

3. Permitting the reading in evidence of selected portions of some transcripts at trial also is a well-established Commission practice, and it is consistent with the FTC's rules permitting Administrative Law Judges broad discretion regarding the presentation of evidence at trial.
4. Respondents' real reason for opposing the use of transcripts at trial appears to be motivated by an effort to disrupt the orderly presentation of complaint counsel's case and would unnecessarily draw out what already is likely to be a lengthy hearing.

for the future in accordance with the general mandate of Congress.³

Under the FTC's Rules of Practice, "relevant, material, and reliable evidence shall be

than in the context of a jury trial. Third, there are good reasons to take this risk in the jury trial context that do not exist in the case of agency adjudications.⁷

The evidence we seek to have admitted through deposition and investigational hearing transcripts is reliable on its face, and respondents' counsel have not even attempted to make the particularized showing necessary to demonstrate otherwise.

- The depositions each are stenographically recorded, verbatim transcripts of the witness's testimony taken under oath with the witness's personal presence, as well

pick and choose what evidence they will rely on, Your Honor, in the first instance,
and the Commission was correct in relying on that evidence. 11

Commission. Additionally, the Commission's Rules of Practice make specific provision for the

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cases that have gone to trial at the Commission since 1990, the presiding ALJ permitted the use of deposition and investigational hearing transcripts as substantive evidence at trial.¹⁸ And we are not aware of any administrative proceedings since 1990 in which an ALJ denied a party's request to introduce as substantive evidence deposition and/or investigational hearing transcripts from non-testifying witnesses.

3. Permitting the Reading in Evidence of Selected Portions of Some Transcripts at Trial Is a Well-Established Commission Practice, and It Is Consistent with the FTC's Rules Permitting Administrative Law Judges Broad Discretion Regarding the Presentation of Evidence at Trial

At the recent Status Hearing in this case, complaint counsel indicated our intent to seek leave of this Court to read selected portions of some of the investigational hearing and deposition transcripts in evidence, in lieu of merely offering the transcripts in evidence or calling certain witnesses to testify.¹⁹ Our purpose in seeking to do so is to expedite the presentation of our case-in-chief and rebuttal. Reading selected excerpts from transcripts where the testimony and party

will obviate the need to spend a lot of time examining witnesses who are, or are associated with, an adverse party.

If you are permitted to see records that are not relevant to the case, you will be able to see records that are not relevant to the case.

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is [] crucial in this proceeding.²⁶ Do respondents seriously intended to challenge the credibility of their own employees? We doubt it. Rather, the more likely purpose of respondents' motions is to disrupt the orderly presentation of complaint counsel's case-in-chief, so that respondents can attempt to argue their case through their witnesses in the middle of our presentation. This need

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prejudice should Your Honor deny us the use of this reliable, relevant, and material evidence at trial;

6. Notification to Opposing Counsel of Transcript Excerpt Readings Should

Case 7:16-cr-00011-UNA Document 1-1 Filed 07/26/16 Page 1 of 1



With respect to the timing of respondents' presentation of counter-designations, we submit that each party should offer its transcript excerpts during its own case. Contrary to Schering's argument, nothing in Commission Rule 3.33(g)(1)(iv) or the law requires otherwise.²⁸

~~This rule provides that if only one of a deposition is offered in evidence, the other party may~~

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

CERTIFICATE OF SERVICE

I hereby certify that this 22nd day of January, 2002, I caused a copy of the foregoing

[REDACTED]

[REDACTED]

ATTACHMENT A

In The Matter Of:

*SCHERING-PLOUGH CORP., UPSHER-SMITH
LABORATORIES AND AMERICAN HOME PRODUCTS CORP.*

DENISE DOLAN, CONFIDENTIAL

June 27, 2001

*For The Record, Inc.
Court Reporting and Litigation Support
603 Post Office Road
Suite 309
Waldorf MD USA 20602*

The remaining pages of the transcript have been redacted.

ATTACHMENT B

OFFICIAL TRANSCRIPT PROCEEDING

FEDERAL TRADE COMMISSION

DOCKET NO. D09297

**TITLE SCHERING-PLOUGH/UPSHER-SMITH/AMERICAN
HOME PRODUCTS CORPORATION**

**PLACE UPSHER-SMITH LABORATORIES
13700 FIRST AVENUE NORTH
PLYMOUTH, MINNESOTA**

DATE OCTOBER 10, 1984

EXHIBIT

EXHIBIT 10

The remaining pages of the transcript have been redacted.

ATTACHMENT C

In The Matter Of:

*SCHERING-PLOUGH & UPSHER-SMITH
MATTER NO. 9910256*

*IAN TROUP
May 25, 2000*

*For The Record, Inc.
Court Reporting and Litigation Support
603 Post Office Road
Suite 309
Waldorf, MD USA 20602
(301) 870-8025 FAX: (301) 870-8333*

Original File 00525TRO.ASC, 166 Pages
Min-U-Script® File ID: 0500934891

Word Index included with this Min-U-Script®

The remaining pages of the transcript have been redacted.

ATTACHMENT D

In The Matter Of:

*SCHERING-PLOUGH & UPSHER-SMITH
MATTER NO. 9910256*

MARK S DOERING

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The specific names of the informant have been redacted

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

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ATTACHMENT E

FEDERAL TRADE COMMISSION

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In the Matter of:)
TOYS "R" US, INC.,)
a corporation.) Docket No. 9278

-----)

Friday, February 28, 1997

Room 532

Federal Trade Commission

6th Street and Pennsylvania Ave., NW
Washington, D.C. 20580

The above-entitled matter came on for prehearing
conference, pursuant to notice, at 10:00 a.m.

