801(a) Generally

December 10, 1996

Dear Mr. Smith:

I write to confirm your advice concerning the [illegible] to acquire a patent license from Company Q. Assume for the sake of the discussion that P is a $100 million person, Q is a $10 million person, and P has valued the license at more than $15 million.

The question is whether the license is "exclusive" for H-S-R purposes. The patent covers a drug delivery system used in cosmetic skin creams that are used for dry skin, wrinkles and the [illegible] incorporate the technology, through physician channels of distribution. The proposed license agreement would grant P the exclusive right to sell the creams through physician channels. Q and its cosmetic company licensees would retain the right to sell exactly the same cream through retail or other non-physician channels.

You advised that under these circumstances, the license from Q to P will not be considered by the Staff to be the kind of exclusive license whose acquisition could require reporting. (See ABA, Premerger Notification Practice Manual, Interpretation No. 49.) You observed that the continued availability to consumers of the same product from other sources alleviates the kind of potential antitrust risk that might be thought to flow from exclusivity.

If this letter does not accurately describe your advice, please give me a call as soon as you can. As always, I ~~am very grateful for your prompt and thorough consideration of~~ our question.

Yours

Richard B. Smith, Esq.
Premerger Notification Office
Bureau of Competition - Room 301
Federal Trade Commission
Washington, DC 20580

Via Federal Express

12/12/96 - Advised writer that since only an exclusive distribution right was being granted, the PMN Office would not view such transfer as reportable under the principles of ABA Letter #49. Retains the right (as do the other licensees) to sell the same product thru other channels of distribution.

R B Smith