

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

COMMISSIONERS: **Edith Ramirez, Chairwoman**
 Julie Brill
 Maureen K. Ohlhausen
 Joshua D. Wright
 Terrell McSweeney

_____)
In the Matter of)
)
AKORN, INC.,)
 a corporation.)
) **Docket No. C-4479**
)
_____)

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act (“FTC Act”), and its authority thereunder, the Federal Trade Commission (“Commission”), having reason to believe that Respondent Akorn, Inc. (“Akorn”), a corporation subject to the jurisdiction of the Commission, has agreed to acquire VPI Holdings Corp., the parent company of VersaPharm Incorporated (“VersaPharm”), a corporation subject to the jurisdiction of the Commission, in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, that such acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. RESPONDENT

1. Respondent Akorn is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Louisiana, with its headquarters address located at 1925 West Field Court, Suite 300, Lake Forest, Illinois 60045.

2. Respondent is, and at all times relevant herein has been, engaged in commerce, as “commerce” is defined in Section 1 of the Clayton Act as amended, 15 U.S.C. § 12, and is a company whose business is in or affects commerce, as “commerce” is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. § 44.

II. ACQUIRED COMPANY

3. VersaPharm is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its headquarters address located at 1775 West Oak Parkway, Suite 800, Marietta, Georgia 30062.

4. VersaPharm is, and at all times relevant herein has been, engaged in commerce, as “commerce” is defined in Section 1 of the Clayton Act as amended, 15 U.S.C. § 12, and is a company whose business is in or affects commerce, as “commerce” is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. § 44.

III. PROPOSED ACQUISITION

5. Pursuant to an Agreement and Plan of Merger dated May 9, 2014, Akorn proposes to acquire 100% of the voting securities of VersaPharm for approximately \$324 million (the “Acquisition”). The Acquisition is subject to Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

IV. RELEVANT MARKETS

6. For the purposes of this Complaint, the relevant line of commerce in which to analyze the effects of the Acquisition is the development, license, manufacture, marketing, distribution, and sale of generic rifampin 600 mg/vial injection (“generic rifampin”).

7. For the purposes of this Complaint, the United States is the relevant geographic area in which to assess the competitive effects of the Acquisition in the relevant line of commerce.

V. MARKET STRUCTURE

8. Generic rifampin is an injectable pharmaceutical used to treat all forms of tuberculosis. Currently, the U.S. Food and Drug Administration (“FDA”) has approved only three firms to sell generic rifampin in the United States: VersaPharm, Mylan Inc., and Bedford Laboratories. Respondent is one of a limited number of firms awaiting FDA approval for a generic rifampin product, which is expected in the foreseeable future. As a result, the Acquisition would reduce the number of likely future suppliers of generic rifampin.

VI. ENTRY CONDITIONS

9. Entry into the relevant market described in Paragraphs 6 and 7 would not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the Acquisition. De novo entry would not take place in a timely manner because the combination of drug development and FDA approval requirements would be lengthy. Although a limited number of firms other than Respondent plan to enter the relevant market in the future, such entry would not be sufficient to prevent the competitive harm likely to result from the Acquisition. In addition, no other entry is likely to occur such that it would be timely and sufficient to deter or counteract the competitive harm likely to result from the Acquisition.

VII. EFFECTS OF THE ACQUISITION

10. The effect of the Acquisition, if consummated, would likely be to substantially lessen competition or to tend to create a monopoly in the relevant market in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, by eliminating future competition between Akorn and VersaPharm in the market for generic rifampin, thereby (a) increasing the likelihood that the combined entity would forego or delay the launch of this product and (b) increasing the likelihood that the combined entity would delay, eliminate, or otherwise reduce the substantial additional price competition that would have resulted from an additional supplier of this product.

VIII. VIOLATIONS CHARGED

11. The Agreement and Plan of Merger described in Paragraph 5 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

12. The Acquisition described in Paragraph 5, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this first day of August, 2014 issues its Complaint against said Respondent.

By the Commission.

Donald S. Clark
Secretary

SEAL: