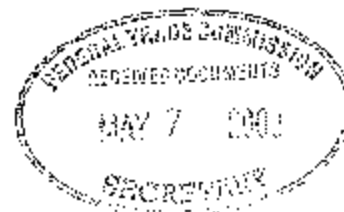


UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION



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

Docket No. 9297

ORDER ON UPSHER-SMITH'S MOTION  
FOR *IN CAMERA* TREATMENT

Pursuant to Commission Rule 3.45(b), on May 3, 2002, Respondent Upsher-Smith Laboratories ("Upsher-Smith") filed a motion to obtain *in camera* treatment of confidential documents. The May 3, 2002 motion seeks indefinite *in camera* treatment for specific portions of documents identified as SPX 1271, SPX 1272, and SPX 1294, all of which were admitted into evidence with JX 5 on March 13, 2002. Respondent Schering-Plough Corporation and Complaint Counsel do not oppose the motion.

In Commission proceedings, requests for *in camera* treatment must show that the public disclosure of the documentary evidence will result in a clearly defined, serious injury to the person or corporation whose records are involved. *In re Kaiser Aluminum & Chem. Corp.*, 103 F.T.C. 500 (1984); *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961). That showing can be made by establishing that the documentary evidence is "sufficiently secret and sufficiently material to the applicant's business that disclosure would result in serious competitive injury," and then balancing that factor against the importance of the information in explaining the rationale of Commission decisions. *Kaiser*, 103 F.T.C. at 500; *General Foods Corp.*, 95 F.T.C. 352, 355 (1980); *Bristol Myers Co.*, 90 F.T.C. 455, 456 (1977). Requests for indefinite *in camera* treatment must include evidence to provide justification as to why the document should be withheld from the public's purview in perpetuity and why the requestor believes the information is likely to remain sensitive or become more sensitive with the passage of time. *E.I. DuPont de Nemours & Co.*, 1990 FTC LEXIS 134, \*2 (April 25, 1990).

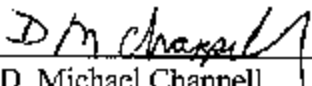
In support of its motion, Upsher-Smith has submitted the Declaration of Vice President of Scientific and Legal Affairs and inside counsel to Upsher-Smith. Through this declaration, Upsher-Smith has demonstrated that the portions of documents it seeks to protect from disclosure contain competitively sensitive trade secret information relating to Upsher-Smith's formulation of its Klor Con M20 products. Upsher-Smith has demonstrated that this information has been carefully guarded by Upsher-Smith and that public disclosure would cause it substantial injury without serving any countervailing public purpose.

*In camera* treatment, for an indefinite period, is hereby GRANTED for the following portions of documents:

- (1) SPX 1271: ¶¶ 22-49 and 51-52;
- (2) SPX 1272: ¶¶ 5, 6, 47, 48, 50-52, 55, and 59-62; and
- (3) SPX 1294: 40:1-40:12, 43:18 - 44:24, 46:13 - 48:11, 50:3 - 50:18, and 52:11 - 52:25.

ORDERED:

Date: May 7, 2002

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