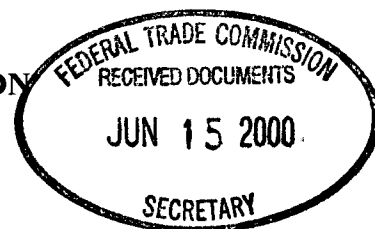


UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



In the Matter of

Hoechst Marion Roussel, Inc., et al.,

Respondents

Docket No. 9293

TO: The Honorable D. Michael Chappell
Administrative Law Judge

**AVENTIS PHARMACEUTICALS, INC.'S
MOTION TO STRIKE COMPLAINT COUNSEL'S
MOTION FOR LEAVE TO FILE SUPPLEMENTAL REPLY
MEMORANDUM IN SUPPORT OF MOTION TO STRIKE
CERTAIN AFFIRMATIVE DEFENSES**

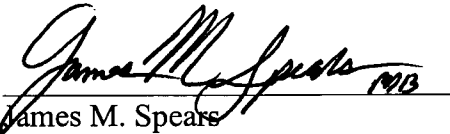
Pursuant to Rule 3.22 of the Federal Trade Commission's Rules of Practice, 16 C.F.R. § 3.22, respondent Aventis Pharmaceuticals, Inc., formerly known as Hoechst Marion Roussel, Inc. ("HMR"), hereby moves motion to strike Complaint Counsels' Motion for Leave to File Supplemental Reply in Support of Motion to Strike.

WHEREFORE, for reasons more fully set forth in the accompanying memorandum in support of the Motion to Strike Complaint Counsel's Motion for Leave to File

Supplemental Reply in Support of Motion to Strike, HMR respectfully requests that this Court enter an Order striking Complaint Counsel's motion, and grant such other relief as the Court may deem just and proper.

Dated: June 15, 2000

Respectfully Submitted,

A handwritten signature in black ink that reads "James M. Spears" with a date "1913" written at the end of the signature.

James M. Spears
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

James R. Eiszner
Scott E. DuPree
SHOOK HARDY & BACON, LLP
1200 Main Street
Kansas City, Missouri 64105-2118

Attorneys for Respondent
Aventis Pharmaceuticals, Inc.

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

In the Matter of

Hoechst Marion Roussel, Inc., et al.,

Respondents

Docket No. 9293

**AVENTIS PHARMACEUTICALS, INC.'S MEMORANDUM IN
SUPPORT OF MOTION TO STRIKE COMPLAINT COUNSEL'S
MOTION FOR LEAVE TO FILE SUPPLEMENTAL REPLY
MEMORANDUM IN SUPPORT OF MOTION TO STRIKE
CERTAIN AFFIRMATIVE DEFENSES**

Pursuant to Rule 3.22(c) of the Federal Trade Commission's Rules of Practice, 16 C.F.R. § 3.22(c), Respondent Aventis Pharmaceuticals, Inc., formerly known as Hoechst Marion Roussel, Inc. ("HMR"), respectfully opposes Complaint Counsel's Motion for Leave to File Supplemental Reply Memorandum in Support of Motion to Strike Certain Affirmative Defenses, and requests that such motion be denied and that Complaint Counsel's proposed supplemental reply memorandum be stricken in its entirety. Complaint Counsel's motion and proposed supplemental memorandum clearly demonstrate why motions to strike affirmative defenses and reply memoranda are so disfavored in Commission practice and legal precedent – because they are so susceptible to misuse as dilatory and vexatious weapons. *See, e.g., RTC v. Gregor*, No. 94 CV 2578, 1995 WL 931093, at *1 (E.D.N.Y. Sept. 29, 1995) ("Motions to strike are generally disfavored because they are often interposed to create a delay" and "can be nothing other than distractions"); *Dura Lube Corp.*, 2000 FTC Lexis 1, at *31 (Jan. 14, 2000) ("motions to strike

are generally disfavored”); *Home Shopping Network, Inc.*, 1995 FTC Lexis 259, at *4 (July 24, 1995) (“It is axiomatic that motions to strike are not favored and are, therefore, infrequently granted.”); *Campbell Soup Co.*, 1989 FTC Lexis 40, at *1-2 (June 14, 1989) (“[i]n general, movants have no right to reply to answers opposing their motions,” and movant bears burden of justifying an exception to the rule); 2 U.S. Federal Trade Comm’n, *Operating Manual* ch. 10.12.6, at 9 (1991) (describing reply briefs as “cumbersome, dilatory, and usually unproductive”).

