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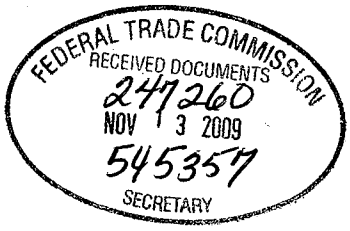


UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of CHURCH & DWIGHT, INC. Defendant.	**FTC FILE 091-0037**

PETITION TO QUASH OR LIMIT SUBPOENA *DUCES TECUM* AND CIVIL INVESTIGATIVE DEMAND ISSUED TO CHURCH & DWIGHT, INC. ON JUNE 29, 2009

Carl W. Hittinger, Esquire
Lesli C. Esposito, Esquire
Matthew A. Goldberg, Esquire
DLA Piper LLP (US)
One Liberty Place
1650 Market Street, Suite 4900
Philadelphia, PA 19103
T.: (215) 656-2449
F.: (215) 606-2149

Attorneys for Petitioner Church & Dwight, Inc.

November 12, 2009

INTRODUCTION

Pursuant to 16 C.F.R. § 2.7(d), Church & Dwight Co., Inc. ("Church & Dwight") hereby petitions to limit or quash the subpoena *duces tecum* ("subpoena') and civil investigative demand ("CID"), both served on June 29, 2009 (Exhibits A and B, respectively).[1] More specifically, Church & Dwight petitions to limit or quash the subpoena and CID only to the extent that they describe the "Relevant Area" of the investigation as including the Canadian market and to the extent that they call for the production of documents located in Canada. Such documents are patently and demonstrably irrelevant to the FTC's investigation, which is focused solely on Church & Dwight's efforts to market male latex condoms in the United States. Moreover, requiring Church & Dwight to produce documents currently located in Canada would be unduly burdensome and require the company to squander significant assets to fulfill the FTC's requests.

BACKGROUND

On June 29, 2009, the FTC issued a subpoena *duces tecum* and a CID to Church & Dwight in connection with its investigation under Section 2 of the Sherman Act and Section 5 of the FTC Act regarding "Church & Dwight's marketing practices through retail chains in the United States of America." *See* Exhibits A and B (emphasis added). The accompanying Resolution Authorizing Use of Compulsory Process states that the general purpose of the investigation is to investigate Church & Dwight's sales and distribution of condoms "in the United States." (Exhibit D)

Although the subpoena and CID clearly state that the subject of the investigation is Church & Dwight's practices in the United States, both the subpoena and CID include Canada in

[1] On November 4, 2009, the FTC staff granted Church & Dwight's request for an extension of time, affording the company until November 13, 2009 to file the instant Petition. *See* November 4, 2009 correspondence from Assistant Director Dean Graybill to Carl Hittinger, Esquire (Exhibit C).

the definition of the term "Relevant Area." During the very first conversation regarding the discovery requests, Church & Dwight raised objections concerning the scope of the "Relevant Area" to the Commission staff. Specifically, Church & Dwight expressed to the Commission staff its position that Canada should not be included in the "Relevant Area" because the FTC has no jurisdiction in Canada and because documents relating to Church & Dwight's sales practices in Canada are irrelevant to its sales practices in the United States. Church & Dwight has explained to the FTC staff and economist that while the Canadian company is a wholly-owned subsidiary of the United States corporation, Church & Dwight, Inc., their managements are separate and distinct from each other – they have different policies and practices in place addressing different markets with different regulatory requirements, retail structures and consumer demands. Moreover, their sales and marketing data are on two entirely separate document and computer systems, one located in the United States and one in Canada. Thus, even assuming documents located in Canada bear any relevance to the United States investigation (and they do not), production of those documents would be unduly burdensome and expensive.

In light of these objections, the Commission staff and Church & Dwight agreed to tentatively compromise on the issue. The parties entered into an oral agreement, whereby Church & Dwight agreed to search for and produce documents related to the sale and marketing of male condoms in Canada to the extent that those documents were physically located in the United States. If after reviewing the initial production the Commission staff still wanted to pursue documents located in Canada, both parties agreed that they would revisit the issue and engage in further discussions. In addition to compromising regarding the production of Canadian documents, the parties agreed that Church & Dwight could begin producing responsive documents on a rolling basis. Pursuant to these agreements, Church & Dwight began producing

the many documents requested in the subpoena and CID. To date, over 182,000 pages of documents have been produced involving thousands of hours of review and analysis. Seventeen paralegals nationwide have been assigned to the review process. Church & Dwight produced its lengthy responses to the CID by the July 30, 2009 return date and has continued to steadily produce at enormous cost and burden, the documents requested by the subpoena on a rolling basis over the past several months. This has included, as agreed, documents located in the United States that relate to Canadian condom sales.

While Church & Dwight was still in the process of producing responsive documents and before the Commission staff had an opportunity to review all Canadian documents located in the United States, the Commission staff once again insisted that Church & Dwight produce documents located in Canada relating to its sales practices in Canada. Again, Church & Dwight resisted not only for grounds previously asserted, but also because the Commission staff and Church & Dwight had an agreement in place. However, the Commission staff took the position that they had authority to nevertheless discover these documents as a part of its investigation. When counsel for Church & Dwight questioned this authority and the relevance of the documents to the issues involved in the United States investigation, the Commission staff and its economist responded that the documents were relevant for the purposes of the Commission staff and its economist to conduct a "natural experiment" comparing Church & Dwight's sales, marketing practices and market share for male condoms in Canada with the United States . Unsatisfied with this response and unable to reach a resolution through good faith negotiations, Church & Dwight now files the instant petition to limit or quash the subpoena and CID to the extent that they purport that the "Relevant Area" of the scope of the investigation includes Canada, and seek documents physically located in Canada.

I. DOCUMENTS RELATED TO CHURCH & DWIGHT'S SUBSIDIARIES' SALES PRACTICES IN CANADA ARE NOT RELEVANT TO THE FTC'S INVESTIGATION IN THE UNITED STATES

The test for the relevancy of an administrative subpoena is "whether the information sought is 'reasonably relevant' to the agency's inquiry." *FTC v. Anderson*, 631 F.2d 741, 745-46 (D.C. Cir. 1979) (Leventhal, J.). Moreover, "the relevancy of an investigative subpoena is measured against the 'general purposes of (the agency's) investigation[.]'" *Id.* Indeed, "[w]hen a conflict exists in the parties' understanding of the purpose of an agency investigation, *the language of the agency's resolution must govern.*" *FTC v. Invention Submission Corp.*, No. 89-272, 1991 U.S. Dist. LEXIS 5523, at *8 (D.D.C. Feb. 13, 1991) (Lamberth, J.) (emphasis added); *see also FTC v. Texaco, Inc.*, 555 F.2d 862, 874 (D.C. Cir. 1977) (Bazelon, C.J.) ("The relevance of the material sought by the FTC must be measured against the scope and purpose of the FTC's investigation, as set forth in the Commission's resolution."), *cert. denied*, 431 U.S. 974 (1977).

Here, the information sought is not relevant to the stated general purpose of the Commission's investigation. The general purpose of the investigation is set forth in the Resolution Authorizing Use of Compulsory Process from the four Commissioners and signed by the Secretary of Commerce. The Resolution clearly states that the purpose is only to investigate Church & Dwight's marketing practices with regard to male condoms throughout retail chains "in the United States."[2] Documents related to Canadian condom sales and marketing practices, by Church & Dwight or a competitor, are in no way relevant to this inquiry.

