

The Commission having thereafter considered the matter and having determined to accept the executed Consent Agreement and to place such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings and issues this Order to Maintain Assets:

1. Respondent J&J is a corporation organized, existing and doing business under and by virtue of the laws of the state of New Jersey, with its headquarters address located at One Johnson & Johnson Plaza, New Brunswick, New Jersey 08933.
2. Respondent Pfizer is a corporation organized, existing and doing business under and by virtue of the laws of the state of Delaware, with its headquarters address located at 235 E. 42nd St., New York, New York 10017.
3. The Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER

the Commission to accomplish the requirements of the Decision and Order in connection with the Commission's determination to make the Decision and Order final; or

2. an entity that receives the prior approval of the Commission to acquire particular assets that the Respondents are required to assign, grant, license, divest, transfer, deliver, or otherwise convey pursuant to the Decision and Order.
- E. "Acquisition" means the acquisition of Pfizer's Consumer Healthcare Division as contemplated by the "Stock and Asset Purchase Agreement" dated June 25, 2006, between Johnson & Johnson and Pfizer Inc.
- F. "Acquisition Date" means the date the Respondents close on the Acquisition.
- G. "Agency(ies)" means any governmental regulatory authority or authorities in the world responsible for granting approvals, clearances, qualifications, licenses, or permits for any aspect of the research, Development, manufacture, marketing, distribution, or sale of the Divestiture Products. The term Agency includes, but is not limited to, the United States Food and Drug Administration ("FDA").
- H. "Balmex Assets" means all of Respondent J&J's rights, title and interest in and to all assets related to Respondent J&J's United States business related to the Balmex Products to the extent legally transferable, including the research, Development, manufacture, distribution, marketing, and sale of the Balmex Products including, without limitation, the following:
1. all Product Intellectual Property related to the Balmex Products including, but not limited to the Balmex[®] Product Trademark, or any variations or derivatives of such Product Trademark; *PROVIDED, HOWEVER*, that Respondent J&J may receive a transitional license back for a limited period of time (as is approved by the Commission in the Remedial Agreements related to the Balmex Products) to the Balmex[®] Product Trademark for the purposes of winding up the use of such Product Trademark in Respondent J&J's businesses associated with such Product Trademark);
 2. a non-exclusive, perpetual, transferable, fully paid-up and royalty-free license(s) to all Retained Product Licensed Intellectual Property related to the Balmex Products to use, make, distribute, offer for sale, promote, advertise, sell, import, or have used, made, distributed, offered for sale, promoted, advertised, sold, or imported, the Balmex Products or any line extension thereof anywhere in the United States; *PROVIDED, HOWEVER*, Respondents shall also grant an exclusive (even as to Respondents), perpetual, fully paid-up and royalty-free license(s) with rights to sublicense to the Balmex Patent Applications to use, make, distribute, offer for sale, promote, advertise, sell, import, or have used, made, distributed, offered for sale, promoted, advertised, sold, or imported, the Balmex Products or any line extensions thereof in the field of OTC

- diaper rash treatment products anywhere in the United States;
3. all Product Manufacturing Technology related to the Balmex Products;
 4. all Product Marketing Materials related to the Balmex Products;
 5. all Website(s) related to the Balmex Products;
 6. all Product Assumed Contracts to the extent related to the Balmex Products (copies to be provided to the Acquirer on or before the Divestiture Date);
 7. all books, records, and files related to the Balmex Products;
 8. a list of all customers and/or targeted customers for the Balmex Products and the pricing and promotions and/or planned or proposed pricing and promotions of the Balmex Products for such customers;
 9. all inventory in existence as of the Divestiture Date including, but not limited to, raw materials, packaging materials, work-in-process and finished goods related to the Balmex Products;
 10. all unfilled customer orders for finished goods as of the Divestiture Date related to the Balmex Products (a list of such orders is to be provided to the Acquirer within two (2) days after the Divestiture Date); and
 11. the Balmex Manufacturing Equipment;

PROVIDED, HOWEVER, that in cases in which documents or other materials included in the Balmex Assets contain information (1) that relates both to the Balmex Products and to Retained Products or other businesses of Respondent J&J and cannot be segregated in a manner that preserves the usefulness of the information as it relates to the Balmex Products or (2) for which Respondent J&J has a legal obligation to retain the original copies, Respondent J&J shall be required to provide only copies or relevant excerpts of the documents and materials containing this information. In instances where such copies are provided to the Acquirer, Respondent J&J shall provide the Acquirer access to original documents under circ

PROVIDED FURTHER, HOWEVER, that with respect to any contract or agreement included in the Balmex Assets that relates both to the Balmex Assets and to any of Respondent J&J Retained Products or businesses not divested pursuant to the Decision and Order, Respondent J&J shall assign to the Acquirer all such rights under the contract or agreement as are related to the Balmex Products, but concurrently may retain its rights under such contract or agreement for the purposes of the Retained Products and businesses not divested pursuant to the Decision and Order;

PROVIDED FURTHER, HOWEVER, that the assets described in Paragraphs I.H.6, I.H.9, and I.H.11 shall be at the Acquirer's option if the Commission approves a divestiture that excludes such assets.

