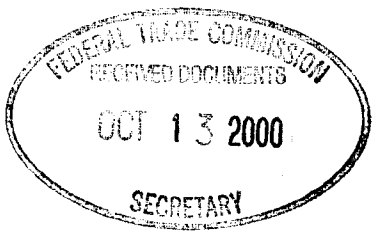
UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION



In the Matter of	)	
	)	
HOECHST MARION ROUSEL, INC., a corporation,	)	
	)	
CARDERM CAPITAL L.P., a limited partnership,	)	Docket No. 9293
	)	
and	)	
	)	
ANDRX CORPORATION, a corporation.	)	
	)	

BARR LABORATORIES, INC.'S MOTION TO QUASH NON-PARTY SUBPOENAS ISSUED BY ANDRX CORPORATION

Pursuant to Rule 3.34(c) of the Federal Trade Commission's Rules of Practice, Barr Laboratories, Inc. ("Barr") hereby moves to quash the non-party subpoenas served on it by Andrx Corporation. The grounds for this motion are set forth in the attached Memorandum in Support of Barr's Motion to Quash and Declaration of Mark L. Kovner, dated October 13, 2000. Barr's good faith efforts to resolve its objections to the subpoenas, pursuant to Rule 3.22(f) of the Federal Trade Commission's Rules of Practice, are set forth in the attached Declaration of Mark L. Kovner, dated October 13, 2000.

Dated: October 13, 2000
Washington, D.C.

KIRKLAND & ELLIS

Mark L. Kovner
Matthew S. Wild
655 15th Street, N.W., Suite 1200
Washington, D.C. 20005
(202) 879-5000

Attorneys for Barr Laboratories, Inc.

CERTIFICATE OF SERVICE

I, Matthew S. Wild, hereby certify that on October 13, 2000, a copy of Barr Laboratories Inc.'s Motion to Quash Non-Party Subpoenas Issued by Andrx Corporation and accompanying Memorandum of Barr Laboratories, Inc. in Support of Its Motion to Quash, and Declaration of Mark L. Kovner, dated October 13, 2000 with annexed exhibits were served by hand delivery or Federal Express to the following persons:

Richard Feinstein
Bureau of Competition
Federal Trade Commission
601 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Hon. D. Michael Chappell
Administrative Law Judge
Federal Trade Commission, Room 104
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Markus H. Meir
Bureau of Competition
Federal Trade Commission
601 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

D. Edward Wilson, Jr.
Shook, Hardy & Bacon
600 14th Street, N.W.
Washington, D.C. 20005-2004

Jonathan D. Lupkin
Solomon, Zauderer, Ellenhorn,
Frischer & Sharp
45 Rockerfeller Plaza
New York, N.Y. 10111

Peter O. Safir
Kleinfeld, Kaplan & Becker
1140 19th Street, N.W., 9th Floor
Washington, D.C. 20036

Matthew S. Wild

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of		
HOECHST MARION ROUSEL, INC., a corporation,	)	
CARDERM CAPITAL L.P., a limited partnership,	)	Docket No. 9293
and	)	
ANDRX CORPORATION, a corporation.	)	

**MEMORANDUM OF BARR LABORATORIES, INC.
IN SUPPORT OF ITS MOTION TO QUASH**

PRELIMINARY STATEMENT

The Federal Trade Commission (the "Commission") brought this proceeding against Andrx Corporation ("Andrx") and Hoechst Marion Rousel, Inc. ("Hoechst"), alleging that various agreements between them in connection with a patent litigation concerning Hoechst's brand name hypertension drug, Cardizem CD, and Andrx's generic bioequivalent, violate the antitrust laws. Andrx has asserted as an affirmative defense that the Commission "unlawfully and arbitrarily . . . singled out Andrx," in the prosecution of this case. (Andrx Answer ¶ 51.) Apparently under the guise of this defense, Andrx is attempting to obtain discovery from the highly confidential files of Barr and Andrx's other actual or potential competitors including - Elan, Inc., Shering Plough Corporation and Upsher-Smith Laboratories, Inc. - seeking information concerning any settlement agreements these parties have involving any brand named drug companies. Andrx seeks this

discovery despite that: (1) Barr and the others are not parties to this proceeding, and (2) the settlement agreements do not involve any drugs or relevant markets at issue this proceeding.

Courts and the Commission have rejected the "selective enforcement" defense as a matter of law. *See, e.g., FTC v. Universal-Rundle Corp.*, 387 U.S. 244, 249-50 (1967) ("although an allegedly illegal practice may appear to be operative throughout an industry," the Commission's discretionary judgment about who to prosecute within an industry cannot be overturned "in the absence of a patent abuse of discretion") (internal citations and quotations omitted); *In re Synchronal Corp.*, 1992 FTC LEXIS 61, at *4 (March 5, 1992) ("That other competitors engaged in the same practices alleged in the Complaint is not a defense."). Accordingly, the Commission has routinely quashed subpoenas based on such a defense. *See, e.g., In re Outdoor World Corp.*, 1989 FTC LEXIS 142, at *2 (Nov. 3, 1989) (quashing a subpoena that requested documents needed "to prove . . . affirmative defenses that [the Respondent] has been unfairly singled out from an industry where the practice alleged in the complaint is rampant" because the defense failed as a matter of law).[1]

---

[1] Even if a "selective enforcement" defense were legally cognizable, there appears to be no factual support for Andrx's argument. The Commission recently obtained a consent agreement involving an agreement between drug manufacturers relating to the settlement of a patent litigation which had the effect of delaying generic entry. *In re Abbott Laboratories*, Docket No. C-3945, Decision and Order (May 22, 2000). Moreover, on October 11, 2000, the Commission "announced that it proposes to conduct a focused study of generic drug competition, and requested public comment on the process it would use to collect relevant information from manufacturers nationwide. The proposed study would examine whether brand-name and generic drug manufacturers have entered into agreements, or have used other strategies, to delay competition from generic versions of patent-protected drugs." FTC Press Release, "FTC to Study Generic Drug Competition" (Oct.11, 2000). The Commission also confirmed that "it is investigating the possibility of similar anticompetitive behavior [to that of Hoechst and Andrx]" involving an agreement between manufacturers regarding Taxol. *Id.*

Moreover, the information sought by Andrx's subpoenas is highly confidential and would provide Andrx and Hoechst with sensitive information relating to Barr's new drug research, costs and marketing. The confidential nature of the information sought outweighs its production.

Finally, the Protective Order is inadequate to safeguard the confidentiality of the information sought. For example, the Protective Order allows, *inter alia*, witnesses (expect officers, directors or employees of Respondents or other pharmaceutical companies) and temporary employees of the Respondents' law firms to have access to Barr's confidential material. The Protective Order fails to restrict the number of copies that the law firms may make of the documents, require that the documents be kept in a secure area or restrict access to only those personnel who are involved in the proceeding. The Protective Order is simply deficient.

FACTS

In this proceeding, the Commission charges that the Andrx-Hoechst agreements violate § 1 of the Sherman Act. Andrx has issued a subpoena to Barr requesting six broad categories of documents, including Barr's settlements of patent litigations and another litigation with a pharmaceutical company and all documents relating to them, particularly any communications with the FTC about these agreements. Specifically, the responsive documents relate to Barr's separate and independent settlement agreements with: (i) Ely Lilly & Co. involving Prozac, (ii) Bayer AG involving Cipro, (iii) Imperial Chemical Industries PLC involving Tamoxifen, and (iv) DuPont Pharmaceuticals, Inc. involving Warfarin. Andrx also seeks to take Barr's deposition for information relating to these agreements. Notably, each of these agreements and most of the other documents responsive to Andrx's subpoena contain confidentiality provisions and trade secrets. These confidentiality provisions are fully justified as these agreements and related documents

contain highly sensitive information relating to, *inter alia*, new drug research, transfer pricing of drugs, expenditures for research and development, available supply of certain drugs, entry of Barr's generic versions of brand named drugs, and Barr's rationale in resolving and litigating intellectual property disputes.

However, none of these agreements or related documents are remotely relevant to the drug involved in this proceeding– Cardizem CD, used to treat hypertension. Rather, these drugs are an antidepressant, antibiotic, chemotherapy treatment, and blood thinner. Nor was Andrx a party to these litigations or agreements. Indeed, Barr's litigation with DuPont did not even involve patent infringement or validity issues.

Despite the fact that the agreements are clearly irrelevant, Barr's counsel attempted to accommodate Andrx in an effort not burden the Commission with wasteful litigation. Where available, Barr has produced public, redacted versions of agreements and other responsive, public documents to Andrx's counsel for use in this proceeding. Even though Anrdx has no entitlement to the discovery it seeks, it has persisted in demanding highly confidential information from Barr, necessitating Barr's instant motion to quash. The substance of these discussions are set forth in the accompanying declaration of Barr's counsel, Mark L. Kovner.

