

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

Commissioners: **Deborah Platt Majoras, Chairman**
 Pamela Jones Harbour
 Jon Leibowitz
 William E. Kovacic
 J. Thomas Rosch

In the Matter of)	
)	
BASIC RESEARCH, L.L.C.,)	
a limited liability corporation,)	
A.G. WATERHOUSE, L.L.C.,)	
a limited liability corporation,)	
KLEIN-BECKER USA, L.L.C.,)	
a limited liability corporation,)	
NUTRASPORT, L.L.C.,)	
a limited liability corporation,)	
SOVAGE DERMALOGIC LABORATORIES, L.L.C.,)	
a limited liability corporation,)	
BAN, L.L.C.,)	DOCKET NO. 9318
a limited liability corporation, also doing)	
business as BASIC RESEARCH, L.L.C.,)	DECISION AND ORDER
OLD BASIC RESEARCH, L.L.C.,)	
BASIC RESEARCH, A.G. WATERHOUSE,)	
KLEIN-BECKER USA, NUTRA SPORT, and)	
SOVAGE DERMALOGIC LABORATORIES,)	
DENNIS GAY,)	
individually and as an officer)	
of the limited liability corporations,)	
DANIEL B. MOWREY,)	
also doing business as)	
AMERICAN PHYTOTHERAPY RESEARCH)	
LABORATORY, and)	
MITCHELL K. FRIEDLANDER)	

The Federal Trade Commission having issued its Complaint charging the Respondents, Basic Research, L.L.C., A.G. Waterhouse, L.L.C., Klein-Becker USA, L.L.C., Nutrasport, L.L.C., Sovage Dermalogic Laboratories, L.L.C., BAN, L.L.C., (d/b/a Basic Research, L.L.C., Old Basic Research, L.L.C., 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 named in the caption hereof with violations of Section 5(a) and 12 of the Federal Trade Commission Act, 15 U.S.C. § 45(a) and 52 as amended, and Respondents having been served with a copy of that Complaint, together with a notice of contemplated relief, and Respondents having filed answers to the Complaint, denying the allegations set forth therein; and

Respondents, their attorneys, and Counsel for the Commission having thereafter executed an Agreement Containing Consent Order, an admission by Respondents of all the jurisdictional facts set forth in the Complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged as such in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers, releases, and other provisions as required by the Commission's Rules; and

The Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with § 3.25(c) of its Rules; and

The Commission having considered the matter and having thereupon accepted the executed Consent Agreement and placed such Agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure described in § 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following Order:

1. Respondent Basic Research, L.L.C., is a Utah limited liability company with its principal office or place of business at 5742 W. Harold Gatty Dr., Salt Lake City, Utah 84116.
2. Respondent A.G. Waterhouse, L.L.C., is a Wyoming limited liability company with its principal office or place of business at 5742 W. Harold Gatty Dr., Salt Lake City, Utah 84116.
3. Respondent Klein-Becker USA, L.L.C., is a Utah limited liability company with its principal office or place of business at 5742 W. Harold Gatty Dr., Salt Lake City, Utah 84116.
4. Respondent Nutrasport, L.L.C., is a Utah limited liability company with its principal office or place of business at 5742 W. Harold Gatty Dr., Salt Lake City, Utah 84116.
5. Respondent Sovage Dermalogic Laboratories, L.L.C., is a Utah limited liability company with its principal office or place of business at 5742 W. Harold Gatty Dr., Salt Lake City, Utah 84116.
6. Respondent BAN, L.L.C., is a Utah limited liability company with its principal office or place of business at 5742 W. Harold Gatty Dr., Salt Lake City, Utah 84116.

7. Respondent Dennis Gay is an officer of the limited liability companies. His principal place of business is the same as that of the limited liability companies.
8. Respondent Daniel B. Mowrey is an individual also doing business as American Phytotherapy Research Laboratory. His principal office or place of business is located at 5742 W. Harold Gatty Dr., Salt Lake City, Utah 84116.
9. Respondent Mitchell K. Friedlander is an individual whose principal office or place of business is the same as that of Mowrey.
10. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.
11. Respondents waive:
 - a. Any further procedural steps;
 - b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law, which the parties agree will not be entered;
 - c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; provided that this waiver does not affect respondents' rights to assert any defenses in any Commission action not enforcing this order;
 - d. Respondents further waive and release any claim respondents may have against the Federal Trade Commission and the employees, agents, or representatives of the FTC arising from this enforcement action; and
 - e. Respondents shall cause a dismissal of the litigation entitled *Carter-Reed Company, LLC v. Federal Trade Commission*, pending in the United States District Court for the District of Utah, Civil No. 2:04cv001142DB, and agree that it will not be re-filed to challenge or contest the validity of this Order, or any FTC agency action that has been taken against respondents prior to this agreement.

