

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

In the Matter of	)	
	)	
	)	
DYNAMIC HEALTH OF FLORIDA, LLC,	)	DOCKET NO. 9317
CHHABRA GROUP, LLC,	)	
DBS LABORATORIES, LLC,	)	
VINEET K. CHHABRA, a/k/a VINCENT K. CHHABRA, and	)	PUBLIC DOCUMENT
JONATHAN BARASH,	)	
Respondents.	)	
	)	

To: The Honorable Stephen J. McGuire  
Chief Administrative Law Judge

COMPLAINT COUNSEL'S PARTIAL OPPOSITION TO MOTION TO EXTEND DATES

By motion dated November 9, 2004, counsel for respondents filed a request for an extension of the time for initiating and responding to discovery in this matter. Complaint counsel opposes this request in part. In support hereof, the following is respectfully submitted.

Complaint counsel is sympathetic to the difficulties facing counsel for respondents at this time. Unfortunately, however, this request follows a series of delays and lapses that have prevented meaningful progress in this litigation. Complaint counsel requests that the Court grant a limited extension of a portion of the dates, in order to provide relief to respondents' counsel without halting the case entirely.

The Court previously continued the case from August 2, 2004 to October 15, 2004, to accommodate the fact that Mr. Chhabra's criminal trial was scheduled to commence on September 4, 2004. In fact, Mr. Chhabra entered a guilty plea on or about September 2, 2004

and no trial was held.

Thus, respondents had ample time, after that date, to prepare for this matter. They have not done so. Pursuant to the Commission's Rules, respondent's disclosures were due on or before October 15, 2004.<sup>1</sup> For their disclosures, respondents merely supplied a copy of documents already in complaint counsel's possession, that is, the responses to civil investigative demands filed by *DBS Laboratories* (the party that failed to answer the complaint) during the pre-complaint investigation. Respondents failed: a) to disclose current contact information of individuals likely to have discoverable information relevant to the allegations, relief, or defenses (including the current contact information for a number of longstanding associates of Mr. Chhabra); and b) to provide a copy of, or a description by category and location of, all documents in the respondents' control relevant to the allegations, relief, and defenses, (including the location of documents within the possession of corporations owned or managed by Mr. Chhabra, such as the ad agency, media placement firm, web hosting business, and fulfillment company for the target products). See Attachments A - C (Mr. Kravitz' letter transmitting the disclosures; complaint counsel's letter re: their inadequacy; and a page containing both an email from

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<sup>1</sup> The Disclosure Rule, 16 C.F.R. § 3.31(b), requires that, within five (5) days of filing their answer, respondents provide:

- a. the name and, if known, the address and telephone number of each individual likely to have discoverable information relevant to the complaint allegations, the proposed relief, or the respondents' defenses, Commission Rule 3.31 (b)(1); and
- b. a copy of, or a description by category and location of, all documents, data compilations, and tangible things, in the possession, custody, or control of respondents that are relevant to such allegations, relief, or defenses, Commission Rule 3.31 (b)(2).

The stay previously issued in this matter operated to extend the date for filing disclosures until October 15.

respondents regarding their view that this matter is a “not a high priority item” and complaint counsel’s response thereto).<sup>2</sup> Additionally, pursuant to the August 2, 2004 *Scheduling Order*, respondents were permitted at any point between October 15, 2004, until November 2, 2004, to issue document requests, requests for admission, interrogatories, and subpoenas duces tecum. As of today, a week after the final date for propounding these types of discovery, respondents have issued *no* requests.

In an effort to suggest that a further continuance of the dates will impose no burden on this proceeding, respondents argue that “as a result of the administrative subpoenas issued prior to the commencement of this lawsuit, as well as the initial disclosures of the parties and the issuance of third party subpoenas, the case is progressing.” This is a significant overstatement. Because respondents failed to provide disclosures conforming to the Commission’s Rules, complaint counsel was forced to make an educated guess as to the current locations of potential witnesses and of relevant documents; to date, we do not know whether we effectively served subpoenas on all of the parties that played a role in the challenged practices. Similarly, respondents’ purported preliminary witness list simply parroted complaint counsel’s own witness list, revealing no new information. To date, complaint counsel has received only a slim (½ inch) file of documents in response to its third party subpoenas. In sum, there has been very little progress in this litigation.

In light of this fact, complaint counsel requests that this Court grant only a portion of the

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<sup>2</sup> Respondents advise the Court that counsel had to cancel his October 31, 2004 trip to Florida to meet with Mr. Chhabra and “review potential documents.” As disclosures were due on October 15, 2004, well before the discovery of Ms. Kravitz’ illness, it does not appear that respondents have shown due diligence in proceeding with this matter.

relief sought by respondents, in order to ensure some advancement of this matter.

First, complaint counsel emphatically opposes respondents' request for an extension, until November 30, 2004, of the dates for issuing document requests, requests for admission, interrogatories, and subpoena duces tecum. Respondents already failed to avail themselves of a three-week window for engaging in these efforts and the retention of the existing deadline will not disable respondents' ability to engage in meaningful discovery: they will receive copies of any documents submitted by third parties in response to the subpoenas issued by complaint counsel, pursuant to the provisions of the *Scheduling Order*, and may conduct depositions through February 11, 2004.

Second, respondents seek to extend the date for providing their expert witness lists from November 15, 2004 to December 15, 2004. (Complaint counsel's expert witnesses were identified on November 5, 2004.) Complaint counsel does not object to an extension of the deadline for identifying respondents' experts until December 1, 2004, and for the filing of its experts' reports until December 15, 2004. We request, however, that the Court simultaneously extend the deadline for the submission of complaint counsel's expert witness reports until December 7, 2004, so we will at least know who respondents' experts are prior to completing our reports.

Third, although respondents assert an intent to respond to Complaint Counsel's discovery requests in a timely fashion, they nonetheless seek "relief from the response dates in the discovery requests" and specifically request that "the discovery deadlines in the case" (apparently, the due dates set forth in §6 of the Additional Provisions to the Scheduling Order) be extended for thirty days. Complaint counsel served its interrogatories and document requests on

respondents on October 25; the date for filing objections to these requests has passed (on November 4) and the responses are due on November 15, 2004. Complaint counsel issued requests for admission to respondents on November 2, 2004; objections are due on November 12 and responses on November 17. Complaint counsel would not object to an extension by approximately two weeks of the dates for filing these objections and responses, as set forth on the attached proposed Order.

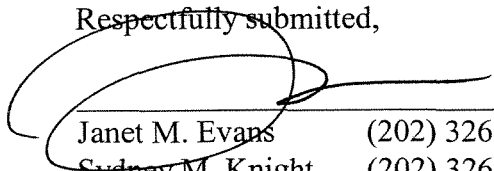
Finally, respondents' motion appears to seek an extension of the time for third parties to respond to pending discovery requests. Good cause has not been shown for such relief, and the third party discovery does not impose a burden on respondents.<sup>3</sup>

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<sup>3</sup> Complaint counsel issued a third party subpoena to the law firm of Arent Fox, in order to evaluate the *bona fides* of respondents' assertion (made on the record during a Congressional hearing) that Arent Fox wrote the challenged ads. Arent Fox has requested a three-week extension of the objection and response dates, saying that it needed to await Mr. Kravitz's consent to releasing the documents. There is, however, no reason to expect that Mr. Kravitz ever will provide that consent. Thus, complaint counsel has advised that firm that we would not oppose a one-week extension of the date for filing an objection to the subpoena duces tecum until November 19, 2004, but that we would oppose a further extension.

For the reasons set forth above, complaint counsel requests that the Court grant in part and deny in part the respondents' motion to extend the dates, and that it issue the Order attached hereto.

Respectfully submitted,



Janet M. Evans (202) 326-2125

Sydney M. Knight (202) 326-2162

Division of Advertising Practices

FEDERAL TRADE COMMISSION

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October 14, 2004

Janet Evans, Esq.  
Sydney Knight, Esq.  
Federal Trade Commission  
Division of Advertising Practices  
601 New Jersey Ave. N.W.  
Washington D.C. 20580

VIA FEDERAL EXPRESS

VIA FACSIMILE TRANSMISSION

(202) 326-3259

Pages: 19

**Re: Initial Disclosures 16 C.F.R. §3.31(b)**

Ms. Evans and Mr. Knight:

This letter shall serve as our initial responses to the above mentioned FTC rule. The documents that pertain to this section are already bates stamped and in your possession, pursuant to the voluntary disclosures made on behalf of DBS Laboratories, LLC by Arent Fox dated December 12, 2003. For your convenience, a copy of the letter signed by Brian P. Waldman and James A. Kaminski referencing the material is enclosed. If you have misplaced or destroyed the materials referenced in the Arent Fox correspondence, please advise and I will send you another complete copy.

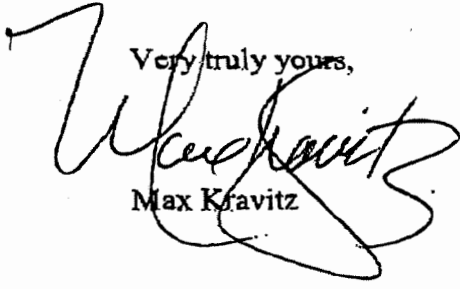
I realize that the voluntary submissions by Arent Fox subsume material outside the four corners of this lawsuit. Please consider materials referenced in the Arent Fox voluntary submissions concerning products other than Pedia Loss and Fabulously Feminine as irrelevant and outside the scope of Respondents' initial responses.

October 14, 2004  
Page 2 of 2

Attachment A, p 2

The documents included in the Arent Fox disclosures are sufficient to satisfy 16 C.F.R. §3.31(b). According to the scheduling order set forth by the Chief Administrative Law Judge, specific information regarding witnesses and experts are not due from Respondents at this time. We are reviewing all of the materials in these initial disclosures to determine which articles, authors and experts can be available for this litigation as well as any other witnesses and experts that may be available. For present purposes, you may assume that we will be calling all persons with pertinent information.

If you are of the opinion that the requirements of 16 C.F.R. §3.31(b) have not been met by the materials already in your possession and referred to at the beginning of this letter, please advise and we will review your concern. Once again, as to witnesses and experts, we have determined that 16 C.F.R. § 3.31(b), when considered *in pari materia* with the Scheduling Order in this case, are not due at this time.

Very truly yours,  
  
Max Kravitz

MK:jfg





UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Bureau of Consumer Protection  
Division of Advertising Practices

Janet M. Evans  
Attorney

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October 15, 2004

**Via E-Mail and Fedex**

Max Kravitz, Esq.  
Kravitz & Kravitz LLC  
145 East Rich Street  
Columbus, OH 43215

**Re: *In re Dynamic Health of Florida LLC,*  
Docket No. 9317**

Dear Mr. Kravitz:

The purported "disclosures" provided by respondents on October 14, 2004 do not comply with the Commission's Disclosure Rule, 16 C.F.R. § 3.31(b). I previously sent you a copy of that Rule. It requires that, within five (5) days of filing their answer, respondents provide:

- a. the name and, if known, the address and telephone number of each individual likely to have discoverable information relevant to the complaint allegations, the proposed relief, or the respondents' defenses, Commission Rule 3.31 (b)(1); and
- b. a copy of, or a description by category and location of, all documents, data compilations, and tangible things, in the possession, custody, or control of respondents that are relevant to such allegations, relief, or defenses, Commission Rule 3.31 (b)(2).

The rule excepts only certain narrowly defined categories of information that is privileged, pertains to experts or hearing preparation, or that is obtainable from some more convenient, less burdensome, or less expensive source. *Id.*

In adopting the Disclosure Rule, the Commission stated that "These initial disclosures are intended to expedite discovery by reducing the need for parties to request basic documents and other information." FTC, Rules of Practice Amendments, 61 FR 50640, 50643 (Sept. 26, 1996). Indeed, the Commission rule parallels Fed. R. Civ. P. 26(a)(1) which, according to advisory committee annotations, was adopted in 1993 to accelerate the exchange of basic information and reduce discovery delays. 2004 Federal Civil Judicial Procedure and Rules 158 (Thompson/West)(commentary on 1993 Amendments).

Max Kravitz  
p. 2

Respondents' purported disclosures include none of the names and contact information required by Commission Rule 3.31 (b)(1).<sup>1</sup> You argue that it is not necessary to provide the identity of and contact information for individuals with knowledge of the issues, because respondents' witness list is not yet due. This conclusion is inaccurate. The Disclosure Rule requires respondents to identify potential persons likely to have discoverable information *regardless* of whether respondents intend to call them as witnesses.

Respondents purported disclosures contain *none* of the documents from their own files required by Commission Rule 3.31 (b)(2).<sup>2</sup> Instead, they have provided documents previously submitted by a separate entity—DBS Laboratories, LLC—in response to CIDs issued in the Commission's pre-complaint investigation. You suggest that these are "sufficient." This conclusion, too, is inaccurate. The Disclosure Rule instructs that "a party shall make its disclosures based upon the information then reasonably available to it." 16 C.F.R. 3.31 (b)(2). It is inconceivable that the DBS Laboratories documents constitute the only information relevant to the allegations, relief, and defenses that is in the possession, custody, or control of Mr. Chhabra, Dynamic Health, and Chhabra Group.

Please remedy this situation immediately.

\_\_\_\_\_ Very truly yours,

Janet M. Evans  
Sydney Knight  
Complaint Counsel

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<sup>1</sup> In this particular case, the rule would require provision of names and contact information for persons who participated in product development, preparation or approval of labeling and advertising for the challenged products, dissemination of ads, evaluation of substantiation for claims, and product sales and fulfillment; and persons who have knowledge of the operations and management of respondents.

<sup>2</sup> In this particular case, the rule would require disclosure of all documents showing the ownership and control of the respondents, and showing the respondents' roles with respect to preparation, approval, or dissemination of advertising and labeling, evaluation of substantiation, and processing and fulfillment of orders. For example, during the June 16, 2004 Congressional Hearing, Mr. Guy Regalado appeared on behalf of Dynamic Health and stated that it had "a technical data abstract on the ingredients from a Dr. Guzman" that "assured us that [Pedia Loss] was safe, it was effective." No such document has been provided, nor have we been told where it is located. Mr. Regalado also stated that the ads had been prepared by Arent, Fox; respondents have provided with no documents supporting this statement.

**Knight, Sydney**

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**From:** Evans, Janet M.  
**Sent:** Friday, October 15, 2004 2:48 PM  
**To:** 'Max Kravitz'  
**Cc:** Hipsley, Heather; Knight, Sydney  
**Subject:** RE: Letter re: disclosures

Max,

Regardless of your frame of reference, respondents are required to comply with the applicable law, which in this case includes the Commission's Rules.

What respondents provided was not "more" so reformulating the DBS Labs information already supplied will not work. It is not sufficient for you, their attorney, to simply forward information that you possess. Respondents are required to reach into their own files to comply with this rule.

Here is the link to the transcript of the hill hearings: [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108\\_house\\_hearings&docid=f:95442.wais](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_house_hearings&docid=f:95442.wais)

Please let me know ASAP when respondents will provide compliant disclosures.

Janet

-----Original Message-----

**From:** Max Kravitz [mailto:mkravitz@kravitzlawnet.com]  
**Sent:** Friday, October 15, 2004 2:54 PM  
**To:** Evans, Janet M.  
**Subject:** RE: Letter re: disclosures

I wouldn't know what Guy Regalado testified to. Would you send me a copy of his testimony? In the meantime, I will attempt to review the initial disclosures and present them in a form that is acceptable to you. I assumed that more was better.

Please understand that the decision of the government to proceed in this litigation does not necessarily mean that respondents are required or intend to put forth the same amount of effort. You know and I know that this case is a nuisance, regardless of what your superiors may think. The case is all the more ludicrous because Vincent Chhabra will be going to jail in December or shortly thereafter for 33 months.

Please understand that I don't mean to be flip or unconcerned and do not take my comments personally because they aren't intended that way. However a lawsuit about two products that are no longer being distributed and whose gross sales totaled \$19,000 is not a high priority item from my vantage point. That being said, I certainly want to litigate this case in a professional, albeit frugal, manner. I also appreciate your past helpful suggestions and helpful comments. Don't assume that I have the same frame of reference about these products that you do. I don't.

Max

-----Original Message-----

**From:** Evans, Janet M. [mailto:JEVANS@ftc.gov]  
**Sent:** Friday, October 15, 2004 10:15 AM  
**To:** Max Kravitz  
**Subject:** Letter re: disclosures

<< File: disclosurecomplaintlet.pdf >>

**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION**

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In the Matter of )

DYNAMIC HEALTH OF FLORIDA, LLC )

CHHABRA GROUP, LLC )

DBS LABORATORIES, LLC )

VINEET K. CHHABRA aka VINCENT K. CHHABRA, and )

JONATHAN BARASH, )

Respondents. )

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Docket No. 9317

**[Proposed] ORDER REGARDING DUE DATES**

The Court has considered the "RESPONDENTS' MOTION TO EXTEND THE TIME FOR FILING ANSWERS TO ADMISSIONS AND TO MODIFY THE SCHEDULING ORDER DATED AUGUST 2, 2004" and the "COMPLAINT COUNSEL'S PARTIAL OPPOSITION TO MOTION TO EXTEND DATES. A partial extension of certain dates is warranted to provide personal relief to respondents' counsel. At the same time, it is not appropriate to re-open the window for initiating discovery, when respondents failed to take any action in that regard during the period permitted under the August 2 Scheduling Order. Accordingly, I hereby extend certain dates, as follows:

November 18, 2004 Due date for objections to interrogatories and document requests  
submitted to respondents

November 26, 2004 Due date for objections to requests for admissions by respondents

December 1, 2004 Due date for admissions by respondents

November 29, 2004 Due date for responding to interrogatories and document requests

submitted to respondents

December 1, 2004 Respondents' counsel provides expert witness list.

December 7, 2004 Complaint counsel provides expert witness reports.

December 15, 2004 Respondents' counsel provides expert witness report.

In all other respects, the provisions of the August 2, 2004 *Scheduling Order* remain in effect.

Ordered:

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Stephen J. McGuire  
Chief Administrative Law Judge

Date:

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 10<sup>th</sup> day of November, 2004 served the attached

**COMPLAINT COUNSEL'S PARTIAL OPPOSITION TO MOTION TO EXTEND DATES**

upon the following as set forth below:

- (1) one (1) electronic copy via email and one (1) copy via overnight delivery service to:

Max Kravitz, Esq.  
Kravitz & Kravitz, LLC  
145 East Rich Street  
Columbus OH 43215  
TEL: 614-464-2000  
FAX: 614- 464-2002  
[mkravitz@kravitzlawnet.com](mailto:mkravitz@kravitzlawnet.com)

- (2) one (1) electronic copy via email and two (2) copies via hand delivery to:

Donald S. Clark  
Secretary  
FTC, Room 172  
600 Pennsylvania Ave., NW  
Washington, D.C. 20580

- (3) two (2) copies via hand delivery to:

The Honorable Stephen J. McGuire  
Chief Administrative Law Judge  
FTC, Room 112  
600 Pennsylvania Ave., NW  
Washington, D.C. 20580

I further certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original, and that a paper copy with an original signature is being filed with the Secretary of the Commission on the same day by other means.

  
Janet M. Evans