IN THE MATTER OF

WARNER-LAMBERT COMPANY

OPINION, ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 7 OF THE CLAYTON ACT

Docket 8850. Complaint, June 30, 1971—Order, April 27, 1976

Opinion, Findings of Facts and Conclusions of Law that the acquisition by Warner-Lambert of Morris Plains, N.J., a major American industrial corporation and a leader in the drug business, of Parke, Davis & Company, has or may substantially lessen competition in the following five therapeutic submarkets of the overall drug manufacturing market: (1) thyroid preparations, (2) cough remedies, (3) cough drops and lozenges, (4) normal serum albumin, and (5) tetanus immune globulin. The order vacates the initial decision of the administrative law judge; adopts the Commission's own Findings of Facts and Conclusions of Law; and directs each party within 30 days to file with the Commission a proposed form of order appropriate to the decision, together with a supporting memorandum.

Appearances

For the Commission: *Paul R. Teetor, Thomas P. Athridge, Robert D. Jacobs* and *Sidney A. Shapiro.*

For the respondent: *Herbert A. Bergson, Howard Adler, Jr., Mary-Margaret Gillen* and *Michael D. Ridberg, Bergson, Borkland, Margolies & Adler,* Washington, D.C. *Mudge, Rose, Guthrie & Alexander,* New York City.

COMPLAINT

The Federal Trade Commission has reason to believe that Warner-Lambert Company (hereafter "Warner-Lambert"), a corporation and the respondent herein, has acquired Parke, Davis & Company (hereafter "Parke, Davis"), a corporation, in violation of Section 7 of the Clayton Act, as amended (15 U.S.C. §18); therefore, pursuant to Section 11 of the Clayton Act, as amended (15 U.S.C. §21), it issues this complaint, stating its charges in that respect as follows:

1. DEFINITIONS

For purposes of the complaint the following definitions shall apply:

(a) "Drugs" are medicines, both pharmaceutical and biological, in dosage form and are here restricted to those intended for human use.

(b) "Ethical" drugs are those for which a prescription is required or which, although sold over the counter without a prescription, are primarily promoted to the medical profession.

(c) "Proprietary" drugs are those which are promoted primarily to the consuming public.

(d) Any reference herein to Warner-Lambert or to Parke, Davis shall be deemed to include all subsidiary corporations unless the context requires otherwise.

2. ACQUISITION

On November 13, 1970, pursuant to an Agreement and Plan of Merger dated August 25, 1970, Warner-Lambert, a Delaware corporation with its principal office at Morris Plains, New Jersey, through a wholly-owned subsidiary, Tabor Company, a Michigan corporation, acquired ownership of all or substantially all the stock of Parke, Davis, a Michigan corporation with its principal place of business at Detroit, Michigan. At the time of the acquisition both Warner-Lambert and Parke, Davis were engaged in interstate commerce within the meaning of Section 7 of the Clayton Act, as amended.

3. ACQUIRING COMPANY

At the time that it acquired Parke, Davis, Warner-Lambert was a major American industrial corporation and a leader in the drug business. In 1969 Warner-Lambert's total sales were $808 million and total assets $572 million, ranking it approximately 138th largest in sales and 165th largest in assets among American industrial corporations. Warner-Lambert has foreign operations, with some 70 owned or leased plants in 47 countries.

Warner-Lambert began business as William R. Warner & Co., later Warner-Hudnut, Inc., the product of a 1916 merger between a cosmetics company and a chemical company. Its total sales in 1954 were $48 million. Thereafter, it embarked upon an extensive acquisition program, the most important being the acquisition of the Lambert Co. (Listerine mouthwash) in 1955. There followed acquisitions of the makers of such well-known proprietary drugs as Bromo-Seltzer (effervescent analgesic), Smith Brothers (cough drops), Sloan's (liniment) and others.

Warner-Lambert makes extensive use of advertising and other promotional programs in marketing its products. Its domestic advertising and promotion budget now approximates $80 million yearly. Its products are advertised on nearly half of all TV network shows. In 1969, Warner-Lambert's consumer products divisions ranked fourth among all proprietary drug manufacturers in the country, with proprietary drug sales to U.S. drugstores and hospitals of $57 million, representing 6.4 percent of total U.S. sales of about $900 million.

