



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

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In the Matter of) Docket No. 9317
) PUBLIC DOCUMENT
DYNAMIC HEALTH OF FLORIDA, LLC,)
CHHABRA GROUP, LLC, and)
VINEET K. CHHABRA aka VINCENT K. CHHABRA,)
Respondents.)
_____)

To: Stephen J. McGuire
Chief Administrative Law Judge

**COMPLAINT COUNSEL’S OPPOSITION TO RESPONDENTS’ MOTION
REGARDING FORM OF DISCOVERY SPECIFICATIONS**

Complaint counsel hereby opposes respondents’ motion regarding the form of discovery specifications. Respondents misconstrue applicable precedent in yet another effort to avoid discovery of their practices. In support of its opposition, complaint counsel submits as follows:

I. BACKGROUND

Complaint counsel has submitted 14 interrogatories and 16 requests for documents to respondents and 11 requests for documents to third parties. This is far short of the 50 interrogatories and 50 document requests authorized by the *Scheduling Order*, which stated that “there is no limit to the number of sets of discovery requests the party may issue, so long as the total number of each type . . . including all subparts, does not exceed these limits.” Relying on a tortured interpretation of the term “subparts,” respondents argue that each of complaint counsel’s requests should be counted as multiple inquiries – as many as 168! Having reconfigured the inquiries in this manner, they then multiply the total by three, arguing that it was improper for

complaint counsel to submit a single set of requests to respondents collectively. Following this analysis (and after making a number of other objections and arguments), they respond to the discovery requests as follows:

- a. Mr. Chhabra provides no interrogatory responses and no documents, arguing that he should not have to answer requests served on respondents collectively and asserting the Fifth Amendment;
- b. Dynamic Health of Florida, LLC (“Dynamic Health”) provides grossly incomplete answers to the first and second interrogatories, no answer to the remaining interrogatories, and no documents; and
- c. Chhabra Group, LLC (“CG”) provides no interrogatory responses and no documents.

II. COMPLAINT COUNSEL’S INTERROGATORIES ARE PROPERLY FORMATTED

The Scheduling Order limits the number of permissible interrogatories and document requests, “including subparts.” The reference to subparts derives from F.R. Civ. P. 33(a). This rule limits interrogatories to a specific number, including “discreet subparts.” It does not, however, provide that every “subpart” counts as a separate interrogatory. The federal rules Advisory Committee has made clear that “discreet subparts” are to be counted separately only when they represent a shift of subject matter. For example, it stated that an inquiry “asking about communications of a particular type should be treated as a single interrogatory even though it requests that the time, place, persons present and contents be stated separately for each such communication.” *F.R. Civ. P. Rule 33 Advisory Committee Notes, 1993 Amendments.*

In *Kendall v. GES Exposition Serv., Inc.*, the court interpreted a local rule containing similar language as follows: “Interrogatory subparts are to be counted as part of but one interrogatory . . . if they are logically or factually subsumed within and necessarily related to the primary question.” 1997 U.S. Dist LEXIS 15827 (D. Nev.) It gave the example of interrogatories that, while containing a number of subparts, were properly counted as single inquiries:

1. “In response to Plaintiff’s Interrogatory No. 8, Defendants Answer by stating, inter alia, that Kendall was ‘called to work in freight GES after December 1991 and declined the work.’ Identify each and every instance by date, show and labor list reflecting Defendants’ assertion that Kendall was called to work in freight at GES and declined. Also, identify the person who administered the labor call and drafted the labor list.
2. “State, with particularity, the value of [plaintiff’s] yearly compensation while employed by Defendants, including, but not limited to, salary, incentive payments, bonuses, life insurance, contributions to pension plan medical insurance and state the basis by which Defendant arrives at the value for each.”

The court stated that the first request counted as a one interrogatory because “the questions seek to identify instances where the Plaintiff was called to work but declined. The subsequent questions in each interrogatory are necessary to complete the details required in the identification.” Similarly, it stated that the second request counted as one interrogatory because it simply “asks for calculation of past compensation and benefits actually received by the Plaintiff.” *Id.* at **6-7.