[2] "Nature and Scope of Investigation: To determine whether Church & Dwight, Co., Inc. has attempted to acquire, acquired, or maintained a monopoly in the distribution or sale of condoms in the United States, or in any part of that commerce, through potentially exclusionary practices including, but not limited to, conditioning discounts or rebates to retailers on the percentage of shelf or display space dedicated to Trojan brand condoms and other products distributed or sold by Church & Dwight, in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. Section 45, as amended." (emphasis added)

Significantly, the Commission staff does *not* allege that Canadian documents directly address issues central to their investigation. Nor does the Commission staff claim that crucial documents needed for its investigation into Church & Dwight's United States activities exist only in Canada. *See In re Polypore*, Docket No. 9327, 2009 WL 569708 (F.T.C. Feb. 3, 2009) (Chappell, A.L.J.) (holding that a U.S. corporation was required to produce document located with a foreign subsidiary because the documents related to central issues in the case and because certain information contained in those documents could only be obtained from their overseas location). Instead, the Commission staff merely asserts that the documents located in Canada may be necessary for purposes of indulging in an economic "natural experiment" that purports to compare Church & Dwight's condom sales and distribution activities in the United States with the same type of activities in the male condom market in Canada.

However, the Commission staff has no basis for believing that this "natural experiment" is relevant or based on any logically sound premise. As stated by former Chairman Deborah Platt Majoras and current Commissioners William E. Kovacic and J. Thomas Rosch, "natural experiments" look to whether "the posited harm has occurred under *circumstances similar to the proposed transaction*[.]" *See FTC v. Foster*, No. CIV 07-352 JB/ACT, 2007 U.S. Dist. LEXIS 47606, *97 (D.N.M. May 29, 2007) (Browning, J.) (emphasis added) (quoting "Statement of Chairman Majoras, Commissioner Kovacic, and Commissioner Rosch Concerning the Closing of the Investigation Into Transactions Involving Comcast, Time Warner Cable, and Adelphia Communications"). Here, the Commission staff has provided absolutely no indication that the sale and distribution of male condoms by Church & Dwight's Canadian subsidiary in the Canadian market constitute actions taken "under circumstances similar" to the sale and distribution of male condoms by Church & Dwight in the United States market. Moreover,

jurisdictional constraints (such as the FTC's inability to compel, for example, (1) testimony from Church & Dwight's Canadian based employees, (2) documents and testimony from Canadian based retailers, and (3) documents and testimony from Church & Dwight's competitors in Canada) preclude any argument by the Commission staff that the requisite similarity can ever be demonstrated if they are able to obtain documents from Church & Dwight that are located in Canada. Thus, from the start, the proposed "natural experiment" is flawed on its face and devoid of a reliable and adequate foundation.

Indeed, the inherently speculative nature of this experiment by the FTC's economist renders it immediately susceptible to an attack under *Daubert v. Merrill Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) (Blackmun, J.). For example, the Commission staff has not established that the natural experiment "fits" with its investigation of Church & Dwight's sale and distribution of male condoms in the United States. *Id.* at 591-92 (explaining that Federal Rule of Evidence 702 requires a valid scientific connection to the pertinent inquiry as a precondition to admissibility). As the Supreme Court explained, the concept of fit is not always obvious, "and scientific validity for one purpose is not necessarily scientific validity for other, unrelated purposes." *Daubert,* 509 U.S. at 591. To illustrate, the Supreme Court used the following hypothetical:

> The study of the phases of the moon, for example, may provide valid scientific 'knowledge' about whether a certain night was dark, and if darkness is a fact in issue, the knowledge will assist the trier of fact. However (absent creditable grounds supporting such a link), evidence that the moon was full on a certain night will not assist the trier of fact in determining whether an individual was unusually likely to have behaved irrationally on that night.

Id.

The same reasoning applies here. Namely, the Commission staff has not offered any indication or independent support whatsoever of a "credible link" between the United States and Canadian markets for male condoms. They have not adduced any affirmative support for the concept that the Canadian market is analogous to the United States market, that, for example, Church & Dwight does not use planogram agreements in Canada, or that Church & Dwight's market growth rate has been substantially different in Canada than in the United States. *Cf. United States v. Dentsply Int'l, Inc.*, No. 99-5, 2000 U.S. Dist. LEXIS 6925 (D. Del. May 10, 2000) (Schwartz, J.) (allowing the DOJ to obtain documents for comparative market analysis purposes from foreign subsidiaries but only where the DOJ was found to be seeking information to confirm and supplement discovery that it had obtained through third-party discovery, which supported its belief that further comparative market analysis was necessary).

Moreover, even if the Commission staff is ultimately permitted to obtain documents from Church & Dwight's subsidiary related to that subsidiary's distribution and marketing practices in Canada, the Commission staff is simply unable jurisdictionally to take the next needed steps and compel document production from competitors and retailers located in Canada. Nor would the Commission staff be able to jurisdictionally obtain related and needed testimony from Church & Dwight's subsidiaries' employees residing in Canada or other relevant persons who are residents of and living in Canada, not the United States. All this would be necessary to lay the proper evidentiary foundation for the admissibility of such information for purposes of the "natural experiment." *See* Fed. R. Evid. 803(6) (stating that the testimony of a custodian or other qualified witness is required to lay foundation for the admission of documents relating to a regularly conducted business activity). In other words, the jurisdictional inability of the Commission staff to obtain other related documents and take needed testimony renders the entire

proposed economic "natural experiment" doomed from inception, as being inherently unreliable because it would be based entirely upon inadmissible evidence. *See In re Universal Serv. Fund Telephone Billing Practices Litig,* Case No. 02-MD-1468-JWL, 2008 U.S. Dist. LEXIS 74548, *23-*24 (D. Kan. Sept. 26, 2008) (Lungstrum, J.) (excluding expert's damage calculations related to antitrust claim where calculations were based solely on an inadmissible and unreliable documents completely lacking in foundation).

Simply put, the Commission staff and economist's insistence on Canadian data will prove to be nothing more than an attempt to engage in an enormously costly and time consuming exercise that is not based on credible facts. Thus, the Commission staff and economist should be precluded from obtaining documents from Church & Dwight's Canadian subsidiary.

II. THE EXPENSE OF PRODUCING THE DOCUMENTS LOCATED IN CANADA WOULD BE UNDULY BURDENSOME

Even if the documents relating to Church & Dwight's sales practices in Canada were relevant to the issues in the United States investigation, the cost of producing the documents would be unduly burdensome. As explained above, documents and records relating to Church & Dwight's sales and marketing practices in Canada are maintained on a completely separate system than the system that houses records relating to sales practices in the United States. As such, complying with this production would likely cost Church & Dwight hundreds of thousands of dollars and would likely involve over a thousand staff-hours by Church & Dwight employees located in both Canada and the United States.

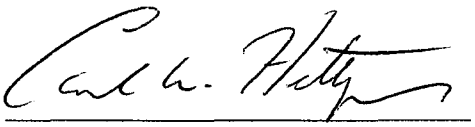
This expense is even more oppressive given the fact that the cost of producing the documents greatly outweighs the benefits of production, since, as previously discussed, any

evidence pertaining to the so-called economic "natural experiment" will likely be inadmissible if this matter is ultimately adjudicated.

CONCLUSION

For the foregoing reasons, the subpoena *duces tecum* and civil investigative demand issued in connection with the FTC's investigation regarding Church & Dwight's marketing practices in the United States, should be quashed or limited to the extent they purport that the "Relevant Area" to the investigation includes Canada and to the extent that they request documents and other information located in Canada.

Respectfully submitted,



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DLA Piper LLP (US)
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Philadelphia, PA 19103
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Attorneys for Petitioner Church & Dwight, Inc.

November 12, 2009

CERTIFICATION OF GOOD FAITH

The undersigned counsel for petitioner Church & Dwight Co., Inc. herein certifies that he has tried on several occasions, and in good faith, to resolve with the Commission staff the issues raised in this Petition to Quash or Limit Subpoena *Duces Tecum* and Civil Investigative Demand Dated June 29, 2009. However, these efforts have proven unsuccessful and have necessitated the filing of the instant Petition.

Carl W. Hittinger, Esquire

Dated: November 12, 2009

EXHIBIT A

SUBPOENA DUCES TECUM

1. TO	2. FROM
Church & Dwight Co. Inc. Carl W. Hittinger, Esq. DLA Piper One Liberty Place 1650 Market St., Ste 4900 Philadelphia, PA 19103-7300	UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION

This subpoena requires you to appear and testify at the request of the Federal Trade Commission at a hearing [or deposition] in the proceeding described in Item 6.

