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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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

In the Matter of	)	
AKORN, INC.,	)	**Docket C-4479**
a corporation.	)	

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition by Akorn, Inc. ("Akorn" or "Respondent") of the voting securities of VersaPharm Incorporated ("VersaPharm"), and Respondent having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent 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

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders ("Consent Agreement"), containing an admission by the Respondent 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 the Respondent 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 to accept the executed Consent Agreement and to place 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 issues its Complaint, makes the following jurisdictional findings and issues this Order to Maintain Assets:

1. Respondent 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 W. Field Court, Suite 300, Lake Forest, Illinois 60045.

2. The Commission has jurisdiction of the subject matter of this proceeding and of the Respondent, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order to Maintain Assets, the following definitions and the definitions used in the Consent Agreement and the proposed Decision and Order (and when made final and effective, the Decision and Order), which are incorporated herein by reference and made a part hereof, shall apply:

A. "Akorn" means Akorn, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Akorn, Inc. (including, without limitation, Akorn Enterprises, Inc.), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. After the Acquisition, Akorn shall include VersaPharm.

B. "VersaPharm" means VersaPharm Incorporated, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by VersaPharm Incorporated, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

C. "Respondent" means Akorn.

D. "Commission" means the Federal Trade Commission.

E. "Decision and Order" means the:

1. Proposed Decision and Order contained in the Consent Agreement in this matter until the issuance of a final and effective Decision and Order by the Commission; and

2. Final Decision and Order issued by the Commission following the issuance and service of a final Decision and Order by the Commission in this matter.

F. "Monitor" means any monitor appointed pursuant to Paragraph III of this Order to Maintain Assets or Paragraph III of the Decision and Order

G. "Orders" means the Decision and Order and this Order to Maintain Assets.

II.

IT IS FURTHER ORDERED that from the date this Order to Maintain Assets becomes final and effective:

A. Until Respondent fully transfers and delivers the Akorn Rifampin Product Assets to the Acquirer, Respondent shall take such actions as are necessary to maintain the full economic viability, marketability and competitiveness of Akorn Rifampin Product Assets, to minimize any risk of loss of competitive potential for the Akorn Rifampin Product Assets, and to prevent the destruction, removal, wasting, deterioration, or impairment of Akorn Rifampin Product Assets except for ordinary wear and tear. Respondent shall not sell, transfer, encumber, or otherwise impair the Akorn Rifampin Product Assets (other than in the manner prescribed in the Decision and Order) nor take any action that lessens the full economic viability, marketability, or competitiveness of the Akorn Rifampin Product Assets.

B. Until Respondent fully transfers and delivers the Akorn Rifampin Product Assets to the Acquirer, Respondent shall:

1. provide, or cause to be provided to the Acquirer all correspondence, submissions, notifications, communications, registrations, or other filings made to, received from, or otherwise conducted with the FDA relating to the Application(s) related to the Akorn Rifampin Product in an organized, comprehensive, complete, useful, timely (i.e., ensuring no unreasonable delays in transmission), and meaningful manner; and

2. cooperate with, and assist, Acquirer in responding to all correspondence, submissions, notifications, communications, registrations, or other filings received from, or otherwise conducted with the FDA relating to the Application(s) related to the Akorn Rifampin Product in an organized, comprehensive, complete, useful, timely (*i.e.*, ensuring no unreasonable delays in transmission), and meaningful manner, with copies and notice to the Monitor and the Acquirer of such contacts with the FDA in an organized, comprehensive, complete, useful, timely (*i.e.*, ensuring no unreasonable delays in transmission), and meaningful manner.

C. Until Respondent fully transfers and delivers the Akorn Rifampin Product Assets to the Acquirer, Respondent shall:

1. not use, directly or indirectly, any Confidential Business Information related to the Business of the Akorn Rifampin Product other than as necessary to comply with the following:

a. the requirements of this Order;

b. Respondent's obligations to the Acquirer under the terms of any related Remedial Agreement; or

c. applicable Law;

2. not disclose or convey any such Confidential Business Information, directly or indirectly, to any Person except (i) the Acquirer, (ii) other Persons specifically authorized by the Acquirer to receive such information, (iii) the Commission, or (iv) the Monitor (if any has been appointed);

3. not provide, disclose, or otherwise make available, directly or indirectly, any such Confidential Business Information related to the marketing or sales of the Akorn Rifampin Product to the employees associated with the Business related to the Retained Product that is the therapeutic equivalent (as that term is defined by the FDA) of the Akorn Rifampin Product; and

4. institute procedures and requirements to ensure that the above-described employees:

a. do not provide, disclose or otherwise make available, directly or indirectly, any Confidential Business Information in contravention of this Order to Maintain Assets; and

b. do not solicit, access, or use any Confidential Business Information that they are prohibited from receiving for any reason or purpose.

