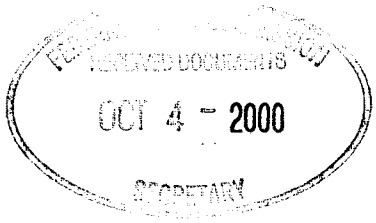


UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

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

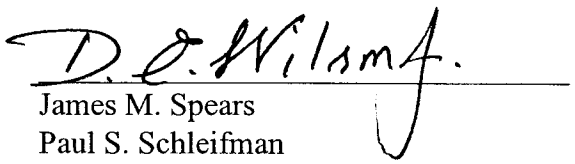
TO: The Honorable D. Michael Chappell
Administrative Law Judge

AVENTIS PHARMACEUTICALS, INC.'S
MOTION TO ENFORCE COMPLIANCE WITH THE
SUBPOENA SERVED ON ALPHARMA, INC.

Pursuant to Rule 3.38(c) of the Federal Trade Commission's Rules of Practice, 16 C.F.R. § 3.38(c), Respondent Aventis Pharmaceuticals, Inc. ("Aventis") respectfully moves for certification to the Commission of a request to enforce the subpoena *duces tecum* served on

Alpharma, Inc. for the reasons set forth in the accompanying Memorandum in Support of this Motion.

Respectfully submitted,



James M. Spears
Paul S. Schleifman
D. Edward Wilson, Jr.
Peter D. Bernstein
SHOOK HARDY & BACON, LLP
600 Fourteenth Street, N.W., Suite 800
Washington, D.C. 20005-2004
(202) 783-8400

Dated: October 4, 2000

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

TO: The Honorable D. Michael Chappell
Administrative Law Judge

AVENTIS PHARMACEUTICALS, INC.'S MEMORANDUM IN SUPPORT OF MOTION TO ENFORCE COMPLIANCE WITH THE SUBPOENA SERVED ON ALPHARMA, INC.

Pursuant to Rule 3.38(c) of the Federal Trade Commission's Rules of Practice, 16 C.F.R. § 3.38(c), Respondent Aventis Pharmaceuticals, Inc. ("Aventis") respectfully moves for certification to the Commission of a request to enforce the subpoena *duces tecum* served on Alpharma Inc. ("Alpharma").

I. BACKGROUND

The primary thrust of the FTC's Complaint is that Respondents' alleged actions unreasonably restrained trade causing injury to competition and consumers in the relevant product market. (*Id.* ¶¶ 29-39). According to Complaint Counsel, the relevant product market is the market

for once-a-day diltiazem products and even narrower markets which "may be contained within" that market. (Complaint ¶ 12). Aventis disputes Complaint Counsel's arbitrarily narrow definition of the relevant product market. Aventis maintains and the evidence will clearly show that the relevant product market is, at a minimum, the market for a class of anti-hypertension products known as calcium channel blockers.

Accordingly, what constitutes the relevant product market is one of the primary issues that must be decided in this case. Alpharma "is a major generic drug company with a substantial presence in consumer pharmaceuticals."[1] Aventis seeks documents from Alpharma concerning its experience in the cardiovascular pharmaceutical product market, if any. Information in the hands of other manufacturers of cardiovascular pharmaceutical products, such as Alpharma, is essential in arriving at a proper relevant market definition. Materials in the possession of Alpharma and other manufacturers, such as marketing, treatment and substitution studies; prescribing guidelines; and incentive contracts, are relevant indicators of the substitutability of pharmaceutical products, and of which products manufacturers view as being in direct competition.

The subpoena *duces tecum* issued to Alpharma was one of approximately 30 issued by the Commission on behalf of Aventis. In summary, the subpoena seeks documents relating to marketing studies and marketing materials, market-share incentive contracts with third party payors, documents reflecting substitutability judgments and studies, and other information necessary to determine the proper scope of any relevant product market that includes Cardizem® CD or generic

---

1. Alpharma Website (visited October 4, 2000) <http://www.alpharmauspd.com/about.html>.

versions of Cardizem® CD. Approximately half of the subpoenas were issued to third party payors, the other half to manufacturers of pharmaceutical products such as Alpharma.

