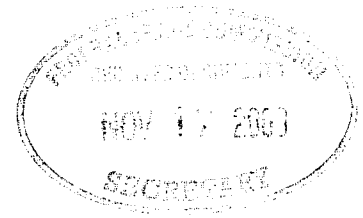


UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION



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

**RESPONDENT HOECHST MARION ROUSSEL, INC.'S
MOTION *IN LIMINE* TO LIMIT THE
TESTIMONY OF PROFESSOR RICHARD FRANK**

Respondent Hoechst Marion Roussel, Inc. ("HMR") moves this Court *in limine* to limit the introduction of testimony from Professor Richard Frank to the matters raised in his expert report.

On September 11, 2000, Complaint Counsel provided HMR with the expert report of Professor Richard G. Frank. Prof. Frank's report covered a broad range of topics, including the competitive significance of generic pharmaceuticals, the Stipulation and Agreement, market definition, and efficiencies. On September 26, 2000, HMR submitted its expert reports to Complaint Counsel.

On October 18, 2000, in accordance with the Scheduling Order, HMR and Complaint Counsel exchanged rebuttal expert reports. HMR submitted several supplemental reports from its previously disclosed experts to rebut the testimony of Prof. Frank. While Complaint Counsel submitted a "rebuttal" report from a patent expert, no rebuttal report was submitted from Prof. Frank.

Accordingly, HMR seeks an order limiting the introduction of testimony from Prof. Frank to the matters raised in his expert report.

The Court clearly has the authority to limit the testimony of experts, and appropriately does so where that testimony goes beyond that disclosed in mandated pre-trial disclosures. *See Asia Strategic Investment Alliances, LTD. v. General Electric Capital Services, Inc.*, 173 F.R.D. 305, 307 (D. Kan. 1997)(holding that untimely expert testimony beyond the specific opinions and data contained in the original expert report that was provided after the date provided in the Scheduling Order preclude the use of that testimony at trial). The Scheduling Order in this case clearly defined the opportunity that each party had for submission of expert rebuttal reports. HMR utilized this opportunity to provide extensive reports from two of its experts to rebut erroneous information, statements and conclusions contained in Prof. Frank's report. These reports were provided in order to preserve HMR's right to affirmatively address issues raised in Prof. Frank's report that might not have been adequately covered by HMR's experts. HMR understood that a failure to provide a rebuttal disclosure would foreclose its experts from affirmatively addressing issues raised by Prof. Frank.^{1/}

Inasmuch as Complaint Counsel elected not to provide Respondents with a rebuttal report by Prof. Frank, Complaint Counsel should not be permitted to elicit any testimony or evidence from Prof. Frank during the trial of this matter which goes beyond the scope of his original report.

WHEREFORE, Respondent Hoechst Marion Roussel, Inc. respectfully prays that this Court enter an Order directing Complaint Counsel not to elicit any testimony from or present

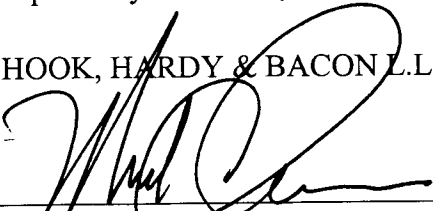
^{1/} *See In the Matter of the Complaint of Kreta Shipping, S.A.*, 181 F.R.D. 273, 276 (S.D.N.Y. 1998)("if expert testimony contradicting another expert's analysis were exempt from . . . stringent disclosure requirements, in many cases parties would have no incentive to file rebuttal reports.").

any evidence through Prof. Frank which goes beyond the scope of his affirmative expert report during the trial of this matter.

Dated: November 16, 2000

Respectfully submitted,

SHOOK, HARDY & BACON L.L.P.



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**ORDER GRANTING HOECHST MARION ROUSSEL, INC.'S
MOTION IN LIMINE TO LIMIT THE TESTIMONY
OF PROFESSOR RICHARD FRANK**

IT IS HEREBY ORDERED that Respondent Hoechst Marion Roussel, Inc.'s Motion in Limine to Limit the Testimony of Professor Richard Frank is hereby GRANTED.

ORDERED:

D. Michael Chappell
Administrative Law Judge

Date: November __, 2000

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

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CERTIFICATE OF MAILING

I, Peter D. Bernstein, hereby certify that on November 16, 2000, a copy of Hoechst Marion Roussel, Inc.'s Motion *In Limine* to Limit the testimony of Professor Richard Frank was served upon the following persons by hand delivery and/or Federal Express as follows:

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