By 1953 Warner-Lambert (then Warner-Hudnut) had also entered the manufacture of ethically promoted drugs through the acquisition of Chilcott Laboratories (formerly the Maltine Company). This business was gradually expanded by Warner-Lambert. Today about 300 "detail" men service the medical profession. During the decade of the 1960's Warner-Lambert's growth as an ethical pharmaceutical manufacturer was partly internal and partly by acquisitions, *e.g.*, in the dermatological field — Texas Pharmacal Co., in the biologicals field — Elizabeth Biochemical Laboratory, in the medical equipment and instrumentation field — American Optical Co., and in foreign drug manufacturing, notably the acquisition of the European firm, Vismara Terapeutici Sp. A.

In product research and development, Warner-Lambert employs approximately 500 persons and spends about $30 million yearly. Its primary research and development efforts are on ethical pharmaceuticals and optics, including medical equipment and instrumentation.

Warner-Lambert has been and is now a rapidly growing firm. By 1969 (through its Warner-Chilcott division) it had become the 15th largest manufacturer of ethical drugs in the Nation, with sales to drugstores and hospitals of $87 million, or 2.3 percent of the $3.8 billion U.S. total for that year. In the overall hospitals-drugstores drug market, both ethical and proprietary, it ranked 12th among U.S. companies, with about 3.1 percent of $4.7 billion total U.S. sales.

4. ACQUIRED COMPANY

Prior to acquisition by Warner-Lambert, Parke, Davis was one of the nation's leading old-line pharmaceutical houses. Founded in 1866, it achieved its present market position largely by internal growth. In 1969 Parke, Davis' total sales were $274 million and its total assets $399 million. It was the 340th largest in sales and 218th largest in assets of all American industrial corporations. It also had extensive foreign operations in 43 countries, including manufacturing plants in 22 of them.

Over the years Parke, Davis built up one of the most extensive product lines in the business. Its pharmaceutical and biological manufacturing facilities are among the most diverse in the Nation. Its catalogue lists some thousand products. It is largely independent of the drug wholesalers on whom most manufacturers must depend by virtue of its unusual nationwide network of 23 warehouses and its sales force of about 1,000 "detail men" who promote its products directly to physicians and hospitals, one of the largest such detail forces in the industry. Its research and development laboratories are among the oldest, largest and best qualified in the industry, employing 700-800

persons. It spends nearly $20 million yearly on product research and development. In 1969 Parke, Davis' domestic sales of $110 million of ethically promoted drugs made it the 11th ranking domestic seller, with 2.9 percent of the $3.8 billion hospitals-drugstores market for ethical drugs.

In 1969, Parke, Davis commenced the organization of a new Consumer Products Division. That Division had initial sales of about $27 million. In 1970 Parke, Davis' articles of incorporation were amended to permit expansion of its activities throughout a broad "health" field, and it undertook a more aggressive promotional policy to expand its product line and to improve its existing market position, particularly in the hospitals-drugstores proprietary drug market where it ranked 44th among all sellers.

Among sellers of drugs of all kinds, both ethical and proprietary, to hospitals and drugstores, Parke, Davis ranked 14th, with 2.4 percent of $4.7 billion sales in 1969.

5. TRADE AND COMMERCE

The drug industry is a large and expanding one. The value of shipments by U.S. pharmaceuticals manufacturers rose steadily from about $900 million in 1947 to $4.7 billion in 1967 and the value of shipments by U.S. biologicals manufacturers during the same period rose from about $40 million to about $173 million. Pharmaceuticals shipments in 1967 totaled $4.1 billion and were divided between ethical and proprietary drugs in a ratio of $3.0 billion to $1.1 billion. Long-run, the trend in the drug manufacturing industry has been toward gradual reduction in the number of firms engaged therein. The number of U.S. companies producing drugs decreased from 1,123 in 1947 to 791 in 1967.

