

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

In the Matter of

**DYNAMIC HEALTH OF FLORIDA, LLC,
CHHABRA GROUP, LLC,
DBS LABORATORIES, LLC,
Limited liability companies,**

**VINCENT K. CHHABRA,
Individually and as an officer of
Dynamic Health of Florida, LLC,
And Chhabra Group, LLC, and**

**JONATHAN BARASH,
Individually and as an officer of
DBS Laboratories, LLC.**

DOCKET NO. 9317

**NON-PARTY ARENT FOX PLLC'S MOTION TO
QUASH SUBPOENA *DUCES TECUM* AND MEMORANDUM IN SUPPORT**

Pursuant to Rules 3.22, 3.31(c)(2) and 3.34(c) of the Federal Trade Commission's ("FTC" or "Commission") Rules of Practice for Adjudicative Proceedings ("FTC Rules of Practice"), Arent Fox PLLC ("Arent Fox"), a law firm that is not a party in the above-captioned case, hereby moves to quash the Subpoena *Duces Tecum* ("Subpoena") issued to it in this proceeding. A copy of the Subpoena is contained in Attachment A.

I. Background

In or about September 2002, Arent Fox began representing several of the above-captioned Defendants in their business activities. The representation lasted until March 2004. During the course of the representation, documents were created that reflected or contained legal opinions or advice.

On November 1, 2004, the FTC issued the Subpoena to Arent Fox requesting documents related to its representation of the Defendants. Specifically, the Subpoena demanded the production of:

All documents and communications referring or relating to advice or counsel provided by Arent Fox in connection with the formulation, development, manufacture, testing, labeling, advertising, marketing, promotion, offering for sale, sale, fulfillment, or customer service of Pedia Loss, Fabulously Feminine, or any other dietary supplement product for female sexual health or children's weight sold, or proposed to be sold, by Vincent K. Chhabra a/k/a Vincent K. Chhabra, Dynamic Health of Florida, LLC, DBS Laboratories, LLC, or any other entity owned in whole or in part by any of them.

Arent Fox determined that the documents were privileged under the attorney-client or work-product privilege and, therefore, decided that disclosure was precluded on ethical grounds. In accordance with Rule 3.22(f) of the FTC Rules of Practice, Arent Fox conferred with the FTC in a telephone conference on November 9, 2004, to discuss Arent Fox's position. Arent Fox informed the FTC that it would not produce the documents, unless the Defendants waived all claims to privilege. The signed statement of counsel confirming that conference pursuant to Rule 3.22(f) is contained in Attachment B.

During the November 9 conference, the FTC and Arent Fox agreed to extend the deadline for the filing of this motion to quash ("Motion to Quash") until November 19, 2004. A letter from Arent Fox to the FTC that memorializes that agreement is contained in Attachment C.

II. The Documents Are Privileged

Given the nature of the documents, at least one privilege is likely to preclude their disclosure. The attorney-client privilege extends over communications between a client and his or her attorney when legal advice or counsel is sought. Upjohn Co. v. U.S., 449 U.S. 383, 397-402 (1981). The privilege applies provided that it is not waived, either

expressly or by disclosure to a third party. U.S. v. Jones, 696 F.2d 1069, 1072 (4th Cir. 1982). The attorney work-product doctrine also protects against disclosure of “the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party...” created in anticipation of litigation. F.R.C.P. 26(b)(3). Accordingly, attorney work product also requires waiver by the client prior to disclosure.

The documents at issue were created during the course of Arent Fox’s representation of the Defendants. The documents consist of communications between Arent Fox and the Defendants or represent attorney work product created in anticipation of litigation. In fact, the Subpoena expressly acknowledges the nature of the documents in that it requests: “*all documents and communications referring or relating to advice or counsel.*” Accordingly, the documents are privileged. A privilege log that lists the documents and briefly describes them is contained in Attachment D.

Arent Fox has requested instruction from the Defendants as to whether they wish to waive all claims of privilege at this time, but to date, has received no response. Arent Fox has no reason to believe that waiver has occurred by disclosure to a third party. Therefore, the documents remain privileged and their disclosure is precluded.

III. This Court May Limit Disclosure of Privileged Documents

This Court has the authority to limit discovery in the manner requested. Specifically, the FTC Rules of Practice expressly provide that an Administrative Law Judge may limit discovery to preserve a privilege, whether based on an Act of Congress or the common law. FTC Rules of Practice 3.31(c)(1)-(2); 3.34(c). Arent Fox has provided all of the information required for a proper motion to quash as specified in Rule 3.34(c) of the FTC Rules of Practice, including a signed statement of counsel

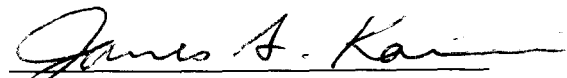
(Attachment B) and a draft order on the motion (“Attachment E”). This motion was timely filed. Accordingly, this Court has the authority to grant this Motion to Quash.

