

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

that AHP's document production schedule was impeding complaint counsel's trial

28, that AHP expected "that its document production will be substantially complete by September 28" and that it would let complaint counsel know promptly if that expectation changed. AHP expects that its document production will be complete before October 3, the date requested in complaint counsel's motion. And AHP will make a custodian available for deposition during the week of October 8.

FACTS

AHP's Rolling Document Production

After having received numerous documents from AHP during the Commission's

[REDACTED]

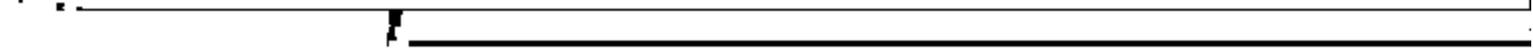
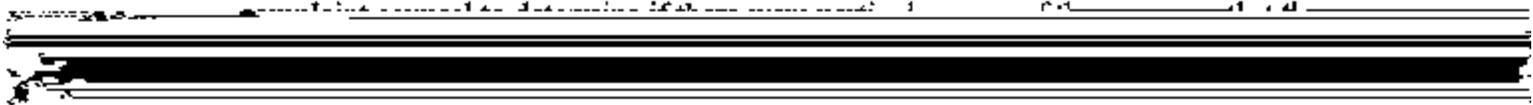
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

On June 26, AHP began its rolling production of documents in response to complaint counsel's request. Its June 26 production consisted of two boxes of organizational charts, which were provided early to complaint counsel to enable



Motion to Compel.) That topic had not been covered in complaint counsel's earlier document request, and once again, AHP had to undertake the process of reviewing organization charts, interviewing employees, and conducting file searches. (See Exhibit 2.)

On September 10, counsel for AHP spoke with complaint counsel about AHP's document production. Complaint counsel expressed concern that AHP's document production was not complete and expressed their hope that AHP would complete its

[REDACTED]

indicated that their trial preparation work was being impeded by AHP's rolling document production. (See Exhibit 2.)

Notice of Deposition of Records Custodian

On July 11, complaint counsel served on counsel for AHP a notice of deposition for a custodian of records. (See Exhibit C to Complaint Counsel's Motion to Compel.)

The notice of deposition specified three topics about which the deponent was requested to testify: the process for identifying files responsive to complaint counsel's document request, description of procedures for withholding privileged documents, and a description of AHP's document retention policies since 1995. At the same time complaint

[REDACTED]

[REDACTED]

[REDACTED]

reasonably assumed that complaint counsel did not, at least at that time, wish to schedule

Nearly two months went by before complaint counsel finally responded to AHP's

letter about the custodial deposition. On September 10, complaint counsel asked AHP's

■ Complaint counsel noticed depositions of other respondents' employees

2.)

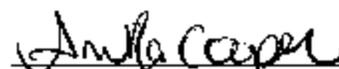
In the face of these facts, complaint counsel will be hard-pressed to identify for the Court a single way in which AHP's rolling document production has hindered complaint counsel's ability to prepare for trial. And indeed, complaint counsel have failed to do so to date. In any event, AHP will complete its production before October 3,



Federal Trade Commission  
601 Pennsylvania Ave., NW.  
Room 3115.  
Washington, D.C. 20580  
Fax (202) 326-3384

Robert Paul  
Christopher Curran  
White & Case LLP  
601 Thirteenth Street, N.W.  
Washington, D.C. 20005  
Fax (202) 639-9355

Laura S. Shores  
Howrey Simon Arnold & White LLP  
1299 Pennsylvania Ave., N.W.  
Washington, D.C. 20004  
Fax (202) 383-6610

  
Anika Sanders Cooper  
Arnold & Porter

# EXHIBIT 1

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# ARNOLD & PORTER

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Anika Sanders Cooper  
Anika\_Cooper@aporter.com  
202.942.5639

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555 Twelfth Street, NW  
Washington, DC 20004-1206

July 19, 2001

VIA FACSIMILE AND HAND DELIVERY

Andrew S. Ginsburg, Esq.  
Federal Trade Commission

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Washington, D.C. 20580

Re: In the Matter of Schering-Plough Corp., et al., Docket No. 9297

Dear Mr. Ginsburg:

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# EXHIBIT 2



subjected to the action of the court.

from complaint counsel or indication that complaint counsel intended to pursue  
the deposition. I told Mr. Ameri that we believed it made more sense for

Two boxes of documents were submitted on June 26, 2001 containing organizational charts for relevant AHP divisions. One box of documents was produced on July 3. Ten boxes of documents were produced on July 24. Six

produced on August 7. Two boxes of documents were produced on August 13. One box of documents was produced on August 14. Two boxes of documents were produced on August 17. Three boxes of documents were produced on



# EXHIBIT 3



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION

WASHINGTON, D.C. 20580

Bureau of Competition

July 19, 2001

By U.S. Mail and electronic mail

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Arnold & Porter  
555 Twelfth Street, NW  
Washington, D.C. 20004-1206

Re: Federal Trade Commission v. Schering-Plough Corporation, et al.  
Docket No. 9297

Dear Ms. Cooper:

Enclosed is complaint counsel's preliminary search list organized at last 2/19/01.

