

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

**0610139**

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

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<b>In the Matter of</b>	)	
	)	
	)	
<b>WATSON PHARMACEUTICALS, INC.</b>	)	
<b>a corporation;</b>	)	
	)	<b>Docket No. C-</b>
<b>and</b>	)	
	)	
<b>ANDRX CORPORATION</b>	)	
<b>a corporation.</b>	)	
	)	
	)	

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**DECISION AND ORDER**  
**[Public Record Version]**

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Respondent Watson Pharmaceuticals, Inc. (“Watson”) of Respondent Andrx Corporation (“Andrx”), hereinafter referred to as “Respondents,” and Respondents having been furnished thereafter with a copy of a draft Complaint (“Complaint”) that the Bureau of Competition proposed to present to the Commission for its consideration and that, if issued by the Commission, would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and an Order

to Maintain Assets, attached to this Order as Appendix I, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent Watson is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nevada, with its headquarters address at 311 Bonnie Circle, Corona, California 92880.
2. Respondent Andrx is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its headquarters address at 8151 Peters Road, Plantation, Florida 33324.
3. The Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

## **ORDER**

### **I.**

**IT IS ORDERED** that, as used in the Order, the following definitions shall apply:

- A. “Watson” means Watson Pharmaceuticals, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Watson (including, but not limited to, Watson Laboratories, Inc. and Water Delaware, Inc.), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. After the Acquisition, Watson shall include Andrx.
- B. “Andrx” means Andrx Corporation, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Andrx (including, but not limited to, Andrx Pharmaceuticals, Inc., and Andrx Pharmaceuticals, LLC), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Respondents” means Watson and Andrx, individually and collectively.
- D. “Commission” means the Federal Trade Commission.

- E. “Acquirer” means:
1. An entity identified by name in this Order to acquire particular assets or rights that Respondents are required to assign, grant, license, divest, transfer, deliver, terminate, or otherwise convey pursuant to this Order and that has been approved by the Commission to accomplish the requirements of this Order in connection with the Commission’s determination to make this Order final; or
  2. An entity approved by the Commission to acquire particular assets or rights that Respondents are required to assign, grant, license, divest, transfer, deliver, terminate, or otherwise convey pursuant to this Order.
- F. “Acquirer Employees” means any of an Acquirer’s employees with any amount of responsibility related to the Divestiture Products.
- G. “Acquisition” means the acquisition contemplated by The Agreement and Plan of Merger dated March 12, 2006, by and among Watson Pharmaceuticals, Inc., Water Delaware, Inc., and Andrx Corporation, and all amendments, exhibits, attachments, agreements, and schedules thereto.
- H. “Acquisition Date” means the earlier of the following dates:
1. The date Respondents close on the Acquisition; or
  2. The date the merger contemplated by the Acquisition is consummated by filing the certificate of merger related to the Acquisition with the Secretary of State of the State of Delaware.
- I. “Actavis” means Actavis Elizabeth LLC, a limited liability company, organized, existing and doing business under and by virtue of the law of the State of Delaware, with its headquarters address at 990 Riverview Drive, Totowa, New Jersey 07512.
- J. “Agency(ies)” means any government regulatory authority or authorities in the world responsible for granting approvals, clearances, qualifications, licenses, or permits for any aspect of the research, Development, manufacture, marketing, distribution, or sale of a Product. This term includes, but is not limited to, the United States Food and Drug Administration (“FDA”).
- K. “Anda” means Anda, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its headquarters address at 2915 Weston Road, Weston, Florida 33331.

















- Z. “Direct Cost” means a cost not to exceed the cost of labor, material, travel and other expenditures to the extent they are directly incurred to provide the relevant assistance or service; *PROVIDED, HOWEVER*, that Direct Cost shall not exceed the average hourly wage rate of Respondents’ employees used by an Acquirer.
- AA. “Divestiture Products” means the Glipizide ER Products and the Generic Oral Contraceptive Products, individually and collectively.
- BB. “Divestiture Products Core Employees” means the Research and Development Employees and the Manufacturing Employees.
- CC. “Divestiture Trustee” means the trustee appointed by the Commission pursuant to Paragraph VII. of this Order.
- DD. “Domain Name” means the domain names (universe resource locators), and registrations thereof, issued by any entity or authority that issues and maintains the domain name registration; *PROVIDED, HOWEVER*, this term shall not include any trademark or service mark rights to such domain names other than the rights to the Trademarks required to be divested.
- EE. “Drug Master Files” means the information submitted to the FDA as described in 21 C.F.R. Part 314.420 related to a Product.
- FF. “Employee Information” means, as related to the Divestiture Products Core Employees, and to the extent permitted by law:
1. A complete and accurate list containing the name of each relevant employee (including former employees who were employed by Respondents within ninety (90) days of the execution of any Remedial Agreements);
  2. The following information for each such employee:
    - a. The date of hire and effective service date;
    - b. Job title or position held;
    - c. A specific job description of the employee’s responsibilities related to the Divestiture Products; *PROVIDED, HOWEVER*, in lieu of this description, Respondents may provide the employee’s most recent performance appraisal;
    - d. The base salary and current wages;

- e. The most recent bonus paid, aggregate annual compensation for the Respondents' last fiscal year and current target or guaranteed bonus, if any;
  - f. Employment status (*i.e.*, active, on leave, on disability, and full or part time);
  - g. Any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly situated employees; and
3. At the Acquirer's option, copies of all applicable employee benefit plans and summary plan descriptions.

GG. "Generic Oral Contraceptive Assets" means, within the Geographic Territory and to the extent legally transferrable, all of Respondent Andrx's rights, title and interest in all assets related to:

1. The Generic Oral Contraceptive Products;
2. Respondent Andrx's business related to the Generic Oral Contraceptive Products;
3. The research, Development, manufacture, distribution, marketing and sale of the Generic Oral Contraceptive Products;
4. The Categorized Assets related to the Generic Oral Contraceptive Products; and
5. The Generic Oral Contraceptive Royalties.

*PROVIDED, HOWEVER*, Respondents may retain any asset necessary to fulfill their obligations under the Generic Oral Contraceptive Supply Agreement.

HH. "Generic Oral Contraceptive Products" means:

1. All Products in Development, manufactured, marketed or sold by Respondent Andrx pursuant to the following of Respondent Andrx's ANDAs:
  - a. ANDA No. 76-334 (norgestimate/ethinyl estradiol 0.25 mg/0.035 mg tablets);











































