Kendall involved a local rule, but its analysis has been cited as appropriate for interpreting the meaning of “subparts” for the purposes of the federal rules. *E.g., Nyfield v. Virgin Is. Tel. Co.*, 2001 U.S. Dist Lexis 6195 (D. Virgin Is.) (“As long as the subparts ask for

information related to the same topic, it is considered a single question.”); USNITA Fed. Rules. Civ. Pro. R. 33, Commentary.¹

Complaint counsel’s interrogatories and discovery requests are attached hereto as Exhibits B and C. They are formal inquires and thus contain legal phrasing, examples to make clear what we mean, and requests for specificity. Set forth below, however, are the inquiries rephrased to demonstrate the core question addressed by each interrogatory. As rephrased, it is clear that each interrogatory addresses only a single topic:

Inter. No.

- 1 Describe how Chhabra’s corporations (identified specifically, including his ownership interest/title) played a role in the dietary supplement business.²
- 2 Identify previously-named third parties involved in Chhabra’s dietary supplement businesses, the roles they played, and who paid them.³
- 3 Identify previously-unnamed third parties that played a role in bringing the challenged products to market.
- 4 Identify communications about substantiation for the challenged products.

¹ Attached as Exhibit A.

² Respondents have tried to suggest that Mr. Chhabra had no involvement in the challenged practices, blaming Mr. Barash and DBS Laboratories for anything that might have gone wrong. Interrogatory 1 is calculated to lead to the production of information showing respondents’ extensive involvement in the challenged practices through companies owned or controlled by Chhabra.

³ This is a “follow the money” question calculated to lead to the production of information showing Chhabra’s control of previously named third parties that participated in these practices.

- 5 Identify communications about claims for the challenged products.
- 6 Disclose ad expenses for the challenged products, by medium.
- 7 Identify evidence supporting the proposition that the challenged claims are not made.
- 8 Identify with specificity trade shows attended by Chhabra to promote the supplements.
- 9 Identify facts that support your affirmative defenses.
- 10 Identify with specificity which of the websites that contained ads for the challenged products were controlled by Chhabra.
- 11 You have resubmitted the DBS Laboratory CID responses as your disclosures; are they inaccurate in any detail?
- 12 When a customer paid to purchase a challenged product, who received the proceeds?
- 13 Identify where records of the Chhabra related entities are kept and when you reviewed those documents to identify responsive documents.
- 14 You say that you've sold the rights to market products that would be covered under the Notice Order: to whom and under what terms?

In sum, the interrogatories were carefully crafted to ensure that complaint counsel obtains the information needed to meet the elements of the case. They seek fundamental information regarding ownership and control of the entities involved in the challenged practices, communications with third parties related to those practices, the challenged advertising and marketing, substantiation for claims, and the appropriateness of fencing-in relief.

Respondents argue that interrogatory 1 should be interpreted as 30 to 60 separate requests,⁴ and that interrogatory 2 should be interpreted as 168 separate requests⁵ in part because they inquire about the involvement in “the formulation, manufacture, advertising, promotion, labeling, offering for sale, sale, distribution, customer service, or fulfilment”⁶ of the supplements sold by Chhabra. This phraseology was simply designed to ensure that respondents accurately identified parties involved in any aspect of the marketing of their dietary supplements. Had complaint counsel instead asked about the involvement of those parties in the “marketing of dietary supplements,” we suspect that respondents either would have challenged the inquiry as vague, or failed to provide pertinent information. Respondents additionally argue that Interrogatory 2 contains multiple subparts because it asks about the role played by specific third parties that, according to information provided by other sources, were retained by a Chhabra-related corporation. Had complaint counsel instead asked simply for identification of “any entity” involved in the marketing of Chhabra’s dietary supplements, we would have encountered the same risks. In sum, although the interrogatories (and document requests) are detailed to ensure a complete response, each of specification addresses itself to a single topic and thus should not be considered to contain improper subparts.

⁴ Respondents’ Response to Complaint Counsel’s First Set of Interrogatories to Respondents, Nov. 29, 2004, p. 8.

