

December 10, 1996

Dear Mr. Smith:

I write tomanfirm mour admice concerning the

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.

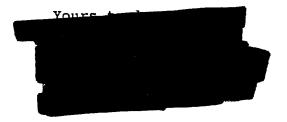
The question is whether the license is "exclusive" for H-S-R purposes. The patent covers a drug delivery system used in cosmetic skin creams that are used for dry skin, wrinkles and the

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.



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

## Via Federal Express

chilarine destruction right was been granted the P the Oxface would not view such transfer as reportable under the purciples of ABA Setter # 49. Philaris the right (as do to all successed to sell the same qualitation other channels of custometers.