3. LOCATION OF HEARING	4. YOUR APPEARANCE WILL BE BEFORE
Federal Trade Commission Suite 570 901 Market St. San Francisco, CA 94103	Sylvia Kundig, Esq. 5. DATE AND TIME OF HEARING OR DEPOSITION July 30, 2009

6. SUBJECT OF INVESTIGATION

FTC File 091-0037 Church & Dwight Co., Inc.

Church & Dwight's marketing practices through retail chains in the United States of America.

See attached Commission Resolution.

7. RECORDS YOU MUST BRING WITH YOU

See attached definitions, instructions and specifications.

8. RECORDS CUSTODIAN/DEPUTY RECORDS CUSTODIAN	9. COMMISSION COUNSEL
Dean Graybill, Esq. (Custodian) Sylvia Kundig, Esq. (Deputy Custodian)	Sylvia Kundig, Esq. (415)848-5188

DATE ISSUED	COMMISSIONER'S SIGNATURE
06/29/09	

GENERAL INSTRUCTIONS

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.

PETITION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any petition to limit or quash this subpoena be filed within 20 days after service or, if the return date is less than 20 days after service, prior to the return date. The original and ten copies of the petition must be filed with the Secretary of the Federal Trade Commission. Send one copy to the Commission Counsel named in Item 9.

TRAVEL EXPENSES

Use the enclosed travel voucher to claim compensation to which you are entitled as a witness for the Commission. The completed travel voucher and this subpoena should be presented to Commission Counsel 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 Commission Counsel.

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

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

○ *in person.*

○ *by registered mail.*

○ *by leaving copy at principal office or place of business, to wit:*

_____

_____

_____

_____

on the person named herein on:

_____
(Month, day, and year)

_____
(Name of person making service)

_____
(Official title)

SUBPOENA DUCES TECUM
ISSUED TO CHURCH & DWIGHT CO., INC.

Unless modified by agreement with the staff of the Federal Trade Commission, each specification of this Request requires a complete search of "the Company" as defined in Paragraph "A" of the Definitions and Instructions which appear after the following Specifications. If the Company believes that the required search or any other part of the Request can be narrowed in any way that is consistent with the Commission's need for documents and information, you are encouraged to discuss such questions and possible modifications with the Commission representatives identified on the last page of this Request. All modifications to this Request must be agreed to in writing by those representatives. You may find it useful to provide the response to Specification 1 of this Request promptly and discuss limiting the required search with the Commission's representatives before you begin your search.

SPECIFICATIONS

1. Submit one copy of each organization chart and personnel directory in effect since January 1, 2001, for the Company as a whole and for each of the Company's facilities or divisions involved in any activity relating to any Relevant Product.

2. For each stock keeping unit ("SKU"), uniform product code ("UPC"), and any other applicable unique identification number of each Relevant Product, submit (a) a sample of the product; and (b) one copy of all selling aids and promotional materials.

3. Submit all Documents relating to the Company's or any other Person's plans relating to any Relevant Product, including, but not limited to, business plans, short term and long range strategies and objectives; budgets and financial projections; plans relating to distribution through different Channels, expansion or retrenchment plans; research and development efforts; and presentations to management committees, executive committees, and boards of directors. For regularly prepared budgets and financial projections, the Company need only submit one copy of final year-end documents and cumulative year to date documents for the current year.

4. Submit all studies, forecasts, surveys, and analyses, e.g., SWOT analyses, relating to competition in the distribution or sale of any Relevant Product, including, but not limited to, documents relating to market share, private label, Channel, access to display space, or relative strengths or weaknesses of the Company or any of its competitors.

5. Submit all Documents since January 1, 2001, relating to allegations by any Person that any Company that manufactures, distributes, or sells any Relevant Product is acting in an unfair or anticompetitive fashion, including, but not limited to, customer and competitor complaints, threatened, pending, or completed lawsuits, and federal and state investigations.

6. Submit all survey, scan, or machine data used in any way to evaluate, market, distribute, or sell any Relevant Product.

All data provided in response to this Specification must be submitted in an electronic format agreed upon by a Commission representative in writing prior to the submission in order to assure that the FTC has the capability of reading and using the data.

7. For each of the Company's customers for each Relevant Product in each Relevant Area, submit a copy of each purchase agreement, pricing agreement, Planogram Program agreement, and contract between the Company and the customer.

8. Submit a copy of each purchase agreement, pricing agreement, and contract between the Company and any Person who manufactures or packages a Relevant Product for the Company.

9. Submit all Documents relating to the Planogram Program, including, but not limited to:

   a. all Documents relating to the purpose, development, and adoption of the Planogram Program, including all Carter-Wallace Documents, regardless of date;

   b. all Documents relating to the structure of the Planogram Program, including, but not limited to, the timing of rebate payments, the payment of rebates based on dedicated display space, and the similarities or differences between the Planogram Program and other types of quantity or loyalty discounts;

   c. all Documents relating to the effects of the Planogram Program on the Company's, or any other Person's market share, shelf space presence or overall competitive position regarding any Relevant Product;

   d. all Documents relating to the effects of the Planogram Program on customers, competitors, and competition with respect to the Relevant Product, including profit margins, prices, consumer choice, and innovation;

   e. all Documents relating to any proposed or actual modifications to the Planogram Program's terms and conditions, implementation, or enforcement;

   f. all Documents relating to the Planogram Program's availability in different Channels and for different customers, including, but not limited to, (I) participation eligibility; (ii) which "tiers" (e.g., 8.5% rebate if 80% of facings are Company Relevant Product) are offered; and (iii) instances where it was modified at a customer's request, e.g., the customer could include non-Company products in its fulfillment of the display space requirement;

   g. all Documents relating to the total cost of the Planogram Program to the Company, including, but not limited to, its profitability and the cost of the rebates and enforcement;

h. all Documents relating to the acceptance or rejection of the Program by the Company's customers or potential customers, including, but not limited to, WalMart;

i. all Documents relating to instances where a customer removed a competitor's Relevant Product and added one of the Company's Relevant Products to adhere to the Planogram Program's display space requirement;

j. all Documents relating to the Company's employees or agents goals relating to customer acceptance of the Planogram Program, including but not limited to, sales force training and goals; and

k. all Documents relating to the Company's share of Relevant Product sales through customers subject to the Planogram Program.

10. Submit all Documents relating to the Company's or any other Person's price lists (wholesale and retail), pricing plans, pricing policies, pricing forecasts, pricing strategies, pricing analyses, and pricing decisions relating to any Relevant Product.

11. For each Relevant Product, submit all Documents relating to the Company's direct or indirect involvement relating to product placement, category management, category captaincy, or other promotional or display space activities.

12. Submit all research or survey Documents relating to brand or customer product preferences, purchasing patterns, or switching behavior.

13. Submit all Documents relating to the strategies behind, effectiveness or impact of, any proposed or disseminated advertisement, promotional activity, and shelf placement strategies (such as the Planogram Program), including, but not limited to, any marketing analyses, consumer research, evaluations, sales force training materials, and sales force goals.

14. Submit Documents sufficient to show the promotional or other fees, and the bases for their calculation, paid or credited to any retailer, warehouser, or distributor of any Relevant Product, including, but not limited to, slotting allowances, "pay-to-stay" fees, coupons, promotional allowances, cooperative advertising allowances, temporary price reductions, rebates, "Catalina" coupons, and marketing reimbursements.

15. Submit all studies, analyses, and reports relating to price sensitivity, price elasticity, or product substitution of any Relevant Products and all underlying data compilations.

All data provided in response to this Specification must be submitted in an electronic format agreed upon by a Commission representative in writing prior to the submission in order to assure that the FTC has the capability of reading and using the data.

16. Submit all Documents referring to the actual or potential differences in distributing Relevant Products through each Channel, including costs, advantages or disadvantages, and supply and demand conditions.

17. Submit all Documents referring to entry into the manufacture or sale of the Relevant Product, including, but not limited to, establishment of a brand name and access to display space, importation requirements, and the time and cost necessary to meet each such requirement.

