

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

COMMISSIONERS: **Jon Leibowitz, Chairman**
 J. Thomas Rosch
 Edith Ramirez
 Julie Brill

_____)
In the Matter of)
)
VALEANT PHARMACEUTICALS INTERNATIONAL, INC.,) **Docket No. C-4343**
a corporation.)
_____)

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission (“Commission”), having initiated an investigation of the owned subsidiary of Johnson & Johnson, and Respondent having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

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 Valeant is a corporation organized, existing and doing business under and by virtue of the laws of Canada, with its corporate head office and principal place of business located at 7150 Mississauga Road, Mississauga, Ontario L5N 8M5, Canada.
2. Johnson & Johnson is a corporation organized, existing and doing business under and by virtue of the laws of New Jersey, with its headquarters address located at One Johnson & Johnson Plaza, New Brunswick, New Jersey 08933, and the address of its wholly owned subsidiary, Janssen Pharmaceuticals, Inc., located at 1125 Trenton-Harbourton Road, Titusville, New Jersey 08560.
3. The Commission has jurisdiction of the subject matter of this proceeding and of the Respondent, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order to Maintain Assets, the following definitions and the definitions used in the Consent Agreement and the proposed Decision and Order (and when made final and effective, the Decision and Order), which are incorporated herein by reference and made a part hereof, shall apply:

- A. “Valeant” or “Respondent” means Valeant P

- E. "Orders" means the Decision and Order and this Order to Maintain Assets.
- F. "Refissa Product Business" means the business of the Respondent within the Geographic Territory specified in the Decision and Order related to each of the Refissa Products, including the research, Development, manufacture, distribution, marketing, and sale of each Refissa Product and the assets related to such business, including, without limitation, the Refissa Product Assets.

II.

IT IS FURTHER ORDERED that from the date this Order to Maintain Assets becomes final and effective:

- A. Until Respondent fully transfers and delivers the Refissa Product Assets to Spear, Respondent shall take such actions as are necessary to maintain the full economic viability, marketability and competitiveness the Refissa Product Business, to minimize any risk of loss of competitive potential for such Refissa Product Business, and to prevent the destruction, removal, wasting, deterioration, or impairment of such Refissa Product Business except for ordinary wear and tear. Respondent shall not sell, transfer, encumber or otherwise impair such Refissa Product Assets (other than in the manner prescribed in the Decision and Order) nor take any action that lessens the full economic viability, marketability or competitiveness of the related Refissa Product Business.
- B. Until Respondent fully transfers and delivers the Refissa Product Assets to Spear, Respondent shall maintain the operations of the Refissa Product Business in the regular and ordinary course of business and in accordance with past practice (including regular repair and maintenance of the assets of such business) and/or as may be necessary to preserve the marketability, viability, and competitiveness of the Refissa Product Business and shall use its best efforts to preserve the existing relationships with the following: suppliers; vendors and distributors; the High Volume Accounts; customers; Agencies; employees; and others having business relations with the Refissa Product Business. Respondent's responsibilities shall include, but are not limited to, the following:
 - 1. providing the Refissa Product Business with sufficient working capital to operate at least at current rates of operation, to meet all capital calls with respect to such business and to carry on, at least at their scheduled pace, all capital projects, business plans and promotional activities for such Refissa Product Business;
 - 2. continuing, at least at their scheduled pace, any additional expenditures for the Refissa Product Business authorized prior to the date the Consent Agreement was signed by Respondent including, but not limited to, all research, Development, manufacturing, distribution, marketing and sales expenditures;

3. providing such resources as may be necessary to respond to competition against each of the Refissa Products and/or to prevent any diminution in sales of each of the Refissa Products during and after the Acquisition process and prior to the complete transfer and delivery of the related Refissa Product Assets to Spear;
4. providing such resources as may be necessary to maintain the competitive strength and positioning of each of the Refissa Products at the related High Volume Accounts;
5. making available for use by the Refissa Product Business funds sufficient to perform all routine maintenance and all other maintenance as may be necessary to, and all replacements of, the assets related to such business, including

- a. the requirements of this Order;
 - b. Respondent's obligations to Spear under the terms of any related Remedial Agreement; or
 - c. applicable Law;
4. not disclose or convey any Confidential Business Information, directly or indirectly, to any Person except to Spear or other Persons specifically authorized by Spear to receive such information; and
 5. not provide, disclose or otherwise make available, directly or indirectly, any Confidential Business Information related to the marketing or sales of the Refissa Products to the employees associated with business related to those Retained Products that contain the same active pharmaceutical ingredient as the Refissa Products.
- E. Not later than thirty (30) days from the earlier of the Closing Date or the date that this Order to Maintain Assets becomes final and effective, Respondent shall provide to all of Respondent's employees and other personnel who may have access to Confidential Business Information related to the Refissa Products notification of the restrictions on the use of such information by Respondent's personnel. Respondent shall give such notification by e-mail with return receipt requested or similar transmission, and keep a file of such receipts for one (1) year after the Closing Date. Respondent shall provide a copy of such notification to Spear. Respondent shall maintain complete records of all such agreements at Respondent's registered office within the United States and shall provide an officer's certification to the Commission stating that such acknowledgment program has been implemented and is being complied with. Respondent shall provide the Spear with copies of all certifications, notifications and reminders sent to Respondent's personnel.

competitive potential for the Refissa Product Business within the Geographic Territory, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Refissa Product Assets except for ordinary wear and tear.

III.

IT IS FURTHER ORDERED that:

- A. At any time after Respondent signs the Consent Agreement in this matter, the Commission may appoint a monitor (“Interim Monitor”) to assure that Respondent expeditiously complies with all of its obligations and performs all of its responsibilities as required by the Orders and the Remedial Agreements.
- B. The Commission shall select the Interim Monitor, subject to the consent of Respondent, which consent shall not be unreasonably withheld. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of a proposed Interim Monitor within ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed Interim Monitor, Respondent shall be deemed to have consented to the selection of the proposed Interim Monitor.
- C. Not later than ten (10) days after the appointment of the Interim Monitor, Respondent shall execute an agreement that, subject to the prior approval of the Commission, confers on the Interim Monitor all the rights and powers necessary to permit the Interim Monitor to monitor Respondent’s compliance with the relevant requirements of the Orders in a manner consistent with the purposes of the Orders.
- D. If an Interim Monitor is appointed, Respondent shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Interim Monitor:
 1. The Interim Monitor shall have the power and authority to monitor Respondent’s compliance with the divestiture and asset maintenance obligations and related requirements of the Orders, 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 Orders 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 date of completion by the Respondent of the divestiture of all Refissa Product Assets and the transfer and delivery of the related Confidential Business Information in a manner that fully satisfies the requirements of the Orders;

provided, however, that the Interim Monitor's service shall not exceed five (5) years from the Order Date;

provided, further, that the Commission may extend or modify this period as may be necessary or appropriate to accomplish the purposes of the Orders.

4. Subject to any demonstrated legally recognized privilege, the Interim Monitor shall have full and complete access to Respondent's personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Interim Monitor may reasonably request, related to

- 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

