

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: Timothy J. Muris, Chairman
Sheila F. Anthony
Mozelle W. Thompson
Orson Swindle
Thomas B. Leary

In the Matter of

SCHERING-PLOUGH CORPORATION,
a corporation,

UPSHER-SMITH LABORATORIES, INC.
a corporation,

and

AMERICAN HOME PRODUCTS CORPORATION
a corporation.

ORDER

This matter is before the Commission on Complaint Counsel's Motion for Leave to File an Appeal Brief Exceeding the Word Limit in the Commission's Rules of Practice. The Commission grants this Motion in part.

The Federal Trade Commission Rules of Practice for Adjudicative Proceedings limit appeal briefs to 75 pages or 18,750 words. 16 C.F.R. § 3.52(b)(2) (2002).¹ Complaint Counsel claim in their motion that the Commission's word count limitation would subject them to undue prejudice, citing the need to respond at length to "fundamental legal error" and consequent

¹ As noted by Respondent Upsher-Smith, the Commission's limit of 75 pages translates to 18,750 words using the D.C. Circuit standard of approximately 250 words per page.

erroneous factual findings on the part of Administrative Law Judge Chappell. Complaint Counsel request leave to file a brief that totals 28,125 words and is therefore 50% in excess of the 75 page, 18,750 word limit.

Respondent Upsher-Smith opposes the request, and asks that it be granted an additional 30 days to file a response brief if Complaint Counsel's motion is granted. Respondent Schering-Plough does not take issue with the request, but notes its opposition to allegations made in Complaint Counsel's motion. Further, Schering-Plough requests that it be permitted to file a response brief equivalent in length to Complaint Counsel's appeal brief.

After consideration of the papers filed in support of and in opposition to this motion, the Commission finds that the allegations in Complaint Counsel's motion are sufficiently serious that Complaint Counsel may be unduly prejudiced if they are not permitted to present adequately their arguments on appeal--whereas no party would suffer any significant harm by allowing counsel some additional word latitude for purposes of filing an Appeal Brief. Therefore;

It is hereby ORDERED that Complaint Counsel are granted leave to file an appeal brief not to exceed 100 pages or 25,000 words. The Commission believes that Complaint Counsel adequately can present their appeal within the four corners of a 25,000 word brief. Further, the Commission notes that Complaint Counsel devote 12 ½ pages, or approximately 3,125 words, to the merits of their case in their Motion for Leave, and

these arguments are therefore before the Commission. Respondents Schering-Plough and Upsher-Smith are similarly granted leave to file answering briefs not to exceed 100 pages or 25,000 words.

Is further ORDERED that the time permitted for any party to respond to a brief exceeding 75 pages or 18,750 words is hereby extended by ten days.

It is so ORDERED.

By the Commission.

A handwritten signature in black ink, appearing to read "Benjamin I. Berman". The signature is fluid and cursive, with a large initial "B" and "I".

Benjamin I. Berman
Acting Secretary

ISSUED: July 25, 2002