



UNITED STATES OF AMERICA
Federal Trade Commission
Washington, D.C. 20580

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Patricia S. Dodszuweit, Clerk
U.S. Court of Appeals for the Third Circuit
21400 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106

Re: *FTC v. Shire ViroPharma Inc.*, No. 18-1807

Dear Ms. Dodszuweit:

At page 25 of the FTC's opening brief, we cited the recent district court decision by in *FTC v. Hornbeam Special Situations, LLC*, No. 1:17-cv-3094, 2018 WL 1870094 (N.D. Ga. Apr. 16, 2018), as one of several cases standing for the proposition that a "reason to believe" determination is committed to agency discretion and hence unreviewable. On October 15, 2018, the court in that case vacated the relevant portion of its earlier decision, agreeing with the reasoning of the district court in this case. No. 1:17-cv-3094 (N.D. Ga.), ECF No. 219. The FTC therefore withdraws its reliance on the earlier opinion.

For all of the reasons stated in its briefs in this case, the FTC believes that the October 15 decision in *Hornbeam Special Situations* is wrongly decided and inconsistent with controlling precedent.

Respectfully submitted,

/s/ Matthew M. Hoffman

Matthew M. Hoffman

cc: Counsel of record (via CM/ECF)