ARGUMENT

I. The Subpoenas Seek Information That Is Relevant Neither To The Commission's Charges Nor Any Valid Defense

Andrx may seek discovery in FTC proceedings only "to the extent that it may be reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of any respondent." 16 C.F.R. § 3.31(c)(1) (2000). Accordingly, a subpoena issued in an FTC proceeding should not be enforced when the information sought is not "reasonably relevant" to the allegations of the complaint or to any valid defenses. *See FTC* v. *Invention Submission Corp.*, 965 F.2d 1086, 1089 (D.C. Cir. 1992), *cert. denied*, 507 U.S. 910 (1993); *FTC v. Anderson*, 631 F.2d 741, 745 (D.C. Cir. 1979). The "relevance standard" for discovery is "not without bite." *Food Lion Corp. v. United Food & Commercial Workers Int'l Union AFL-CIO-CLC,* 103 F.3d 1007, 1013 (D.C. Cir. 1997) (holding subpoenaed documents were irrelevant because "[e]ven if [we] were correct that the fourth-party documents . . . might lead to evidence of other corporate campaigns carried on by other unions against other employers, we do not see how this evidence would bear on UFCW's intent"). Accordingly, Andrx's subpoenas should be quashed because they seek information from Barr that is irrelevant to both the Commission's charges and any valid defense.

None of Andrx's document requests deal with subject matter of the FTC's claim, to wit, that the Andrx-Hoechst agreements harmed competition in the market for Cardizem CD and its generic equivalent. Rather, all of the requests deal with Barr's patent settlement agreements and other agreements (and related documents) involving products - Prozac, Tamoxifen, Cipro and

Warfarin – that are not in the relevant market. As noted, Cardizem is an anti-hypertension drug while the drugs covered by the subpoena to Barr are an antidepressant, antibiotic, chemotherapy treatment and blood thinner. Andrx was neither a party to the litigations, nor to the agreements. These documents have no bearing on the Commission's charges.

Moreover, the subpoenas do not seek information that is "reasonably relevant" to any valid defense in this action. Andrx's subpoenas appear to be issued to support its twelfth affirmative defense -- namely, that the "FTC is acting unlawfully and arbitrarily in attempting to single out Andrx for challenge with respect to the [] commonplace provisions [of the Andrx-Hoechst agreements]." Andrx Answer ¶ 51. However, this defense -- which is the subject of a pending motion to strike by Complaint Counsel -- has been repeatedly rejected by the Supreme Court. *See, e.g., Universal-Rundle Corp.*, 387 U.S. at 249 - 50 (holding that the fact that the Commission may have singled out one firm in "an allegedly illegal practice [that] may appear to be operative throughout an industry," is not a defense "in the absence of a patent abuse of discretion"); *Moog Indus., Inc. v. FTC*, 355 U.S. 411, 413 (1958) ("whether all firms in the industry should be dealt with in a single proceeding or should receive individualized treatment are questions that call for discretionary determination by the administrative agency").

Accordingly, the Commission has routinely quashed requests for documents that relate to such defenses. For example, an ALJ quashed a subpoena on identical grounds holding:

> This demand is irrelevant. Absent a patent abuse of discretion, the Commission may proceed against one party without acting against others similarly situated.

In re Outdoor World Corporation, 1989 FTC LEXIS 142, at *2. The Commission has also repeatedly stricken selective enforcement defenses on this basis. *See, e.g., In re Synchronal Corp.*,

1992 FTC LEXIS 61, at *2 ("That other competitors engaged in the same practices alleged in the Complaint is not a defense."); *In re Rush-Hampton Indus., Inc.*, 1984 FTC LEXIS 94, at *2 (April 6, 1984) (similar); *In re The Kroger Co.*, 1977 FTC LEXIS 70, at *3 (Oct.18, 1977) (defense of selective enforcement is "insufficient as a matter of law").

Even if a selective enforcement defense were legally cognizable -- which it is not -- the requested settlement agreements and related documents would not be relevant to such a defense unless they contained terms that were in fact similar to the Andrx-Hoechst agreements. To entertain this defense would invite a series of protracted, collateral litigations concerning the similarity of each settlement agreement Andrx claims to be comparable to the Andrx-Hoechst agreements. The Commission has repeatedly foreclosed discovery into collateral matters. *See, e.g., In re Borg-Warner Corp.*, 1979 FTC LEXIS 166, at *7 (Oct.19, 1979) (quashing request for discovery that would generate "a number of collateral issues unduly delaying the proceeding").

Further, the agreements and documents requested by Andrx bear no relation to any rule of reason defense that Andrx may attempt to assert. First, at least one court has already determined that the rule of reason is inapplicable to the Andrx-Hoechst agreements. *In re Cardizem CD Antitrust Litig.*, 105 F. Supp. 2d 682, 705-706 (E.D. Mich. 2000) ("[T]his Court concludes that [Andrx-Hoechst agreement] is a naked horizontal market allocation agreement and thus constitutes a restraint of trade that is illegal *per se* under section 1 of the Sherman Antitrust Act."). Second, the rule of reason requires courts to weigh the procompetitive effects of the agreement at issue with the anticompetitive effects in the market in question, but Barr's agreements and related documents have no bearing on the market for Cardizem CD and its generic equivalent and say nothing about the

effects that the Andrx-Hoechst agreement may have had on competition in that market. Thus, they are irrelevant to any rule of reason analysis in this case.

II. The Confidential Nature Of The Information Sought Outweighs Its Production

The subpoenas should also be quashed because they seek highly sensitive and confidential business information from a potential competitor. Andrx's subpoenas seek testimony and documents relating to, *inter alia*, new drug research, transfer pricing of drugs, expenditures for research and development, available supply of certain drugs, entry of Barr's generic versions of brand named drugs, and Barr's rationale in resolving and litigating intellectual property disputes. It would be grossly unfair to require Barr to provide Andrx with such highly confidential information.

Parties seeking disclosure of confidential information typically must make a strong showing that the information sought is relevant and that there is a specific need for the documents in order to prepare for trial. *See, e.g., Am. Standard Inc. v. Pfizer, Inc.*, 828 F.2d 734, 741 (Fed. Cir. 1987) ("party seeking discovery . . . [must] establish that disclosure of trade secrets and confidential information is relevant and necessary to its case"); *Hartley Pen Co. v. U.S. Dist. Court for the So. Dist. of Cal., Cent. Div.*, 287 F.2d 324, 331 (9th Cir. 1961) (same), *cert. denied,* 375 U.S. 945 (1963); *Duplan Corp. v. Deering Milliken Inc.*, 397 F. Supp. 1146, 1186 (D.S.C. 1974) (requiring a "clear showing that the documents are relevant to the issues involved"). Andrx has not made such a showing. Indeed, any claim of relevance is non-existent or extremely weak and outweighed by the highly sensitive and confidential nature of the materials sought.

Courts have been particularly reluctant to force non-parties to disclose confidential information to their competitors. *See, e.g., American Standard,* 828 F.2d at 741 ("Courts have presumed that disclosure to a competitor is more harmful than disclosure to a non-competitor.") (collecting cases); *Echostar Communications Corp. v. News Corp. Ltd.*, 180 F.R.D. 391, 395 (D. Colo. 1998) (same) (internal quotations omitted); *United States v. Serta Assoc., Inc.*, 29 F.R.D. 136, 138 (N.D. Ill. 1961) (quashing subpoena because the court "is not convinced of the relevancy of the documents sought, and additionally because it would be most reluctant to force a non-party competitor to divulge confidential information"). Thus, Andrx's and Barr's relationship as actual or potential competitors strongly supports quashing the subpoenas.

The existence of a protective order does not alter the analysis. "A protective order is not a substitute for establishing relevance or need." *Micro Motion, Inc., v. Kane Steel Co., Inc.*, 894 F.2d 1318, 1325 (Fed. Cir. 1990); *see also Echostar*, 180 F.R.D. at 396 ("The protective order does not negate the fact that the information which is sought by Echostar is only marginally relevant, and does not negate the fact that Echostar has not established that denial of discovery will cause Echostar to suffer undue hardship.").

Moreover, the Protective Order is deficient in the following respects, *inter alia*:

- nothing prevents parties in other ongoing proceedings from obtaining access to any confidential documents turned over to Andrx in this proceeding;
- witnesses other than officers, directors and employees of Respondents or other pharmaceutical companies may be shown confidential documents during the course of their testimony;
- Respondents' law firms have no obligation to maintain the confidential documents in a locked, secure area away from personnel who are not working on this matter;

- Respondents' law firms may show temporary employees the confidential documents even though there is no assurance that these "temporary employees" will abide by the Protective Order;

- there are neither limits on the number of copies that may be made of the confidential documents, nor an obligation on Respondents' law firms to ***return*** all copies at the conclusion of the proceedings.