- I. "Balmex Employees" means the persons listed in non-public Appendix D to the Decision and Order.
- J. "Balmex Manufacturing Equipment" means all manufacturing and other equipment, located at any facility, that:
 - 1. is owned by Respondent J&J; and
 - 2. was used, within the one (1) year period immediately prior to the Acquisition and/or within the one (1) year period immediately prior to the Divestiture Date, in the research, Development, manufacture, or packaging of the Balmex Products.
- K. "Balmex Patent Applications" means:
 - 1. USSN 11,216,441 (Anti-inflammatory composition);
 - 2. USSN 11,215,912 (Anti-inflammatory method of use); and
 - 3. US 20005/0202056 (Composition for reducing enzymatic irritation to skin).
- L. "Balmex Products" means all Products Developed, in Development, manufactured, distributed, marketed or sold in the United States by Respondent J&J prior to the Acquisition that were marketed or sold or to be marketed or sold in the United States as OTC diaper rash treatment Products using the Product Trademark Balmex[®] or any variations or derivatives of such Product Trademark including, but not limited to, Balmex[®] Zinc Oxide Diaper Rash Cream and Balmex[®] Daily Skin Protectant; *PROVIDED HOWEVER*, Balmex Products does not include any products with the Aveeno[®] or Johnson[®] Product Trademarks including, but not limited to, Johnson's[®] No More Rash[®] Diaper Rash Cream and Aveeno[®] Diaper Rash Cream.

- M. “BI” means Boehringer Ingelheim Pharmaceuticals, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the state of Delaware, with its headquarters address at 900 Ridgebury Road, Ridgefield, Connecticut 06877-0368.
- N. “BI Agreement” means the Asset Purchase Agreement among Johnson & Johnson, Pfizer Inc. and Boehringer Ingelheim Pharmaceuticals, Inc., dated as of October 12, 2006, and amended by letter agreement dated November 27, 2006, and all amendments, exhibits, attachments, agreements, and schedules thereto. The BI Agreement is attached to the Decision and Order and contained in non-public Appendix B.
- O. “cGMP” means current Good Manufacturing Practice as set forth in the United States Federal, Food, Drug, and Cosmetic Act, as amended, and includes all rules and regulations promulgated by the FDA thereunder.
- P. “Chattem” means Chattem, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with its headquarters address at 1715 West 38th Street, Chattanooga, Tennessee 37409.
- Q. “Chattem Agreement” means the Asset Purchase Agreement among Johnson & Johnson, Pfizer Inc. and Chattem, Inc., dated as of October 5, 2006, and amended by letter agreement dated November 27, 2006, and all amendments, exhibits, attachments, agreements, and schedules thereto. The Chattem Agreement is attached to the Decision and Order and contained in non-public Appendix C.
- R. “Chattem Supply Agreement” means the Manufacturing and Supply Agreement among Johnson & Johnson, Pfizer Inc. and Chattem, Inc., appended to the Chattem Agreement as Exhibit D., and all amendments, exhibits, attachments, and schedules thereto.
- S. “Confidential Business Information” means all information owned by, or in the possession or control of, Respondents that is not in the public domain and that is related to the research, Development, manufacture, marketing, commercialization, importation, exportation, cost, pricing, supply, sales, sales support or use of the Divestiture Products; *PROVIDED HOWEVER*, that the restrictions contained in this Order regarding the use, conveyance, provision, or disclosure of “Confidential Business Information” shall not apply to the following:
1. information that subsequently falls within the public domain through no violation of the Decision and Order or breach of confidentiality or non-disclosure agreement with respect to such information by Respondents;
 2. information related to the Balmex Products that Respondent Pfizer can demonstrate it obtained without the assistance of Respondent J&J prior to the Acquisition;