In particular drug industry submarkets, such as those specified later in Paragraph 6, the top four or at least the top eight sellers in each such submarket commonly control 75 percent or more of the business. Moreover, the top 20 among all sellers of pharmaceutical drugs (SIC 2834) between 1947 and 1967 increased their aggregate market share from 64 percent to 73 percent. Within the top 20 pharmaceutical firms, the market position of the top eight after declining somewhat during the late 1950's has since held its ground and shows some tendency now to rise. It was at about the 40 percent level in 1967.

Research for and development of new or improved drugs is an important element for success in the drug industry. Generally such research, testing and related facilities are expensive and time-consuming. Such research, testing and related facilities, together with the control of patents; possession of heavily promoted and successful trade names, and of nationwide distribution facilities, including large and

established "detail" forces for ethical promotions and the ability to engage in expensive advertising programs for the promotion of proprietary drugs, tend to raise substantial barriers to entry into the drug industry, to limit competition within the industry and in submarkets thereof, and to make the existing drug firms, and particularly the larger drug firms, the most likely sources of new competition with regard to particular drug product submarkets in which they do not presently compete.

Parke, Davis and Warner-Lambert have each made substantial commitments to research and development, have operated substantial research and development programs in the past, and each stands among the leading U.S. firms in capacity and capability to conduct research and development. In addition, each was, prior to the merger complained of herein, possessed of patent rights, heavily promoted trade names, nationwide distribution facilities, large and established "detail" forces, substantial advertising budgets, and other competitive advantages which made each one of these firms among the most likely to enter or improve its competitive position in drug submarkets where it was not already a significant competitive factor.

6. MARKETS ADVERSELY AFFECTED

The acquisition of Parke, Davis by Warner-Lambert tends substantially to lessen actual and potential competition in drug manufacturing generally, in the ethical segment thereof and in, among others, the following relevant product submarkets, all of which are nationwide in geographic scope and all of which are highly concentrated.

In some such submarkets substantial existing ("SE") competition between the parties and with others has been eliminated.

In other such submarkets where one party ranked among the top four or eight sellers, with a significant or at least not insignificant market share, the acquisition has ended all likelihood that existing, imminent or recent ("E/I/R") competition by the other, with that other firm's many competitive advantages, would have grown to more substantial proportions.

In other such submarkets where one party ranked among the top four or eight sellers, with a significant or at least not insignificant market share, the acquisition has eliminated the other party as a potential entrant ("PE") into competition. With respect to such submarkets, special circumstances such as marketing of the same product in a different geographic market or of an only slightly different product in the same market combined with the many competitive advantages of the other party served to make such other party one of the most likely entrants into competition.

Aggregate sales in these 55 submarkets in 1969 totaled about $1,800 million.

A. *Hormones*

Drugs affecting the endocrine glandular system and related compounds constitute an important part of the pharmaceuticals industry. Sold ethically, domestic shipments thereof in 1969 were valued at $497 million. The following constitute well-defined and significant hormone submarkets:

(1) Thyroid Preparations (SE)
(2) Anti-thyroid Preparations (PE)
(3) Oral Contraceptives (E/I/R)
(4) Progestogens, Except Oral Contraceptives (PE)
(5) Anabolic Agents (E/I/R)
(6) Adrenocortical Extract (PE)
(7) ACTH (PE)
(8) Chorionic Gonadotropins (PE)
(9) Topical Corticoid with Anti-infective Combinations (E/I/R)

B. *Neuropharmacals*

Pharmaceutical preparations acting on man's central nervous system and sense-organs constitute the largest single segment of the pharmaceutical market. Shipments of such drugs by U.S. manufacturers in 1969 approximated $1,373 million. Just over 70 percent were promoted ethically. The following constitute well-defined and significant neuropharmacal submarkets:

(1) Effervescent Analgesics (PE)
(2) Anorexiants (Non-amphetamine) (E/I/R)
(3) Anti-Parkinsonism Drugs (E/I/R)

C. *Cardiovascular Drugs*

Preparations acting on the human cardiovascular system are an important segment of the pharmaceutical market. In 1969 shipments of cardiovascular drugs by U.S. manufacturers approximated $267 million. Virtually all were promoted ethically. The following constitute well-defined and significant cardiovascular submarkets:

(1) Anti-Anginal Drugs (E/I/R)
(2) Anti-arrhythmics (PE)