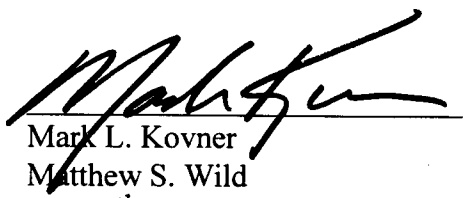
Thus, even if the Barr were to be required to turn over its confidential documents, it should not be ordered to do so until the loopholes in the Protective Order are eliminated.

CONCLUSION

Andrx's subpoenas should be quashed because they (1) seek information that is neither reasonably relevant to the Commission's charges nor any valid defense, (2) request that highly confidential and sensitive information be disclosed to a potential competitor without an adequate showing of need, and (3) the Protective Order is inadequate to protect Barr's confidential information.

Dated: October 13, 2000
Washington, D.C.

KIRKLAND & ELLIS



Mark L. Kovner
Matthew S. Wild
655 15th Street, N.W., Suite 1200
Washington, D.C. 20005
(202) 879-5000

Attorneys for Barr Laboratories, Inc.

UNITED SATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of	)	
	)	
HOECHST MARION ROUSEL, INC.,	)	
a corporation,	)	
	)	
CARDERM CAPITAL L.P.,	)	Docket No. 9293
a limited partnership,	)	
	)	
and	)	
	)	
ANDRX CORPORATION,	)	
a corporation.	)	
	)	

DECLARATION OF MARK L. KOVNER IN SUPPORT OF BARR LABORATORIES, INC.'S MOTION TO QUASH

MARK L. KOVNER, hereby declares as follows:

1. I am a member of Kirkland & Ellis, attorneys for Barr Laboratories, Inc. ("Barr"). My knowledge is personal and based on a review of the relevant documents.

2. I respectfully submit this declaration in support of Barr's motion to quash non-party subpoenas issued to it by Respondent Andrx Corporation ("Andrx"). The subpoenas are annexed hereto as Exhibit A. As set forth below and in the accompanying memorandum of law, the subpoenas should be quashed because they seek irrelevant information and the confidential nature of the information sought outweighs Respondent's purported "need" for the information. I also set forth below, pursuant to FTC Rule of Practice for Adjudicative Proceedings 3.22(f), my good faith efforts

to resolve Barr's objections to the subpoenas to avoid burdening these proceedings with the instant motion.

The Subpoena Seeks Irrelevant And Confidential Information

3. The subpoenas seek information relating to four separate and independent settlement agreements between Barr and: (i) Eli Lilly & Co. involving Prozac; (ii)Bayer AG involving Cipro; (iii) Imperial Chemical Industries PLC involving Tamoxifen; and (iv) Du Pont Pharmaceuticals, Inc. involving Warfarin. One subpoena also seeks a deposition for testimony relating to these settlement agreements. Andrx was neither a party to the underlying litigations, nor to these agreements. Indeed, unlike the settlement agreement between Respondents that formed the basis for the administrative complaint in these proceedings, the litigation between Barr and Du Pont did not involve patent issues.

4. Moreover, none of the drugs involved in Barr's various agreements or related responsive documents treat the same conditions as the anti-hypertensive drug, Cardizem CD, that is involved in Respondents' agreement. Prozac is an antidepressant; Cipro is antibiotic; Tamoxifen is a chemotherapy treatment; and Warfarin is a blood thinner. Thus, nothing about these drugs could have any impact on the relevant product market in these proceedings, anti-hypertensive drugs or Cardizem CD.

5. Barr's settlement agreements are highly confidential, and each contain confidentiality clauses. Similarly, most of the other documents Responsive to Andrx's subpoena– all of which are related to Barr's settlement agreements – are either governed by confidentiality clauses in the agreements or contain sensitive information such that disclosure to a potential competitor would be irreparable. These agreements and most of the other related documents

responsive to Andrx's subpoena contain information relating to, *inter alia*, new drug research, transfer pricing of drugs, expenditures for research and development, available supply of certain drugs, entry of Barr's generic versions of brand named drugs, and Barr's rationale in resolving and litigating intellectual property disputes. If compelled to turn them over, Respondents would gain access to Barr's core competitive information. Such a result would be grossly inequitable, particularly considering the non-existent or remote relevance that Barr's agreements would have to these proceedings. For the same reasons, deposition testimony on these subjects should be precluded.

Good Faith Efforts To Resolve Barr's Objections

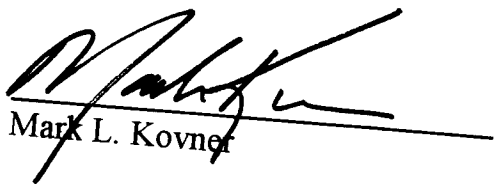
6. In September, 2000, I contacted Jonathan D. Lupkin, Esq., Andrx's attorney, in an effort to resolve the issues presented by this motion. By letters dated September 29, 2000 and October 10, 2000 (annexed collectively as Exhibit B), Mr. Lupkin agreed to extend Barr's time to move to quash the subpoena until October 16, 2000.

7. With the hope that Mr. Lupkin would withdraw the subpoena when he realized that Barr's settlement agreements were irrelevant and contained highly confidential information, I allowed Mr. Lupkin to review some of Barr's agreements at my firm's offices in New York. *See* Mr. Lupkin's letter to me dated October 3, 2000 (annexed as Exhibit C).

8. Despite their clear lack of relevance, Mr. Lupkin persisted in demanding copies of the agreements and related documents for Andrx. In a final attempt to avoid motion practice, I provided Mr. Lupkin with redacted copies of two supply and distribution agreements between Barr and Bayer and Barr and Imperial Chemical Industries which contain core information concerning the nature of those two settlements that Andrx seeks and other public, responsive documents. *See* Matthew S. Wild's transmittal letters to Mr. Lupkin dated October 10, 2000; October 12, 2000

(annexed collectively as Exhibit D). However, Mr. Lupkin has persisted in demanding the confidential information that Barr needed redacted as well as additional confidential information. Accordingly, Barr was left with no alternative but to move to quash Andrx's subpoenas.

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 13, 2000.



Mark L. Kovner

RECEIVED
AUG 08 2000
MARY ZEIGER

SUBPOENA AD TESTIFICANDUM

Issued Pursuant to Rule 3.34(a)(1), 16 C.F.R. § 3.34(a)(1) (1997)

1 TO

Barr Laboratories
By one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf concerning the subject matter of this action and/or of the subject matter of the documents described in Exhibit A
2 Quaker Road, PO Box 2900
Pomona, NY 10970-2900

2 FROM

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

This subpoena requires you to appear and give testimony, at the date and time specified in Items 5 and 6, at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

3. PLACE OF HEARING

SOLOMON, ZAUDERER, ELLENHORN, FRISCHER & SHARP
45 Rockefeller Plaza
New York, NY 10111
or at such other location as is mutually agreed upon.

4 YOUR APPEARANCE WILL BE BEFORE

Notary Public
(at the request of Respondent Andrx Corporation)

5. DATE AND TIME OF HEARING OR DEPOSITION

Aug. 28, 2000 at 10:30 a.m.

6 SUBJECT OF PROCEEDING

In the matter of Hoechst Marion Roussel, Inc., et al.

7 ADMINISTRATIVE LAW JUDGE

The Honorable D. Michael Chappell

Federal Trade Commission
Washington, D.C. 20580

8. COUNSEL REQUESTING SUBPOENA

SOLOMON, ZAUDERER, ELLENHORN, FRISCHER & SHARP
45 Rockefeller Plaza, 7th Floor
New York, NY 10111

Attorneys for Respondent Andrx Corporation

DATE ISSUED

8 8 2000

SECRETARY'S SIGNATURE

Donald S. Clark

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed with the Secretary of the Federal Trade Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 8, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to Counsel listed in Item 8 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Counsel listed in Item 8.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

○ in person.

○ by registered mail

○ by leaving copy at principal office or place of business, to wit:

_____

_____

_____

_____

on the person named herein on:

_____
(Month, day and year)

_____
(Name of person making service)

_____
(Official title)

SUBPOENA DUCES TECUM

Issued Pursuant to Rule 3.34(b), 16 C.F.R. § 3.34(b)(1997)

1 TO

Barr Laboratories
By one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf concerning the subject matter of this action and/or of the subject matter of the documents described in Exhibit A
2 Quaker Road, PO Box 2900
Pomona, NY 10970-2900

2. FROM

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things - or to permit inspection of premises - at the date and time specified in Item 5, at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

3 PLACE OF PRODUCTION OR INSPECTION

SOLOMON, ZAUDERER, ELLENHORN, FRISCHER & SHARP
45 Rockefeller Plaza
New York, NY 10111
or at such other location as is mutually agreed upon

4. MATERIAL WILL BE PRODUCED TO Notary Public (at the request of Respondent Andrx Corporation)

5. DATE AND TIME OF PRODUCTION OR INSPECTION

Aug. 28, 2000 at 10:30 a.m.