Despite the fact that reply memoranda are normally not permitted under the Commission’s rules,¹ Complaint Counsel has burdened this Court and Respondents with not one, but *two* motions for leave to reply with respect to its Motion to Strike. In each instance, Complaint Counsel has failed to demonstrate, or even to acknowledge that it must demonstrate, that an exception to the rule prohibiting reply is justified here because Respondents’ answers “raise[] some new point of fact or law which could not have been anticipated in the original motion,” *Litton Indus., Inc.*, 1979 FTC Lexis 333, at *1 (June 12, 1979) – even after being reminded of this standard by HMR’s Memorandum in Opposition to Complaint Counsel’s original motion for leave to reply (*see* HMR Opp. Br. at 2-2). Far from responding to some new and unanticipated point of fact or law, Complaint Counsel’s proposed supplemental reply memorandum merely seeks to give Complaint Counsel one more opportunity to respond to arguments that it previously acknowledged were not newly raised in Respondents’ opposition motions (*see* Original Proposed Reply at 2-4) and to documents that Complaint Counsel has long possessed but only recently produced to Respondents.

1. 16 C.F.R. § 3.22(c).

As the tortured history of Complaint Counsel's Motion to Strike demonstrates, motions to strike and for leave to reply are particularly susceptible to abuse in the hands of a Complaint Counsel that enjoys the fruits of two years of investigative discovery against respondents, such as HMR, who, under the Commission's expedited procedural rules, have only a few short months to complete discovery in their defense to a Commission Complaint. Particularly in light of the very stringent and expedited deadlines imposed by the Commission's procedural rules and the Scheduling Order in this matter, Respondents should not be required to respond, or risk default, to Complaint Counsel's endless, dilatory attempts to find and articulate some basis that might support its Motion to Strike. Neither should this Court be expected to sift through stacks of supplemental briefing on issues anticipated and/or addressed in Complaint Counsel's original motion papers whenever Complaint Counsel becomes aware of weaknesses in its original arguments. Reply memoranda were never intended to serve so dilatory and vexatious a purpose. Respondent HMR, therefore, respectfully requests that this Court deny Complaint Counsel's motion to file a supplemental reply and strike Complaint Counsel's proposed supplemental reply memorandum in its entirety.

CONCLUSION

WHEREFORE, for the reasons set forth herein, Respondent HMR respectfully requests that this Court deny Complaint Counsel's Motion For Leave to File Supplemental Reply Memorandum in Support of Motion to Strike Certain Affirmative Defenses, deny Complaint Counsel's proposed supplemental reply memorandum in its entirety, and grant such other and further relief as the Court may deem just and proper.

Dated: June 14, 2000

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "James M. Spears", is written over a horizontal line. To the right of the signature, the year "2013" is written in smaller handwriting.

James M. Spears
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

James R. Eiszner
Scott E. DuPree
SHOOK HARDY & BACON, LLP
1200 Main Street
Kansas City, Missouri 64105-2118

Attorneys for Respondent
Aventis Pharmaceuticals, Inc.

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

In the Matter of

Hoechst Marion Roussel, Inc., et al.,

Respondents

Docket No. 9293

**ORDER GRANTING MOTION TO STRIKE COMPLAINT COUNSEL'S
MOTION FOR LEAVE TO FILE SUPPLEMENTAL REPLY IN
SUPPORT OF MOTION TO STRIKE**

IT IS HEREBY ORDERED that Aventis Pharmaceuticals, Inc.'s Motion to Strike Complaint Counsels' Motion for Leave to File Supplemental Reply in Support of Motion to Strike is hereby GRANTED.

Dated: _____, 2000

D. Michael Chappell
Administrative Law Judge

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

In the Matter of

Hoechst Marion Roussel, Inc., et al.,

Respondents

Docket No. 9293

CERTIFICATE OF SERVICE

I, Peter D. Bernstein, hereby certify that on June 15, 2000, a copy of Aventis Pharmaceuticals, Inc.'s Motion to Strike Complaint Counsels' Motion for Leave to File Supplemental Reply in Support of Motion to Strike Certain Affirmative Defenses, was served upon the following persons by hand delivery and/or Federal Express as follows:

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


Markus Meier
Federal Trade Commission
Room 3017
601 Pennsylvania Ave., N.W.
Washington, D.C. 20580

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

Louis M. Solomon [By FedEx]
Solomon, Zauderer, Ellerhorn,
Frischer & Sharp
45 Rockefeller Plaza
New York, NY 10111

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

Peter O. Safir
Kleinfeld, Kaplan and Becker
1140 19th St., N.W.
Washington, D.C. 20036



Peter D. Bernstein