18. Submit all Documents analyzing imports into, or exports from, each Relevant Area of any Relevant Product, including, but not limited to, Documents showing the names of importers or exporters; the market share or position of such importers or exporters; the quality or quantity of products imported or exported in total or by any Person; and any costs or barriers to imports or exports.

19. Submit all Documents relating to instances since January 1, 2001, in which the Company or competitor entered or discontinued a new Relevant Product SKU or UPC (including private label Relevant Products), including all studies, surveys, analyses and reports that were prepared by or for the Company, and all Documents used or relied on to prepare such studies, surveys, analyses, and reports.

20. Submit Documents sufficient to show, since January 1, 2005, every instance in which the Company has bid, has been solicited to bid, or has considered bidding to develop, manufacture, distribute or supply any Relevant Product (including private label Relevant Products), or has negotiated, in lieu of bidding, to review or present pricing, promotional funding, or other terms.

21. Submit one copy of each financial statement, budget, profit and loss statement, cost center report, profitability report, and other financial report regularly prepared by or for the Company on a quarterly or annual basis relating to (a) the Company as a whole; (b) each of the Company's production facilities, sales offices, and distribution facilities that relate to the production and sale of any Relevant Product; and (c) any Relevant Product line or customer for any Relevant Product.

22. Submit Documents sufficient to show the Company's policies and procedures relating to the retention and destruction of documents.

23. Submit a copy of all instructions prepared by the Company relating to the steps taken to respond to this Request. Where oral instructions were given, identify the person who gave the instructions and describe the content of the instructions and the person(s) to whom the instructions were given. For each specification, identify the individual(s) who assisted in the preparation of the response, with a listing of the persons (identified by name and corporate title or job description) whose files were searched by each.

DEFINITIONS AND INSTRUCTIONS

For the purposes of this Request, the following definitions and instructions apply:

A. "Company" or "Church & Dwight" means Church & Dwight Co., Inc., its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents and representatives of the foregoing. The terms "subsidiary", "affiliate" and "joint venture" refer to any Person in which there is partial (25 percent or more) or total ownership or control between the Company and any other Person.

B. "Documents" means all computer files and written, recorded, and graphic materials of every kind in the possession, custody or control of the Company. The term "Documents" includes, without limitation: electronic mail messages; electronic correspondence and drafts of Documents; metadata and other bibliographic or historical data describing or relating to Documents created, revised, or distributed on computer systems; copies of Documents that are not identical duplicates of the originals in that person's files; and copies of Documents the originals of which are not in the possession, custody or control of the Company.

(1) Unless otherwise specified, the term "Documents" excludes (a) bills of lading, invoices, purchase orders, customs declarations, and other similar Documents of a purely transactional nature; (b) architectural plans and engineering blueprints; and (c) Documents solely relating to environmental, tax, OSHA, or ERISA issues.

(2) The term "computer files" includes information stored in, or accessible through, computer or other information retrieval systems. Thus, the Company should produce Documents that exist in machine-readable form, including Documents stored in personal computers, portable computers, workstations, minicomputers, mainframes, servers, backup disks and tapes, archive disks and tapes, and other forms of offline storage, whether on or off Company premises. If the Company believes that the required search of backup disks and tapes and archive disks and tapes can be narrowed in any way that is consistent with the Commission's need for Documents and information, you are encouraged to discuss a possible modification to this instruction with the Commission representatives identified on the last page of this Request. The Commission representative will consider modifying this instruction to:

(a) exclude the search and production of files from backup disks and tapes and archive disks and tapes unless it appears that files are missing from files that exist in personal computers, portable computers, workstations, minicomputers, mainframes, and servers searched by the Company;

(b) limit the portion of backup disks and tapes and archive disks and tapes that needs to be searched and produced to certain key individuals, or certain time periods or certain specifications identified by Commission representatives; or

(c) include other proposals consistent with Commission policy and the facts of the case.

(3) If the Company intends to utilize any De-duplication or Near-de-duplication software or services when collecting or reviewing information that is stored in the Company's computer systems or electronic storage media in response to this Request, or if the Company's computer systems contain or utilize such software, the Company must contact Commission representatives to determine, with the assistance of the appropriate government technical officials, whether and in what manner the Company may use such software or services when producing materials in response to this Request.

C. "Person" includes the Company and means any natural person, corporate entity, partnership, association, joint venture, government entity, or trust.

D. "Relating to" means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, or stating.

E. "And" and "or" have both conjunctive and disjunctive meanings.

F. "Plans" means tentative and preliminary proposals, recommendations, or considerations, whether or not finalized or authorized, as well as those that have been adopted.

G. "Sales" means net sales, i.e., total sales after deducting discounts, returns, allowances and excise taxes. "Sales" includes sales of the Relevant Product whether manufactured by the Company itself or purchased from sources outside the Company and resold by the Company in the same manufactured form as purchased.

H. "Channel" means (I) convenience stores; (ii) supermarkets and grocery stores; (iii) drug stores; (iv) club stores; (v) mass merchandisers; (vi) internet; (vii) public or nonprofit; (viii) adult market; (ix) distributors; and (x) all other outlets from which consumers purchase Relevant Products.

I. "Relevant Product" means (1) male latex condoms; and (2) male non-latex condoms.

J. "Planogram Program" means the program the Company offers to customers that is based on the percentage of facings or other types of display space the customer dedicates to Trojan brand condoms.

K. "Relevant Area" means (a) the United States; (b) Canada; and © each area as to which the Company separately collects and maintains information and data within the United States, including, but not limited to, each Metropolitan Statistical Area ("MSA") or comparable metropolitan area designation.

L. "Minimum viable scale" means the smallest amount of production at which average costs equal the price currently charged for the Relevant Product. It should be noted that minimum viable scale differs from the concept of minimum efficient scale, which is the

smallest scale at which average costs are minimized.

M. "Sunk costs" means the acquisition costs of tangible and intangible assets necessary to manufacture and sell the Relevant Product [provide the relevant service] that cannot be recovered through the redeployment of these assets for other uses.

N. Unless otherwise specified, each specification calls for information and data to be provided separately for each Relevant Product, by Relevant Area, by Channel.

O. All references to year refer to calendar year. Unless otherwise specified, each of the specifications calls for Documents and information for each of the years from January 1, 1999 to the present.

P. This Request shall be deemed continuing in nature so as to require production of all Documents responsive to any specification included in this Request produced or obtained by the Company up to forty-five calendar days prior to the date of the Company's full compliance with this Request.

Q. The Company shall discuss the form and method of production of responsive documents with the Commission representative identified on the last page of this subpoena. The Company shall be permitted to use any form and method of production of responsive documents that the Commission representative approves in writing. The Commission can support the following production forms and methods:

(1) In lieu of original paper documents, the Company may submit either paper or electronic copies of original documents. If the documents are provided electronically as TIFF images, they must be accompanied by OCR.

(2) In lieu of original documents stored electronically, the Company may submit documents in the following form: electronically stored documents, except Microsoft Excel files and Access databases, may be produced as single-page TIFF images with a corresponding file containing the extracted text from the document, accompanied by an Opticon load file. Metadata and custodian information shall be provided in a delimited ASCII format. Microsoft Excel and Access files shall be provided natively.

(3) Electronic productions may be submitted in the following methods:

(a) Responsive documents may be submitted through an online repository maintained by an independent vendor; and

(b) Responsive documents may be submitted directly to the Commission on any combination of the listed media types; however, the Commission prefers IDE hard drives for productions over 10GB:

- CD-R CD-ROM formatted to ISO 9660 specifications;
- DVD-ROM for Windows-compatible personal computers;
- IDE and EIDE hard disk drives, formatted in Microsoft Windows-compatible, uncompressed data; and
- USB 2.0 Flash Drives.

(4) Documents submitted in hard copy shall be submitted in sturdy cartons not larger than 1.5 cubic feet. Number each such box and mark each such box with corporate identification and the name(s) of the person(s) whose files are contained in the box.

