



Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

February 16, 2010

**VIA E-MAIL AND EXPRESS MAIL**

Church & Dwight, Inc.  
c/o Carl W. Hittinger, Esquire  
DLA Piper LLP (US)  
One Liberty Place  
1650 Market St., Suite 4900  
Philadelphia, PA 19103

Re: Request for Rehearing by the Full Commission of the Denial of Petition to Quash or Limit Subpoena Duces Tecum and Civil Investigative Demand Issued to Church & Dwight, Inc. ("Petition") and Denial of Leave to File Out of Time ("Request for Leave"), File No. 091-0037

Dear Mr. Hittinger:

This letter advises you of the Commission's disposition of Church & Dwight, Inc.'s ("C&D") Request for Rehearing by the Full Commission of the Denial of C&D's Petition and Request for Leave ("Request for Rehearing"). On November 13, 2009, C&D filed its Petition on the grounds that the subpoena and CID seek irrelevant Canadian marketing documents, and that it would be unduly burdensome for it to produce Canadian marketing documents that are located in Canada. On December 7, 2009, C&D filed its Request for Leave seeking to raise a further ground for quashing or modifying the subpoenas and CIDs in order to permit it to redact "irrelevant" information regarding C&D's non-condom products from otherwise responsive documents. On December 23, 2009, Commissioner Harbour directed the issuance of a Letter Ruling denying C&D any of the relief requested in either the Petition or Request for Leave on the grounds that: (1) C&D had allowed the time for filing a petition to quash to lapse before seeking an extension from staff of the deadline for filing a petition to quash; (2) C&D had not offered any credible justification for not having filed its Request for Leave at the same time as the Petition; and (3) even if the Petition and Request for Leave had not been time-barred, the requested relief would have been denied because (a) Canadian marketing documents and information regarding non-condom products are relevant to the investigation, (b) C&D had not proven that it would be unduly burdensome for it to produce its Canadian marketing documents, including those kept and maintained in Canada, and (c) C&D had not advanced any plausible data security justification that could only be remedied by its redaction of information related to its non-condom products from otherwise relevant documents.

On December 28, 2009, C&D filed its Request for Rehearing based on its disagreement with the Letter Ruling denying its Petition and Request for Leave. Request for Rehearing at 1. The Request for Rehearing presents no new evidence or arguments, and does not suggest that Commissioner Harbour's Letter Ruling is based on any mistakes of law or fact. The Request for Rehearing additionally asks the Commission to stay the January 26, 2010, return dates on the subpoena and CID "until such time as the full Commission has reviewed the Petition and Request [for Leave] and has reached a final decision on the important issues raised that have not heretofore been addressed by the Commission or the federal courts." Request for Rehearing at 1.<sup>1</sup>

For substantially the same reasons as those stated in Commissioner Harbour's Letter Ruling of December 23, 2009, the Letter Ruling is affirmed, and the request for a stay of compliance pending the Commission's decision must be denied as moot.

For all the foregoing reasons, **IT IS ORDERED THAT** the Letter Ruling be, and it hereby is, **AFFIRMED**.

**IT IS FURTHER ORDERED THAT** C&D's request for a stay of compliance with the subpoena and CID be, and it hereby is, **DENIED** because it is moot.

**By direction of the Commission.**

  
Donald S. Clark  
Secretary

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<sup>1</sup> The alleged issues of first impression raised by C&D's claims for relief are not in fact self-evident. As Commissioner Harbour found, C&D's claims for relief are in most cases not even supported by the authorities cited by C&D in its Petition and Request for Leave. *See, e.g.*, Letter Ruling at 5. Counsel for C&D asks the Commission to decide these "important issues" without providing the Commission with any substantial assistance. Further, the issues that are self-evident from the Petition and Request for Leave are relatively settled. It is self-evident that relevant information has to be produced, even if that production entails some burden. *FTC v. Texaco*, 555 F.2d 862, 871-74, 882 (D.C. Cir. 1976); *United States v. Morton Salt Co.*, 338 U.S. 632 (1950). It is also self-evident that the relevance of material to be produced must be measured against the purposes stated in the resolution authorizing the use of process. *Texaco*, 555 F.2d at 874. Finally, it is self-evident that the petitioner bears the burden of proving that the specifications of a subpoena or CID are unreasonable. *FTC v. Rockefeller*, 591 F.2d 182, 190 (2<sup>nd</sup> Cir. 1979). And, as Commissioner Harbour found, it is equally self-evident that C&D has not factually or legally supported its claims for relief.