3. information related to the Unisom Products, Cortizone10 Products, and Zantac Products that Respondent J&J can demonstrate it obtained without the assistance of Respondent Pfizer prior to the Acquisition;
 4. information that is required by Law to be publically disclosed; or
 5. information that does not relate to the Divestiture Products.
- T. “Cortizone 10 Assets” means all of Respondent Pfizer’s rights, title and interest in and to all assets related to Respondent Pfizer’s United States business related to the Cortizone 10 Products to the extent legally transferable, including the research, Development, manufacture, distribution, marketing, and sale of the Cortizone 10 Products including, without limitation, the following:
1. all Product Intellectual Property related to the Cortizone 10 Products including, but not limited to, the Cortizone 10[®] and Cortizone 5[®] Product Trademarks, or any variations or derivatives of such Product Trademarks; *PROVIDED, HOWEVER*, that Respondents may receive a transitional license back for a limited period of time (as is approved by the Commission in the Remedial Agreements related to the Cortizone 10 Products) to these Product Trademarks for the purposes of winding up the use of such Product Trademarks in Respondents’ businesses associated with such Product Trademarks;
 2. a non-exclusive, perpetual, transferable, fully paid-up and royalty-free license(s) to all Retained Product Licensed Intellectual Property related to the Cortizone 10 Products to use, make, distribute, offer for sale, promote, advertise, sell, import, or have used, made, distributed, offered for sale, promoted, advertised, sold, or imported, the Cortizone 10 Products or any line extensions thereof anywhere in the United States;
 3. all Product Manufacturing Technology related to the Cortizone 10 Products;
 4. all Product Marketing Materials related to the Cortizone 10 Products;
 5. all Website(s) related to the

9. all inventory in existence as of the Divestiture Date including, but not limited to, raw materials, packaging materials, work-in-process and finished goods related to the Cortizone 10 Products;
10. all unfilled customer orders for finished goods as of the Divestiture Date related to the Cortizone 10 Products (a list of such orders is to be provided to the Acquirer within two (2) days after the Divestiture Date); and
11. the Cortizone 10 Manufacturing Equipment;

PROVIDED, HOWEVER, thatoods82.5600 TD(all inventory in existence as of the D)Tj175.8000 0.0000

1. is owned by Respondent Pfizer; and
 2. was used, within the one (1) year period immediately prior to the Acquisition and/or within the one (1) year period immediately prior to the Divestiture Date, in the research, Development, manufacture, or packaging of the Cortizone 10 Products.
- W. “Cortizone 10 Products” means all Products Developed, in Development, manufactured, distributed, marketed or sold in the United States by Respondent Pfizer prior to the Acquisition that were marketed or sold or to be marketed or sold in the United States as OTC hydrocortisone anti-itch products using the Cortizone 10[®] or Cortizone 5[®] Product Trademarks, or any variations or derivatives of such Product Trademarks, including, but not

V. of the Decision and Order.

FF. “Domain Name” means the domain names (universal resource locators) and registrations thereof, issued by any entity or authority that issues and maintains the domain name registration; *PROVIDED, HOWEVER*, Domain Name shall not include any trademark or service mark rights to such domain names other than the rights to the Product Trademarks related to the Divestiture Products.

GG. “Excluded Assets” means:

1. The following trademarks, including names and logos: Pfizer Inc., Pfizer, Pfizer Consumer Healthcare, Warner-Lambert, Parke-Davis, Pharmacia, Johnson & Johnson, J&J, Johnson’s, Johnson & Johnson Consumer Companies, Inc., JJCCI, McNeil, McNeil-PPC, Inc., Personal Products Company, Aveeno, or the names or trade dress of any other corporations, companies, or brands owned or sold by Respondents or related logos to the extent used on or in Respondent J&J’s or Respondent Pfizer’s Retained Products or businesses not divested pursuant to this Order;
2. The following websites: www.pfizer.com, www.pfizerch.com, www.baby.com, www.jnj.com;
3. Content of Website(s) that is owned by Third Parties and other Product Intellectual Property not owned by Respondents that is incorporated in Website(s), such stock photographs used in the Website(s), *except* to the extent that Respondents can convey its rights, if any, therein;
4. Content of Website(s) that is unrelated to the Divestiture Products;
5. Cash or cash equivalents related to the Divestiture Assets;
6. Accounts receivable related to the Divestiture Assets;
7. Losses, loss carry-forwards, or rights to receive funds, credits or loss carry-forwards with respect to any and all taxes of Respondents that relate to any liability retained by Respondents;
8. Rights, claims, or credits of Respondents relating to any assets or liability being retained by Respondents;
9. Real property relating to the Divestiture Assets;
10. Information management systems used by Respondents;

11. Insurance policies relating to the Divestiture Assets and all rights of any nature with respect thereto;
 12. Attorney work product, attorney client communications and other items protected by the attorney-client privilege;
 13. Documents received from third-parties related to the divestiture of the Divestiture Assets;
 14. Equipment relating to the distribution of the Divestiture Assets including, but not limited to, equipment at Pfizer distribution facilities at Lititz, PA, Elk Grove, IL, and Reno, NV, and equipment at J&J distribution facilities at Mechanicsburg, PA, Memphis, TN, and Ontario, CA;
 15. Property and assets located outside of the United States;
 16. Non-finished goods inventory, including raw materials, packaging materials, and work-in-process not directly related to the Divestiture Products;
 17. All personnel records; *PROVIDED, HOWEVER*, that the foregoing shall not affect obligations of Respondents under Paragraph II.F. of this Order; and
 18. Retained Product Licensed Intellectual Property.
- HH. “GSK” means GlaxoSmithKline plc, a corporation headquartered in the United Kingdom, with its principal United States Consumer Products division headquartered at 1000 GSK Drive, Moon Township, PA 15108.
- II. “Governmental Entity” means any Federal, state, local or non-U.S. government, or any court, legislature, governmental agency, or governmental commission, or any judicial or regulatory authority of any government.
- JJ. “High Volume Retail Account” means any retailer or distributor whose annual and/or projected aggregate annual sales in units or in dollars of a Divestiture Product in the United States on a company-wide level was or is among the top twenty highest of such sales within the United States on any of the following dates: 1) the end of the last quarter that immediately preceded the date of the public announcement of the proposed Acquisition; 2) the end of the last quarter that immediately preceded the Acquisition Date; or 3) the end of the last quarter that immediately preceded the Divestiture Date for the relevant assets.
- KK. “Interim Monitor” means any monitor appointed pursuant to Paragraph III. of this Order or Paragraph IV. of the Decision and Order.

- LL. “Law” means all laws, statutes, rules, regulations, ordinances, and other pronouncements by any Governmental Entity having the effect of law.
- MM. “Non-Zantac Assets” means the Balmex Assets, the Cortizone 10 Assets, and the Unisom Assets; *PROVIDED, HOWEVER*, that the Non-Zantac Assets shall not include the Excluded Assets.
- NN. “Non-Zantac Divestiture Agreement” means:
1. The Chattem Agreement; or
 2. Any agreement that receives the prior approval of the Commission between Respondents and an Acquirer for the divestiture of the Non-Zantac Assets entered into pursuant to Paragraph II.B. of the Decision and Order, and any attachments, agreements, and schedules related thereto.
- OO. “Non-Zantac Products” means the Balmex Products, the Cortizone 10 Products, and the Unisom Products.
- PP. “Non-Zantac Supply Agreement” means:
1. the Chattem Supply Agreement; or
 2. any agreement that receives the prior approval of the Commission between Respondents and an Acquirer for the supply of Non-Zantac Products entered pursuant to Paragraph II.C. of the Decision and Order, and any attachments, agreements, and schedules thereto.
- QQ. “OTC” means, with respect to any Product, an over-the-counter product that contains an active pharmaceutical ingredient and is sold without a prescription from a licensed practitioner.
- RR. “Patents” means all United States patents, patent applications, and statutory invention registrations, in each case existing as of the Divestiture Date (*except* where the Decision and Order specifies a different time), and includes all reissues, divisions, continuations, continuations-in-part, supplementary protection certificates, extensions and reexaminations thereof, all inventions disclosed therein, all rights therein provided by international treaties and conventions, and all rights to obtain and file for patents and registrations thereto in the United States, related to any Product of or owned by Respondents as of the Divestiture Date.
- SS. “Person” means any individual, partnership, joint venture, firm, corporation, association, trust, unincorporated organization, joint venture, or other business or governmental entity, and any subsidiaries, divisions, groups or affiliates thereof.

TT. “Product” means a retail consumer good Developed, made, distributed, marketed or sold by Respondents.

UU. “Product Assumed Contracts” means all of the following contracts or agreements:

1. pursuant to which any Third Party purchases, or has the option to purchase without further negotiation, the Divestiture Products from the Respondents;
2. pursuant to which the Respondents purchase any materials from any Third Party for use in connection with the manufacture of the Divestiture Products;
3. relating to any quality control trials involving the Divestiture Products;
4. relating to the marketing of the Divestiture Products or educational matters relating to the Divestiture Products including, but not limited to, the slotting and/or shelf spacing assignments of the Divestiture Product with the High Volume Retail Accounts;
5. relating to the manufacture of the Divestiture Products;
6. constituting confidentiality agreements involving the Divestiture Products;
7. involving any royalty, licensing, or similar arrangement involving the Divestiture Products;
8. pursuant to which any services are provided with respect to the Divestiture Products or the Divestiture Products business, including consultation arrangements; and/or
- 9.

including customer lists, sales force call activity reports, vendor lists, sales data, slotting allowance data, speaker lists, manufacturing records, manufacturing processes, and supplier lists; all data contained in laboratory notebooks relating to the Divestiture Products.

