

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

In the Matter of)	
)	
Schering-Plough Corporation,)	
a corporation,)	
)	Docket No. 9297
Upsher-Smith Laboratories, Inc.,)	
a corporation,)	PUBLIC
)	
and)	
)	
American Home Products Corporation,)	
a corporation.)	

**UPSHER-SMITH’S MOTION FOR LEAVE TO FILE REPLY
MEMORANDUM IN SUPPORT OF ITS MOTION TO STRIKE
COMPLAINT COUNSEL’S RELIANCE ON THE JULY 2002 FTC STUDY**

Pursuant to Commission Rule 3.22(c), Upsher-Smith respectfully moves for leave to file the accompanying Reply Memorandum in Support Of Its Motion To Strike Complaint Counsel’s Reliance On The July 2002 FTC Study (“Reply”). This short Reply is necessary to address new theories and further factual misstatements contained in Complaint Counsel’s opposition memorandum.

While Complaint Counsel concede the FTC Study falls outside the record and while they do not dispute that taking judicial or official notice of the Study is inappropriate, Complaint Counsel’s opposition memorandum asserts that the Study contains “legislative facts” supposedly immune from the rules of evidence and the ordinary scrutiny of an adjudicative proceeding. Complaint Counsel have raised this “legislative fact” theory for the first time in their opposition memorandum. They did not mention or allude to this theory when they relied upon the FTC

Study in their appellate reply brief. Upsher-Smith needs to file its Reply principally to explain why Complaint Counsel's "legislative fact" theory is inapplicable.

Upsher-Smith also needs to file its Reply to correct certain misstatements that if left uncorrected could prejudice Upsher-Smith.

For the foregoing reasons, Upsher-Smith respectfully requests that the Commission grant Upsher-Smith leave to file its Reply. Complaint Counsel have not consented to this motion.

December 16, 2002

Respectfully submitted,

WHITE & CASE LLP

By: _____

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