

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



In the Matter of)

Schering-Plough Corporation,)
a corporation,)

Upsher-Smith Laboratories,)
a corporation,)

and)

American Home Products Corporation,)
a corporation)

Docket No. 9297

PUBLIC

**UPSHER-SMITH'S MOTION IN LIMINE TO BAR
COMPLAINT COUNSEL'S PROPOSED USE OF TRANSCRIPT EXCERPTS**

Upsher-Smith hereby moves to bar Complaint Counsel's proposed use of transcript

excerpts. The facts and authorities in support of this motion are set forth in the accompanying

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**UPSHER-SMITH'S MEMORANDUM IN SUPPORT OF ITS MOTION IN LIMINE
TO BAR COMPLAINT COUNSEL'S PROPOSED USE OF TRANSCRIPT EXCERPTS**

Sabrina Blush and ESI Lederle) were not given notice of the hearing, and did not have any

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Depositions

Complaint Counsel also intend to rely upon transcripts of depositions taken in this proceeding. These depositions were taken in accordance with Part III of the Commission's

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

the investigative-hearing excerpts are plainly inadmissible, even if those hearings were considered to be "depositions," and most of the actual depositions are inadmissible as well.

A. Investigative-Hearing Transcripts

As indicated above, Part III of the Commission Rules of Practice conspicuously do not

~~authorize the use of investigative hearing transcripts as evidence.~~

~~_____~~

~~_____~~

~~_____~~

~~_____~~

adjudicative stage: "We have found no authorities suggesting that the rules governing Federal Trade Commission investigations violate the Constitution, and this is understandable since any

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Every person who is a shareholder of a corporation is a shareholder of the corporation.

[REDACTED]

[REDACTED]

[REDACTED]

of the transcripts designated by Complaint Counsel are from deposition of [redacted]

[redacted]

U

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

called and gave extensive testimony, only advised that he had testified in the past.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

products held by Upsher-Smith." Complaint Counsel's Statement of Case at 2. In an unusual

without case that depends on a grand jury's findings for consideration between the

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

right to cross-examine. Under Section 3.33(g)(1) these transcripts are admissible for any purpose. Under the common practice described above and endorsed by the Eighth Circuit in *Dhyme*, Complaint Counsel ought to be required to call Upsher-Smith's officers live as a

REDACTED

REDACTED

REDACTED

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ORDER ON APPLICANT'S MOTION FOR SUMMARY JUDGMENT

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of January 2009 I served copies of Hecker Smith's

[REDACTED]

[REDACTED]