

CONCURRING STATEMENT OF COMMISSIONER ORSON SWINDLE

in *Novartis Corp., et al.*, Dkt. No. 9279

...for a stay pending appeal, review of ...
IV of the Order. I have voted in favor of ...
...separately to explain the differences ...
...and those of the majority.

The Commission has granted Novartis's petition for the corrective advertising provision contained in Part IV of the Order. However, I am writing separately to explain the differences between my reasons for granting the petition and those of the majority.

When deciding whether to grant a stay, I consider: 1) the likelihood of the applicant's success on appeal; 2) whether the applicant will suffer irreparable harm if the stay is granted; 3) whether there are other factors that weigh in favor of or against the stay; and 4) whether the stay is in the public interest.

The Commission considers four factors when deciding whether to grant a stay: 1) the likelihood of the applicant's success on appeal; 2) whether the applicant will suffer irreparable harm if the stay is granted; 3) whether there are other factors that weigh in favor of or against the stay; and 4) whether the stay is in the public interest.

In this case, I conclude that the evidence does not establish a substantial likelihood of success on appeal. The Commission's decision to grant the stay is based on the fact that the evidence does not establish a substantial likelihood of success on appeal. I conclude that the evidence does not establish a substantial likelihood of success on appeal. In addition, the Commission's decision to grant the stay is based on the fact that the evidence does not establish a substantial likelihood of success on appeal. I conclude that the evidence does not establish a substantial likelihood of success on appeal. Finally, the Commission's decision to grant the stay is based on the fact that the evidence does not establish a substantial likelihood of success on appeal. I conclude that the evidence does not establish a substantial likelihood of success on appeal.

therefore postponed, consumers are unlikely to suffer harm because there was insufficient

the majority, I do not believe that the record shows any lingering effect, it follows that there is no consumer injury if the Commission grants a stay. Finally, I conclude that the stay is in the public interest because it prevents a possible injury to consumers.

factors to be evaluated under Rule 37(c) weigh in favor of the majority of the conclusions that I reached just over two months ago. Accordingly, I agree that the appropriate result there is to stay the corrective advertising portion of the Order.

My determination that a stay of granting a stay is a logical outgrowth of a dissenting from the imposition of a stay. I agree that the appropriate result there is to stay the corrective advertising portion of the Order.

with everything that the majority has previously said and

In contrast, the logical outgrowth of a dissenting from the imposition of a stay is to grant a stay.

of the record rather than reasoning and I believe it to the Court of Appeals for the District of Columbia Circuit to determine whether the corrective advertising provision can be sustained in light of these clear discrepancies.

done in this case. I believe it is a logical outgrowth of a dissenting from the imposition of a stay. I believe it is a logical outgrowth of a dissenting from the imposition of a stay. I believe it is a logical outgrowth of a dissenting from the imposition of a stay.

disparaging advertisements. I want to reiterate

Novartis

provision that

preoccupation with corrective advertising. I find especially puzzling the order

allowing Novartis to count toward that \$8 million figure its expenditures for its second broadcast

advertising. I believe it is a logical outgrowth of a dissenting from the imposition of a stay.