6 SUBJECT OF PROCEEDING

In the matter of Hoechst Marion Roussel, Inc., et al.

7 MATERIAL TO BE PRODUCED

See Exhibit A

8 ADMINISTRATIVE LAW JUDGE

The Honorable D. Michael Chappell

Federal Trade Commission
Washington, D.C. 20580

9. COUNSEL REQUESTING SUBPOENA

SOLOMON, ZAUDERER, ELLENHORN, FRISCHER & SHARP
45 Rockefeller Plaza, 7th Floor
New York, NY 10111

Attorneys for Respondent Andrx Corporation

DATE ISSUED

SECRETARY'S SIGNATURE

Donald S. Clark

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed with the Secretary of the Federal Trade Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 9, and upon all other parties prescribed by the Rules of Practice.

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This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served (check the method used)

- ○ in person
- ○ by registered mail.
- ○ by leaving copy at principal office or place of business, to wit:

_____

_____

_____

_____

on the person named herein on:

_____
(Month, day, and year)

_____
(Name of person making service)

_____
(Official title)

EXHIBIT A

1. All documents sufficient to identify each settlement or partial settlement of patent litigation, concerning which your Company is aware, involving an innovator or brand name pharmaceutical company, and a generic company, that involved any form of:

(a) payment from the brand name company to the generic company; or

(b) licensing and/or royalty arrangement between the brand name company and the generic company.

2. All operative agreements involved in the settlements or partial settlements referenced in Request No. 1 above, together with any analyses of any such agreements.

3. Copies of all Licensing Agreements and Joint Development Agreements to which your Company is or was a party, that involved any form of:

(a) payment from the brand name company to the generic company; or

(b) licensing and/or royalty arrangement between the brand name company and the generic company.

4. All documents relating to any agreements or contracts between:

(a) you and ICI/Zeneca concerning or relating to tamoxifen;

(b) you and Bayer Corporation concerning or relating to ciprofloxacin;

(c) you and DuPont Pharmaceuticals, Inc. concerning or relating to coumadin; and

(d) you and Eli Lilly and Company concerning or relating to prozac.

5. All communications and documents which relate to communications between the Company and the FTC concerning any of the agreements

referenced in Requests Nos. 1-4 above.

6. Documents concerning any decision, by your Company or any other, to market or not market a pharmaceutical product in the context of an actual or threatened patent litigation with respect to that product.

DEFINITIONS AND INSTRUCTIONS

1. Unless otherwise stated, the requests herein refer to the time period of January 1, 1992 through present.

2. As used herein, the words "you" or "your," "your Company," or "the Company" shall mean the individual and/or entity to whom this subpoena was directed, and each of its predecessors, successors, groups, divisions, subsidiaries and affiliates and each of your present or former officers, directors, employees, agents, controlling shareholders (and any entity controlled by any such controlling shareholder) or other person acting for or on behalf of any of them.

3. As used herein, the terms "document" or "documents" or "documentation" include these terms as defined by 16 C.F.R. § 3.34(b) and, in addition, the original or drafts or any kind of written, printed, recorded or graphic matter or sound reproduction, however produced or reproduced, whether sent or received or neither, and all copies thereof which are different in any way from the original (whether by notation, indication of copies sent or received or otherwise) regardless of whether designated "Confidential," "Privileged" or otherwise and including, but not limited to, any correspondence, paper, book, account, drawing, agreement, contract, e-mail, handwritten notes, invoice, memorandum, telegram, object, opinion, purchase order, report, records, transcript, summary, study, survey recording of any telephone or other conversation, interviews or notes of any conference. The terms "document" or "documents" shall also

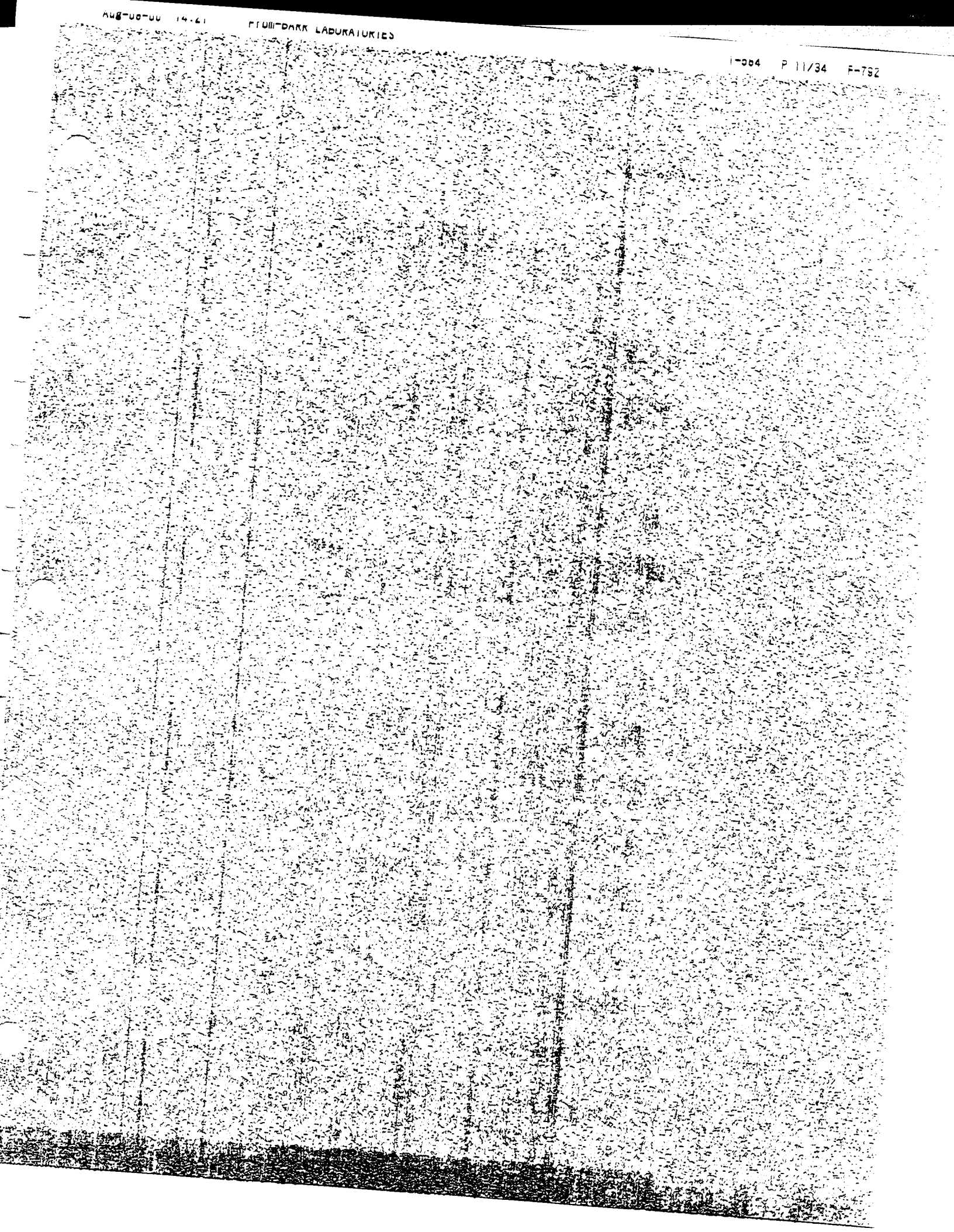
include data stored, maintained or organized electronically or magnetically or through computer equipment, translated, if necessary, by you into reasonably usable form, and film impressions, magnetic tape and sound or mechanical productions of any kind or nature whatsoever.

4. Except for privileged materials, produce each responsive document in its entirety by including all attachments and all pages, regardless of whether they directly relate to the specified subject matter. Submit any appendix, table, or other attachment by either physically attaching it to the responsive document or clearly marking it to indicate the responsive document to which it corresponds. Except for privileged material, do not mask, cut, expunge, edit, or delete any responsive document or portion thereof in any manner.

5. As used herein, the connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

6. The response to each document production request is to be numbered in a manner consistent with these requests and is to be preceded by the specific request.

7. If any form of privilege or immunity is claimed as a ground for withholding a response, submit a written statement that describes the factual basis of the purported privilege or claim of immunity in sufficient detail to permit the court to adjudicate the validity of the claim.



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of

HOECHST MARION ROUSSEL, INC.,
a corporation,

CARDERM CAPITAL L.P.,
a limited partnership,

and

ANDRX CORPORATION,
a corporation.