⁵ Respondents’ Motion to Compel Compliance with 16 C.F.R. § 3.36, Nov. 27, p. 3.

⁶ Fulfilment refers to the process of packaging and shipping a product ordered by a customer online or by telephone.

Considerations of fairness also warrant denial of the respondents' motion. The Federal Rules were amended to add numerical limitations on use of interrogatories in 1993, as part of a revamping of the discovery rules. The amendments included adoption of disclosure requirements in Rule 26(a) "to accelerate the exchange of basic information about the case to eliminate the paper work involved in requesting such information." *See Advisory Committee Notes to 1993 Amendments*. The numerical limits in Rule 33(a) reflected the assumption that interrogatories would be less necessary given that "Rule 26 . . . requires disclosure of much of the information previously obtained" through interrogatories. *Id.* In 1996, the Commission modified its rules to adopt similar requirements. *Rules of Practice Amendments*, 61 FR 50640, 50643 (1996).

In this case, the respondents' disclosures contained no new information.⁷ "The purpose of the limit on interrogatories is not to prevent discovery but to prevent potentially excessive use of this particular discovery device." *Power & Telephone Supply Co. v. Suntrust Banks, Inc.*, 204 U.S. Dist Lexis 6326, [*4] (W.D. Tenn.). Where a party has not excessively abused the right to discovery, it is appropriate to mandate a response to interrogatories even if they exceed the set numerical limit. *See Id.*, [*5]. Complaint counsel submitted its discovery requests in good faith and requests that respondents be directed to respond to them even if the court determines that they exceed the set limits.

⁷ *See* Complaint Counsel's Partial Opposition to Motion to Extend Dates, Nov. 10, 2004, p. 2.

III. COMPLAINT COUNSEL PROPERLY PROPOUNDED DISCOVERY ON RESPONDENTS

Respondents also argue that it was improper for complaint counsel to submit a single set of interrogatories and a single set of document requests on Chhabra, Dynamic Health, and CG. They ask that complaint counsel be directed to resubmit interrogatories to each respondent individually, a request designed to force complaint counsel to choose between submitting discovery on Chhabra (who continues to plead the Fifth Amendment)⁸ or one of the corporate respondents (whose knowledge of the challenged practices is much more circumscribed).⁹ While complaint counsel would direct its discovery to Mr. Chhabra if forced to make a choice, it does not believe that choice is required. Respondents were treated as a single party for the purposes of counting discovery requests in other cases before this court. *E.g., Basic Research, Inc.*, D. 9318

⁸ Chhabra continues to assert the Fifth Amendment because, although he submitted a guilty plea and agreed to specified sentence on Sept. 2, 2004, he has yet to be formally sentenced in his criminal case. He neglects to note that he caused the delay in sentencing by failing to appear, first on November 5 and then on December 2, for post-plea questioning (to determine, for example, the location of assets subject to forfeiture). The questioning is now scheduled for December 7.

Mr. Chhabra is, in fact, no longer entitled to plead the Fifth Amendment. In the criminal plea agreement, he agreed “cooperate fully and truthfully with the United and provide all information known to the defendant regarding any criminal activity as requested by the government.” Plea Agreement of Vineet K. Chhabra, ¶ 12. By entering into such an agreement, he waived his Fifth Amendment privilege. *E.g. United States v. Scruggs*, 356 F.3d 539, 546 (4th Cir. 2003), and cases cited therein.

⁹ Dynamic Health’s interrogatory responses are heavily qualified by phrases like, “to Dynamic Health’s knowledge.” Mr. Kravitz advises that they are to be signed by Guy Regalado, former vice president for sales. Currently, they are unsigned. Respondent’s Responses to Complaint Counsel’s First Set of Interrogatories to Respondents, Nov. 29, 2004.

(Complaint Counsel's Request for Admissions, Nov. 8, 2004)¹⁰; *Telebrands Corp.*, D. 9313

(Complaint Counsel's First Request for Admissions, Dec. 16, 2003).¹¹ The fact that complaint counsel's discovery requests were served on respondents together is unobjectionable, and does not provide a basis for tripling the number of interrogatories.¹²

III. CONCLUSION

For the reasons set forth above, complaint counsel respectfully requests that the Administrative Law Judge issue the attached order denying respondents' motion regarding the form of discovery specifications.