Recipients were selected following an analysis of cardiovascular prescriptions broken down by third party payors and manufacturers, respectively, and a review of the preliminary witness list submitted by Complaint Counsel. This analysis was done in conjunction with Aventis' economic experts and was based on industry data provided by IMS. Only those companies needed to provide a statistical sample large enough to support sound analysis were included, with the addition of a few, such as Alpharma, who, as discussed below, were on Complaint Counsel's witness list.

According to Complaint Counsel, one of the central purposes and intended effects of the HMR/Andrx Stipulation and Agreement was to provide Andrx with an incentive to refrain from relinquishing its right to the 180-day Exclusivity Period to which it became entitled under the Hatch-Waxman amendments to the U.S. Food Drug and Cosmetics Act and that such action delayed the entry of other generic versions of Cardizem® CD into the market. (Complaint ¶¶ 31, 33)

The subpoena *duces tecum* was also issued because Alpharma is on both the preliminary and revised witness lists submitted by Complaint Counsel. According to Complaint Counsel's Revised Preliminary Witness List, Robert Wrobel, Vice President and Chief Legal Officer, is expected to testify about Alpharma's "agreement to waive its FDA-granted right, as the first generic company to file a Paragraph IV certification under the hatch-Waxman Act, to 180 days of marketing exclusivity." (*See* Complaint Counsel's Revised Preliminary Witness List).

The fact that Complaint Counsel anticipates calling Mr. Wrobel to testify about how Alpharma managed its rights under the Hatch-Waxman Exclusivity Period makes it absolutely necessary for Aventis to have an reasonable opportunity to take Mr. Wrobel's deposition and to examine such documents as may be available that would help describe the specifics of that transaction and the various economic and legal considerations that may have played a role in Alpharma's decision-making.

Aventis' counsel has had only one conversation with Alpharma's counsel, on September 21, 2000. At that time, Alpharma's counsel informed Aventis' counsel that Aventis should file a motion to compel production. Declaration of D. E. Wilson, Jr. at para. 4, attached. This motion followed.

II. ARGUMENT

A. Alpharma has Failed to Comply with its Basic Discovery Obligations

The Commission's Rules of Practice provide that "in instances where a nonparty fails to comply with a subpoena," this tribunal "shall certify to the Commission a request that court enforcement of the subpoena . . . be sought." 16 C.F.R. § 3.38(c) (emphases added). Alpharma has clearly failed to comply with the subpoena *duces tecum* served upon it by Aventis. It has not produced any documents and has told Aventis' counsel to file a motion to compel production.

B. The Materials Sought are Essential to Aventis' Defense of the Case

There can be no doubt that the materials sought from Alpharma are highly relevant to this case. Alpharma is a leading generic pharmaceutical manufacturer in the U.S. and one of its officers will be a witness for Complaint Counsel in the upcoming hearing.

In making marketing decisions, manufacturers such as Alpharma study and make judgments with respect to the substitutability of various pharmaceutical products. Decisions are made as to which products compete with each other. Substitutability studies, internal marketing materials, and other documents relating to the classification and use of pharmaceutical products, reflect and help define the various categories of pharmaceutical products offered in the marketplace, as well as which products are considered suitable substitutes for each other under particular sets of medical circumstances. These materials will show how substitution and marketing decisions are made, providing important evidence as to the way in which a major manufacturer of generic pharmaceutical products views the market, and the creation of markets.

Similarly, contracts between the manufacturers of pharmaceutical products and third-party payors typically contain market-share incentive provisions by which manufacturers reward third-party payors for market-share gains their products achieve with respect to other products deemed to be in competition. Materials relating to these contracts, including marketing and sales strategy materials, reflect health care providers' and manufacturers' business judgments as to which pharmaceutical products are in competition with each other. This information is also highly relevant to the determination of the relevant product market in this case.

Finally, Complaint Counsel's Revised Preliminary Witness List, Robert Wrobel, Vice President and Chief Legal Officer, is expected to testify about Alpharma's "agreement to waive its FDA-granted right, as the first generic company to file a Paragraph IV certification under the hatch-Waxman Act, to 180 days of marketing exclusivity." (*See* Complaint Counsel's Revised Preliminary Witness List).