D. Not later than thirty (30) days from the earlier of: (i) the Closing Date or (ii) the date this Order to Maintain Assets is issued by the Commission, Respondent shall provide written notification of the restrictions on the use and disclosure of the Confidential Business Information related to the Akorn Rifampin Product by Respondent's personnel to all of its employees who (i) may be in possession of such Confidential Business Information or (ii) may have access to such Confidential Business Information.

E. Respondent shall give the above-described notification by e-mail with return receipt requested or similar transmission and keep a file of those receipts for one (1) year after the Closing Date. Respondent shall provide a copy of the notification to the Acquirer. Respondent shall maintain complete records of all such notifications at Respondent's registered office within the United States and shall provide an officer's certification to the Commission stating that the acknowledgment program has been implemented and is being complied with. Respondent shall provide the Acquirer with copies of all certifications, notifications, and reminders sent to Respondent's personnel.

F. Respondent shall monitor the implementation by its employees and other personnel of all applicable restrictions with respect to Confidential Business Information, and take corrective actions for the failure of such employees and personnel to comply with such restrictions or to furnish the written agreements and acknowledgments required by this Order to Maintain Assets.

G. The purpose of this Order to Maintain Assets is to maintain the full economic viability, marketability, and competitiveness of the Akorn Rifampin Product Assets within the Geographic Territory through the full transfer and delivery to an Acquirer, to minimize any risk of loss of competitive potential for the Akorn Rifampin Product Assets within the Geographic Territory, and to prevent the destruction, removal, wasting, deterioration, or impairment of the Akorn Rifampin Product Assets except for ordinary wear and tear.

III.

IT IS FURTHER ORDERED that:

A. Quantic Regulatory Services, LLC (F. William Rahe) shall serve as the Monitor pursuant to the agreement executed by the Monitor and Respondent and attached as Appendix A ("Monitor Agreement") and Non-Public Appendix B ("Monitor Compensation"). The Monitor is appointed to assure that Respondent expeditiously complies with all of its obligations and performs all of its responsibilities as required by this Order, the Order to Maintain Assets, and the Remedial Agreements.

B. Not later than ten (10) days after the appointment of the Monitor, Respondent shall execute an agreement that, subject to the prior approval of the Commission, confers on the Monitor all the rights and powers necessary to permit the Monitor to monitor Respondent's compliance with the relevant requirements of the Orders in a manner consistent with the purposes of the Orders.

C. If a Monitor is appointed, Respondent shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:

1. The Monitor shall have the power and authority to monitor Respondent's compliance with the divestiture and asset maintenance obligations and related requirements of the Orders, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of the Orders and in consultation with the Commission.

2. The Monitor shall act in a fiduciary capacity for the benefit of the Commission.

3. The Monitor shall serve until the date of completion by Respondent of the divestiture of the Akorn Rifampin Product Assets, the transfer and delivery of the related Product Manufacturing Technology in a manner that fully satisfies the requirements of this Order and, with respect to each Divestiture Product that is a Contract Manufacture Product,

until the earliest of: (i) the date the Acquirer of the Akorn Rifampin Product (or that Acquirer's Manufacturing Designee(s)) is approved by the FDA to manufacture and sell the Akorn Rifampin Product and able to manufacture the Divestiture Product in commercial quantities, in a manner consistent with cGMP, independently of Respondent; (ii) the date the Acquirer of the Akorn Rifampin Product notifies the Commission and Respondent of its intention to abandon its efforts to manufacture the Akorn Rifampin Product; or (iii) the date of written notification from staff of the Commission that the Monitor, in consultation with staff of the Commission, has determined that the Acquirer has abandoned its efforts to manufacture the Akorn Rifampin Product;

PROVIDED, HOWEVER, that, with respect to each Divestiture Product, the Monitor's service shall not exceed five (5) years from the Order Date *unless* the Commission decides to extend or modify this period as may be necessary or appropriate to accomplish the purposes of the Orders.

D. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to Respondent's personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, related to Respondent's compliance with its obligations under the Orders, including, but not limited to, its obligations related to the relevant assets. Respondent shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Respondent's compliance with the Orders.