Respectfully submitted,

Janet M. Evans

Sydney K. Knight

Division of Advertising Practices
FEDERAL TRADE COMMISSION
600 Pennsylvania Avenue, N.W.
Mail drop NJ-3212
Washington, D.C. 20580

¹⁰ Available online at:
<http://www.ftc.gov/os/adjpro/d9318/041108ccreqforadmiss.pdf> (admissions requested directed to 3 respondents).

¹¹ Available online at:
<http://www.ftc.gov/os/adjpro/d9313/031216ccsfirstreqadmissions.pdf> (admissions requests directed all respondents). Document requests in that case also were issued to respondents collectively. See *Telebrands, Inc.*, D. 9313 (Complaint Counsel's First Set of Requests For Production of Documentary Materials and Tangible Things Directed to Telebrands Corp., TV Savings, LLL, and Ajit Khubani, Nov. 21, 2003) attached as Exhibit D.

¹² Indeed, respondents have prosecuted their defense as a unitary entity. They filed one answer to the complaint, one proposed scheduling order, one motion for protective order and for stay, one preliminary witness list, and so forth. The corporate respondents are closely held corporations, owned by Chhabra and his sister, Sabrina Faruqui. See Exhibit E hereto. In their Answer, respondents admitted that Chhabra is an officer of both corporate respondents.

jevans@ftc.gov
(202) 326-2125
fax: (202) 326-3259

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of)
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DYNAMIC HEALTH OF FLORIDA, LLC)
CHHABRA GROUP, LLC, and)
VINEET K. CHHABRA aka VINCENT K. CHHABRA,)
Respondents.)
)

Docket No. 9317

**[Proposed] ORDER REGARDING FORM OF COMPLAINT COUNSEL'S DISCOVERY
REQUESTS**

The Court has considered the "RESPONDENTS' MOTION TO COMPEL COMPLIANCE WITH 16 C.F.R. §3.35," filed November 29, 2004, and the "COMPLAINT COUNSEL'S OPPOSITION TO RESPONDENTS' MOTION REGARDING FORM OF DISCOVERY SPECIFICATIONS," filed December 6, 2004. Each of the discovery requests submitted by complaint counsel is addressed to a single topic. Accordingly, I do not believe that they contain "subparts" that should be separately counted, for purposes of calculating the number of requests filed. *See Kendall v. GES Exposition Serv., Inc.*, 1997 U.S. Dist Lexis 15827 (D.Nev.) Additionally, under the specific circumstances of this case, it does not appear appropriate to require that complaint counsel serve separate discovery requests on each separate respondent. This does not hinder the respondents' ability to claim privileges or assert defenses that may accrue to one or more of them individually. Accordingly, the respondents' motion is DENIED.

Ordered:

Stephen J. McGuire
Chief Administrative Law Judge

Date:

Exhibit A

COMMENTARY

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FEDERAL RULES OF CIVIL PROCEDURE
V. DEPOSITIONS AND DISCOVERY

Rule 33. Interrogatories to Parties

Shane Read

U.S. Attorney's Office, Northern District of Texas
The National Institute for Trial Advocacy
Notre Dame Law School

Rule 33 provides that a party may serve upon any other party up to 25 written interrogatories (including all discrete subparts) which must be answered by the party served. Along with depositions, interrogatories are the bread and butter of civil litigation.

A party may not serve any party until after an initial attorney-scheduling meeting, required by FRCP 26(d), is held. Each interrogatory must be answered separately and under oath within 30 days after service. Evasive answers and qualified answers are prohibited; one should object if the question is unclear or beyond the proper scope of discovery. However, if a qualified answer is used to clarify the question and results in a forthright answer, such an answer is proper.

If there are objections, the objection must be specifically stated and the interrogatory must then be answered to the extent it is not objectionable. Blanket objections are improper, since each interrogatory must be answered separately. Objections are waived unless the grounds are stated in a timely manner, except where good cause can be shown for the failure to do so.

