

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

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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,	)	Docket No. 9318
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.	)	

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**ORDER DENYING RESPONDENT GAY'S MOTION FOR RECONSIDERATION**

**I.**

On March 24, 2005, Respondent Gay filed a Motion for Reconsideration of Order on Respondents' Motion to Strike Expert Witnesses and for Sanctions and Other Relief. Complaint Counsel filed its Opposition on April 1, 2005. By Order dated April 6, 2005, this matter was stayed. By Order of the Commission dated June 17, 2005, the stay in the proceedings was lifted.

For the reasons set forth below, Respondent Gay's Motion is **DENIED**.

**II.**

By Order dated March 15, 2005, Complaint Counsel was required to make its testifying expert, Dr. Steven Heysmfield, available for an additional four hours of deposition testimony. That Order held that because Complaint Counsel failed to provide certain information to Respondents in a more timely fashion, to remedy any harm from the delayed disclosures, Respondents were allowed additional time to complete their deposition of Heysmfield.

By the instant motion, Respondent Gay now seeks reconsideration of the March 15, 2005 Order and seeks up to two days to complete the deposition of Heymsfield. Respondent Gay argues that Gay has not had the opportunity to ask one question of Heymsfield under oath. According to Gay, counsel for Respondent Mowery examined Heymsfield for five and one-half hours; counsel for the corporate Respondents examined Heymsfield for one and one-half hours; and counsel for Respondent Freidlander examined Heymsfield for three and one-half hours. Respondent Gay asserts that it needs additional time to examine Heymsfield.

Complaint Counsel states that Respondents have collectively and strategically expended approximately eleven hours already in deposing Dr. Heymsfield on the topics of their choice. Complaint Counsel asserts that Respondent has failed to demonstrate that the one and a half days of deposition already taken and the additional four hours ordered by the March 15, 2005 Order are insufficient to allow Respondents fair opportunity to question one of the four expert witnesses identified by Complaint Counsel. Complaint Counsel further asserts that Respondent Gay's motion fails to meet the standards for reconsideration.

### III.

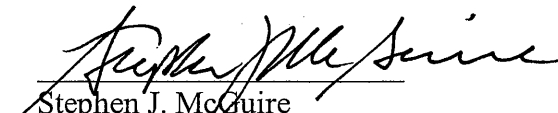
A motion for reconsideration may be granted only "where: (1) there has been an intervening change in controlling law; (2) new evidence is available; or (3) there is a need to correct clear error or manifest injustice." *In re Rambus*, 2003 FTC LEXIS 49, \*11 (March 26, 2003) (citing *Regency Communications, Inc. v. Cleartel Communications, Inc.*, 212 F. Supp.2d 1, 3 (D.D.C. 2002)). "Reconsideration motions are not intended to be opportunities 'to take a second bite of the apple' and relitigate previously decided matters." *Id.* at \*11-12 (citing *Greenwald v. Orb Comm. & Marketing, Inc.*, 2003 WL 660844, \*1 (S.D.N.Y. Feb. 27, 2002)).

Respondent Gay has failed to demonstrate that: (1) there has been an intervening change in controlling law; (2) new evidence is available; or (3) there is a need to correct clear error or manifest injustice. Respondent's motion fails to meet the heavy burden required for granting a motion for reconsideration. Accordingly, it is **DENIED**.

### IV.

Pursuant to the March 15, 2005 Order, Complaint Counsel shall make its expert, Dr. Steven Heymsfield, available for an additional four hours of deposition. The deposition shall be completed by September 9, 2005.

ORDERED:

  
Stephen J. McGuire  
Chief Administrative Law Judge

August 9, 2005