APPEARANCES:

[Redacted]

1 whenever that is, for each side, we would plan on

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1 record. Your Honor doesn't have to sit there and have
2 deposition transcripts read to you. Your Honor's perfectly
3 -- probably would prefer to read them at your leisure.
4 Let's use court time for court, for testimony.

5 JUDGE TIMONY: What's this argument about they

1 have these problems of getting people here or filling the
2 days.

3 One of the ways to make this trial proceed
4 expeditiously is to use all of the available time, 9:30 to
5 5:30, every day to hear testimony so that maybe we finish
6 well in advance of March 24th. We think we could complete
7 complaint counsel's case in nine or ten trial days, if we us
8 our time well, and we would hope that that would be the way

1 accommodating.

2 MR. DAGEN: So, that's what we have tried to do,
3 Honor. We have tried to schedule it to make sure that we
4 get the witnesses in and out on the day that they are
5 scheduled.

6 JUDGE TIMONY: I am not going to make you move the
7 witnesses up, but how about this idea of the depositions?

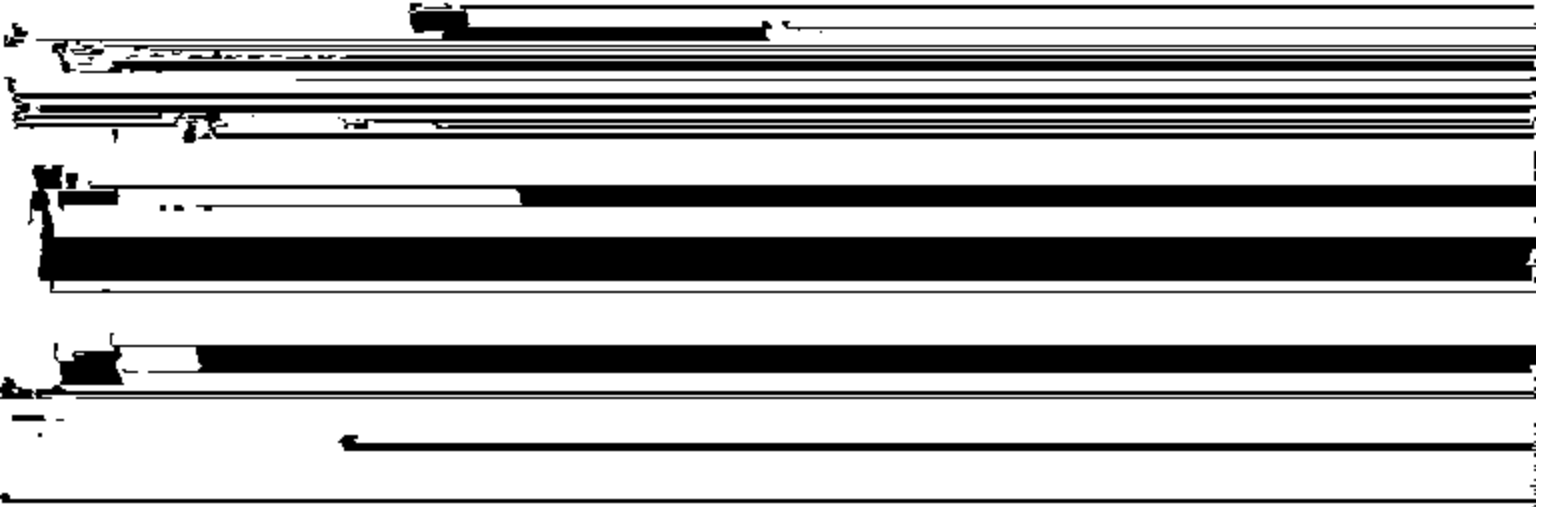
8 MR. DAGEN: The investigational hearings of the To
9 "R" Us witnesses, Your Honor, are admissions.

10 JUDGE TIMONY: But I don't want to hear them all.

11 MR. DAGEN: You are not going to hear them all. Y
12 are just going to be -- there are some particular points i
13 terms of putting on our case that we think would be useful
14 for you to hear.

15 JUDGE TIMONY: How long is it going to take?

16 MR. DAGEN: We can probably read or put in the --
17 those cites in a couple of, you know, probably spend a cou



1 various aspects of the Toys "R" Us policy that they have w
2 -- with the witness -- with the manufacturers, the policy
3 that they were setting forth, and documents that discuss t
4 agreements, and we would propose that, just to show them t
5 the Court --

6 JUDGE TIMONY: You want to argue them to me?

1 There is an opening argument, there may be a closin
2 argument, there will certainly be post-hearing briefs and
3 proposed findings, and I don't think there is a need for ea
4 side to pick its hundred best documents and read them to Yo

1 going to -- I wanted you to see what I looked forward to

4 what I should have done, so now I can do it.

1 MR. DAGEN: No, this is something that you raised.

2 JUDGE TIMONY: To get back to this subject--

1 our document day will go --

2 JUDGE TIMONY: I think he was just limiting it to

3 authenticity but let's hear what he says

ATTACHMENT F



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

SECTION 5