

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Robert Pitofsky, Chairman**
 Sheila F. Anthony
 Mozelle W. Thompson
 Orson Swindle
 Thomas B. Leary

_____)	
In the Matter of)	
)	
Glaxo Wellcome plc,)	
a corporation,)	
)	
and)	
)	Docket No. C-3990
SmithKline Beecham plc,)	
a corporation.)	
_____)	

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed merger between Respondent Glaxo Wellcome plc (“Glaxo”) and Respondent SmithKline Beecham plc (“SB”), hereinafter referred to as “Respondents,”

other than the jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it has reason to believe that Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having determined to accept the executed Consent Agreement and to place the Consent Agreement on the public record for a period of thirty (30) days, the Commission hereby issues its Complaint, makes the following jurisdictional findings and issues this Order to Maintain Assets:

1. Respondent Glaxo is a corporation organized, existing and doing business under and by virtue of the laws of the United Kingdom, with its office and principal place of business located at Glaxo Wellcome House, Berkeley Avenue, Greenford, Middlesex, UB6 ONN, England.
2. Respondent SB is a corporation organized, existing and doing business under and by virtue of the laws of the United Kingdom, with its office and principal place of business located at 3 New Horizons Court, Brentford, Middlesex, TW8 9EP, England.
3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order to Maintain Assets, the definitions used in the Consent Agreement and the attached Decision and Order shall apply.

II.

IT IS FURTHER ORDERED that from the date this Order to Maintain Assets becomes final:

- A. Respondents shall take such actions as are reasonably necessary to maintain the viability, marketability, and competitiveness of the Kytril Assets, Zofran Assets, Fanciclovir Assets and Penciclovir Assets, Tazicef Assets, Zantac Assets, DISC-HSV Prophylactic Vaccine Assets, Renzapride Assets, GI147211C Assets, and Frovatriptan Assets, hereinafter collectively referred to as "Assets," and to prevent the destruction, removal, wasting, deterioration, sale, disposition, transfer or impairment of any of the Assets, except for ordinary wear and tear and as would otherwise occur in the ordinary course of business.

- B. Respondents shall adhere to and abide by the Divestiture Agreements incorporated by reference into this Order to Maintain Assets and made a part hereof.

III.

IT IS FURTHER ORDERED that:

- A. At any time after the Commission issues this Order to Maintain Assets, the Commission may appoint one or more Monitor Trustee(s) to assure that Respondents expeditiously comply with their obligations relating to the Assets pursuant to this Order to Maintain Assets, and to the Consent Agreement, the Decision and Order and the related Divestiture Agreements.
- B. Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities and responsibilities of any Monitor Trustee appointed pursuant to Paragraph III.A.:
 1. The Commission shall select the Monitor Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after receipt of written notice by the staff of the Commission to Respondents of the identity of any proposed trustee, Respondents shall be deemed to have consented to the selection of the proposed trustee.
 2. The Monitor Trustee shall have the power and authority to monitor Respondents' compliance with the terms of this Order to Maintain Assets and of any corresponding terms in the Consent Agreement and the Decision and Order.
 3. Within ten (10) days after appointment of the Monitor Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission, confers on the Monitor Trustee all the rights and powers necessary to permit the Monitor Trustee to monitor Respondents' compliance with the terms of this Order to Maintain Assets and, as applicable, the Consent Agreement and the Decision and Order.
 4. The Monitor Trustee shall serve for such time as is necessary to monitor Respondents' compliance with the provisions of this Order to Maintain Assets.
 5. The Monitor Trustee shall have full and complete access, subject to any legally recognized privilege of Respondents, to Respondents' personnel, books, records,

documents, facilities and technical information relating to any of the Assets or to any other relevant information, as the Monitor Trustee may reasonably request, including, but not limited to, all documents and records kept in the normal course of business that relate to the Assets. Respondents shall cooperate with any reasonable request of the Monitor Trustee. Respondents shall take no action to interfere with or impede the Monitor Trustee's ability to monitor Respondents's compliance with this Order to Maintain Assets and, as applicable, the Consent Agreement and the Decision and Order.

6. The Monitor Trustee shall serve, without bond or other security, at the expense of

X.A. of the Decision and Order in this matter, and/or as Divestiture Trustee(s) pursuant to Paragraph XI.A. of the Decision and Order in this matter.

IV.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate Respondents such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of this Order to Maintain Assets.

V.

IT IS FURTHER ORDERED that for the purposes of determining or securing compliance with this Order to Maintain Assets, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondents made to their principal United States office, Respondents shall permit any duly authorized representatives of the Commission:

- A. Access, during office hours of Respondents and in the presence of counsel, to all facilities, and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession or under the control of Respondents relating to compliance with this Order to Maintain Assets; and
- B. Upon five (5) days' notice to Respondents and without restraint or interference from Respondents, to interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

VI.

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate on the earlier of:

- A. Three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. The day after all of the divestitures or transfers of the Assets, as described in and required by the Decision and Order, are completed.

By the Commission.

Donald S. Clark
Secretary

SEAL

ISSUED: December 15, 2000