R. All Documents responsive to this request, regardless of format or form and regardless of whether submitted in paper or electronic form:

(1) shall be produced in complete form, unredacted unless privileged, and in the order in which they appear in the Company's files and shall not be shuffled or otherwise rearranged. For example:

(a) if in their original condition papers were stapled, clipped or otherwise fastened together or maintained in file folders, binders, covers or containers, they shall be produced in such form, and any Documents that must be removed from their original folders, binders, covers or containers in order to be produced shall be identified in a manner so as to clearly specify the folder, binder, cover or container from which such Documents came; and

(b) if in their original condition electronic Documents were maintained in folders or otherwise organized, they shall be produced in such form and information shall be produced so as to clearly specify the folder or organization format;

(2) if written in a language other than English, shall be translated into English, with the English translation attached to the foreign language Document;

(3) shall be produced in color where necessary to interpret the Document;

(4) shall be marked on each page with corporate identification and consecutive Document control numbers;

(5) shall be accompanied by an affidavit of an officer of the Company stating that the copies are true, correct and complete copies of the original Documents;

(6) shall be accompanied by an index that identifies: (I) the name of each person from whom responsive Documents are submitted; and (ii) the corresponding consecutive Document control number(s) used to identify that person's Documents, and if submitted in paper form, the box number containing such Documents. If the index exists as a computer file(s), provide the index both as a printed hard copy and in machine-readable

form (provided that Commission representatives determine prior to submission that the machine-readable form would be in a format that allows the agency to use the computer files). The Commission representative will provide a sample index upon request.

S. If any Documents are withheld from production based on a claim of privilege, provide a statement of the claim of privilege and all facts relied upon in support thereof, in the form of a log that includes each Document's authors, addressees, date, a description of each Document, all recipients of the original and any copies. Attachments to a Document should be identified as such and entered separately on the log. For each author, addressee, and recipient, state the person's full name, title, and employer or firm, and denote all attorneys with an asterisk. The description of the subject matter shall describe the nature of each Document in a manner that, though not revealing information itself privileged, provides sufficiently detailed information to enable the Commission to assess the applicability of the privilege claimed. For each Document withheld under a claim that it constitutes or contains attorney work product, also state whether the Company asserts that the Document was prepared in anticipation of litigation or for trial and, if so, identify the anticipated litigation or trial upon which the assertion is based. Submit all nonprivileged portions of any responsive Document (including nonprivileged or redactable attachments) for which a claim of privilege is asserted (except where the only nonprivileged information has already been produced in response to this instruction), noting where redactions in the Document have been made. Documents authored by outside lawyers representing the Company that were not directly or indirectly furnished to the Company or any third-party, such as internal law firm memoranda, may be omitted from the log.

T. If the Company is unable to answer any question fully, supply such information as is available. Explain why such answer is incomplete, the efforts made by the Company to obtain the information, and the source from which the complete answer may be obtained. If books and records that provide accurate answers are not available, enter best estimates and describe how the estimates were derived, including the sources or bases of such estimates. Estimated data should be followed by the notation "est." If there is no reasonable way for the Company to make an estimate, provide an explanation.

U. If Documents responsive to a particular specification no longer exist for reasons other than the ordinary course of business or the implementation of the Company's Document retention policy as disclosed or described in response to Specification 16 of this Request, but the Company has reason to believe have been in existence, state the circumstances under which they were lost or destroyed, describe the Documents to the fullest extent possible, state the specification(s) to which they are responsive, and identify persons having knowledge of the content of such Documents.

V. In order for the Company's response to this Request to be complete, the attached certification form must be executed by the official supervising compliance with this Request, notarized, and submitted along with the responsive materials.

Any questions you have relating to the scope or meaning of anything in this Request or

suggestions for possible modifications thereto should be directed to Sylvia Kundig at 415.848.5188. The response to the Request shall be addressed to the attention of Sylvia Kundig and delivered between 8:30 a.m. and 5:00 p.m. on any business day to Federal Trade Commission. If you wish to submit your response by United States mail, please call staff listed above for mailing instructions.

CERTIFICATION

This response to the Subpoena Duces Tecum, together with any and all appendices and attachments thereto, was prepared and assembled under my supervision in accordance with instructions issued by the Federal Trade Commission. Subject to the recognition that, where so indicated, reasonable estimates have been made because books and records do not provide the required information, the information is, to the best of my knowledge, true, correct, and complete in accordance with the statute and rules.

_____

TYPE OR PRINT NAME AND TITLE

_____

(Signature)

Subscribed and sworn to before me at the City of _____, State of _____, this _____ day of _____, 200_.

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Jon Leibowitz, Chairman
Pamela Jones Harbour
William E. Kovacic
J. Thomas Rosch

RESOLUTION AUTHORIZING USE OF COMPULSORY PROCESS IN A NONPUBLIC INVESTIGATION

File No. 091-0037

Nature and Scope of Investigation:

To determine whether Church & Dwight, Co., Inc. has attempted to acquire, acquired, or maintained a monopoly in the distribution or sale of condoms in the United States, or in any part of that commerce, through potentially exclusionary practices including, but not limited to, conditioning discounts or rebates to retailers on the percentage of shelf or display space dedicated to Trojan brand condoms and other products distributed or sold by Church & Dwight, in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. Section 45, as amended.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation.

Authority to Conduct Investigation:

Sections 6, 9, 10, and 20 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 49, 50, and 57b-1, as amended; FTC Procedures and Rules of Practice, 16 C.F.R. § 1.1 *et seq.* and supplements thereto.

By direction of the Commission.

Donald S. Clark
Secretary

Issued: June 10, 2009

EXHIBIT B

United States of America
Federal Trade Commission

CIVIL INVESTIGATIVE DEMAND

1. TO

Church & Dwight Co. Inc.
Carl W. Hittinger, Esq.
One Liberty Place
1650 Market St., Ste 4900
Philadelphia, PA 19103-7300

This demand is issued pursuant to Section 20 of the Federal Trade Commission Act, 15 U.S.C. § 57b-1, in the course of an investigation to determine whether there is, has been, or may be a violation of any laws administered by the Federal Trade Commission by conduct, activities or proposed action as described in Item 3.

2. ACTION REQUIRED

☒ You are required to appear and testify.

LOCATION OF HEARING	YOUR APPEARANCE WILL BE BEFORE
Federal Trade Commission Suite 570 901 Market St. San Francisco, CA 94103	Sylvia Kundig
	DATE AND TIME OF HEARING OR DEPOSITION July 30, 2009

☒ You are required to produce all documents described in the attached schedule that are in your possession, custody, or control, and to make them available at your address indicated above for inspection and copying or reproduction at the date and time specified below.

☒ You are required to answer the interrogatories or provide the written report described on the attached schedule. Answer each interrogatory or report separately and fully in writing. Submit your answers or report to the Records Custodian named in Item 4 on or before the date specified below.

DATE AND TIME THE DOCUMENTS MUST BE AVAILABLE

July 30, 2009

3. SUBJECT OF INVESTIGATION

FTC File 091-0037 Church & Dwight Co., Inc. Church & Dwight's marketing practices through retail chains in the United States of America. See attached Commission Resolution.

4. RECORDS CUSTODIAN/DEPUTY RECORDS CUSTODIAN	5. COMMISSION COUNSEL
Dean Graybill, Esq. (Custodian) Sylvia Kundig, Esq. (Deputy Custodian)	Sylvia Kundig, Esq. (415)848-5188

DATE ISSUED	COMMISSIONER'S SIGNATURE
06/29/09	

INSTRUCTIONS AND NOTICES

The delivery of this demand 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. The production of documents or the submission of answers and report in response to this demand must be made under a sworn certificate, in the form printed on the second page of this demand, by the person to whom this demand is directed or, if not a natural person, by a person or persons having knowledge of the facts and circumstances of such production or responsible for answering each interrogatory or report question. This demand does not require approval by OMB under the Paperwork Reduction Act of 1980.

PETITION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any petition to limit or quash this demand be filed within 20 days after service, or, if the return date is less than 20 days after service, prior to the return date. The original and twelve copies of the petition must be filed with the Secretary of the Federal Trade Commission, and one copy should be sent to the Commission Counsel named in Item 5.