WW. “Product Employee Information” means the following, as and to the extent permitted by the Law:

1. a complete and accurate list containing the name of each relevant employee (including former employees who were employed by Respondents within ninety (90) days of the execution date of any Remedial Agreement);
2. with respect to each such employee, the following information:
 - a. the date of hire and effective service date;
 - b. job title or position held;
 - c. a specific description of the employee’s responsibilities related to the relevant Divestiture Product; *PROVIDED, HOWEVER*, in lieu of this description, Respondents may provide the employee’s most recent performance appraisal;
 - d. the base salary or current wages;
 - e. the most recent bonus paid, aggregate annual compensation for the Respondent’s last fiscal year and current target or guaranteed bonus, if any;
 - f. employment status (*i.e.*, active or on leave or disability; full-time or part-time); and
 - g. any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly situated employees; and
3. at the Acquirer’s option, copies of all employee benefit plans and summary plan descriptions (if any) applicable to the relevant employees.

XX. “Product Intellectual Property” means all of the following related to a Divestiture Product (other than Retained Product Licensed Intellectual Property):

1. Patents;
2. Product Copyrights;
3. Product Trademarks, trade names, Product Trade Dress, trade secrets, know-how,

techniques, data, inventions, practices, methods, and other confidential or proprietary technical, business, research, Development and other information; and

4. rights to obtain and file for patents and registrations thereof.

YY. “Product Manufacturing Technology” means all technology, trade secrets, know-how, and proprietary information (whether patented, patentable or otherwise) related to the manufacture of (including, at the Acquirer’s option, information related to all equipment used to manufacture) the Divestiture Products including, but not limited to all product specifications, processes, product designs, plans, trade secrets, ideas, concepts, manufacturing, engineering, and other manuals, and drawings, standard operating procedures, flow diagrams, chemical, safety, quality assurance, quality control, research records, clinical data, compositions, annual product reviews, regulatory communications, and labeling and all other information related to the manufacturing process, and supplier lists.

ZZ. “Product Marketing Materials” means all marketing materials used anywhere in the United States related to the Divestiture Products as of the Divestiture Date, including, without limitation, all advertising materials, training materials, product data, price lists, mailing lists, sales materials (e.g., detailing reports; vendor lists; sales data), marketing information, (e.g., competitor information; research data; market intelligence reports; statistical programs (if any) used for marketing and sales research; customer information, including customer sales information; sales forecasting models; educational materials; Website content and advertising and display materials; speaker lists), promotional and marketing materials, artwork for the production of packaging components, television masters and other similar materials related to the Divestiture Products.

AAA. “Product Trade Dress” means the current trade dress of the Product, including but not limited to, Product packaging, and the lettering of the Product trade name or brand name.

BBB. “Product Trademarks” means all United States proprietary names or designations, trademarks, service marks, tradenames, and brand names, including registrations and applications for registration therefor (and all renewals, modifications, and extensions thereof) and all common law rights, and the goodwill symbolized thereby and associated therewith, for the Products.

CCC. “Releasee(s)” means the Acquirer of the Divestiture Assets or any entity controlled by or under common control with such Acquirer, or any licensees, sub-licensees, manufacturers, suppliers, distributors, and customers of such Acquirer, of such Acquirer-affiliated entities.

DDD. “Remedial Agreement” means:

collectively are less than the aggregate retail sales in dollars within the same period of the Divestiture Products collectively, the above-described intellectual property shall be considered, at the Acquirer's option, Product Intellectual Property and, thereby, subject to assignment to the Acquirer;

PROVIDED FURTHER, HOWEVER, that in such cases, Respondents may take a license back from the Acquirer for such intellectual property for use in connection with the Retained Products.

HHH. "Third Party(ies)" means any private entity other than the following: (1) the Respondents; or (2) an Acquirer.

III. "Unisom Assets" means all of Respondent Pfizer's rights, title and interest in and to all assets related to Respondent Pfizer's United States business related to the Unisom Products to the extent legally transferable, including the research, Development, manufacture, distribution, marketing, and sale of the Unisom Products including, without limitation, the following:

