

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

COMMISSIONERS: **Joseph J. Simons, Chairman**
 Maureen K. Ohlhausen
 Noah Joshua Phillips
 Rohit Chopra
 Rebecca Kelly Slaughter

In the Matter of)

Impax Laboratories, Inc.,)
a corporation,)

Respondent)

PUBLIC

DOCKET NO. 9373

**COMPLAINT COUNSEL’S REPLY IN SUPPORT OF
MOTION TO DISMISS RESPONDENT’S NOTICE OF CROSS-APPEAL**

Nothing in Impax’s opposition persuades that the Commission should entertain its cross-appeal here. Impax may wish the Administrative Law Judge had accepted all of its arguments, including those on market power. But it will be the rare party that cannot find some fault with the ALJ’s reasoning, conclusions, or findings of fact in a complex case. Permitting a cross-appeal here is tantamount to permitting a cross-appeal in every case. As in *LabMD*, Impax can advance its market power arguments in its answering brief as alternate grounds for affirmance. *See Order, In re LabMD, Inc.*, FTC Dkt. No. 9357 (Dec. 7, 2015). Impax cites no precedent—from the Commission or any court—granting a cross-appeal in these circumstances.

Impax concedes that it can fairly present its arguments without resort to a separate set of briefs if the Commission grants it an additional 10,000 words for its opposition. *See Opp.* at 5. Complaint Counsel does not object to Impax’s request for additional words. In the event the Commission grants this request, however, Complaint Counsel seeks an additional 5,000 words

for its reply brief. The parties can fully and fairly present their arguments with an extra 15,000 words, far fewer than the 35,000 words that an additional set of briefing would entail.

Dated: June 12, 2018

Respectfully submitted,

/s/ Charles A. Loughlin

Charles A. Loughlin
Markus H. Meier
Bradley S. Albert
Daniel W. Butrymowicz
Alpa D. Davis
Nicholas A. Leefer
Synda Mark
Lauren Peay
J. Maren Schmidt
Eric M. Sprague
Jamie Towey
James H. Weingarten
Rebecca E. Weinstein

Federal Trade Commission
Bureau of Competition
600 Pennsylvania Ave., NW
Washington, DC 20580
Telephone: (202) 326-2114
Facsimile: (202) 326-3384
Email: cloughlin@ftc.gov

Counsel Supporting the Complaint

CERTIFICATE OF SERVICE

I hereby certify that on June 12, 2018, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-113
Washington, DC 20580
ElectronicFilings@ftc.gov

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580

I also certify that I delivered via electronic mail a copy of the foregoing document to:

Edward D. Hassi
Michael E. Antalics
Benjamin J. Hendricks
Eileen M. Brogan
O'Melveny & Myers, LLP
1625 Eye Street NW
Washington, DC 20006
ehassi@omm.com
mantalics@omm.com
bhendricks@omm.com
ebrogan@omm.com

Anna Fabish
Stephen McIntyre
O'Melveny & Myers, LLP
400 South Hope Street
Los Angeles, CA 90071
afabish@omm.com
smcintyre@omm.com

Counsel for Respondent Impax Laboratories, Inc.

June 12, 2018

By: s/ Rebecca E. Weinstein

CERTIFICATE FOR ELECTRONIC FILING

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

June 12, 2018

By: s/ Rebecca E. Weinstein