

**UNITED STATES OF AMERICA
BEFORE 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

**COMPLAINT COUNSEL'S MOTION FOR LEAVE TO TAKE DEPOSITIONS OF
WITNESSES ON SCHERING-PLOUGH'S FINAL WITNESS LIST
(PUBLIC RECORD)**

Over a month after the close of discovery, and just over a month before the start of the hearing in this matter, Schering has included on its final witness list three new names, Mark Gashko, Steven Thornton, and Philip Vogt.¹

¹Exhibit A, Respondent Schering-Plough Corporation's Witness List, pgs. 9, 13-14.

²Exhibit B, Respondent Schering-Plough Corporation's Revised Witness List Regarding Allegations Against Schering-Plough Corporation and Upsher-Smith Laboratories.

³Complaint counsel has been unable to resolve this issue with respondent Schering-Plough.

submitted its final witness list. Therefore, complaint counsel seek an order allowing us to depose and
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⁴1996 FTC Lexis 621 (November 12, 1996).

⁵ (.....) (continued...)

Although the discovery period has ended, complaint counsel should have the opportunity to obtain discovery from these witnesses in order to prepare for their cross-examination. Schering has not shown good cause, as required by the scheduling order, for adding these witnesses to the final witness list. The remedy is to allow complaint counsel to depose these witnesses.

II. Conclusion

Schering did not provide good cause for the addition of these three individuals to its final witness list. Complaint counsel should be allowed to depose these three witnesses, as soon as possible, at its offices in Washington, D.C. Otherwise, prejudice would be imposed on complaint counsel, which has not obtained the necessary discovery from these witnesses to prepare for cross-examination.

Respectfully Submitted,

Karen G. Bokat
Steve Vieux
Counsel Supporting the Complaint

Bureau of Competition
Federal Trade Commission
Washington, D.C. 20580

Dated: December 21, 2001

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CERTIFICATE OF SERVICE

I, Steve Vieux, hereby certify that on December 21, 2001, I caused a copy of the public version of Complaint Counsel's Motion for Leave To Take Depositions of Witnesses on Schering-Plough's Final Witness List to be filed with the Secretary of the Commission, and two paper copies to be served by hand delivery upon:

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

The following persons were served with one paper copy by Federal Express and facsimile:

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