D. *Respiratory Drugs*

Among the oldest kinds of pharmaceutical preparations are those drugs acting on the respiratory system. Manufacturers' shipments of

such drugs for human use in the United States were valued at $490 million in 1969, of which about $259 million were promoted ethically and $222 were proprietaries. The following constitute well-defined and significant respiratory drug submarkets:

(1) Cough Remedies (SE)
(2) Cough Drops and Lozenges (SE)
(3) Antitussives and Expectorants (E/I/R)
(4) Cold Remedies (E/I/R)
(5) Oral Decongestants (E/I/R)
(6) Oral Decongestants (Ethical, OTC) (E/I/R)
(7) Topical Decongestants (E/I/R)
(8) Anti-histamines (PE)
(9) Bronchial Dilators (E/I/R)

E. *Gastro-Intestinal Drugs*

Pharmaceutical preparations acting on the human digestive system make up another important part of the pharmaceutical industry. In 1969 shipments of all U.S. manufacturers of this kind approximated $430 million. The following constitute well-defined and significant gastro-intestinal drug submarkets:

(1) Antacids (E/I/R)
(2) Gastric Secretory Inhibitors (E/I/R)
(3) Irritant Laxatives (SE)
(4) Irritant Laxatives (Ethical) (SE)
(5) Digestive Enzymes (PE)
(6) Lipotropics (PE)

F. *Skin Preparations*

Pharmaceutical preparations acting on the skin constitute a significant part of the drug market. Total shipments by manufacturers of such products in 1969 were valued at $274 million, of which about 40 percent were ethical and 60 percent were for proprietary marketing. The following constitute well-defined and significant skin preparations submarkets:

(1) Topical Proteolytic Enzymes (PE)
(2) Anti-Hemorrhoidal Preparations (E/I/R)
(3) Liniments (E/I/R)
(4) Emollient/Protective Dermatological Preparations Promoted Ethically (PE)
(5) Sunscreen Products (PE)
(6) Hypo-allergenic Cosmetics (PE)

G. *Vitamins*

Vitamin compounds constitute an important segment of the drug market. Total shipments by U.S. manufacturers of vitamins in 1969 amounted to $253 million, of which about $246 million were domestic shipments. Ethical sales exceeded proprietary sales about six to four. The following constitute well-defined and significant vitamin submarkets:

(1) Prenatal Vitamins (E/I/R)
(2) Therapeutic Vitamins (With Minerals) (E/I/R)
(3) All Vitamins (Ethical) (E/I/R)

H. *Anti-Infectives*

Pharmaceutical preparations affecting parasitic and infective diseases constitute a large and rapidly growing segment of the drug manufacturing industry. Total shipments by manufacturers of anti-infective agents, except corticoid-anti-infective combinations, in 1969 amounted to about $876 million, of which about $816 million were domestic shipments. The ethical-proprietary sales ratio was nearly four to one. The following constitute well-defined and significant anti-infective submarkets:

(1) Antibiotics For Gram Negative Bacterial Infections (SE)
(2) Ampicillin (PE)
(3) Anti-pseudomonas Drugs (PE)
(4) Urinary Antibacterials (Non-Sulfa) (E/I/R)
(5) Mouthwash (E/I/R)
(6) Breath Fresheners (PE)

I. *Biologicals*

Biological products prepared for therapeutic or diagnostic medical purposes include blood and blood derivatives, vaccines and antigens, antitoxins, toxoids and toxins for immunization, therapeutic immune serums and diagnostic products, including allergenic extracts, poison ivy and poison oak extract. Total shipments by U.S. manufacturers in 1967 approximated $167 million. These are all ethical products. The following constitute well-defined and significant biologicals submarkets:

(1) Normal Human Serum Albumin (PE)
(2) Immune Serum Globulin (PE)
(3) Tetanus Immune Globulin (PE)
(4) Diagnostic Products (Blood Chemistry) (PE)
(5) Diagnostic Products (Blood Coagulation) (PE)
(6) Pregnancy Tests (E/I/R)

J. *Medical Electronic Equipment*

The recent application of electronics to the practice of medicine has resulted in development of much new equipment for hospitals and physician's offices, much of it in the fields of cardiac disease diagnosis and patient monitoring. The value of all manufacturers' shipments of electronic medical equipment is now probably of a magnitude of $300 million or more yearly. The following constitute well defined and significant submarkets for medical electronic equipment.

