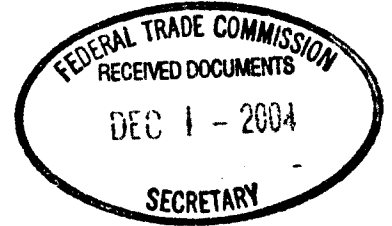


UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES



In the Matter of)
)
)
BASIC RESEARCH, LLC)
A.G. WATERHOUSE, LLC)
KLEIN-BECKER USA, LLC)
NUTRASPORT, LLC)
SOVAGE DERMALOGIC LABORATORIES, LLC)
BAN, LLC d/b/a BASIC RESEARCH, LLC)
)
OLD BASIC RESEARCH, LLC,)
BASIC RESEARCH, A.G. WATERHOUSE,)
KLEIN-BECKER USA, NUTRA SPORT, and)
SOVAGE DERMALOGIC LABORATORIES)
DENNIS GAY)
DANIEL B. MOWREY d/b/a AMERICAN)
PHYTOTHERAPY RESEARCH LABORATORY, and)
MITCHELL K. FRIEDLANDER,)
Respondents.)
_____)

Docket No. 9318

ORDER GRANTING BASIC RESEARCH'S FOURTH MOTION TO COMPEL

I.

On November 15, 2004, Respondent Basic Research, LLC ("Respondent") filed its fourth motion to compel ("Motion"). On November 29, 2004, Complaint Counsel filed its opposition to the motion ("Opposition"). Upon consideration of the briefs and attachments, and for the reasons set forth below, Respondent's fourth motion to compel is **GRANTED**.

II.

Respondent seeks an order compelling Complaint Counsel to provide a privilege log that complies with the requirements of 16 C.F.R. § 3.38A. Motion at 1. Respondent argues that the privilege log submitted by Complaint Counsel does not identify the documents with specificity, does not identify authors and recipients, and does not identify the dates of the documents. Motion at 2. Complaint Counsel contends that it provided sufficient information for Respondents to assess privilege claims; Respondent's request is unnecessary and overly burdensome; and Respondent's privilege log suffers from some of the same deficiencies. Opposition at 1-2.

III.

Rule 3.38A identifies the requirements for privilege logs, stating:

(a) Any person withholding material responsive to a subpoena issued pursuant to § 3.34, written interrogatories requested pursuant to § 3.35, a request for production or access pursuant to § 3.37, or any other request for the production of materials under this part, shall assert a claim of privilege or any similar claim not later than the date set for production of the material. Such person shall, if so directed in the subpoena or other request for production, submit, together with such claim, a schedule of the items withheld which states individually as to each such item the type, title, specific subject matter, and date of the item; the names, addresses, positions, and organizations of all authors and recipients of the item; and the specific grounds for claiming that the item is privileged.

16 C.F.R. § 3.38A(a). Rule 3.38A clearly states that the privilege log must state individually as to each item the date and the name and address of all authors and recipients.


The privilege log submitted by Complaint Counsel does not provide the information required by Rule 3.38A. For example, item 13 lists both authors and recipients as “BCP Staff and Management,” describes the documents as “[i]nternal memoranda and notes regarding scope of the complaint allegations,” and asserts that the documents are protected by the work product and deliberative process privileges. Opposition, Ex. A. The names, addresses, positions, and organizations of all authors and recipients are not listed, no dates are provided, and it is not possible to determine the number of documents involved. This is clearly insufficient under Rule 3.38A.

Provision of a complete privilege log may be time consuming for both parties. Indeed, Complaint Counsel argues that Respondent’s privilege log is deficient as well. To the extent the parties all agree to waive certain requirements that are not necessary to determine whether the document is entitled to the privilege claimed, the parties may do so. However, if the parties are unable to reach an agreement, the privilege logs must conform to the requirements of Rule 3.38A.

IV.

For the above-stated reasons, Respondent’s fourth motion to compel is **GRANTED**. Complaint Counsel will have fifteen days from the date of this Order to provide a complete privilege log.

ORDERED:



Stephen J. McGuire
Chief Administrative Law Judge

Date: December 1, 2004