IV. Prayer for Relief

Arent Fox respectfully requests that this Court recognize that the documents at issue are currently privileged and that Arent Fox is obligated to forego production.

Accordingly, this Court should grant this Motion to Quash.

Respectfully submitted,



Gary C. Tepper
Brian P. Waldman
James A. Kaminski
ARENT FOX PLLC
1050 Connecticut Avenue
Washington, D.C. 20036

Tel: (202) 857-8982 (Tepper)
(202) 857-8971 (Waldman)
(202) 828-3447 (Kaminski)

Fax: (202) 857-6395

Email: Tepper.Gary@arentfox.com
Waldman.Brian@arentfox.com
Kaminski.James@arentfox.com

CERTIFICATE OF SERVICE

This is to certify that on November 19, 2004, I caused a copy of the attached Non-Party Arent Fox PLLC's Motion To Quash Subpoena *Duces Tecum* to be served upon the following persons by facsimile, email or U.S. First Class Mail:

(1) the original and one paper copy filed by Federal Express, and one electronic copy via email to:

Donald S. Clark, Secretary
Federal Trade Commission, Room 159
600 Pennsylvania Avenue, NW
Washington, DC 20580
E-mail: secretary@ftc.gov

(2) two paper copies served by Federal Express and one electronic copy via email to:

The Honorable Stephen J. McGuire
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
E-mail: dgross@ftc.gov

(3) one electronic copy via email and two paper copies via U.S. mail to:

Janet M. Evans
Sydney M. Knight
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
E-mail: jevans@ftc.gov

Max Kravitz
Kravitz & Kravitz
145 E. Rich Street
Columbus, OH 43215
Tel: (614) 464-2000
Fax: (614) 464-2002
Email: mkravitz@kravitzlawnet.com

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 by being sent by U.S. mail.

Executed in Washington, D.C. on November 19, 2004.



James A. Kaminski
Arent Fox, PLLC
1050 Connecticut Avenue
Washington, D.C. 20009
Tel: (202) 828-3447
Fax: (202) 857-6395
Email: Kaminski.James@arentfox.com

ATTACHMENT A



SUBPOENA DUCES TECUM

Issued Pursuant to Rule 3.34(b), 16 C.F.R. § 3.34(b)(1997)

<p>1. TO</p> <p>Arent Fox Kintner Plotkin & Kahn, PLLC 1050 Connecticut Avenue, NW Washington, DC 20036-5339</p>	<p>2. FROM</p> <p style="text-align: center;">UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
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This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things - or to permit inspection of premises - at the date and time specified in Item 5, at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

<p>3. PLACE OF PRODUCTION OR INSPECTION</p> <p>Federal Trade Commission 600 Pennsylvania Ave., NW NJ-3213 Washington, DC 20580</p>	<p>4. MATERIAL WILL BE PRODUCED TO</p> <p>An authorized representative of the FTC</p> <hr/> <p>5. DATE AND TIME OF PRODUCTION OR INSPECTION</p> <p>On or before November 22, 2004</p>
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6. SUBJECT OF PROCEEDING

In the Matter of
Dynamic Health of Florida, LLC
D. 9317

7. MATERIAL TO BE PRODUCED

See attached specifications. Documents may be returned via Federal Express in lieu of personal appearance on or before November 22, 2004

<p>8. ADMINISTRATIVE LAW JUDGE</p> <p>Stephen J. McGuire Chief Administrative Law Judge</p> <p style="text-align: center;">Federal Trade Commission Washington, D.C. 20580</p>	<p>9. COUNSEL REQUESTING SUBPOENA</p> <p>Janet M. Evans 600 Pennsylvania Ave., NW NJ-3213 Washington, DC 20580 (202) 326-2125</p>
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<p>DATE ISSUED</p> <p>NOV 1 2004</p>	<p>SECRETARY'S SIGNATURE</p> <p style="text-align: center;"><i>Donald J. Clark</i></p>
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GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed with the Secretary of the Federal Trade Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 9, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to counsel listed in Item 9 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from counsel listed in Item 9.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

in person.

by registered mail.

by leaving copy at principal office or place of business, to wit:

on the person named herein on:

(Month, day, and year)

(Name of person making service)

(Official title)