The fact that Complaint Counsel anticipates calling Mr. Wrobel to testify about how Alpharma managed its rights under the Hatch-Waxman Exclusivity Period makes it absolutely necessary for Aventis to have an reasonable opportunity to take Mr. Wrobel's deposition and to examine such documents as may be available that would help describe the specifics of that transaction and the various economic and legal considerations that may have played a role in Alpharma's decision-making.

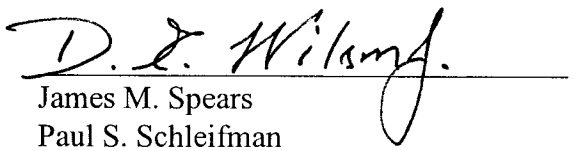
This and other information in the hands of Alpharma is essential to: (1) allow Aventis to defend this case; and (2) demonstrate that the relevant product market allegations set forth in the Complaint are overly narrow and cannot be supported. Moreover, without the requested documentation from Alpharma, Aventis will be denied an adequate opportunity to test Complaint Counsel's presentation of testimony from Mr. Wrobel.

III. CONCLUSION

WHEREFORE, pursuant to Commission Rule of Practice 3.38(c), 16 C.F.R. § 3.38(c), Aventis Pharmaceuticals, Inc. respectfully requests that this tribunal certify to the Commission a request that court enforcement of the subpoena be sought. In conjunction with that request, Aventis requests that this court stay any deposition of an Alpharma officer or employee

until two weeks after Alpharma has complied with the subpoena. In the alternative, Aventis respectfully requests an order from this tribunal that no witness from Alpharma be allowed to testify in this proceeding.

Respectfully submitted,



James M. Spears
Paul S. Schleifman
D. Edward Wilson, Jr.
Peter D. Bernstein
SHOOK HARDY & BACON, LLP
600 Fourteenth Street, N.W., Suite 800
Washington, D.C. 20005-2004
(202) 783-8400

Dated: October 4, 2000

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

DECLARATION OF D. E. WILSON, JR., IN SUPPORT OF AVENTIS PHARMACEUTICAL, INC.'S MOTION FOR ENFORCEMENT OF SUBPOENA SERVED ON ALPHARMA, INC.

I, D. E. WILSON, JR., hereby state the following pursuant to Rule 3.22(f) of the Federal Trade Commission's Rules of Practice, 16 C.F.R. § 3.22(f):

1. I am a member in good standing of the Bar of the District of Columbia Court of Appeals and am presently associated with the firm of Shook Hardy & Bacon LLP, counsel for respondent Aventis Pharmaceuticals, Inc. ("Aventis").

2. On July 6, 2000, I caused a subpoena *duces tecum* (copy attached at Tab A) to be delivered to Alpharma, Inc., by mailing it, registered mail, return receipt requested, to the company's address for service of process, Alpharma, Inc., c/o Corporation Service Company, 830 Bear Taverns Road, Trenton, NJ 08628. The return receipt, dated July 10, 2000, was subsequently delivered to our offices. (Copy at Tab B).

3. Having received no response from Alpharma and knowing that its General Counsel was on the Complaint Counsel's Witness list, I conferred with counsel for Andrx, which had also issued a subpoena to Alpharma. Counsel for Andrx identified outside counsel for Alpharma as Tifft Smith, Kirkland & Ellis, Washington, D.C.

4. After trading telephone calls, I spoke with Mr. Smith on September 21, 2000, at which time I was told to make a motion for production, that Alpharma would not otherwise comply with the subpoena served on it.

Executed in Washington, D.C., on October 4, 2000.

Respectfully Submitted,

D. E. Wilson, Jr.

TAB A

SUBPOENA DUCES TECUM

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

1. TO
Custodian of Records for:
Robert F. Wrobel, VP & Chief Legal Officer
Alpharma, Inc.
One Executive Drive
Fort Lee, NJ 07024
c/o Corporation Service Company
830 Bear Tavern Road
Trenton, NJ 08628

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

Shook, Hardy & Bacon L.L.P.
600 14th Street, N.W., Suite 800
Washington, DC 20005-2004

4. MATERIAL WILL BE PRODUCED TO
Shook, Hardy & Bacon L.L.P.
Attn: D. Edward Wilson, Counsel for Hoechst Marion Roussel, Inc.