(1) Electrocardiographs (E/I/R)

(2) Patient Monitoring Equipment (PE)

K. *Fine/Bulk Chemicals*

Fine or bulk chemicals are those suitable for use as pharmaceuticals, either mediately or immediately. Among the well-defined and significant fine/bulk chemicals sub-markets are those for:

(1) Pyridine (PE)

(2) Picoline (PE)

(3) Niacinamide (PE)

7. COMPETITIVE EFFECTS OF THE ACQUISITION

Warner-Lambert's acquisition of Parke, Davis has at one stroke raised the former's rank among all American drug manufacturers serving the hospitals/drugstores market from 12th to 3rd place and from 15th to 5th place in the ethical sector thereof. It has increased its share of the $4.7 billion U.S. hospitals-drugstores market from 3.1 percent to 5.5 percent and its share of the $3.8 billion ethical segment thereof from 2.3 percent to 5.2 percent. Concentration of sales in the hands of the eight largest sellers in the hospitals-drugstores drug market has been increased as a result of this merger from about 40.0 percent to about 41.7 percent, and in the ethical segment thereof concentration has been increased from about 44.1 percent to about 45.1 percent.

As a result of said acquisition competition may be substantially lessened in the nationwide drug manufacturing market, in its ethical and proprietary segments, and in various submarkets thereof, all nationwide in geographic scope, including, among others, each of the submarkets set out in Paragraph 6 hereof, by increasing concentration as alleged above and also in the following ways, among others:

(a) Actual and potential competition between Parke, Davis and Warner-Lambert has been eliminated and actual and potential competition with others has been eliminated or substantially lessened;

(b) Parke, Davis, which has long been one of the most significant

firms in the drug industry, in terms of research, distributional and promotional resources and broad resource flexibility has now been completely and permanently eliminated as an actual or potential independent competitor in countless product lines throughout the drug industry;

(c) Entry or growth of new competition may be further inhibited;

(d) The acquisition is likely to encourage a tendency to additional acquisitions or mergers, and to thereby further increase concentration.

VIOLATION

By reason of all the foregoing, the acquisition of Parke, Davis' stock by Warner-Lambert constitutes a violation of Section 7 of the Clayton Act, as amended (15 U.S.C. §18).

INITIAL DECISION BY ANDREW C. GOODHOPE, ADMINISTRATIVE LAW JUDGE

AUGUST 2, 1974

STATEMENT OF PROCEEDINGS

[1] On June 30, 1971, the Commission issued its complaint against respondent charging it with violation of Section 7 of the Clayton Act, as amended (15 U.S.C. §18). A copy of the complaint and notice of hearing were served upon respondent, and respondent thereafter appeared by its counsel and filed an answer admitting certain of the allegations of the complaint but denying that it had violated Section 7 of the Clayton Act.

[2] Extensive hearings were thereafter held, at which time testimony and documentary evidence were offered in support of and in opposition to the allegations of the complaint. At the close of all the evidence and pursuant to leave granted by the administrative law judge, proposed findings of fact, conclusions of law, briefs and proposed orders were filed by counsel supporting the complaint and counsel for the respondent.

Proposed findings not herein adopted either in the form or substance proposed are rejected as not supported by the evidence or as involving immaterial matters. Having reviewed the entire record in this proceeding, including the proposed findings and briefs, the administrative law judge, based upon the entire record, makes the following:

FINDINGS OF FACT

JURISDICTIONAL FACTS[1]

1. Warner-Lambert Company (Warner-Lambert), respondent herein, is a corporation organized and existing under the laws of the State of Delaware with its principal office and place of business located at Morris Plains, New Jersey.

2. Prior to November 13, 1970, when it was acquired by Warner-Lambert, Parke, Davis & Company (Parke, Davis) was a corporation organized and existing under the laws of the State of Michigan with its principal office and place of business located at Detroit, Michigan.