[REDACTED]

[REDACTED]

[REDACTED]

**Complaint Counsel's Preliminary Search List**

1. Bradley Albert: Mr. Albert is an attorney in the Bureau of Competition, Division of Health Care Services and Products, assigned to this matter.
2. Patricia Allen: Ms. Allen is an investigator in the Bureau of Competition, Division of Health Care Services and Products, assigned to this matter.

[REDACTED]

[REDACTED]

3. Yaa Apori: Ms. Apori is an attorney in the Bureau of Competition, Division of Health Care Services and Products, assigned to this matter.

~~4. Yoon Debet Ms. Debet is an attorney in the Bureau of Competition, Division of Health Care Services and Products, assigned to this matter.~~

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

---

Services and Products, assigned to this matter.

17. Steve Vieux: Mr. Vieux is an attorney in the Bureau of Competition, Division of Health Care Services and Products, assigned to this matter.

# EXHIBIT 4



# EXHIBIT 5

**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION**

In the Matter of

SCIERING-PLOUGH CORPORATION,

a corporation,

UPSHER-SMITH LABORATORIES, INC.,

a corporation,

and

AMERICAN HOME PRODUCTS CORPORATION,

a corporation.

Docket No. 9297

**NOTICE OF DEPOSITION**

**EXHIBIT A**

**TOPICS OF INQUIRY**

1. Identification of all steps and procedures taken by Schering-Plough Corporation to locate

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Production of Documents and Things. This includes, but is not limited to, identification

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**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION**

In the Matter of

SCHERING-PLOUGH CORPORATION,

a corporation,

UPsher-SMITH LABORATORIES, INC.,

a corporation,

and

AMERICAN HOME PRODUCTS CORPORATION,

a corporation.

Docket No. 9297

**NOTICE OF DEPOSITION**

PLEASE TAKE NOTICE, that pursuant to Rule 3.33(c) of the Federal Trade Commission's Rules of Practice for Adjudicative Proceedings, complaint counsel will take the deposition of respondent Upsher-Smith Laboratories, Inc., as represented by one or more designated officers, directors, or other employees most knowledgeable regarding the matters set forth in Fed. Reg. 44

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# EXHIBIT 6

FROM WHITE & CASE LLP DC

(TUE) 7. 24 '01 12:24/ST. 12:21/NO. 4862775909 P 2

LOS ANGELES  
MIAMI  
NEW YORK  
PALM ALTO  
WASHINGTON, D.C.

BERLIN  
BRAFISLAVA  
BUENOS AIRES  
BUDAPEST  
DRESDEN  
DUSSELDORF  
FRANKFURT  
HAMBURG  
HELSINKI  
ISTANBUL  
LONDON  
MILAN  
MOSCOW  
PARIS  
PRAGUE  
ROME  
STOCKHOLM  
WARSAW

**WHITE & CASE**  
UNITED LIABILITY PARTNERSHIP

601 THIRTEENTH STREET, N.W.  
SUITE 600 SOUTH  
WASHINGTON, D.C. 20005-3807

TELEPHONE: (1-202) 626-3500  
FACSIMILE: (1-202) 630-0355

DIRECT DIAL: (202) 626-3697

E-MAIL: rmalik@whitecase.com

ALHAYT  
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TOKYO

BAHRAIN  
JEDDAH  
RIYADH

MERIDO CITY  
SAO PAULO

JOHANNESBURG

July 24, 2001

**VIA FACSIMILE**

Andrew S Ginsburg Esq

Bureau of Competition  
601 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

Re: *Schering-Plough Corp., Upsher-Smith Laboratories, Inc.,  
American Home Products Corporation, Docket No. 9297*

Dear Mr. Ginsburg:



# EXHIBIT 7

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



Andrew S. Ginsburg, Esq.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

during the investigatory stage of this proceeding. We are now in Part III litigation, and complaint

[REDACTED]

[REDACTED]

# EXHIBIT 8



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20540

Philip M. Eisenstat

Direct Dial

Rajeev K. Malik, Esq.  
White & Case  
601 Thirteenth Street, N.W.  
Suite 600 South  
Washington, D.C. 20005-3807

Rajeev K. Malik, Esq.  
Page 2

earlier investigational subpoena, complaint counsel cannot rely on a similarly limited search for the Complaint Counsel's First Request for the Production of Documents and Things Issued to Upsher-Smith Laboratories, Inc. ("First Document Request to Upsher-Smith"). While we can identify certain categories of documents for which we received no or virtually no documents, we have no way of telling in what other areas relevant documents exist but were not produced.