1. all Product Intellectual Property related to the Unisom Products including, but not limited to, the "Bendy Girl" character, and the Unisom[®], SleepGels[®] and SleepTabs[®] Product Trademarks, or any variations or derivatives of such Product Trademarks; *PROVIDED, HOWEVER*, that Respondents may receive a transitional license back for a limited period of time (as is approved by the Commission in the Remedial Agreements related to the Unisom Products) to these Product Trademarks for the purposes of winding up the use of such Product Trademarks in Respondents' businesses associated with such Product Trademarks;
2. a non-exclusive, perpetual, transferable, fully paid-up and royalty-free license(s) to all Retained Product Licensed Intellectual Property related to the Unisom Products to use, make, distribute, offer for sale, promote, advertise, sell, import, or have used, made, distributed, offered for sale, promoted, advertised, sold, or imported, the Unisom Products or any line extension thereof anywhere in the United States;
3. all Product Manufacturing Technology related to the Unisom Products;
4. all Product Marketing Materials related to the Unisom Products;
5. all Website(s) related to the Unisom Products;
6. all Product Assumed Contracts to the extent related to the Unisom Products (copies to be provided to the Acquirer on or before the Divestiture Date);

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make, distribute, offer for sale, promote, advertise, sell, import, or have used, made, distributed, offered for sale, promoted, advertised, sold, or imported, the Zantac Products or any line extension thereof anywhere in the United States; *PROVIDED, HOWEVER*, Respondents shall also grant an exclusive (even as to Respondents), perpetual, fully paid-up and royalty-free license(s) with rights to sublicense to the Zantac Patents to use, make, distribute, offer for sale, promote, advertise, sell, import, or have used, made, distributed, offered for sale, promoted, advertised, sold, or imported, the Zantac Products or any line extensions thereof in the field of OTC histamine H2-receptor antagonists products anywhere in the United States;

3. all Product Manufacturing Technology related to the Zantac Products;
4. all Product Marketi

research, and the Zantac Employees.

RRR. “Zantac Manufacturing Equipment” means all manufacturing and other equipment, located at any facility, that:

1. is owned by Respondent Pfizer; and
2. was used, within the one (1) year period immediately prior to the Acquisition and/or within the one (1) year period immediately prior to the Divestiture Date, in the research, Development, manufacture, or packaging of the Zantac Products.

SSS. “Zantac Patents” means:

1. U.S. Patent 5,098,715 (Flavor film-coated tablets); and
2. Any patent applications and patents issuing from Attorney Docket Number, PC 33462

Divestiture Assets, except for ordinary wear and tear.

- B. Respondents shall maintain the operations of the Divestiture Assets in the regular and ordinary course of business and in accordance with past practice (including regular repair and maintenance of the assets of such businesses) and shall use their best efforts to preserve the existing relationships with the following: suppliers; vendors and distributors, including, but not limited to, the High Volume Accounts; customers; Agencies; employees; and others having business relations with the Divestiture Assets. Respondents' responsibilities shall include, but are not limited to, the following:
1. providing the Divestiture Assets with sufficient capital to operate at least at current rates of operation, to meet all capital calls with respect to such businesses and to carry on, at least at their scheduled pace, all capital projects, business plans and promotional activities for the Divestiture Assets;
 2. continuing, at least at their scheduled pace, any additional expenditures for Divestiture Assets authorized prior to the date the Consent Agreement was signed by Respondents including, but not limited to, all research, Development, manufacture, distribution, marketing and sales expenditures;
 3. providing such resources as may be necessary to respond to competition against the Divestiture Assets and/or prevent any diminution of sales of the Divestiture Assets prior to divestiture;
 4. providing such resources as may be necessary to maintain the competitive strength and positioning of the Divestiture Assets at the High Volume Accounts;
 5. making available for use by the Divestiture Assets funds sufficient to perform all routine maintenance and all other maintenance as may be necessary to, and all replacements of, the Divestiture Assets;
 6. providing the Divestiture Assets with such funds as are necessary to maintain the viability, marketability, and competitiveness of the Divestiture Assets;
 7. providing such support services to the Divestiture Assets were being provided to these businesses by Respondents as of the date of the Consent Agreement; and
 8. cooperating with the Interim Monitor in the performance of his or her obligations pursuant to Paragraph III. of this Order to Maintain Assets.
- C. Pending divestiture of the Divestiture Assets, Respondents shall:

1. not use, directly or indirectly, any Confidential Business Information related to the research, Development, manufacturing, marketing, or sale of the Divestiture Products other than to comply with the requirements of this Order to Maintain Assets;
2. not disclose or convey any Confidential Business Information, directly or indirectly, to any person except the relevant Acquirer; and
3. not provide, disclose or otherwise make available, directly or indirectly, any Confidential Business Information related to the market for OTC products to Respondents' employees associated with Respondents' retained OTC products business with the following exceptions:
 - a. Balmex Products to Respondents' employees associated with Respondents' retained OTC diaper rash treatment business;
 - b. Unisom Products to Respondents' employees associated with Respondents' retained OTC nighttime sleep-aids business;
 - c. Cortizone 10 Products to Respondents' employees associated with Respondents' retained OTC hydrocortisone anti-itch products business; and
 - d. Zantac Products to Respondents' employees associated with Respondents' OTC histamine

Acquirer with copies of all certifications, notifications and reminders sent to Respondents' personnel relating to the Divestiture Products.