3. At all times relevant to this proceeding, Warner-Lambert sold and shipped, and is now selling and shipping, products in interstate commerce throughout the United States and was and is engaged in commerce as "commerce" is defined in the Clayton Act.

[3] 4. At all times relevant to this proceeding, Parke, Davis sold and shipped products in interstate commerce throughout the United States and on November 13, 1970, and prior thereto, was engaged in commerce as "commerce" is defined in the Clayton Act.

5. On November 13, 1970, pursuant to an agreement and plan of merger dated August 25, 1970, Warner-Lambert acquired ownership of all or substantially all the stock of Parke, Davis in return for 6,600,000 shares of Warner-Lambert common stock.

RELEVANT MARKET AND LINES OF COMMERCE

6. The relevant market within which to view the merger of Warner-Lambert and Parke, Davis is the entire United States (Complaint, para. 6; Answer, para. 6; Tr. 27).

7. There are a number of lines of relevant commerce to be considered in viewing this merger. They are as follows:

(a) The overall drug market. This market consists of medicines, both pharmaceutical and biological, in dosage form and are limited in this proceeding to those for human use. Included in this market are ethical drugs and so-called proprietary drugs. Proprietary drugs are not a separate line of commerce relevant for consideration in this case, other than as a part of the overall drug market, described above. These are products manufactured and sold by the drug industry and which are promoted principally to the consuming public. They may include products for which a prescription may often be written by a physician, but which may also be sold over-the-counter without a prescription.

[1] The complaint alleges and the answer admits the essential jurisdictional facts. Hereafter CPF refers to complaint counsel's proposed findings and RPF to respondent's.

(b) Ethical drugs. These drugs for which a prescription from a physician is required, or which, although sold over-the-counter (OTC) without a prescription, are primarily advertised and promoted by the drug industry to the medical, pharmacy and allied professions. These ethical drugs are a relevant line of commerce for consideration in this case.

[4] (c) In addition, counsel in support of the complaint assert that there are 20 separate submarkets of the overall drug market which are included as either ethical or proprietary drugs which constitute distinct lines of commerce and must be considered individually in considering this merger. It is urged that there was either actual or potential competition existing at the time of the merger which was directly affected or eliminated as a result of the merger.

Each of these relevant markets outlined above will be treated seriatim in this initial decision.

ACQUIRING CORPORATION: WARNER-LAMBERT

8. Warner-Lambert's history dates back to 1856, the year in which William R. Warner founded an ethical drug business in Philadelphia (CX 43), which was acquired by Pfeifer Chemical Co. in 1908. In 1916 the stock of Richard Hudnut, a New York cosmetics manufacturer, was acquired and from 1920 to 1955 the combined business was known as Warner-Hudnut, Inc. (CX 43). Following a merger with the Lambert Company of St. Louis in 1955, the firm name was changed to Warner-Lambert Pharmaceutical Company (CX 1(B)) and in 1970 simplified to Warner-Lambert Company (CX 1(B)).

9. Between 1952 and 1970, Warner-Lambert acquired or merged with the following companies, all of whom were engaged in the broad drug market or closely allied lines of products:

Date	*Company*
1952	Chilcott Laboratories, Inc.
1955	The Lambert Company
1956	Nepera Chemical Company
1962	American Chicle Company
1964	Smith Brothers
1966	Texas Pharmacal Company
1967	American Optical Company
1967	Vismara Terapeuticai, Sp. A
1969	Elizabeth Biochemical Laboratory

[5] Warner-Lambert, over the years, had also consistently enjoyed internal growth and expansion of a substantial nature.

10. Warner-Lambert employs 40,000 persons worldwide (CX 1(T)). The major portion of Warner-Lambert's research facilities, ethical

pharmaceutical manufacturing facilities and the executive offices are located in Morris Plains, New Jersey (CX 1(W)). Proprietary pharmaceutical products are manufactured at plants in Lintz, Pennsylvania; Rockford, Illinois; and Anaheim, California. Dermatological and hypoallergenic products are manufactured in San Antonio, Texas, and cough drops are manufactured principally in Poughkeepsie, New York (CX 1(W)).