YOUR RIGHTS TO REGULATORY ENFORCEMENT FAIRNESS

The FTC has a longstanding commitment to a fair regulatory enforcement environment. If you are a small business (under Small Business Administration standards), you have a right to contact the Small Business Administration's National Ombudsman at 1-888-REGFAIR (1-888-734-3247) or www.sba.gov/ombudsman regarding the fairness of the compliance and enforcement activities of the agency. You should understand, however, that the National Ombudsman cannot change, stop, or delay a federal agency enforcement action.

The FTC strictly forbids retaliatory acts by its employees, and you will not be penalized for expressing a concern about these activities.

TRAVEL EXPENSES

Use the enclosed travel voucher to claim compensation to which you are entitled as a witness for the Commission. The completed travel voucher and this demand should be presented to Commission Counsel for payment. If you are permanently or temporarily living somewhere other than the address on this demand and it would require excessive travel for you to appear, you must get prior approval from Commission Counsel.

Form of Certificate of Compliance*

I/We do certify that all of the documents and information required by the attached Civil Investigative Demand which are in the possession, custody, control, or knowledge of the person to whom the demand is directed have been submitted to a custodian named herein.

If a document responsive to this Civil Investigative Demand has not been submitted, the objections to its submission and the reasons for the objection have been stated.

If an interrogatory or a portion of the request has not been fully answered or a portion of the report has not been completed, the objections to such interrogatory or uncompleted portion and the reasons for the objections have been stated.

Signature _____

Title _____

Sworn to before me this day

_____ _____

_____
Notary Public

_____

*In the event that more than one person is responsible for complying with this demand, the certificate shall identify the documents for which each certifying individual was responsible. In place of a sworn statement, the above certificate of compliance may be supported by an unsworn declaration as provided for by 28 U.S.C. § 1746.

CIVIL INVESTIGATIVE DEMAND
ISSUED TO CHURCH & DWIGHT CO., INC.

Unless modified by agreement with the staff of the Federal Trade Commission, each specification of this Civil Investigative Demand ("CID") requires a complete search of "the Company" as defined in Paragraph "A" of the Definitions and Instructions which appear after the following Specifications. If the Company believes that the required search or any other part of the CID can be narrowed in any way that is consistent with the Commission's need for information, the Company's representatives are encouraged to discuss such questions and possible modifications with the Commission representative identified on the last page of this CID. All modifications to this CID must be agreed to in writing by that Commission representative.

SPECIFICATIONS

1. Submit:

   a. a list of all agents and representatives of the Company, including, but not limited to, all attorneys, consultants, advertising agencies, product distributors, sales agents, and other persons retained by the Company in any capacity relating to any Relevant Product covered by this CID (excluding those retained solely in connection with environmental issues, tax, human resources, pensions, benefits, ERISA, or OSHA issues); and

   b. for each agent and representative listed above, the agent's or representative's title, and the agent's or representative's business address and telephone number.

2. List each Relevant Product developed, manufactured, licensed, distributed, or sold by the Company, and for each product:

   a. describe the product in detail, including, but not limited to, its stock keeping unit ("SKU") and Uniform Product Code ("UPC") numbers, packaging type, packaging size, ingredients, product features, the date it was first sold, planned to be discontinued or discontinued;

   b. state the brand or trade name under which the product is sold (and identify the Person who owns the brand or trade name);

   c. state the division, subsidiary, or affiliate of the Company that manufacturers, distributes, or sells, or has manufactured, distributed, or sold, the product;

   d. state whether the Company manufacturers, distributes, or sells the product as an agent for another Person, or whether another Person manufactures, distributes, or sells the product as an agent for the Company, in either case identifying the relevant agent or principal;

e. state whether a third Person manufactures the product for the Company and, if so, identify the manufacturer;

f. state whether a third Person packages the product for the Company and, if so, identify the packager;

g. state the terms of the contract with the third Persons identified in 2(e) and 2(f);

h. state the name, address, telephone numbers and other contact information of the Persons that purchased the Relevant Product from the Company;

i. state the name, address, estimated sales, and estimated market share, stated separately in units and dollars, of each of the Company's competitors that develop, manufacture and sell the Relevant Product; and

j. state the Company's estimated market share, stated separately in units and dollars, in the development, manufacture and sale of the Relevant Product.

3. For each SKU and UPC (or least aggregated product grouping level available) identified in the Company's response to Specification 2, state weekly, monthly and annually and in total:

a. the Company's Sales, stated separately in units and dollars;

b. that portion of the Company's Sales, stated separately, in units and dollars, that were of products purchased from sources outside of the Company, and resold by the Company rather than of products produced by the Company;

c. any deductions (such as promotions or off-invoice discounts) from the Company's gross sales, identified, described, and stated separately, that the Company uses to calculate net Sales;

d. the Company's cost of goods sold stated separately in units and dollars for:

i. direct production cost per unit, in total, and by the following components, (1) raw materials, (2) packaging, (3) labor, (4) plant overhead costs, (5) any other costs, and (6) if the product is purchased, the cost of the purchased goods;

ii. indirect production cost, per unit;

iii. total production cost, per unit;

e. the Company's production cost variances stated separately by type;

f. the Company's distribution and freight costs including cost center expense summaries showing costs by type for each distribution center, expenses by type incurred for moving product from production facilities to distribution centers, expenses by type for third-party distribution and warehousing services;

g. gross margins and state the method of computation; and

h. the Company's prices, including, but not limited to, wholesale prices, retail prices and list prices (including any underlying data used to calculate these prices).

All data provided in response to this Specification must be submitted in an electronic format agreed upon by a Commission representative in writing prior to the submission in order to assure that the FTC has the capability of reading and using the data.

4. For each least aggregated product grouping level available, e.g., SKU, UPC, brand or trade name, for those products identified in the Company's response to Specification 2, state weekly, monthly and annually:

a. stated separately, the amount of the Company's variable trade promotions by type, consumer promotions by type, fixed trade promotions by type, fixed consumer promotions by type, media advertising and expenditures by type, any other promotional and marketing expenditures by type;

b. the Company's research and development costs; and

c. the Company's other costs, such as selling, general and administrative, and other overhead expenditures, by type.

All data provided in response to this Specification must be submitted in an electronic format agreed upon by a Commission representative in writing prior to the submission in order to assure that the FTC has the capability of reading and using the data.

5. Separately for each customer by Channel, by week, for each SKU and UPC identified in response to Specification 2, provide the following information and data:

a. the SKU number;

b. the UPC number;

c. all available product descriptors, including but not limited to (i) a text description of the product; (ii) classification variables, such as category, subcategory, segment, form, company, brand, and sub-brand; (iii) package size and package type (such as single-serve vs. multi-pack); and (iv) other product descriptors, such as flavor, quality, brand image, and price characteristics;

d. date (week ending date and year);

e. the All Commodity Volume ("ACV") for each product;

f. stated separately in units, equivalent units, dollars, average unit price, and percent ACV, all available sales information, including but not limited to (i) total sales; (ii) total non-promoted sales; (iii) total sales sold with a temporary price reduction only; (iv) total sales sold with a feature only; (v) total sales sold with a display only; and (vi) total sales sold with a feature and display;

g. total value of coupon redemptions;

h. when the purchase triggered a "Catalina," or any other type of check-out coupon; and

i. the quantity and value of other promotions.

All data provided in response to this Specification must be submitted in an electronic format agreed upon by a Commission representative in writing prior to the submission in order to assure that the FTC has the capability of reading and using the data.

6. Identify each product, and provide the bases for the claim, that the Company claims competes, or will compete, with each Relevant Product identified in the Company's response to Specification 2.