5. DATE AND TIME OF PRODUCTION OR INSPECTION

July 21, 2000 at 10:00 a.m.

6. SUBJECT OF PROCEEDING

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

7. MATERIAL TO BE PRODUCED

See Exhibit "A" attached hereto

8. ADMINISTRATIVE LAW JUDGE

The Honorable D. Michael Chappell

Federal Trade Commission
Washington, D.C. 20580

9. COUNSEL REQUESTING SUBPOENA

Shook, Hardy & Bacon L.L.P
James M. Spears
D. Edward Wilson
Peter D. Bernstein
Counsel for Hoechst Marion Roussel

DATE ISSUED

MAY 11 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 9, 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 9 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 9.

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

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

Exhibit A to Subpoena Duces Tecum

In the Matter of	)	
	)	Docket No. 9293
Hoechst Marion Roussel, Inc., et al.,	)	
	)	
Respondents	)	
	)	

HMRI'S FIRST DOCUMENT PRODUCTION REQUEST TO ALPHARMA, INC

Respondent Hoechst Marion Roussel, Inc. ("HMRI"), pursuant to the Federal Trade Commission's Rules of Practice for Adjudicative Proceedings, 16 C.F.R. § 3.34(b), requests that Alpharma, Inc., (hereinafter referred to as "the company") produce documents and other things for inspection and copying, within 20 days, in response to the Document Requests set forth below, and in accordance with the Definitions and Instructions following thereafter, at the offices of Shook, Hardy & Bacon, L.L.P., 600 14th Street, N.W., Washington, D.C. 20005, or such location as may be mutually agreed upon.

DOCUMENT REQUESTS

Request No. 1.: All documents that reflect or relate to marketing cardiovascular pharmaceutical products to any entity on Attachment 1, attached, including but not limited to

marketing plans and budgets, sales forecasts, pricing and contracting strategies, brochures and marketing materials of any kind.

Request No. 2.: All documents which relate to the effect of bioequivalent or generic versions of pioneer cardiovascular pharmaceutical products on the market and/or price for those pioneer cardiovascular pharmaceutical products.

Request No. 3.: All documents that reflect or relate to the actual or potential effect on competition with, or on sales, prices or market share for the company's cardiovascular pharmaceutical products by any actual or potential prescription or non-prescription drugs for the treatment of hypertension and angina.

Request No. 4.: All documents that reflect or relate to the actual or potential effect on competition with, or on sales, prices or market share for the company's cardiovascular pharmaceutical products by Cardizem® CD or a bioequivalent or generic version of Cardizem® CD.

Request No. 5.: All documents that reflect or relate to the following sales and marketing information:

(a) annual (and, for the current year, monthly) sales (in units), revenue, and profit information for each stock keeping unit relating to the sale of each of the company's cardiovascular pharmaceutical products;
(b) prices, pricing plans, pricing policies, pricing forecasts, pricing strategies, and pricing decisions for each of the company's cardiovascular pharmaceutical products;
(c) projected or anticipated prices, sales (in units), revenues, and profits for each stock keeping unit relating to the sale of each of the company's cardiovascular pharmaceutical products;
(d) strategic and marketing plans for each of the company's cardiovascular pharmaceutical products; and,
(e) promotional materials of any kind, including but not limited to brochures, print advertisements, transcripts of electronic media advertisement.

Request No. 6.: All documents that reflect or relate to the introduction or sale of bioequivalent or generic versions of Cardizem® CD by any person, including, but not limited to:

(a) attempts to introduce a bioequivalent or generic version of Cardizem® CD to the commercial market;
(b) the historical projections or anticipated dates of entry into the commercial market of each bioequivalent or generic version of Cardizem® CD;
(c) any analysis, study, projection, forecast, budget or plan on the affect of the introduction of a bioequivalent or generic version of Cardizem® CD on the company's sales, revenues or profits;
(d) for each of the first three years following the projected or anticipated introduction or sale of bioequivalent or generic version of Cardizem® CD:

    (i) the projected or anticipated market share (measured in terms of unit sales and revenues) of the bioequivalent or generic version of Cardizem® CD;
    (ii) projected or anticipated price of the bioequivalent or generic version of Cardizem® CD;
    (iii) projected or anticipated price of Cardizem® CD;
    (iv) the company's projected or anticipated lost annual revenues and profits.