ATTACHMENT A

SUBPOENA DUCES TECUM TO
ARENT FOX KINTNER PLOTKIN & KAHN, PLLC
FOR PRODUCTION OF
DOCUMENTARY MATERIALS AND TANGIBLE THINGS

I. SPECIFICATION¹

Demand is hereby made for the following documentary materials and tangible things:

1. All documents and communications referring or relating to advice or counsel provided by Arent, Fox in connection with the formulation, development, manufacture, testing, labeling, advertising, marketing, promotion, offering for sale, sale, fulfillment, or customer service of Pedia Loss, Fabulously Feminine, or any other dietary supplement product for female sexual health or children's weight sold, or proposed to be sold, by Vineet K. Chhabra a/k/a Vincent K. Chhabra, Dynamic Health of Florida, LLC, DBS Laboratories, LLC, or any other entity owned in whole or in part by any of them.

II. DEFINITIONS

1. "All documents" means each document, as defined below, which can be located, discovered or obtained by reasonable, diligent efforts, including without limitation all documents possessed by: (a) you or your counsel; or (b) any other person or entity from whom you can obtain such documents by request or which you have a legal right to bring within your possession by demand.

2. "Arent Fox" means the law firm of Arent Fox Kintner Plotkin & Kahn, PLLC, its wholly or partially owned subsidiaries, parent companies, unincorporated divisions, joint ventures, partnerships, operation under assumed names, predecessors, affiliates, and all directors, officers, partners, employees, agents, attorneys, consultants, franchisees, independent distributors, and any other person or entity, working for or on behalf of the foregoing at any time, including but not limited to Brian P. Waldman and James A. Kaminski.

3. "And" as well as "or" shall be construed both conjunctively and disjunctively, as necessary, in order to bring within the scope of any **Document** Specification in this Subpoena For Documentary Materials and Tangible Things all information that otherwise might be construed to be outside the scope of the request.

¹ **Note: Read and comply with the Definitions and Instructions that follow.**

4. **“Document”** means the complete original and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any written, typed, printed, transcribed, taped, recorded, filmed, punched, computer-stored, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated or made, including but not limited to any advertisement, book, pamphlet, periodical, contract, file, invoice, memorandum, note, telegram, report, record, handwritten note, working paper, routing slip, package insert, sticker, web page, chart, graph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, agenda, minute, code book, data compilation, tests, reports, clinical studies, test reports, scientific literature, articles, expert opinions, handwritten notes, correspondence, communications, electronic mail, electronically stored data, computer (including handheld computer) material (including print-outs, cards, magnetic or electronic tapes, discs and such codes or instructions as will transform such computer materials into easily understandable form), and video and audio recordings.

5. **“Includes”** or **“including”** means **“including but not limited to,”** so as to avoid excluding any information that might otherwise be construed to be within the scope of any Specification.

6. **“Referring to”** or **“relating to”** means discussing, describing, reflecting, containing, analyzing, studying, reporting, commenting, evidencing, constituting, setting forth, considering, recommending, concerning, or pertaining to, in whole or in part.

7. **“You”** or **“Your”** means the person or entity to whom this subpoena duces tecum is directed.

8. The use of the singular includes the plural, and the plural includes the singular.

9. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.

10. The spelling of a name shall be construed to include all similar variants thereof.

III. INSTRUCTIONS

1. Unless otherwise specified, the time period covered by this Document Specification shall not be limited and all documents responsive to the Specification, regardless of dates or time periods involved, should be provided.

2. A complete copy of each document should be submitted even if only a portion of the document is within the terms of the Specification. The document shall not be edited, cut, or expunged and shall include all covering letters and memoranda, transmittal slips, appendices, tables or other attachments.

3. All information submitted shall be clearly and precisely identified as to the Specification(s) or sub-Specification(s) to which it is responsive. You should consecutively number each page in your submission; each page submitted should be marked with a unique "Bates" document tracking number.

4. Documents covered by this Specification are those which are in your possession or under your actual or constructive custody or control, whether or not such documents were received from or disseminated to any other person or entity including attorneys, accountants, directors, officers, and employees.

5. If any of the documentary materials requested in this Specification is available in machine-readable form (such as floppy or hard disks, drums, core storage, magnetic tapes or punch cards), state the form in which it is available and describe the type of computer or other machinery required to read the record(s) involved. If the information requested is stored in a computer or a file or record generated by a computer, indicate whether you have an existing program that will print out the record in readable form and state the name, title, business address and telephone number of each person who is familiar with the program.