7. Separately for each of the Company's customers, for each week, from 1999 to the present, provide the following information:

a. the customer's name, address, contact person, and telephone number;

b. all financial terms offered to the customer, stated separately, including, but not limited to, wholesale prices, discounts, rebates, allowances, including those offered under the Planogram Program;

c. The quantity sold to the customer, stated separately in units and dollars, for each week and month;

d. The selling expenses attributable to the customer, stated separately, for advertising, in-store promotions, discounts, allowances, "Catalina" coupons, rebates, and other expenses, for each week and month;

e. The location of all distribution locations serving the customer;

f. The freight cost per unit paid by the seller;

g. The freight cost per unit paid by the buyer; and

h. The net delivered price per unit (net of all freight, taxes, discounts, allowances, and rebates attributed to the sale);

i. all financial transactions executed with the customer, stated separately, including, but not limited to, whether the customer has agreed to purchase all or some portion or percentage of the Relevant Product from the Company.

8. Describe the Company's policies relating to suggested retail prices, list prices, and wholesale prices, including but not limited to how and why these prices differ among customers and Channels.

9. Provide the following information regarding the Planogram Program:

a. a list of the Company's customers and state whether and when the customer was offered participation in the Planogram program, including, but not limited to offers to move to a "tier" (e.g., 8.5% rebate if 80% of facings are the Company's Relevant Product);

b. if a customer was not offered participation in the Planogram Program, state the reason(s) why;

c. for each customer who was offered participation in the Planogram Program, or participation in the Planogram Program at a different "tier," state the terms and conditions offered, accepted, or rejected by the Company or its customers, including, but not limited to;

i. the percentage of the rebate and when it was to be paid;
ii. the facings or display space requirement for the rebate;
iii. the "tiers" offered, rejected or accepted;
iv. whether the rebate was paid on an annual, quarterly, or other basis;
v. how the facings/display requirement was determined or measured;
vi. the amount of the rebate paid; and
vii. how compliance with the program was determined or measured; and whether a compliance issue ever arose, and if so, what the Company did to address it.

d. for each customer identified in 9(a) that declined to participate in the Planogram Program, state the reasons given;

e. for each customer identified in 9(a) that moved to a higher "tier," identify, by SKU and UPC, the Company's recommended change in planogram facings and state the change in sales to that customer;

f. all costs associated with implementation and enforcement of the Planogram Program and how those costs were determined; and

g. for each year, calculate the market share of the Relevant Product, by Channel, by unit and dollar sales, for the United States, of the combined participants in the Planogram Program.

10. State the location of each facility that manufactures or sells, or has manufactured or sold, any Relevant Product for the Company, and for each such facility state:

a. whether the facility was leased, acquired, or built by or for the Company, and, if not built by the Company, the name of the person who built the facility for the Company or from whom the facility was leased or acquired;

b. the date of the facility's opening or acquisition, the length of time and cost in dollars required to open the facility from initial plan to full production, and its current estimated replacement cost and time necessary to replace it; and

c. the current nameplate and practical capacity and the annual capacity utilization rate for production of each Relevant Product manufactured at the facility, specifying all other factors used to calculate capacity, the number of shifts normally used at the facility, and the feasibility of increasing capacity, including the costs and time required.

If the Company believes that this Specification may be narrowed in any way that is consistent with the Commission's need for documents and information it is encouraged to discuss possible modifications with Commission representatives who will consider modifying this Specification on a case-by-case basis.

11. For any SKU or UPC introduced since 1999, that has been discontinued, provide the following:

a. product development costs;

b. all marketing and promotional expenditures including, but not limited to, slotting allowances, advertising expenditures, including coop, sales expenses, etc.;

c. annual sales in dollars and units;

d. cost of goods sold and how that was determined;

e. expenditures incurred to remove product from retail and distribution locations and any return or discontinuance allowances.

12. From conception to implementation, for each Relevant Product, describe how the Company's promotional activities and strategies (including advertisement, trade promotions, rebates, and coupons) are developed, instituted, and maintained, including the specific people who propose and approve the promotional plans.

13. Provide a list of every customer since January 1, 2001, that has discontinued carrying one or more SKUs, UPCs, or any other applicable unique identification numbers of the Company's Relevant Products that, at the time of the customer's discontinuance, were still being sold by the Company, and for each such customer:

    a. describe the area of the country that was previously served;

    b. identify the Relevant Product that was discontinued;

    c. state the reason given for the discontinuance;

    d. describe the efforts the Company made to retain the customer;

    e. identify the name of the firm and the product that displaced the Company's Relevant Product; and

    f. state when the customer discontinued carrying the Company's Relevant Product.

14. Identify, provide the title, and describe the contents of each financial statement, budget, profit and loss statement, cost center report, profitability report, and other financial report regularly prepared by or for the Company on any periodic basis relating to (a) the Company as a whole; (b) each of the Company's production facilities, sales offices, and distribution facilities that relate to the production and sale of any Relevant Product; and (c) any Relevant Product line or customer for any Relevant Product. For each such report, state how often each is prepared and the person responsible for the preparation of each such report.

15. State the name and address of each person that has entered or attempted to enter into, or exited from, the research, development, manufacture, distribution, or sale of any Relevant Product. For each such person, identify the Relevant Product(s) it researches, develops, manufactures, distributes, or sells or researched, developed, manufactured, distributed, or sold, the Relevant Area in which it sells or sold the product(s), and the date of its entry into or exit from the market. For each person that has exited due to an acquisition or merger, identify the acquiring person or the resulting merged person. For each entrant, state whether the entrant built a new facility, converted assets previously used for another purpose (identifying that purpose), or began using facilities that were already being used for the same purpose.

16. For each Relevant Product, identify and describe (including the bases for your response):

a. requirements for entry into the manufacture or sale of the product including, but not limited to, research and development, planning and design, production requirements, distribution systems, access to shelf space, service requirements, patents, licenses, sales and marketing activities, brand establishment, and any necessary governmental and customer approvals, and the time necessary to meet each such requirement;

b. the total costs and costs by type required for entry into the manufacture or sale of the product; the amount of such costs that would be recoverable if the entrant were unsuccessful or elected to exit the manufacture or sale of the product; the methods and amount of time necessary to recover such costs; and the total sunk costs entailed in satisfying the requirements for entry;

c. possible new entrants into the research, development, manufacture or sale of the product; and

d. the minimum viable scale, the minimum and optimum plant size, production line size, capacity utilization rate, production volume, requirements for multi-plant, multi-product, or vertically integrated operations, or other factors required to attain any available cost savings or other efficiencies necessary to compete profitably in the manufacture or sale of the product.

17. Describe all quotas, tariffs, government regulations and transportation costs relating to imports into, or exports from, each Relevant Area of any Relevant Product.

18. Identify, and state whether the Company is a member of or subscribes to, all trade associations, information services, and other organizations relating to the research, development, manufacture, distribution, or sale of any Relevant Product.

19. For each electronic database maintained by the Company that contains information relating to prices, sales, research and development, production, costs, or customers for any Relevant Product, provide the following information:

a. the size and format of the database, including, but not limited to, the authoring application, operating system, and application version;

b. a detailed description of the data contained in the database;

c. the date range for which data has been input;

d. a record layout and the title and a description of each record or field contained in the database;

e. a description of all regularly prepared and ad hoc reports generated using information contained in the database, including, but not limited to, the name of

the report, the distribution list for the report, the frequency with which the report is generated (e.g. daily, weekly, monthly, annually), and the person responsible for generating the report; and

f. an identification of databases, spreadsheets, or other electronic files that are linked to the database.

20. Describe in detail the Company's policies and procedures relating to the retention and destruction of documents.

21. Identify the person(s) responsible for preparing the response to this CID and submit a copy of all instructions prepared by the Company relating to the steps taken to respond to this CID. Where oral instructions were given, identify the person who gave the instructions and describe the content of the instructions and the person(s) to whom the instructions were given. For each specification, identify the individual(s) who assisted in the preparation of the response, with a listing of the persons (identified by name and corporate title or job description) whose files were searched by each.

DEFINITIONS AND INSTRUCTIONS

For the purposes of this CID, the following definitions and instructions apply:

A. "The Company" or "Church & Dwight" means Church & Dwight Co., Inc., its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents and representatives of the foregoing. The terms "subsidiary", "affiliate" and "joint venture" refer to any person in which there is partial (25 percent or more) or total ownership or control between the Company and any other person.