Docket No. 9293

PROTECTIVE ORDER GOVERNING DISCOVERY MATERIAL

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter (the "Matter") against improper use and disclosure of confidential information submitted or produced in connection with this Matter:

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material ("Protective Order") shall govern the handling of all Discovery Material, as hereafter defined.

DEFINITIONS

1. "Matter" means the matter captioned *In the Matter of Hoechst Marion Roussel, Inc., Carderm Capital L.P., and Andrx Corporation*, Docket Number 9293, pending before the Federal Trade Commission, and all subsequent appellate or other review proceedings related thereto.

2. "Commission" or "FTC" means the Federal Trade Commission, or any of its employees, agents, attorneys, and all other persons acting or purporting to act on its behalf.

excluding persons retained as consultants or experts for purposes of this Matter

3 "HMR" means Aventis Pharmaceuticals Inc , formerly known as Hoechst Marion Roussel, Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at Parsippany, New Jersey

4 "Carderm" means Carderm Capital L P , a limited partnership organized, existing, and doing business under and by virtue of the laws of the Delaware, with its office and principal place of business located at Hamilton, Bermuda.

5 "Andrx" means Andrx Corporation, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at Fort Lauderdale, Florida.

6 "Party" means either the FTC, HMR, Carderm or Andrx

7 "Respondents" means HMR, Carderm and Andrx

8 "Outside Counsel" means the law firm(s) that is/are counsel of record for Respondents in this Matter and its/their associated attorneys, persons regularly employed by such law firm(s) (including legal assistants, clerical staff, and information management personnel) and temporary personnel retained by such law firm(s) to perform legal or clerical duties, or to provide logistical litigation support with regard to this Matter, provided that any attorney associated with Outside Counsel shall not be a director, officer or employee of Respondents The term Outside Counsel does not include persons retained as consultants or experts for the purposes of this Matter

9 "Producing Party" means a Party or Third Party that produced or intends to produce Confidential Discovery Material to any of the Parties For purposes of Confidential Discovery Material of a Third Party that either is in the possession, custody or control of the FTC or has been produced by the FTC in this Matter, the Producing Party shall mean the Third Party that originally provided the Confidential Discovery Material to the FTC The Producing Party shall also mean the FTC for purposes of any document or material prepared by, or on behalf of the FTC

10 "Third Party" means any natural person, partnership, corporation, association, or other legal entity not named as a party to this Matter -- including without limitation Biovail Corporation ("Biovail") and Faulding Inc ("Faulding") -- and their employees, directors, officers, attorneys and agents

11 "Expert/Consultant" means experts or other persons who are retained to assist complaint counsel or Respondents' counsel in preparation for trial or to give testimony at trial

12 "Document" means the complete original or a true, correct and complete copy and any non-identical copies of any written or graphic matter, no matter how produced, recorded, stored or reproduced, including, but not limited to, any writing, letter, envelope, telegraph meeting minute, memorandum statement, affidavit, declaration, book, record, survey, map, study, handwritten note, working paper, chart, index, tabulation, graph, tape, data sheet, data processing card, printout, microfilm, index, computer readable media or other electronically stored data, appointment book, diary, diary entry, calendar, desk pad, telephone message slip, note of interview or communication or any other data compilation, including all drafts of all such documents. "Document" also includes every writing, drawing, graph, chart, photograph, phono

record, tape and other data compilations from which information can be obtained, and includes all drafts and all copies of every such writing or record that contain any commentary, notes, or marking whatsoever not appearing on the original

13 "Discovery Material" includes without limitation deposition testimony, deposition exhibits, interrogatory responses, admissions, affidavits, declarations, documents produced pursuant to compulsory process or voluntarily in lieu thereof, and any other documents or information produced or given to one Party by another Party or by a Third Party in connection with discovery in this Matter

14 "Confidential Discovery Material" means all Discovery Material that is designated by a Producing Party as confidential and that is covered by Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. § 46(f), and Commission Rule of Practice § 4.10(a)(2), 16 C.F.R. § 4.10(a)(2), submitted to the FTC pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 18a, or formal interpretations or rules promulgated thereunder, 16 C.F.R. Part 800, or Section 26(c)(7) of the Federal Rules of Civil Procedure and precedents thereunder. Confidential Discovery Material shall include non-public commercial information, the disclosure of which to Respondent or Third Parties would cause substantial commercial harm or personal embarrassment to the disclosing party. The following is a non-exhaustive list of examples of information that likely will qualify for treatment as Confidential Discovery Material: strategic plans (involving pricing, marketing, research and development, product roadmaps, corporate alliances, or mergers and acquisitions) that have not been fully implemented or revealed to the public, trade secrets; customer-specific evaluations or data (e.g., prices, volumes, or revenues); personnel files and evaluations; information subject to

confidentiality or non-disclosure agreements; proprietary technical or engineering information; proprietary financial data or projections, and proprietary consumer, customer or market research or analyses applicable to current or future market conditions, the disclosure of which could reveal Confidential Discovery Material

TERMS AND CONDITIONS OF PROTECTIVE ORDER

1 Discovery Material, or information derived therefrom, shall be used solely by the Parties for purposes of this Matter, and shall not be used for any other purpose, including without limitation any business or commercial purpose. The Parties, in conducting discovery from Third Parties, shall attach to such discovery requests a copy of this Protective Order and a cover letter that will apprise such Third Parties of their rights hereunder.

2 Discovery Material may be designated as Confidential Discovery Material by Producing Parties by placing on or affixing, in such manner as will not interfere with the legibility thereof, the notation "CONFIDENTIAL - FTC Docket No 9293" (or other similar notation containing a reference to this Matter) to the first page of a document containing such Confidential Discovery Material, or, by Parties by instructing the court reporter to denote each page of a transcript containing such Confidential Discovery Material as "Confidential." Such designations shall be made within fourteen (14) days from the initial production or deposition and constitute a good-faith representation by counsel for the Party or Third Party making the designations that the document constitutes or contains "Confidential Discovery Material."

3 To the extent any such material is made part of this proceeding, all documents heretofore obtained by compulsory process or voluntarily from any Party, regardless of whether

designated confidential by the Party, and transcripts of any investigational hearings, interviews and depositions, which were obtained during the pre-complaint stage of this Matter shall be treated as Confidential Discovery Material. Material previously produced by Respondents and designated as a "Confidential," regardless of whether such materials have been marked in accordance with paragraph 2 above, shall be treated as Confidential Discovery Material as provided herein. The material referred to in this paragraph shall only be available for use in this proceeding once an independent basis has been demonstrated for such use.

4. Confidential Discovery Material shall not, directly or indirectly, be disclosed or otherwise provided to anyone except, in accordance with paragraphs 5 and 6, to

(a) complaint counsel and the Commission, as permitted by the Commission's Rules of Practice,

(b) Outside Counsel,

(c) Experts/Consultants,

(d) witnesses or deponents at trial or deposition;

(e) the Administrative Law Judge and personnel assisting him;

(f) court reporters and deposition transcript reporters;

(g) judges and other court personnel of any court having jurisdiction over any appeal proceedings involving this Matter; and

(h) any author or recipient of Confidential Discovery Material (as indicated on the face of the document, record or material), and any individual who was in the direct chain of supervision of the author at the time the Confidential Discovery Material was created or received.

5. In addition to the above-designated persons, certain named designated

individuals and in-house counsel not to exceed two attorneys per corporate party who do not have day to day business responsibilities shall be provided with access on the condition that each such in-house counsel or designated executive signs a declaration in the form attached hereto as Exhibit "A," which is incorporated herein by reference For Respondent Carderm, the designated individual is Stephan Petri For Respondent HMR, the designated individual is Edward Stratemeier, Vice President and General Counsel For Respondent Andrx, the designated individual is Scott Lodin, Vice President and General Counsel

6 Confidential Discovery Material shall not, directly or indirectly, be disclosed or otherwise provided to an Expert/Consultant unless such Expert/Consultant agrees in writing:

(a) to maintain such Confidential Discovery Material in separate locked room(s) or locked cabinet(s) when such Confidential Discovery Material is not being reviewed;

(b) to return such Confidential Discovery Material to complaint counsel or Respondent's Outside Counsel, as appropriate, upon the conclusion of the Expert/Consultant's assignment or retention,

(c) to not disclose such Confidential Discovery Material to anyone, except as permitted by the Protective Order; and

(d) to use such Confidential Discovery Material and the information contained therein solely for the purpose of rendering consulting services to a Party to this Matter, including providing testimony in judicial or administrative proceedings arising out of this Matter

7 This paragraph governs the procedures for the following specified disclosures and challenges to designations of confidentiality