11. In 1969, prior to the acquisition of Parke, Davis, Warner-Lambert's sales were $808 million and total assets were $572 million. In 1969, its total domestic sales were $540 million and its total domestic assets were $366 million (Complaint, para. 3; Answer, para. 3). Its sales were divided about equally between professional and consumer products and products sold internationally. In 1969, professional products, all products promoted to the medical profession, accounted for 36.1 percent of total sales, while consumer products accounted for 35.9 percent, and international sales 28.0 percent of total sales (CX 1(T)). Approximately 10 percent of the total of all sales for 1969 were accounted for by ethical drug sales (RX 2029; Tr. 2638).

12. At all relevant times, Warner-Lambert has manufactured and sold: professional products, including ethical pharmaceuticals, dental specialties, ophthalmic lenses and frames, ophthalmic and scientific instruments, sunglasses, safety products, fine chemicals and biochemical specialties.

13. Warner-Lambert over the years has enjoyed substantial growth in the drug industry, both in the ethical and proprietary portions of the drug market. The primary reasons before this growth is Warner-Lambert's ability to engage in extensive promotion (detailing) to the medical profession, including the pharmacists and related professions of its ethical drugs and the substantial advertising which it puts behind its proprietary or over-the-counter drugs. [6] Its trade name products have become very familiar to the medical profession. The advertising behind such products as Listerine, Bromo Seltzer, Super Anahist, Smith Brothers Cough Drops, Rolaids have made them household names and commonly are among the leading products in their markets (CX 157, CX 222, CX 2690). In addition, Warner-Lambert has been able to use these popular trade names to sell associated products, such as tooth paste, breath spray and throat lozenges (CX 251, CX 2698).

14. Warner-Lambert utilizes every conceivable type of print and electrical medium to promote its products. These include direct mail, billboard, shelf-talkers displays, television, radio, newspapers, magazines and professional journals. In 1968 Warner-Lambert spent approximately $80 million for domestic advertising; in 1969 approximately $93 million and in 1970 approximately $126 million for domestic

advertising (CX 11-12, 21, 24). In 1970 Warner-Lambert was the largest drug and cosmetic advertiser in the country and the fifth largest advertiser among all companies (CX 24, CX 289-292).

15. Warner-Lambert engages in research and development programs. In 1969 it spent approximately $11 million for ethical research and employed about 320 persons in this endeavor (Resp. Ans., para. 3; CX 29; Tr. 2685). Warner-Lambert likewise engages in research and development work with its foreign operations and derives benefits in this country from this overseas research and development. Warner-Lambert likewise engages in research and development work in support of its proprietary drug products which amounted to approximately $2 million in 1970 (Resp. Ans., para. 3).

16. Warner-Lambert also employs a highly capable staff of 3,000 sales representatives in the United States serving various markets. It is a highly oriented marketing company with an able promotional staff, skilled packaging experts and market planners.

17. Warner-Lambert has been successful over the years in obtaining patents on many of its products which have been well accepted in the market. In addition, Warner-Lambert is regularly engaged in licensing drugs from other companies or individuals holding patents on such drugs and at present has approximately 18 products on the market which are licensed for manufacture or sale from such companies. [7]

ACQUIRED CORPORATION: PARKE, DAVIS

18. Parke, Davis is a famous ethical pharmaceutical company (Tr. 2724) and one of the most respected names in medicine (CX 276). Since the company was founded, its research and development has resulted in hundreds of major contributions to pharmacy and medicine (CX 419). The reputation of Parke, Davis research for breadth and quality is excellent (Tr. 1840, 1886-87, 2730).

19. Parke, Davis employs approximately 15,000 persons, of whom about 7,300 are located in the United States (CX 1 (CC)). Parke, Davis' executive offices and the largest of its ethical and proprietary facilities are located in Detroit, Michigan (CX 1 (BB)). Research facilities are centered in Ann Arbor, and Detroit, Michigan, while biological products are manufactured principally at Rochester, Michigan (CX 1 (BB)). Parke, Davis owns or leases distribution centers in 23 major cities in the United States (CX 1(BB)).

20. At all times relevant to this case, Parke, Davis has manufactured and sold pharmaceutical, biological, medical-surgical and related health care products in the United States and throughout the free world (CX 1(Y)). All of Parke, Davis' pharmaceutical products were