Request No. 7.: All documents that, as to any cardiovascular pharmaceutical products, analyze, study, reflect, or relate to any one or more of the following:

(a) gross and net sales to all customers in units and dollars;

(b) gross number and dollar value of promotional sample units distributed;

(c) sales returns in units and dollars;

(d) cost of goods sold in dollars;

(e) gross and net profit in dollars;

(f) sales, promotion, or marketing expenses;

(g) the list price and wholesale acquisition cost;

(h) product returns in units and dollars;

(i) rebates, credits, allowances, charge backs, and any other adjustment to price; and,

(j) total research and development cost for each cardiovascular pharmaceutical product.

Request No. 8.: All data and reports, including but not limited to data and reports provided by third-party vendors such as IMS, that reflect or relate to the sales of any cardiovascular pharmaceutical product and any analysis that might consider: (1) the extent to which these products compete against each other and compete against Cardizem® CD and other sustained release diltiazem products; (2) the extent to which sales of the products respond to/or are affected by variations in price or manufacturer discounts, rebates, credits or other price adjustments; and (3) the extent to which sales of the products respond to changes in the manner in which they are listed in formularies maintained by third-party payors, insurers and other health care providers.

Request No. 9.: All documents that reflect or relate to in any way standards of care for the treatment of hypertension and/or angina through the use of cardiovascular pharmaceutical products.

Request No. 10.: All documents sufficient to show the name and chemical entity of all products which the company believes competes with Cardizem® CD. For each product, produce documents sufficient to explain why the company believes that product competes with Cardizem® CD.

Request No. 11.: All documents sufficient to show the name and chemical entity of all products which the company believes competes with the company's cardiovascular pharmaceutical

products. For each product, produce documents sufficient to explain why the company believes that product competes with the company's cardiovascular pharmaceutical products.

Request No. 12.: All documents that reflect or relate to, in any way, the substitutability or exchangeability of any actual or potential cardiovascular pharmaceutical product for Cardizem® CD.

Request No. 13.: All documents that reflect or relate to, in any way, the substitutability of any cardiovascular pharmaceutical product for any other cardiovascular pharmaceutical product.

Request No. 14.: All documents that reflect or relate to, in any way, programs, campaigns or activities undertaken by you which are designed to encourage the use or substitution of any cardiovascular pharmaceutical product for any other cardiovascular pharmaceutical product.

Request No. 15.: All documents that reflect or relate to agreements or contracts between you and any entity on Attachment 1, attached, concerning or relating to cardiovascular pharmaceutical products.

Request No. 16.: All documents that reflect or relate to, in any way, the negotiation of contracts or other agreements regarding discounts, rebates, credits, allowances, charge backs and other price adjustments between you and any entity on Attachment 1, attached, with regard to cardiovascular pharmaceutical products.

Request No. 17.: All documents sufficient to identify the individual(s) (by name, address, position and date) who supervise the negotiation of contracts and/or agreements between you and any entity on Attachment 1, attached, with regard to cardiovascular pharmaceutical products.

Request No. 18.: All documents produced to the FTC by the company in connection with the Section 5 investigation of the Stipulation and Agreement, FTC File No. 981-0368.

Request No. 19.: All communications and documents that reflect or relate to communications between the company and the FTC (including without limitation documents provided by the company to the FTC and transcripts of testimony before the FTC), concerning FTC File No. 981-0368.

Request No. 20.: All documents that reflect or relate to communications with the FTC regarding request for information, including but not limited to subpoenas and civil investigative demands received from the FTC and all documents and all communications transmitting responses or modifying the requests.

Request No. 21.: All documents that reflect or relate to communications with the FTC or FDA by the company relating to HMRI, Andrx, Biovail, Faulding, diltiazem products, calcium channel blockers, substitution of one cardiovascular pharmaceutical product for another, substitution of generic products for branded products, testimony or potential testimony on behalf of the FTC or any other person with respect to FTC Docket No. 9293.

Request No. 22.: All documents that reflect or relate to communications between the company and the FTC or FDA (including without limitation documents provided by the company to the FTC or FDA and transcripts of testimony before the FTC or FDA) relating to HMRI, Andrx, Biovail, Faulding or diltiazem products.