E. Respondents shall prohibit any former Zantac Marketing Employees and former Zantac Research and Development Employees from participating in the sales, marketing, or research and Development of Respondents' OTC histamine H2-receptor antagonists Retained Products for a period of two (2) years after the Divestiture Date.

F. Respondents shall:

1. for a period of at least six (6) months from the Divestiture Date ("Divestiture Product Employee Access Period"), provide the relevant Acquirer of the Divestiture Assets with the opportunity to enter into employment contracts with the related Divestiture Products Employees; and
2. provide the relevant Acquirer of the Divestiture Assets with the Product Employee Information related to the Divestiture Product Employees not later than the earlier of the following dates:
 - a. ten (10) days after notice by staff of the Commission to the Respondents to provide the Product Employee Information; or
 - b. ten (10) days after the Divestiture Date.

Failure by Respondents to provide the Product Employee Information for any relevant employee within the time provided herein shall extend the Divestiture Employee Access Period with respect to that employee in an amount equal to the delay.

G. Respondents shall:

1. during the Divestiture Product Employee Access Period, not interfere with the hiring or employing by the relevant Acquirer of the Divestiture Assets of Divestiture Product Employees and remove any impediments within the control of Respondents that may deter these employees from accepting employment with such Acquirer, including, but not limited to, any noncompete or nondisclosure provisions of employment or other contracts with Respondents that would affect the ability or incentive of those individuals to be employed by such Acquirer. In the case of the Divestiture Product Employees, Respondents shall waive, for the benefit of the relevant Acquirer of the Divestiture Assets, any attorney-client privilege that may otherwise apply to these employees.

PROVIDED, HOWEVER, that this Paragraph II.G.1 shall not prohibit the Respondents from making offers of employment to or employing any Divestiture Product Employees during the Divestiture Product Employee Access Period where the relevant Acquirer of the Divestiture Assets has notified the Respondents in writing that it does not intend to make an offer of employment to that employee;

PROVIDED FURTHER, HOWEVER, that if the Respondents notify the relevant Acquirer of the Divestiture Assets in writing of their desire to make an offer of employment to a particular Divestiture Product Employee, and that Acquirer does not make an offer of employment to such employee within twenty (20) days of the date that Acquirer receives such notice, the Respondents may make an offer of employment to that employee;

2. until the Divestiture Date, provide all Divestiture Product Employees with reasonable financial incentives to continue in their positions and to market and promote the Divestiture Products consistent with past practices and/or as may be necessary to preserve the marketability, viability and competitiveness of the Divestiture Products and to ensure successful execution of the pre-Acquisition marketing plans related to the Divestiture Products. Such incentives shall include a continuation of all employee compensation and benefits offered by Respondents until the Divestiture Date for the divestiture of the Divestiture Assets has occurred, including regularly scheduled raises, bonuses, and vesting of pension benefits (as permitted by Law);

PROVIDED, HOWEVER, that nothing in this Order requires or shall be construed to require the Respondents to terminate the employment of any employee or prevent Respondents from continuing the employment of Divestiture Product Employees (other than those conditions contained in this Order) in connection with the Acquisition; and

3. for a period of one (1) year from the Divestiture Date, not:
 - a. directly or indirectly, solicit or otherwise attempt to induce any employee of an Acquirer with any amount of responsibility related to the Divestiture Products (“Acquirer Employee”) to terminate his or her employment relationship with that Acquirer; or
 - b. hire any Acquirer Employee; *PROVIDED, HOWEVER*, Respondents may hire any former Acquirer Employee whose employment has been terminated by an Acquirer or who independently applies for employment with the Respondents, as long as such employee was not solicited in violation of the non-solicitation requirements contained herein;

PROVIDED, HOWEVER, Respondents may do the following: (1) advertise for

employees in newspapers, trade publications or other media not targeted specifically at the Acquirer Employees; or (2) hire an Acquirer Employee who contacts Respondents on his or her own initiative without any direct or indirect solicitation or encouragement from the Respondents.

- H. Respondents shall adhere to and abide by the Remedial Agreements incorporated by reference into this Order to Maintain Assets and made a part hereof.
- I. The purpose of this Order to Maintain Assets is to maintain the full economic viability, marketability and competitiveness of the Divestiture Assets, to minimize any risk of loss of competitive potential for the Divestiture Assets, and to prevent the destruction, removal, wasting, deterioration, or impairment of the assets to be divested except for ordinary wear and tear.

III.