B. "Person" includes the Company and means any natural person, corporate entity, partnership, association, joint venture, government entity, or trust.

C. "Relating to" means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, or stating.

D. "And" and "or" have both conjunctive and disjunctive meanings.

E. "Plans" means tentative and preliminary proposals, recommendations, or considerations, whether or not finalized or authorized, as well as those that have been adopted.

F. "Sales" means net sales, i.e., total sales after deducting discounts, returns, allowances and excise taxes. "Sales" includes sales of the Relevant Product whether manufactured by the Company itself or purchased from sources outside the Company and resold by the Company in the same manufactured form as purchased.

G. "Relevant Product" as used herein means, (1) male latex condoms; and (2) male non-latex condoms.

H. "Relevant Area" means (a) the United States; (b) Canada; and (c) each area as to which the Company separately collects and maintains information and data within the United States, including, but not limited to, each Metropolitan Statistical Area ("MSA") or comparable metropolitan area designation.

I. "Planogram Program" means the Program the Company offers to customers that is based on the percentage of facings or other types of display space the customer dedicates to Trojan brand condoms.

J. "Minimum viable scale" means the smallest amount of production at which average costs equal the price currently charged for the Relevant Product. It should be noted that minimum viable scale differs from the concept of minimum efficient scale, which is the smallest scale at which average costs are minimized.

K. "Channel" means (i) convenience stores; (ii) supermarkets and grocery stores; (iii) drug stores; (iv) club stores; (v) mass merchandisers; (vi) internet; (vii) public or nonprofit; (viii) adult market; (ix) distributors; and (x) all other outlets from which consumers purchase Relevant Products.

L. "Sunk costs" means the acquisition costs of tangible and intangible assets necessary to manufacture or sell the Relevant Product that cannot be recovered through the redeployment of these assets for other uses.

M. All references to year refer to calendar year. Unless otherwise specified, each of the specifications calls for information and data for each of the years from January 1, 1999 to the present. Provide information separately for each year; where yearly data is not yet available, provide data for the calendar year to date. If calendar year information is not available, supply the Company's fiscal year data indicating the twelve month period covered, and provide the Company's best estimate of calendar year data.

N. Unless otherwise specified, each specification calls for information and data to be provided separately for each Relevant Product, by Relevant Area, by Channel.

O. This CID shall be deemed continuing in nature so as to require production of all information responsive to any specification included in this CID produced or obtained by the Company up to forty-five calendar days prior to the date of the Company's full compliance with this CID.

P. Each specification and subspecification of the CID shall be answered separately and fully in writing under oath. All information submitted shall be clearly and precisely identified as to the specification(s) or subspecification(s) to which it is responsive.

Q. If any information is withheld from production based on a claim of privilege, provide a statement of the claim of privilege and all facts relied upon in support thereof.

R. If the Company is unable to answer any question fully, supply such information as is available. Explain why such answer is incomplete, the efforts made by the Company to obtain the information, and the source from which the complete answer may be obtained. If books and records that provide accurate answers are not available, enter best estimates and describe how the estimates were derived, including the sources or bases of such estimates. Estimated data should be followed by the notation "est." If there is no reasonable way for the Company to make an estimate, provide an explanation.

S. In order for the Company's response to this CID to be complete, the attached certification form must be executed by the official supervising compliance with this CID, notarized, and submitted along with the responsive materials.

Any questions you have relating to the scope or meaning of anything in this CID or suggestions for possible modifications thereto should be directed to Sylvia Kundig at

415.848.5188. The response to the CID shall be addressed to the attention of Sylvia Kundig and delivered between 8:30 a.m. and 5:00 p.m. on any business day to the Federal Trade Commission, Western Region-San Francisco, 901 Market Street, Suite 570, San Francisco, CA, 94103. If you wish to submit your response by United States mail, please call the person listed above for mailing instructions.

CERTIFICATION

This response to the Civil Investigative Demand, together with any and all appendices and attachments thereto, was prepared and assembled under my supervision in accordance with instructions issued by the Federal Trade Commission. Subject to the recognition that, where so indicated, reasonable estimates have been made because books and records do not provide the required information, the information is, to the best of my knowledge, true, correct, and complete in accordance with the statute and rules.

_____

TYPE OR PRINT NAME AND TITLE

_____

(Signature)

Subscribed and sworn to before me at the City of _____, State of _____ , this _____ day of _____, 200_.

_____

(Notary Public)

My Commission Expires: _____

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Jon Leibowitz, Chairman
Pamela Jones Harbour
William E. Kovacic
J. Thomas Rosch

RESOLUTION AUTHORIZING USE OF COMPULSORY PROCESS IN A NONPUBLIC INVESTIGATION

File No. 091-0037

Nature and Scope of Investigation:

To determine whether Church & Dwight, Co., Inc. has attempted to acquire, acquired, or maintained a monopoly in the distribution or sale of condoms in the United States, or in any part of that commerce, through potentially exclusionary practices including, but not limited to, conditioning discounts or rebates to retailers on the percentage of shelf or display space dedicated to Trojan brand condoms and other products distributed or sold by Church & Dwight, in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. Section 45, as amended.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation.

Authority to Conduct Investigation:

Sections 6, 9, 10, and 20 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 49, 50, and 57b-1, as amended; FTC Procedures and Rules of Practice, 16 C.F.R. § 1.1 *et seq.* and supplements thereto.

By direction of the Commission.

Donald S. Clark
Secretary

Issued: June 10, 2009

EXHIBIT C

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WESTERN REGION

901 Market Street, Suite 570
San Francisco, California 94103

Dean Graybill
Assistant Director

Phone: (415) 848-5124
Fax: (415) 848-5184
Email: dgraybill@ftc.gov

November 4, 2009

Lesli Esposito, Esq.
Carl Hittinger, Esq.
DLA Piper
One Liberty Place
1650 Market Street, Ste. 4900
Philadelphia, PA 19103

VIA Email and US Mail

Re: Church & Dwight
FTC File 091-0037

Dear Ms. Esposito and Mr. Hittinger:

By letter of October 30, you have requested that FTC staff limit the Commission's subpoenas and CIDs to exclude the production of documents and information held by Church & Dwight's wholly-owned subsidiary in Canada. You further request that FTC staff, absent such agreement, grant permission to file a petition to quash asking the Commission to limit the discovery requests in this fashion. Although you directed these requests to staff, I felt I should respond given the Commission's delegation of authority to Regional Office managers to rule on requests for extension of time to file petitions to quash, *see*,16 C.F.R. § § 2.7(d)(3).

As staff has repeatedly stated, we do not agree with your position on the Canadian production issue.[1] Therefore, we cannot agree to limit the scope of the subpoenas and CIDs in this fashion. However, we are willing to grant a short extension of time to file a petition to quash on that issue alone. By this letter I grant an extension until c.o.b. Friday, November 13 for the filing of such a petition. I should emphasis that the extension is granted only with respect to the issue of the discoverability of Canadian-held documents and information, and no other.

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[1] I should note that we also disagree with the contention in your letter that staff agreed to a two-step process whereby we would accept Canada-related documents located in the United States and then determine whether to request information held in Canada. Although that had been proposed by C&D, staff never agreed to this procedure or to forego Canada-held documents under any circumstance.

Finally, your letter contends that producing such information would impose undue burdens. In this regard, please know that staff stands ready to discuss possible ways of reducing undue burdens with respect to the production of documents and information held by C&D's subsidiary in Canada.

If you have any questions, feel free to confer with staff as has been customary. However, I also am happy to discuss this with you personally if you wish.

Very truly yours,

Dean C Graybill

Dean Graybill
Assistant Director
Western Region – San Francisco

EXHIBIT D

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Jon Leibowitz, Chairman
Pamela Jones Harbour
William E. Kovacic
J. Thomas Rosch

RESOLUTION AUTHORIZING USE OF COMPULSORY PROCESS IN A NONPUBLIC INVESTIGATION

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By direction of the Commission.

Donald S. Clark
Secretary

Issued: June 10, 2009