6. Promotional materials submitted in response to this Specification shall be submitted in the following form(s) as follows: For documents, provide the original promotional materials if available, or, if not available, color copies thereof. For audio-only (or radio) materials, provide a tape cassette (or digitized recording, if in machine-readable form) and a script, as well as any audio out-takes. For video recordings, provide a DVD or VHS cassette and script or storyboard, as well as any video out-takes. For Internet or other online materials, provide a CD (if in machine-readable form) or a clear color printout of all screens displayed in the promotional materials and identify the site, forum, or address.

8. All objections to this Document Specification, must be raised in the initial response or are otherwise waived.

9. If any requested material is withheld based on a claim of privilege, submit together with such claim a schedule of the items withheld which states individually for each item withheld: (a) the type, title, specific subject matter, and date of the item; (b) the names, addresses, positions, and organizations of all authors and recipients of the item; and (c) the specific grounds for claiming that the item is privileged. If only part of a responsive document is privileged, all non-privileged portions of the document must be submitted. (Further instructions pertinent to a particular Document Specification appear in parentheses within or following that Specification.)

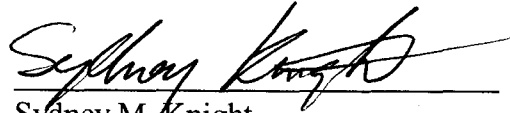
CERTIFICATE OF SERVICE

I hereby certify that I have this 1st day of November, 2004 filed and served the attached **SUBPOENA DUCES TECUM TO ARENT FOX KINTNER PLOTKIN & KAHN, PLLC FOR PRODUCTION OF DOCUMENTARY MATERIALS AND TANGIBLE THINGS** upon the following as set forth below:

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

Arent Fox Kintner Plotkin & Kahn, PLLC
1050 Connecticut Avenue, NW
Washington, DC 20036-5339

James Kaminski
Arent Fox Kintner Plotkin & Kahn, PLLC
1050 Connecticut Avenue, NW
Washington, DC 20036-5339



Sydney M. Knight

ATTACHMENT B

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

In the Matter of

**DYNAMIC HEALTH OF FLORIDA, LLC,
CHHABRA GROUP, LLC,
DBS LABORATORIES, LLC,
Limited liability companies,**

**VINCENT K. CHHABRA,
Individually and as an officer of
Dynamic Health of Florida, LLC,
And Chhabra Group, LLC, and**

**JONATHAN BARASH,
Individually and as an officer of
DBS Laboratories, LLC.**

DOCKET NO. 9317

**STATEMENT OF JAMES A. KAMINSKI PURSUANT TO RULE 3.22(f) OF THE
FEDERAL TRADE COMMISSION'S RULES OF PRACTICE IN
ADJUDICATIVE PROCEEDINGS**

I, James A. Kaminski, make the following statement in support of Non-Party Arent Fox PLLC's ("Arent Fox") Motion to Quash Subpoena *Duces Tecum* ("Motion to Quash"):

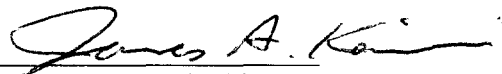
1. I am counsel for Arent Fox, regarding the Subpoena *Duces Tecum* ("Subpoena") issued to it on November 1, 2004, in the above-captioned case.
2. In accordance with Rule 3.22(f), Arent Fox conferred with the Federal Trade Commission ("FTC") by telephone on November 9, 2004, at approximately 11:30 a.m. To the best of my knowledge, the participants were located in their respective offices. The participants for Arent Fox included Gary C. Tepper and myself and Janet M. Evans and Sydney M. Knight represented the FTC.
3. The conference was conducted in good faith.

4. As for the issues resolved during the conference, the FTC agreed to extend the deadline for the filing of this Motion to Quash to November 19, 2004. Arent Fox further agreed to comply with the Subpoena, if the Defendants waive all claims to privilege they may have. Arent Fox pledged to inquire with the Defendants whether they wish to continue to assert all claims of privilege over the documents.

5. As for the issues not resolved during the conference, Arent Fox determined that it was still precluded from compliance with the Subpoena.

I state that the foregoing is true and correct.

Executed in Washington, D.C. on November 19, 2004.