(a) Disclosure to Experts

If any Party desires to disclose Confidential Discovery Material to any expert who may testify, who is not an FTC employee, and who may have interests in the pharmaceutical industry beyond their employment as an expert in this Matter, the disclosing Party shall notify the Producing Party of its desire to disclose such material. Such notice shall identify the specific expert who may testify to whom the Confidential Discovery Material is to be disclosed. Such identification shall include, but not be limited to, the full name and professional address and/or affiliation of the proposed expert who may testify, and a current curriculum vitae of such expert identifying all other present and prior employers and/or firms in the pharmaceutical industry for which or on behalf of which the identified expert has been employed or done consulting work in the preceding four (4) years. The Producing Party may object to the disclosure of the Confidential Discovery Material within five (5) business days of receiving notice of an intent to disclose the Confidential Discovery Material to the identified expert by providing the disclosing Party with a written statement of the reasons for the objection. If the Producing Party timely objects, the disclosing Party shall not disclose the Confidential Discovery Material to the identified expert, absent a written agreement with the Producing Party or order of the Administrative Law Judge. The Producing Party lodging an objection and the disclosing Party shall meet and confer in good faith in an attempt to determine the terms of disclosure to the identified expert. If at the end of five (5) business days of negotiating the parties have not resolved their differences or if counsel determine in good faith that negotiations have failed, the disclosing Party may make written application to the Administrative Law Judge as provided by paragraph 7(c) of this Protective Order. If the Producing Party does not object to the disclosure of Confidential Discovery Material to the identified expert within five (5) business days, the

disclosing Party may disclose the Confidential Discovery Material to the identified expert

(b) Challenges to Confidentiality Designations

If any Party seeks to challenge a Producing Party's designation of material as Confidential Discovery Material or any other restriction contained within this Protective Order, the challenging Party shall notify the Producing Party and all Parties of the challenge to such designation. Such notice shall identify with specificity (i.e., by document control numbers, deposition transcript page and line reference, or other means sufficient to locate easily such materials) the designation being challenged. The Producing Party may preserve its designation within five (5) business days of receiving notice of the confidentiality challenge by providing the challenging Party and all Parties with a written statement of the reasons for the designation. If the Producing Party timely preserves its rights, the Parties shall continue to treat the challenged material as Confidential Discovery Material, absent a written agreement with the Producing Party or order of the Administrative Law Judge. The Producing Party preserving its rights and the challenging Party shall meet and confer in good faith in an attempt to negotiate changes to any challenged designation. If at the end of five (5) business days of negotiating the parties have not resolved their differences or if counsel determine in good faith that negotiations have failed, the challenging Party may make written application to the Administrative Law Judge as provided by paragraph 7(c) of this Protective Order. If the Producing Party does not preserve its rights within five (5) business days, the challenging Party may alter the designation as contained in the notice. The challenging Party shall notify the Producing Party and the other Party of any changes in confidentiality designations.

Regardless of confidential designation, copies of published magazine or

newspaper articles, and excerpts from published books and public documents filed with the Securities and Exchange Commission may be used by any Party without reference to the procedures of this subparagraph.

(c) Resolution of Disclosure or Confidentiality Disputes

If negotiations under subparagraphs 7(a)-(b) of this Protective Order have failed to resolve the issues, a Party seeking to disclose Confidential Discovery Material or challenging a confidentiality designation or any other restriction contained within this Protective Order may make written application to the Administrative Law Judge for relief. Such application shall be served on the Producing Party and the other Party, and be accompanied by a certification that the meet and confer obligations of this paragraph have been met, but that good faith negotiations have failed to resolve outstanding issues. The Producing Party and any other Party shall have five (5) business days to respond to the application, which time may be extended by the Administrative Law Judge. While an application is pending, the Parties shall maintain the pre-application status of the Confidential Discovery Material. Nothing in this Protective Order shall create a presumption or alter the burden of persuading the Administrative Law Judge of the propriety of a requested disclosure or change in designation.

8. Confidential Discovery Material shall not be disclosed to any person described in subparagraphs 4(b), 4(c) and 4(d) and paragraph 5 of this Protective Order until such person has executed and transmitted to Respondent's counsel or complaint counsel, as the case may be, a declaration or declarations, as applicable, in the form attached hereto as Exhibit "A," which is incorporated herein by reference. Respondents' counsel and complaint counsel shall maintain a file of all such declarations for the duration of the litigation. Confidential Discovery Material

shall not be copied or reproduced for use in this Matter except to the extent such copying or reproduction is reasonably necessary to the conduct of this Matter, and all such copies or reproductions shall be subject to the terms of this Protective Order If the duplication process by which copies or reproductions of Confidential Discovery Material are made does not preserve the confidentiality designations that appear on the original documents, all such copies or reproductions shall be stamped "CONFIDENTIAL - FTC Docket No 9293 "

9 The Parties shall not be obligated to challenge the propriety of any designation or treatment of information as confidential and the failure to do so promptly shall not preclude any subsequent objection to such designation or treatment, or any motion seeking permission to disclose such material to persons not referred to in paragraphs 4 and 5 above. If Confidential Discovery Material is produced without the legend attached, such document shall be treated as Confidential from the time the Producing Party advises complaint counsel and Respondents' counsel in writing that such material should be so designated and provides all the Parties with an appropriately labeled replacement. The Parties shall return promptly or destroy the unmarked documents

10 If the FTC (a) receives a discovery request that may require the disclosure by it of a Third Party's Confidential Discovery Material; or (b) intends to or is required to disclose, voluntarily or involuntarily, a Third Party's Confidential Discovery Material (whether or not such disclosure is in response to a discovery request), the FTC promptly shall notify the Third Party of either receipt of such request or its intention to disclose such material Such notification shall be in writing and, if not otherwise done, sent for receipt by the Third Party at least five (5) business days before production, and shall include a copy of this Protective Order and a cover letter that

will apprise the Third Party of its rights hereunder.

11 If anyone receives a discovery request in another proceeding that may require the disclosure of a Producing Party's Confidential Discovery Material, the subpoena recipient promptly shall notify the Producing Party of receipt of such request. Such notification shall be in writing and, if not otherwise done, sent for receipt by the Producing Party at least five (5) business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the Producing Party of its rights hereunder. The Producing Party shall be solely responsible for asserting any objection to the requested production. Nothing herein shall be construed as requiring the subpoena recipient or anyone else covered by this Order to challenge or appeal any such order requiring production of Confidential Discovery Material, or to subject itself to any penalties for noncompliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission.

12 This Order governs the disclosure of information during the course of discovery and does not constitute an *in camera* order as provided in Section 3.45 of the Commission's Rules of Practice ("Rule"), 16 C.F.R. § 3.45.

13 (a) The Commission's Rules of Practice require that material may not be withheld from the public record unless it falls within the scope of an order by the Administrative Law Judge that such material, or portions thereof, be placed *in camera*. 16 C.F.R. § 3.45(b) and (d). To comply with this rule, the Party seeking to introduce into evidence by filing a pleading, an exhibit thereto, or otherwise placing on the record Confidential Discovery Material ("filing Party") must first obtain an order by the Administrative Law Judge that such information has been granted *in camera* status.

An application for *in camera* treatment must (1) specifically identify or describe the materials for which *in camera* treatment is sought; (2) provide reasons for granting such materials *in camera* status, (3) specify the time period for which *in camera* treatment is sought for each document, and (4) attach as exhibits to the application the documents containing the specific information for which *in camera* treatment is sought

A blanket *in camera* order for an entire pleading is contrary to public policy and will not be granted The parties must specifically identify the portions of a pleading, document, deposition transcript, or exhibit for which *in camera* treatment is sought. Entire documents or exhibits will rarely, if ever, be eligible for *in camera* treatment. The parties are reminded that Rule 3 45 places the burden of showing that public disclosure will likely result in a clearly defined, serious injury upon the person requesting *in camera* treatment. In addition, to sustain the burden of proof, an application must be supported by proper evidence, such as affidavits, to support all factual issues *See* 16 C F R § 3 43

(b) The Scheduling Order requires the parties to file motions to request *in camera* treatment of materials marked confidential pursuant to a protective order no later than September 1 2000

A Party that has produced materials or information that it reasonably expects to include in a pleading, motion, exhibit or other paper to be filed with the Secretary ("pleading") and that it believes meets the standards for *in camera* treatment must file a motion with the Administrative Law Judge to request *in camera* treatment of such materials no later than September 1, 2000

A Party that has received materials or information from another Party or a

Third Party that it reasonably expects to include in a pleading must provide the opposing Party or Third Party with a list of such materials no later than August 18, 2000. A Third Party shall be provided with a copy of this Order along with such list. This list will not be filed with the Secretary's Office, but must be served on the Administrative Law Judge.

