conduct that is reasonably necessary to form or participate in legitimate ''qualified risk-sharing'' or ''qualified clinically-integrated'' joint arrangements, as defined in the proposed Consent Order. Also, Paragraph II would not bar agreements that only involve physicians who are part of the same medical group practice, defined in Paragraph I.B, because it is intended to reach agreements between and among independent competitors.

Paragraphs III and IV require AllCare to notify the Commission before it initiates any arrangement to act as an agent or messenger with respect to physician contracting with payors. The Order also would require AllCare to provide to the Commission key details of the arrangement and to delay the implementation of that arrangement to permit further factual discovery by the Commission at its option. Paragraph III applies such requirements to arrangements under which AllCare would be acting as a messenger, and Paragraph IV applies them to arrangements under which AllCare plans to achieve financial or clinical integration.

Paragraph V.A requires AllCare to send a copy of the Complaint and Consent Order to its physician members, its management and staff, and any payors who communicated with AllCare, or with whom AllCare communicated, with regard to any interest in contracting for physician services.

Part V.B. of the Order requires AllCare to terminate preexisting payor contracts held by physicians who were AllCare participants since January 1, 2005, upon (1) receipt by AllCare of a written request for termination by relevant payors, or (2) the termination date, renewal date, or anniversary date of the contract, whichever is earlier. This termination can be delayed for up to one year after the effective date of the Order, upon the written request of the payor. This provision is intended to eliminate the effects of AllCare's joint price setting behavior.

Paragraph V.C requires that AllCare send a copy of any payor's request for termination to every physician who participates in each group. Paragraph V.D contains further notification provisions relating to future contact with physicians, payors, management, and staff. This provision requires AllCare to distribute a copy of the Complaint and Consent Order to each physician who begins participating in each group; each payor who contacts each group regarding the provision of physician services; and each person who becomes an officer, director, manager, or employee for three years after the date on which the Consent Order becomes final. In addition, Paragraph V.D requires AllCare to publish a copy of the Complaint and Consent Order, for three years, in any official publication that it sends to its participating physicians.

Paragraphs V.E and VI-VII impose various obligations on AllCare to provide to the Commission information that would assist in the monitoring of Respondent's compliance with the Consent Order.

Pursuant to Paragraph VIII, the proposed Consent Order will expire in 20 years from the date it is issued.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E8–31385 Filed 1–2–09: 8:45 am]

BILLING CODE 6750–01–S

FEDERAL TRADE COMMISSION

[File No. 061 0123]

Inverness Medical Innovations, Inc.; Agreement Containing Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before January 20, 2009.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Inverness Medical Innovations, File No. 061 0123,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 135-H, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form by following the instructions on the web-based form at (*http://secure.commentworks.com/ftc-Inverness*). To ensure that the Commission considers an electronic comment, you must file it on that web-based form.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC website, to the extent practicable, at *www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*).

FOR FURTHER INFORMATION CONTACT: Lore Unt, FTC Bureau of Competition, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, (202) 326-3019.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for December 23, 2008), on the World Wide Web, at (*http://www.ftc.gov/os/2008/12/index.htm*). A paper copy can be obtained from the

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order To Aid Public Comment

I. Introduction

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an Agreement Containing Consent Order (''Consent Agreement'') from Inverness Medical Innovations, Inc. (''Inverness'').

The proposed Consent Agreement is designed to remedy the harm to competition from Inverness' conduct in acquiring certain assets of ACON Laboratories, Inc. (''ACON''). It would settle charges that Inverness engaged in an unlawful course of conduct to maintain its monopoly power in the lateral flow consumer pregnancy test market and hamper the development of future competition in that market, by restricting ACON's digital consumer pregnancy test supply and development joint venture with Church & Dwight Co., Inc. (''Church & Dwight''), and by acquiring ACON's competing water-soluble dye consumer pregnancy test technology.