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

2. “Competent and reliable scientific evidence” shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.
3. “Endorser” and “endorsement” shall mean as defined in 16 C.F.R. 2.55.0(b).
4. “Food” and “drug” shall mean as defined in Section 15 of the Federal Trade Commission Act, 15 U.S.C. § 55.
5. Unless otherwise specified, “respondents” shall mean Basic Research, L.L.C., A.G. Waterhouse, L.L.C., Klein-Becker USA, L.L.C., Nutrasport, L.L.C., Sovage Dermalogic Laboratories, L.L.C., BAN, L.L.C., d/b/a Basic Research, L.L.C., Old Basic Research, L.L.C., Basic Research, A.G. Waterhouse, Klein-Becker USA, Nutra Sport, and Sovage Dermalogic Laboratories, Dennis Gay, Daniel B. Mowrey, and Mitchell K. Friedlander, and each of the above’s successors and assigns, and their officers, agents, representatives, and employees.
6. “Substantially similar product” shall mean any product that is substantially similar in ingredients, composition, and properties.

I.

IT IS ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Dermalin-APg, Cutting Gel, Tummy Flattening Gel, Leptoprin, Anorex, PediaLean, or any substantially similar product, in or affecting commerce, shall not represent, in any manner, expressly or by implication, including through the use of the names “Cutting Gel,” “Tummy Flattening Gel,” “Anorex” and “PediaLean,” or other trade names, or through the use of endorsements, that such product causes weight or fat loss, unless at the time the representation is made, respondents possess and rely upon a reasonable basis for the representation, which shall consist of competent and reliable scientific evidence.

II.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any food, drug, or dietary supplement, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, including through the use of trade names or endorsements, about the effect of such food, drug or dietary supplement on any disease, or about the effect of such food, drug or dietary supplement on the structure or function of the human body or other health benefits or weight loss

benefits, unless at the time the representation is made respondents possess and rely upon a reasonable basis for the representation, which shall consist of competent and reliable scientific evidence.

III.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product, service, or program in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, including through the use of endorsements or trade names, the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research.

IV.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Leptoprin, Anorex, or any other product, service, or program in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, including through the use of endorsements:

- A. That respondent Daniel B. Mowrey is a medical doctor; or
- B. The profession, expertise, training, education, experience or qualifications of Mowrey or any other endorser.

V.

IT IS FURTHER ORDERED that payment shall be made to the Federal Trade Commission the sum of three million dollars (\$3,000,000). This payment shall be made in the following manner:

A. Basic Research, L.L.C. shall make the payment, on behalf of all respondents, by wire transfer or certified or cashier's check made payable to the Federal Trade Commission, the payment to be made no later than fifteen (15) days after the date that this order becomes final; *provided* that all respondents are primarily liable, jointly and severally, for the payment amount, including any default payment amount if the payment is in default, unless and until payment is made in full.

B. In the event of any default in payment, which default continues for ten (10) days beyond the due date of payment, the amount due, together with interest, as computed pursuant to 28 U.S.C. § 1961 from the date of default to the date of payment, shall immediately become due and payable.

C. The funds paid, together with any accrued interest, shall, in the discretion of the Commission, be used by the Commission to provide direct redress to purchasers of any of the products challenged in the complaint in connection with the acts or practices alleged in the complaint, and to pay any attendant costs of administration. If the Commission determines, in its sole discretion, that redress to purchasers of this product is wholly or partially impracticable or is otherwise unwarranted, any funds not so used shall be paid to the United States Treasury. Respondents shall be notified as to how the funds are distributed, but shall have no right to contest the manner of distribution chosen by the Commission. No portion of the payment as herein provided shall be deemed a payment of any fine, penalty or punitive assessment.

D. Respondents relinquish all dominion, control and title to the funds paid, and all legal and equitable title to the funds vests in the Treasurer of the United States and in the designated consumers. Respondents shall make no claim to or demand for return of the funds, directly or indirectly, through counsel or otherwise; and in the event of bankruptcy of either respondent, respondents acknowledge that the funds are not part of the debtor's estate, nor does the estate have any claim or interest therein.

VI.

Nothing in this order shall prohibit respondents from making any representation for any drug that is permitted in labeling for such drug under any tentative final or final standard promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration.

VII.

Nothing in this order shall prohibit respondents from making any representation for any product that is specifically permitted in labeling for such product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

VIII.

IT IS FURTHER ORDERED that respondents Dennis Gay, Daniel B. Mowrey, and Mitchell K. Friedlander, for a period of ten (10) years after the date of issuance of this order, shall notify the Commission of the discontinuance of their current business or employment, or of their affiliation with any new business or employment. The notice shall include the respondents' new business address and telephone number and a description of the nature of the business or employment and their duties and responsibilities. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

IX.

IT IS FURTHER ORDERED that respondents shall, for three (3) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. Copies of all advertisements and promotional materials containing the representation;
- B. All materials that were relied upon in disseminating the representation; and
- C. Any tests, reports, studies, surveys, demonstrations or other evidence in their possession or control that reasonably contradict, qualify or call into question the representation or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

X.

IT IS FURTHER ORDERED that respondents shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondents shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

XI.

IT IS FURTHER ORDERED that respondents shall notify the Commission at least thirty (30) days prior to any change in the respondent corporation(s) that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

XII.

IT IS FURTHER ORDERED that respondents shall, within ninety (90) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

XIII.

This order will terminate on June 19, 2026, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED: June 19, 2006