IT IS FURTHER ORDERED that:

- A. David T. Painter of LECG shall serve a

compliance with the divestiture and asset maintenance obligations and related requirements of the Order, and shall exercise such power and authority and carry out the duties and responsibilities of the Interim Monitor in a manner consistent with the purposes of the Order and in consultation with the Commission.

2. The Interim Monitor shall act in a fiduciary capacity for the benefit of the Commission.
3. The Interim Monitor shall serve until the later of:
 - a. the completion by Respondents of the divestiture of all relevant assets required to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed pursuant to this Order in a manner that fully satisfies the requirements of the Order and notification by the Acquirer to the Interim Monitor that it is fully capable of producing the relevant Products acquired pursuant to a Remedial Agreement independently of Respondents; or
 - b. the completion by Respondents of the last obligation under the Order pertaining to the Interim Monitor's service;

PROVIDED, HOWEVER, that the Commission may extend or modify this period as may be necessary or appropriate to accomplish the purposes of the Order.

4. Subject to any demonstrated legally recognized privilege, the Interim Monitor shall have full and complete access to Respondents' personnel, books, documents, records kept in the normal course of business, facilities and technical information, and such other relevant information as the Interim Monitor may reasonably request, related to Respondents' compliance with their obligations under the Order, including, but not limited to, their obligations related to the relevant assets. Respondents shall cooperate with any reasonable request of the Interim Monitor and shall take no action to interfere with or impede the Interim Monitor's ability to monitor Respondents' compliance with the Order.
5. The Interim Monitor shall serve, without bond or other security, at the expense of Respondent J&J on such reasonable and customary terms and conditions as the Commission may set. The Interim Monitor shall have authority to employ, at the expense of Respondent J&J, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities.
6. Respondent J&J shall indemnify the Interim Monitor and Respondents shall hold the Interim Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Interim Monitor's duties,

including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Interim Monitor.

7. Respondents shall report to the Interim Monitor in accordance with the requirements of this Order and/or as otherwise provided in any agreement approved by the Commission. The Interim Monitor shall evaluate the reports submitted to the Interim Monitor by Respondents, and any reports submitted by the Acquirer with respect to the performance of Respondents' obligations under the Order or the Remedial Agreement. Within thirty (30) days from the date the Interim Monitor receives these reports, the Interim Monitor shall report in writing to the Commission concerning performance by Respondents of their obligations under the Order.
 8. Respondents may require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; *PROVIDED, HOWEVER*, that such agreement shall not restrict the Interim Monitor from providing any information to the Commission.
- E. The Commission may, among other things, require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Interim Monitor's duties.
 - F. If the Commission determines that the Interim Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Interim Monitor in the same manner as provided in this Paragraph.
 - G. The Commission may on its own initiative, or at the request of the Interim Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Orders.
 - H. The Interim Monitor appointed pursuant to the Orders may be the same person appointed as a Divestiture Trustee pursuant to the relevant provisions of the Decision and Order.

IV.

IT IS FURTHER ORDERED that within thirty (30) days after the date this Order to Maintain Assets becomes final, and every thirty (30) days thereafter until Respondents have fully complied with Paragraph II. of the Decision and Order (*i.e.*, have assigned, licensed, divested, transferred, delivered, terminated or otherwise conveyed all relevant assets or rights to the Acquirers in a manner that fully satisfies the requirements of the Decision and Order), Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with this Order to Maintain Assets and the Decision and Order; *PROVIDED, HOWEVER*, that, after the Decision and Order in this matter becomes final, the reports due under this Order to Maintain Assets may be consolidated with, and submitted to the Commission at the same time as, the reports required to be submitted by Respondents pursuant to Paragraph VI. of the Decision and Order.

V.

IT IS FURTHER ORDERED that Respondent J&J shall notify the Commission at least thirty (30) days prior to:

- A. any proposed dissolution of Respondent J&J;
- B. any proposed acquisition, merger or consolidation of Respondent J&J; or
- C. any other change in Respondent J&J including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

VI.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Respondents, the Commission may, at its discretion, require Respondents to produce any and all documents, records, information, and data in their possession, custody, or control that are relevant to the Commission's investigation of Respondent J&J's compliance with the Order.

- by Respondents at the request of the authorized representative(s) of the Commission; and
- B. to interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

VII.

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate on the earlier of:

- A. Three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. The day after the divestiture and transfer of the Divestiture Assets, as described in and required by the attached Decision and Order, is completed and the Interim Monitor, in consultation with Commission staff and an Acquirer, notifies the Commission that an Acquirer's transition is complete.

By the Commission, Commissioner Harbour, Commissioner Kovacic, and Commissioner Rosch recused.

Donald S. Clark
Secretary

SEAL
ISSUED: December 12, 2006