

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

In the Matter of)	
)	
Schering-Plough Corporation,)	
a corporation,)	
)	
Upsher-Smith Laboratories,)	Docket No. 9297
a corporation,)	
)	
and)	
)	
American Home Products Corporation,)	
a corporation.)	
)	

**RESPONDENTS' REPLY MEMORANDUM IN SUPPORT OF
MOTION FOR PROTECTIVE ORDER**

Schering-
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In defending its requests, complaint counsel argues primarily that the number of requests is insufficient to establish undue burden. However, much of the support complaint counsel offers for this argument is inapposite. The majority of the cases that complaint counsel cites for its contention that “judges have refused to strike” similarly voluminous requests for admissions do not even address an argument that the number of requests was burdensome. *See, e.g., In the Matter of General Motors Corp.*, 1977 FTC LEXIS 293 (1977) (merely examining sufficiency of GM’s responses); *In the Matter of Sterling Drug, Inc., et al.*, 1976 FTC LEXIS 272 (1976) (determining sufficiency of responses or objections not based on numerosity); *Photon, Inc. v. Harris Intertype, Inc.*, 28 F.R.D. 327 (D. Mass. 1961) (no argument that number of requests was burdensome).

Further, the discovery sought in the remainder of cases that complaint counsel cites is notably different from the requests at issue here. For example, *Berry v. Federated Mut. Ins. Co.* allowed 244 documentary requests, but the requests were less burdensome than the instant requests. 110 F.R.D. 441 (N.D. Ind. 1986) (requests sought authentication of a large number of exhibits to be introduced at trial). In *Duncan v. Santaniello*, the court permitted 292 requests, while specifically noting that the legal issues in the case were complex. 1996 U.S. Dist. LEXIS 3860, *6 (

The burden of responding to hundreds of objectionable requests outweighs any benefit that complaint counsel could potentially derive from the responses. Complaint counsel has seemingly misunderstood Respondents' motion and therefore failed to demonstrate any such benefit. Accordingly, complaint counsel's Second Requests for Admissions should be stricken.

Should the Court be inclined to deny Respondents' motion, Respondents request that they be given an appropriate amount of time to respond to the numerous requests for admissions. Complaint counsel's suggestion that Respondents complete their responses by November 8, 2001 is improper considering the substantial burden associated with answering hundreds of requests. Under the Commission's Rules of Practice, a party is given ten days or, if the Court allows, longer to respond to requests. 16 C.F.R. § 3.32(b). In light of the burdensome nature of these requests and the numerous other demands on Respondent's resources, Respondents respectfully request a minimum of fourteen days from the entry of the Court's order on this motion to complete their responses.

Respectfully submitted,