Request No. 23.: All documents maintained by the company with respect to FTC File No. 981-0368.

Request No. 24.: All documents maintained by the company with respect to FTC Docket No. 9293, "Hoechst-Andrx Generic Cardizem,"Complaint issued March 16, 2000.

Request No. 25.: All documents that reflect or relate to communications between the company and the FTC with respect to FTC Docket No. 9293, "Hoechst-Andrx Generic Cardizem,"Complaint issued March 16, 2000.

Request No. 26.: All documents that reflect or relate to organizational charts for your company showing position, person occupying each position, person to whom reporting, and all descriptions relating to the positions shown on the organizational charts.

DEFINITIONS AND INSTRUCTIONS

1. Unless otherwise stated, the requests herein refer to the time period of January 1, 1992 through present, and pertain to activities in the United States.

2. As used herein, the words "you" or "your" shall mean Alpharma, Inc., and each of its predecessors, successors, groups, divisions, subsidiaries and affiliates.

3. As used herein, "HMRI" shall mean the Respondent Hoechst Marion Roussel, Inc. and each of its predecessors, successors, groups, divisions, subsidiaries and affiliates.

4. As used herein, the term "payor" means any entity with which you have a contractual or other relationship setting the terms by which prescription pharmaceutical products are provided to members pursuant to plans, including, without limitation, insurance companies, pharmaceutical benefit companies, and managed care organizations.

5. As used herein, "cardiovascular pharmaceutical products" means the products within code 31000 of the IMS Uniform System of Classification.

6. As used herein, "Cardizem® CD" means the diltiazem formulation sold under this name.

7. As used herein, "person" means all employees, individuals, and entities, including but not limited to corporations, associations, companies, partnerships, joint ventures, trusts and estates.

8. 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.

9. 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.

10. As used herein, the words "describe", "relates to" ,"relating to", "reflecting", "regarding" or equivalent language shall mean constituting, reflecting, respecting, supporting, contradicting, referring to, stating, describing, recording, noting, containing, monitoring, studying, analyzing, discussing, evaluating or relevant to.

11. 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.

12. As used herein, the term "communication" means every manner of transmitting or receiving information, opinions, and thoughts whether orally or in writing.

13. As used herein, the term "health benefit plan" refers to any plan which you operate or administer which provides for the payment or reimbursement of health care related expenses.

14. As used herein, the term "prescription benefit plan" refers to any plan which you operate or administer, either solely or in conjunction with another entity, which provides for the payment of or reimbursement for pharmaceutical products dispensed pursuant to doctors' prescriptions.

15. As used herein, the term "plan" or "plans" refers jointly to the health benefit plan and prescription benefit plan.

16. As used herein, the term "members" refers to individuals who are enrolled in and eligible to receive benefits through a health benefit plan and/or prescription benefit plan.

17. As used herein, the term "substitutability" refers to the degree to which doctors, patients, pharmacies, wholesalers, PBMs, and/or health benefit plans shift purchases between or among pharmaceutical products based on considerations including, but not limited to, cost, efficacy, and side effects.

18. 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.

19. If any form of privilege or immunity is claimed as 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.

20. If a request is deemed objectionable, state the reasons for the objection. If a portion of a request is deemed objectionable, state the objection, and answer the remaining unobjectionable portion of the request.

SHOOK, HARDY & BACON L.L.P.

By: _____

James M. Spears
Paul S. Schleifman
D. E. Wilson, Jr.
Peter D. Bernstein
600 14th Street, N.W.
Washington, D.C. 20005-2004
202-783-8400

Attorneys for Respondent Hoechst Marion Roussel, Inc.

Dated: July 6, 2000

Attachment 1, attached

Attachment 1 to Subpoena Duces Tecum
Issued on Behalf of HMRI

Merck-Medco Managed Care, Inc.
PCS Health Systems Inc.
Express Scripts, Inc.
Aetna US Healthcare
United HealthCare Services, Inc.
Humana, Inc.
Healthsource, Inc.
Caremark Inc.
Pacificare Health Systems, Inc.
Kaiser Permenente Insurance Company
Foundation Health Systems, Inc.
Blue Cross and Blue Shield of Michigan
Empire Blue Cross Blue Shield
Blue Cross/Blue Shield of Florida
Blue Cross/Blue Shield of California
Advance Paradigm, Inc.