Under the terms of the proposed Decision and Order, Inverness will divest ACON's water-soluble dye consumer pregnancy test product assets. In addition, Inverness will remove barriers to ACON's continued supply of digital tests to Church & Dwight during the remaining term of their joint venture. The proposed Decision and Order also limits Inverness' ability to interfere with the unwinding of the ACON/Church & Dwight joint venture by, among other things, requiring Inverness to disclaim ownership of intellectual property developed by ACON and Church & Dwight during their joint venture.

II. Background

Inverness is a leader in the research, development, manufacture, and sale of consumer pregnancy tests in the United States. Nearly all retail consumer pregnancy tests use immunoassay-based ''lateral flow'' technology, which tests a urine sample for the presence of the human chorionic gonadotropin (''hCG'') hormone produced by pregnant women. Consumer pregnancy tests consist of a plastic handheld stick device, which contains a test strip embedded beneath an indicator window. The test strip contains chemical agents that react to the presence of hCG in the urine sample. If the test is positive for hCG, a colored line will develop within the indicator window.

Lateral flow consumer pregnancy tests are more accurate, easier to use, and less costly than other pregnancy tests, which resemble laboratory test kits. There are no viable substitutes for consumer pregnancy tests based on lateral flow technology.

''Digital'' consumer pregnancy tests use and improve upon lateral flow technology. Rather than a colored line indicator, a digital pregnancy test indicates results through a digital display of words, such as ''PREGNANT'' or ''NOT PREGNANT.'' Digital consumer pregnancy tests are more difficult to develop and manufacture than standard consumer pregnancy tests, because they require more extensive know-how and more exacting manufacturing tolerances. Digital consumer pregnancy tests are a growing segment of the consumer pregnancy test market.

Inverness is the dominant firm in the market for consumer pregnancy tests. Inverness maintains an approximately 70% share of the U.S. consumer pregnancy test market. At the time of Inverness' acquisition of ACON, Inverness was one of only three independent companies marketing or manufacturing digital consumer pregnancy tests. The other firms exited the market in 2006.

ACON developed, manufactured, and sold consumer pregnancy tests in competition with Inverness. Before Inverness' acquisition of the ACON assets, ACON was developing digital consumer pregnancy tests in a joint venture with Church & Dwight, Inverness' leading competitor. The collaboration with Church & Dwight envisioned that ACON would manufacture and supply the resulting digital consumer pregnancy test products on Church & Dwight's behalf.

ACON also had invested in the development of new lateral flow tests that used water-soluble dyes, rather than colored particles, as the reactive agents in the test strip. ACON was one of the only, if not the only, firm involved in the development of consumer pregnancy tests that used water-soluble dye technology. Before the acquisition, ACON had completed prototypes of the product, and supplied sample quantities to U.S. customers.

In 2006, Inverness acquired certain assets from ACON, which included assets relating to ACON's water-soluble dye technology and assets relating to ACON's digital consumer pregnancy test joint venture with Church & Dwight.

III. The Proposed Complaint

The proposed complaint alleges that relevant market in which to analyze Inverness' conduct is the research, development, manufacture, and sale of consumer pregnancy tests in the United States. Inverness is the dominant player in the market for consumer pregnancy tests. Barriers to entry into the consumer pregnancy test market include intellectual property, know-how, and advertising.

The proposed complaint alleges that Inverness engaged in a course of conduct to maintain its monopoly power in this market by threatening to hamper or stifle future competition from two emerging alternative consumer pregnancy test technologies.