James A. Kaminski
ARENT FOX, PLLC
1050 Connecticut Avenue
Washington, D.C. 20036

Tel: (202) 828-3447
Fax: (202) 857-6395
Email: kaminski.james@arentfox.com

ATTACHMENT C

Arent Fox
ATTORNEYS AT LAW

Gary C. Tepper
202.857.8982 DIRECT
202.857.6395 FAX
tepper.gary@arentfox.com

James A. Kaminski
202.828.3447 DIRECT
202.857.6395 FAX
kaminski.james@arentfox.com

By Facsimile and Federal Express

November 9, 2004

Janet M. Evans, Esq.
Sydney M. Knight, Esq.
Federal Trade Commission
NJ-3213
600 Pennsylvania Ave., NW
Washington, DC 20580

Re: In the Matter of Dynamic Health of Florida, LLC

Dear Ms. Evans and Mr. Knight:

As we agreed in our telephone conference today, the time period to file an objection to the subpoena issued to Arent Fox PLLC in the above-referenced matter is extended to November 19, 2004. Hopefully, in the meantime, you will be able to come to some understanding on the privilege issue with Dynamic Health so as to avoid a dispute concerning production of privileged documents.

Sincerely,



Gary C. Tepper
James A. Kaminski

ATTACHMENT D

**DOCUMENT PRODUCTION PRIVILEGE LOG
DOCUMENTS PRODUCED BY DBS**

	BATES NUMBER (FTC-P)	DATE	RECIPIENT	AUTHOR	DESCRIPTION	PRIVILEGE DESIGNATION
1.	00001-00005	4/9/03	Guy Regalado Robert Waters	Brian Waldman	Email containing client/attorney communication.	AC/WP
2.	00006-00009	1/30/03	Guy Regalado	Brian Waldman	Email containing client/attorney communication.	AC/WP
3.	00010-00012	7/17/03	Guillermo Herrera John Reinbergs Brian Waldman	Guy Regalado	Email for attorney review.	AC/WP
4.	00013-00014	5/21/03	Guy Regalado	Brian Waldman	Fax for attorney review.	AC/WP
5.	00015				Attorney's handwritten notes and mental impressions regarding product information.	AC/WP
6.	00016-00023	2/13/03			Attorney draft of agreement.	AC/WP
7.	00024-00025	2/20/03	Alan Leach	Lillian Sutton	Email for attorney review.	AC/WP
8.	00026-00028	2/20/03	Alan Leach	Lillian Sutton	Email for attorney review.	AC/WP
9.	00029-00030	2/20/03	Alan Leach	Lillian Sutton	Email for attorney review.	AC/WP
10.	00031-00033	2/10/03	Lillian Sutton	Brian Waldman	Email for attorney review with attorney's handwritten notes and mental impressions.	AC/WP
11.	00034-00035	2/4/03	Brian Waldman Guillermo Herrera John Reinbergs	Guy Regalado	Email for attorney review with attorney's handwritten notes and mental impressions.	AC/WP
12.	00036-00037	2/2/03			Document for attorney review.	AC/WP
13.	00038-00041	1/30/03	Guy Regalado	Brian Waldman	Email containing attorney's notes and mental impressions.	AC/WP
14.	00042-00054	1/27/03	Randi Swatt Robert Waters Tony Pavel	Brian Waldman	Memorandum with attorney's notes and mental impressions regarding product information.	AC/WP
15.	00055				Attorney's handwritten notes and mental impressions regarding product information.	AC/WP
16.	00056-00090	1/29/03	Guy Regalado Randi Swatt	Brian Waldman	Fax containing memorandum of law, attorney's notes and mental impressions regarding product information.	AC/WP
17.	00091-00097	1/23/03	Bob Waters Vincent Chhabra Guy Regalado Randi Swatt	Cristen Bruning	Letter enclosing attorney's notes and mental impressions regarding product information.	AC/WP

ATTACHMENT E

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

In the Matter of

**DYNAMIC HEALTH OF FLORIDA, LLC,
CHHABRA GROUP, LLC,
DBS LABORATORIES, LLC,
Limited liability companies,**

**VINCENT K. CHHABRA,
Individually and as an officer of
Dynamic Health of Florida, LLC,
And Chhabra Group, LLC, and**

**JONATHAN BARASH,
Individually and as an officer of
DBS Laboratories, LLC.**

DOCKET NO. 9317

**[Draft] ORDER GRANTING NON-PARTY ARENT FOX PLLC'S MOTION TO
QUASH SUBPOENA DUCES TECUM**

Before the Administrative Law Judge is Non-Party Arent Fox PLLC's Motion to Quash Subpoena *Duces Tecum* ("Motion to Quash"). Having considered the Motion to Quash and the supporting arguments and the response, if any, by the Federal Trade Commission ("FTC"), this Court finds that the motion should be, and hereby is, GRANTED.

IT IS THEREFORE ORDERED that the Subpoena *Duces Tecum* issued to Arent Fox PLLC on November 1, 2004, is hereby quashed in its entirety.

Signed this _____ of November, 2004.

Stephen J. McGuire
Chief Administrative Law Judge