TAB B

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, and 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

Alpharma, Inc.
c/o Corporation Service Company
830 Bear Tavern Road
Trenton, NJ 08628

4a. Article Number
R865168551

4b. Service Type
☒ Registered ☐ Insured
☐ Certified ☐ COD
☐ Express Mail ☒ Return Receipt for Merchandise

7. Date of Delivery
7/10/03

5. Signature (Addressee)
T CAVALLERO

8. Addressee's Address (Only if requested and fee is paid)

Is your RETURN ADDRESS completed on the reverse side

Thank you for using Return Receipt Service.

N RECEIPT

Registered No.

Date Stamp

To Be Completed By Post Office

Reg. Fee $	Special Delivery $
Handling Charge $	Return Receipt $
Postage $	Restricted Delivery $
Received by	

Customer Must Declare Full Value $

☐ With Postal Insurance
☒ Without Postal Insurance

Domestic Insurance Is Limited To $25,000; International Indemnity Is Limited (See Reverse)

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WASHINGTON, DC 20005-2004

TO
ALPHARMA, INC
c/o Corporation Service Company
830 Bear Tavern ROAD
Trenton, NJ 08628

PS Form 3806, February 1995

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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

CERTIFICATION TO COMMISSION OF REQUEST FOR ENFORCEMENT OF SUBPOENA DUCES TECUM SERVED ON NON-PARTY ALPHARMA, INC.

Non-Party Alpharma, Inc. ("Alpharma"), has refused to comply with an FTC subpoena served by Aventis Pharmaceuticals, Inc. ("Aventis"). Accordingly, the Commission should direct the General Counsel's office to enforce this subpoena in court. *See* 16 C.F.R. § 3.38(c) ("in instances where a nonparty fails to comply with a subpoena or order, [the ALJ] shall certify to the Commission a request that court enforcement of the subpoena or order be sought.")

On May 17, 2000, the Commission issued a subpoena *duces tecum* to Aventis, which Aventis served on Alpharma. The subpoena sought the production of documents relevant to Aventis' defense against Complaint Counsel's claim that Aventis engaged in monopoly and anti-competitive practices.

Alpharma has refused to produce responsive documents to Aventis. The Commission should therefore direct the Office of the General Counsel to seek court enforcement of the subpoena *duces tecum* issued May 17, 2000, to Aventis.

D. Michael Chappell
Administrative Law Judge

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 GRANTING RESPONDENT AVENTIS PHARMACEUTICALS, INC. MOTION FOR STAY OF OR TO PROHIBIT TESTIMONY BY ALPHARMA, INC.

On September 20, 2000, pursuant to Commission Rule 3.36, Respondent Aventis Pharmaceuticals, Inc. ("Aventis") filed a motion for an order requesting judicial enforcement of a subpoena *duces tecum* served by it on nonparty Alpharma, Inc. ("Alpharma"). Pending decision by the Commission on the Certification of it of Aventis' request and any subsequent proceedings, it is hereby

ORDERED, that no official of Alpharma may testify or provide any evidence in this proceeding until two (2) weeks after Alpharma has complied with the subpoena *duces tecum*.

ORDERED:

D. Michael Chappell
Administrative Law Judge

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of **Hoechst Marion Roussel, Inc., et al.,** **Respondents.**	Docket No. 9293

CERTIFICATE OF SERVICE

I, D. E. Wilson, Jr.,, hereby certify that on October 4, 2000, a copy of Aventis Pharmaceuticals, Inc.'s Motion to Enforce Compliance With Subpoena *Duces Tecum* Issued to Alpharma Inc., was served upon the following persons by hand delivery and/or Federal Express as follows:

Donald S. Clark, Secretary
Federal Trade Commission
600 Pennsylvania Ave., N.W., Room 172
Washington, D.C. 20580

Richard Feinstein
Federal Trade Commission
601 Pennsylvania Ave., N.W., Room 3114
Washington, D.C. 20580

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

Markus Meier
Federal Trade Commission
601 Pennsylvania Ave., N.W., Room 3017
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D. E. Wilson, Jr.