First, the proposed complaint alleges that Inverness' acquisition of the ACON assets weakened future competition from digital consumer pregnancy test products. The proposed complaint alleges that, through its acquisition of the ACON assets, Inverness: (a) imposed a covenant not to compete on ACON, which limited the scope and duration of the ACON's digital consumer pregnancy test joint venture with Church & Dwight; (b) required ACON to surrender to Inverness any profits from ACON's joint venture with Church & Dwight; and (c) acquired rights to the intellectual property developed by ACON and Church & Dwight in their joint venture. Through these actions, Inverness interfered with ACON's ability and incentive to develop and manufacture digital consumer pregnancy tests in its joint venture with Church & Dwight. Inverness' conduct also injured competition that might arise after the unwinding of the joint venture between ACON and Church & Dwight, by interfering with ACON's ability and incentive to serve as an independent developer and supplier of digital consumer pregnancy tests, and by hampering Church & Dwight's ability and incentive to introduce competing digital consumer pregnancy test products manufactured by another developer.

Second, the proposed complaint alleges that Inverness' acquisition of the ACON assets eliminated future competition from water-soluble dye lateral flow consumer pregnancy tests. After Inverness acquired the rights to ACON's water-soluble dye consumer pregnancy test product, Inverness made no use of the test, and ceased development and marketing efforts for

it. Inverness' acquisition of the ACON assets further entrenched Inverness' monopoly power in consumer pregnancy tests by preventing future competition from competing water-soluble dye consumer pregnancy tests.

IV. The Proposed Order

The proposed order will remedy the Commission's competitive concerns about Inverness' conduct in maintaining its consumer pregnancy test product monopoly power.

First, the proposed order contains provisions to prevent Inverness from interfering with the digital consumer pregnancy test product joint venture between ACON and Church & Dwight, and to enable ACON and Church & Dwight to maintain their competitive viability after the joint venture ends. These provisions include a requirement that Inverness disclaim any ownership rights on intellectual property developed during the joint venture. The proposed order further requires that Inverness will not interfere with ACON's transfer or licensing of digital consumer pregnancy test technology to Church & Dwight, and that Inverness not interfere with ACON's ability to manufacture digital consumer pregnancy tests for Church & Dwight during their collaboration.

Second, to prevent Inverness from harming emerging competition from water-soluble dye consumer pregnancy test products, the proposed order requires Inverness to divest, to Aemoh Products, LLC, a fully-paid perpetual exclusive sublicense to Inverness' water-soluble dye intellectual property. The proposed order seeks to ensure that water-soluble dye products can be developed without risk of infringing Inverness' intellectual property, by requiring Inverness to covenant not to assert intellectual property infringement claims against certain lateral flow products that use Inverness' water-soluble dye technology. These provisions, among others, will give Aemoh—a start-up run by a successful and experienced health products entrepreneur—the ability to complete the commercialization of water-soluble dye based consumer pregnancy tests.

V. Opportunity for Public Comment

The proposed consent order has been placed on the public record for 30 days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the proposed consent order and the comments received and will decide whether it should withdraw from the agreement or make the proposed consent order final.

By accepting the proposed Consent Agreement subject to final approval, the Commission anticipates that the competitive problems alleged in the complaint will be resolved. The purpose of this analysis is to invite public comment on the proposed Consent Agreement, in order to aid the Commission in its determination of whether to make the proposed order final. This analysis is not intended to constitute an official interpretation of the proposed order nor is it intended to modify the terms of the proposed order in any way.

By direction of the Commission, Commissioner Harbour recused.

Richard C. Donohue,

Acting Secretary.

[FR Doc. E8–31366 Filed 1–2–09: 8:45 am]

BILLING CODE 6750–01–S

FEDERAL TRADE COMMISSION

[File No. 081 0240]

King Pharmaceuticals, Inc. and Alpharma Inc.; Agreement Containing Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before January 27, 2009.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''King Alpharma, File No. 081 0240,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 135-H, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form by following the instructions on the web-based form at (*http://secure.commentworks.com/ftc-KingAlpharma*). To ensure that the Commission considers an electronic comment, you must file it on that web-based form.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC website, to the extent practicable, at *www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*).

FOR FURTHER INFORMATION CONTACT: James Southworth, FTC Bureau of Competition, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, (202) 326-2822.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).