

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION



In the Matter of)

HOECHST MARION ROUSSEL, INC.,)
a corporation,)

CARDERM CAPITAL L.P.,)
a limited partnership,)

and)

ANDRX CORPORATION,)
a corporation.)

Docket No. 9293

**ORDER DENYING AVENTIS' MOTION TO ENFORCE
COMPLIANCE WITH THE SUBPOENA SERVED ON SITRICK**

I.

Respondent Aventis Pharmaceuticals, Inc. ("Aventis"), formerly known as Hoechst Marion Roussel, Inc., on October 4, 2000, filed its Motion to Enforce Compliance With The Subpoena Served on Sitrick and Company ("Sitrick"). Sitrick responded by filing its Opposition to Aventis' Motion to Enforce Compliance on October 16, 2000.

For the reasons set forth below, Aventis' Motion to Enforce Compliance is DENIED.

II.

Sitrick is a public relations firm whose clients include Biovail Corporation International ("Biovail"). Aventis asserts that its subpoena seeks, in summary, documents from Sitrick relating to Sitrick's communications with Biovail, news organizations, selected other pharmaceutical manufacturers, and, generally, documents reflecting Sitrick's involvement in the development of an advertizing and marketing strategy for certain cardiovascular pharmaceutical products. Aventis asserts that Sitrick is in the business of advising a pharmaceutical manufacturer on the positioning and marketing of cardiovascular pharmaceutical products. Because, Aventis asserts, product market definition is a key element of this case, Sitrick's perspective will provide important evidence.

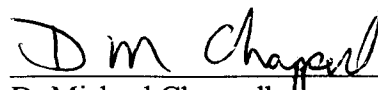
Aventis asserts that because documents produced by Sitrick in related, New Jersey litigation, have been made available to Aventis in this proceeding, discussions between Aventis and Sitrick regarding compliance with the subpoena focused on Sitrick's obligation to update its production made in the New Jersey litigation, but that those discussions "were not productive." (Wilson Declaration ¶ 3.)

Sitrick responds that all documents responsive to the subpoena at issue have been produced. Sitrick asserts that it produced all documents responsive to subpoenas served on it by Aventis in connection with the New Jersey litigation and the Michigan litigation, and that those same documents were, by agreement of counsel, made available to counsel for Aventis in the FTC proceeding. (Alexander Declaration ¶¶ 6, 17-18.) In an August 25, 2000 letter to counsel for Aventis, counsel for Sitrick stated that any responsive documents found since Sitrick's previous production would be provided to counsel on or before Michael Sitrick's August 30, 2000 deposition. (Alexander Declaration ¶¶ 16-17.) At the deposition of Michael Sitrick, the parties were advised that Sitrick's files had been reviewed for any documents received or created subsequent to the original production and were advised that there were no additional responsive documents. (Alexander Declaration ¶¶ 6, 17-18.)

III.

The Commission's Rules of Practice state that "in instances where a nonparty fails to comply with a subpoena or order, the Administrative Law Judge shall certify to the Commission a request that court enforcement of the subpoena or order be sought." 16 C.F.R. § 3.38(c). This rule is derived from the Commission's organic statute which sets forth "in case of disobedience to a subpoena the Commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence." 15 U.S.C. § 49. *See also In re Market Dev. Corp.*, 95 F.T.C. 100, 1980 FTC LEXIS 162, *244-45 (Jan. 15, 1980). Based upon a review of the pleadings and declarations submitted, Sitrick has not failed to comply with Aventis' subpoena. Accordingly, Aventis' Motion to Enforce Compliance is DENIED.

ORDERED.



D. Michael Chappell
Administrative Law Judge

Date: October 23, 2000