E. The Monitor shall serve, without bond or other security, at the expense of Respondent, on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have authority to employ, at the expense of Respondent, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities.

F. Respondent shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Monitor.

G. Respondent shall report to the Monitor in accordance with the requirements of the Orders and as otherwise provided in any agreement approved by the Commission. The Monitor shall evaluate the reports submitted to the Monitor by the Respondent, and any reports submitted by the Acquirer with respect to the performance of Respondent's obligations under the Orders or the Remedial Agreement(s). Within thirty (30) days from the date the Monitor receives these

reports, the Monitor shall report in writing to the Commission concerning performance by Respondent of its obligations under the Orders; *PROVIDED, HOWEVER,* beginning ninety (90) days after Respondent filed its final report pursuant to Paragraph VII.B of the Decision and Order, and ninety (90) days thereafter, the Monitor shall report in writing to the Commission concerning progress by each Acquirer toward obtaining FDA approval to manufacture the Akorn Rifampin Product and obtaining the ability to manufacture the Akorn Rifampin Product in commercial quantities, in a manner consistent with cGMP, independently of the Respondent.

H. Respondent may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *PROVIDED, HOWEVER,* that such agreement shall not restrict the Monitor from providing any information to the Commission.

I. The Commission may, among other things, require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.

J. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor:

1. The Commission shall select the substitute Monitor, subject to the consent of Respondent, which consent shall not be unreasonably withheld. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of a proposed Monitor within ten (10) days after the notice by the staff of the Commission to Respondent of the identity of any proposed Monitor, Respondent shall be deemed to have consented to the selection of the proposed Monitor.

2. Not later than ten (10) days after the appointment of the substitute Monitor, Respondent shall execute an agreement that, subject to the prior approval of the Commission, confers on the Monitor all rights and powers necessary to permit the Monitor to monitor Respondent's compliance with the relevant terms of the Order in a manner consistent with the purposes of the Order in the same manner as provided in this Paragraph.

K. The Commission may on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Orders.

L. The Monitor appointed pursuant to this Order to Maintain Assets may be the same person appointed as a Divestiture Trustee pursuant to the relevant provisions of the Decision and Order.

IV.

IT IS FURTHER ORDERED that within thirty (30) days after the date this Order to Maintain Assets is issued by the Commission, and every sixty (60) days thereafter until Respondent has fully complied with this Order to Maintain Assets, Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with the Orders. Respondent shall submit at the same time a copy of their report concerning compliance with the Orders to the Monitor, if any Monitor has been appointed. Respondent shall include in their reports, among other things that are required from time to time, a detailed description of their efforts to comply with the relevant paragraphs of the Orders, including:

A. a detailed description of all substantive contacts, negotiations, or recommendations related to (i) the divestiture and transfer of all relevant assets and rights, (ii) transitional services being provided by the Respondent to the relevant Acquirer, and (iii) the agreement to Contract Manufacture; and

B. a detailed description of the timing for the completion of such obligations.

PROVIDED, HOWEVER, that, after the Decision and Order in this matter becomes final, the reports due under this Order to Maintain Assets may be consolidated with, and submitted to the Commission at the same time as, the reports required to be submitted by Respondent pursuant to Paragraph VII of the Decision and Order.

V.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to:

A. any proposed dissolution of a Respondent;

B. any proposed acquisition, merger or consolidation of the Respondent; or

C. any other change in a Respondent including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Orders.

VI.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days' notice to the Respondent made to its principal United States offices, registered office of its United States subsidiary, or its headquarters address, the Respondent shall,

without restraint or interference, permit any duly authorized representative of the Commission:

A. access, during business office hours of the Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of the Respondent related to compliance with this Order, which copying services shall be provided by the Respondent at the request of the authorized representative(s) of the Commission and at the expense of the Respondent; and

B. to interview officers, directors, or employees of the Respondent, who may have counsel present, regarding such matters.

VII.

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate on the later of:

A. three (3) days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or

B. the day after the later of (i) the divestiture of all of the Akorn Rifampin Product Assets, as required by and described in Paragraph II.A. of the Decision and Order, has been completed, or (ii) the Order Date; or

C. the Commission otherwise directs that this Order to Maintain Assets is terminated.

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED: August 1, 2014

APPENDIX A
MONITOR AGREEMENT

NON-PUBLIC APPENDIX B
MONITOR COMPENSATION

[Redacted From the Public Record Version, But Incorporated By Reference]