(c) If any Party seeks to introduce into evidence, by filing a pleading or otherwise placing on the record, information which includes its own Confidential Discovery Material which has not previously been granted *in camera* status, and the Party seeks to prevent its own materials or information from being placed on the public record, at least 10 days prior to filing such pleading, -- unless it is impracticable (e.g., when filing a response or reply brief) in which case at least 5 days prior to filing such pleading -- the Party shall make an application to the Administrative Law Judge to request that such materials or information be treated as *in camera* information.

If any Party seeks to introduce into evidence, by filing a pleading or otherwise placing on the record, information which includes another Party's Confidential Discovery Material which has not previously been granted *in camera* status, the filing Party must notify the other Party's counsel at least 14 days prior to such proposed filing -- unless it is impracticable (e.g., when filing a response or reply brief). If 14 days advance notice cannot be provided, the other Party's counsel must be notified as soon as possible and prior to the time of introduction of such documents or information. The Producing Party's counsel shall have 7 days from the date of notice to make an application to the Administrative Law Judge to request that such materials be treated as *in camera* information. The parties shall not file pleadings or attachments thereto that contain another Party's Confidential Discovery Material unless the Party

seeking to introduce such material has first obtained an *in camera* order or certifies that the other Party has been given proper notice prior to the introduction of such material

The parties shall not file pleadings or attachments thereto that contain a Third Party's Confidential Discovery Material unless the Party seeking to introduce such material has first obtained an *in camera* order or certifies that the Third Party has been given 14 days notice prior to the introduction of such material and a copy of this Order

(d) The parties are cautioned that compliance with this Order will require them to submit applications for *in camera* treatment in advance of filing motions which include confidential materials and that deadlines for filing motions attaching confidential materials will not be extended for failure to file applications for *in camera* treatment in a timely manner The parties are further cautioned that it is rarely necessary to attach confidential information in support of pleadings Absent strict adherence to these procedures, pleadings should be composed in a manner which sufficiently apprises the Court of the matter at issue and which does not identify or disclose any confidential information. Failure to comply with these procedures may result in pleadings or portions thereof being stricken from the record.

14 Nothing in this Protective Order shall be construed to conflict with the provisions of Sections 6, 10, and 21 of the Federal Trade Commission Act, 15 U S C §§ 46, 50, 57b-2, or with Rules 3.22, 3 45 or 4 11(b)-(e), 16 C F R. §§ 3.22, 3 45 and 4 11(b)-(e) [1] Any Party or Producing Party may move at any time for, treatment *in camera* of any Confidential

[1] The right of the Administrative Law Judge, the Commission, and reviewing courts to disclose information afforded *in camera* treatment or Confidential Discovery Material, to the extent necessary for proper disposition of the proceeding, is specifically reserved pursuant to Rule 3 45, 16 C F R. § 3 45

Discovery Material or any portion of the proceedings in this Matter to the extent necessary for proper disposition of the Matter

15 At the conclusion of this Matter, Respondent's counsel shall return to the Producing Party, or destroy, all originals and copies of documents and all notes, memoranda, or other papers containing Confidential Discovery Material which have not been made part of the record in this Matter Complaint counsel shall dispose of all documents in accordance with Rule 4 12, 16 C.F.R. § 4.12

16 The provisions of this Protective Order, insofar as they restrict the communication and use of Confidential Discovery Material shall, without written permission of the Producing Party or further order of the Administrative Law Judge hearing this Matter, continue to be binding after the conclusion of this Matter

17 This Protective Order shall not apply to the disclosure by a Producing Party or its Counsel of such Producing Party's Confidential Discovery Material to such Producing Party's employees, agents, former employees, board members, directors, and officers.

18. The production or disclosure of any Discovery Material made after entry of this Protective Order which a Producing Party claims was inadvertent and should not have been produced or disclosed because of a privilege will not automatically be deemed to be a waiver of any privilege to which the Producing Party would have been entitled had the privileged Discovery Material not inadvertently been produced or disclosed In the event of such claimed inadvertent production or disclosure, the following procedures shall be followed:

(a) The Producing Party may request the return of any such Discovery Material within twenty (20) days of discovering that it was inadvertently produced or disclosed

(or inadvertently produced or disclosed without redacting the privileged content). A request for the return of any Discovery Material shall identify the specific Discovery Material and the basis for asserting that the specific Discovery Material (or portions thereof) is subject to the attorney-client privilege or the work product doctrine and the date of discovery that there had been an inadvertent production or disclosure.

(b) If a Producing Party requests the return, pursuant to this paragraph, of any such Discovery Material from another Party, the Party to whom the request is made shall return immediately to the Producing Party all copies of the Discovery Material within its possession, custody, or control – including all copies in the possession of experts, consultants, or others to whom the Discovery Material was provided – unless the Party asked to return the Discovery Material in good faith reasonably believes that the Discovery Material is not privileged. Such good faith belief shall be based on either (i) a facial review of the Discovery Material, or (ii) the inadequacy of any explanations provided by the Producing Party, and shall not be based on an argument that production or disclosure of the Discovery Material waived any privilege. In the event that only portions of the Discovery Material contain privileged subject matter, the Producing Party shall substitute a redacted version of the Discovery Material at the time of making the request for the return of the requested Discovery Material.

(c) Should the Party contesting the request to return the Discovery Material pursuant to this paragraph decline to return the Discovery Material, the Producing Party seeking return of the Discovery Material may thereafter move for an order compelling the return of the Discovery Material. In any such motion, the Producing Party shall have the burden of showing that the Discovery Material is privileged and that the production was inadvertent.

c that upon the termination of my participation in this proceeding I will promptly return all Confidential Discovery Material, and all notes, memoranda, or other papers containing Confidential Discovery Material, to complaint counsel or respondent's counsel, as appropriate

[4 I understand that if I am receiving Confidential Discovery Material as an Expert/Consultant, as that term is defined in this Protective Order, the restrictions on my use of Confidential Discovery Material also include the duty and obligation

a to maintain such Confidential Discovery Material in separate locked room(s) or locked cabinet(s) when such Confidential Discovery Material is not being reviewed;

b to return such Confidential Discovery Material to complaint counsel or Respondent's Outside Counsel, as appropriate, upon the conclusion of my assignment or retention, and

c to use such Confidential Discovery Material and the information contained therein solely for the purpose of rendering consulting services to a Party to this Matter, including providing testimony in judicial or administrative proceedings arising out of this Matter]

5 I am fully aware that, pursuant to Section 3 42(h) of the Commission's Rules of Practice, 16 C F R. § 3 42(h), my failure to comply with the terms of the Protective Order may constitute contempt of the Commission and may subject me to sanctions imposed by the Commission.

_____ Date _____

Full Name [Typed or Printed]

_____

Signature

19 Entry of the foregoing Protective Order is without prejudice to the right of the Parties to apply for further protective orders or for modification of any provision of this Protective Order

ORDERED

D Michael Chappell
Administrative Law Judge

Dated April 28, 2000

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

EXHIBIT A

In the Matter of

HOECHST MARION ROUSSEL, INC.,
a corporation,

CARDERM CAPITAL L.P.,
a limited partnership,

and

ANDRX CORPORATION,
a corporation.

Docket No. 9293

DECLARATION CONCERNING PROTECTIVE ORDER GOVERNING DISCOVERY MATERIAL

I, [NAME], hereby declare and certify the following to be true

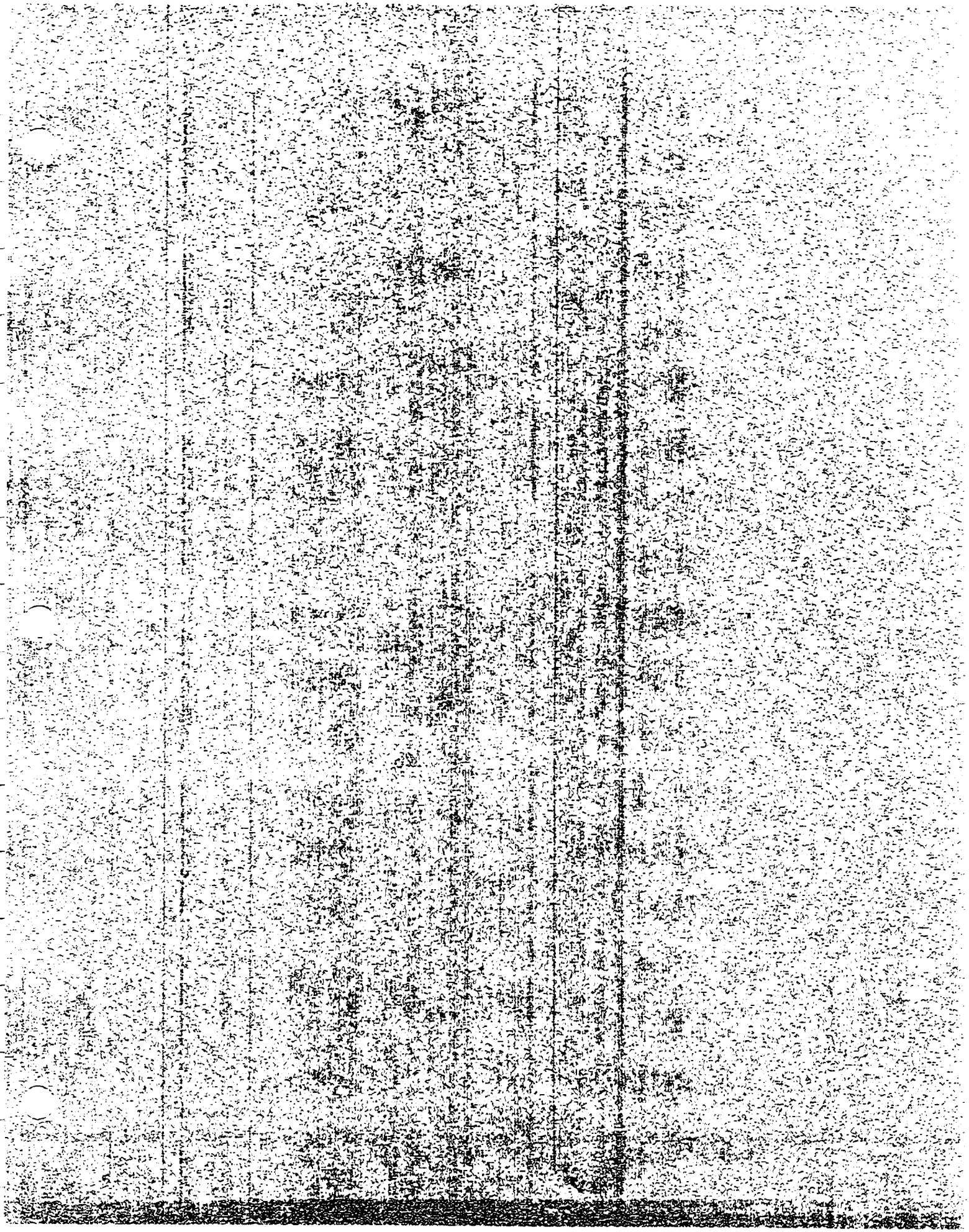
1 [Statement of employment]

2 I have read the "Protective Order Governing Discovery Material" ("Protective Order") issued by Administrative Law Judge D. Michael Chappell on April 28, 2000, in connection with the above captioned matter. I understand the restrictions on my use of any Confidential Discovery Material (as this term is used in the Protective Order) in this action and I agree to abide by the Protective Order.

3 I understand that the restrictions on my use of such Confidential Discovery Material include:

a. that I will use such Confidential Discovery Material only for the purposes of preparing for this proceedings, and hearing(s) and any appeal of this proceeding and for no other purpose,

b. that I will not disclose such Confidential Discovery Material to anyone, except as permitted by the Protective Order; and



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of

HOECHST MARION ROUSSEL, INC.,
a corporation,

CARDERM CAPITAL L.P.,
a limited partnership,

and

ANDRX CORPORATION,
a corporation

Docket No. 9293

ORDER AMENDING PROTECTIVE ORDER GOVERNING DISCOVERY MATERIAL

Upon consideration of Complaint Counsel's Motion to Amend Protective Order Governing Discovery Material, Respondents' counsels' opposition thereto, and arguments of counsel, IT IS HEREBY ORDERED that Complaint Counsel's motion is GRANTED, only as herein specified, and that Paragraphs 3 and 19 of the Terms and Conditions of the Protective Order Governing Discovery Material, entered in this matter on April 28, 2000, be amended as follows:

3. To the extent any such material is made part of this proceeding, all documents heretofore obtained by compulsory process or voluntarily from any Party or Third Party, regardless of whether designated confidential by the Party or Third Party, and transcripts of any

investigational hearings, interviews and depositions, which were obtained during the pre-complaint stage of this Matter shall be treated as Confidential Discovery Material Material previously produced by Respondents or a Third Party, and designated as "Confidential," regardless of whether such materials have been marked in accordance with paragraph 2 above, shall be treated as Confidential Discovery Material as provided herein The material referred to in this paragraph shall only be available for use in this proceeding once an independent basis has been demonstrated for such use

19 Entry of the foregoing Protective Order is without prejudice to the right of the Parties or Third Parties to apply for further protective orders or for modification of any provision of this Protective Order

Except as expressly stated herein the remainder of the Protective Order Governing Discovery Material dated April 28, 2000, shall remain in effect.

ORDERED

D Michael Chappell
Administrative Law Judge

Dated May 8, 2000

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WRITER'S DIRECT DIAL

(212) 424-0758

September 29, 2000

VIA FACSIMILE

Mark Kovner, Esq.
Kirkland & Ellis
655 15th Street, N.W.
Washington, D.C. 20005

Re: In re Hoechst Marion Roussel-- FTC Docket No. 9293

Dear Mark:

As we discussed, I enclose a copy of the protective order entered by the Administrative Law Judge in the above-referenced proceeding.

I also wish to confirm that your client's time to move to quash Andrx's subpoena is extended until either five (5) days after I (or someone else from my office) reviews the responsive documents that you have collected or by October 11, 2000, whichever is earlier.

Thank you.

Sincerely,

Jonathan D. Lupkin

Encl.

KIRKLAND & ELLIS
PARTNERSHIPS INCLUDING PROFESSIONAL CORPORATIONS

655 Fifteenth Street, N.W.
Washington, D.C. 20005

Mark L. Kovner
To Call Writer Directly:
(202) 879-5129

202 879-5000

Facsimile:
202 879-5200

October 10, 2000

VIA FACSIMILE

Jonathan D. Lupkin, Esq.
Solomon, Zauderer, Ellenhorn, Frischer & Sharp
45 Rockefeller Plaza
New York, New York 10111

Re: In re Hoechst Marion Rousell, Inc. (FTC Docket 9293)

Dear Jonathan:

This will confirm our agreement to extend until Monday, October 17, 2000, Barr Lab's time to move to quash the subpoenas served on behalf of Andrx.

Sincerely,

Mark L. Kovner /MSW

Mark L. Kovner

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October 3, 2000

VIA FACSIMILE

Mark Kovner, Esq.
Kirkland & Ellis
655 15th Street, N.W.
Washington, D.C. 20005

Re: In re Hoechst Marion Roussel-- FTC Docket No. 9293

Dear Mark:

Per our discussion, I hereby request that, pursuant to our subpoena duces tecum, you provide us with copies of the agreements that I reviewed earlier today at your offices in New York. Additionally, please let me know when you will be in a position to permit me to review the one additional agreement that I have not already reviewed.

Thank you for your continued cooperation in this matter.

Sincerely,

Jonathan D. Lupkin

KIRKLAND & ELLIS
PARTNERSHIPS INCLUDING PROFESSIONAL CORPORATIONS

Matthew S. Wild
To Call Writer Directly:
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October 10, 2000

VIA FEDEX

Jonathan D. Lupkin, Esq.
Solomon, Zauderer, Ellenhorn, Frischer & Sharp
45 Rockefeller Plaza
New York, New York 10111

Re: In re Hoechst Marion Rousell, Inc. (FTC Docket 9293)

Dear Mr. Lupkin:

Please find enclosed redacted copies of Barr's Distribution and Supply Agreements with Bayer for ciproflaxin and Barr's Distribution and Supply Agreement with Imperial Chemical Industries PLC and its affiliate Zeneca Limited for tamoxifen. These documents are consecutively numbered BARR 000001 through BARR 0000108.

Sincerely,

Matthew S. Wild

Enclosures

KIRKLAND & ELLIS
PARTNERSHIPS INCLUDING PROFESSIONAL CORPORATIONS

Matthew S. Wild
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October 12, 2000

VIA FEDEX

Jonathan D. Lupkin, Esq.
Solomon, Zauderer, Ellenhorn, Frischer & Sharp
45 Rockefeller Plaza
New York, New York 10111

Re: In re Hoechst Marion Rousell, Inc. (FTC Docket 9293)

Dear Mr. Lupkin:

Please find enclosed copies of certain documents Barr provided to the Federal Trade Commission consecutively numbered BARR 000109 through BARR 001032. Please treat documents numbered BARR 001023 through BARR 001032 as "Confidential, Attorneys' Eyes Only" under the Protective Order. A redacted copy of Barr's Proprietary Drug Development and Marketing Agreement with DuPont Pharmaceuticals, Inc. (numbered BARR 001033 through BARR 001056) is also enclosed.

Sincerely,

Matthew S. Wild

Enclosures