Where the answer to the interrogatory may be obtained from the party's business records and the burden is substantially the same for both parties, a party has the option to produce the records for examination from which the answer may be ascertained. The person making the answers

must sign them under oath and the attorney must sign objections.

In most courts, interrogatories are used less often since the advent of FRCP 26(a)(1)-(3) which require much of the information previously obtained through the use of interrogatories (e.g., relevant witnesses, calculation of damages, insurance agreements, production of relevant documents, etc.). However, many districts have opted-out of the requirements of Rule 26, making interrogatories an even more important tool in preparing one's case in those districts.

Interrogatories are efficient in determining an opposing party's factual contentions and obtaining precise answers regarding data that a deposition might not reveal. If a complaint is sufficient but nonetheless stated in general terms, one could propound "contention" interrogatories asking for the basis for a party's contention in particular paragraphs in a complaint. For example, if the plaintiff's complaint asserts that he was discriminated against on the basis of race, national origin, and sex and if the complaint details a factual basis for a claim based on race but not sex, the following interrogatory would be helpful: "State in full specific detail all facts which you contend support your allegation in paragraph ---- of Plaintiff's Original Complaint that ABC Company discriminated against Plaintiff on the basis of sex."

Such a "contention" interrogatory will help an attorney determine the germane legal issues, the strength of opposing side's contention, which documents should be examined, and which witnesses to interview. In short, interrogatories can be used to define the scope of the legal issues and facts presented in the lawsuit. An interrogatory is not objectionable simply because it asks for an opinion or contention that relates to fact or the application of law to fact.

Another effective way to use interrogatories is to ask for important dates, calculations of damages and information that is derived from documents. The advantage here is that at a deposition, a deponent often does not remember exact figures, dates, etc. The interrogatory will ensure that

such important information is timely provided and will avoid the delay and expense of having the deponent search through stacks of documents in order to answer the question at a deposition.

Interrogatories are also very important in determining other parties' lists of witnesses who may have relevant facts about a case. Such information is usually the springboard that starts the discovery process. Moreover, whatever the question, interrogatories are helpful because the opposing side has a continuing duty to supplement its answers, whether they relate to fact witnesses, damage calculations, etc., and such answers can be very damaging at a trial.

Assume, for example, that an employment discrimination case asserts retaliation and the plaintiff asked the defendant to describe how plaintiff's discipline compared with other similarly situated employees. In a rush to meet the answer deadline, the Company lists five employees from the regional office where plaintiff worked and their respective discipline. Typically, such an interrogatory is answered at the beginning of a lawsuit, years before a trial date is reached and well before the case is thoroughly investigated. At trial, if the defendant decides that instead of the five regional employees listed in its interrogatory, a more fair comparison would be to compare plaintiff's discipline to employees in all of its offices nationwide, the defendant would be bound by its unsupplemented answer in the interrogatory and prevented from asserting a full defense at trial.

Two obvious disadvantages to the use of interrogatories are that there is no chance to spontaneously follow-up on an answer as there would be in an oral deposition, and there is a limit, 25 including subparts, to the number of interrogatories a party may serve.

On that latter point, there is much confusion about what constitutes a legitimate subpart to an interrogatory so that it may count as one question. As long as the subparts ask for information related to the same topic, it is considered a single question, see *Kendall v. GES Exposition Services, Inc.*, (1997, DC Nev) 174 FRD 684.

For example, if the question asks "List all fact witnesses with relevant knowledge to the lawsuit" and the subparts provide for the witnesses' name, address, etc., then only one interrogatory has been propounded. However, if the question is a compound sentence, it will usually count as two interrogatories. Again for example, the following are improper: 1) "When did you first start having problems with your back and have you ever sought medical treatment for it?" and 2) "Please list any eyewitnesses to your alleged complaint of discrimination and describe where each witness was located and their relationship to you."

If one is on the receiving end of interrogatories, be alert to interrogatories that request the responding party to attach relevant documents to its responses. A novice might produce the document, but an alert party will object and force the requesting party to serve a request for production of documents.

Exhibit B

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

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

COMPLAINT COUNSEL’S FIRST SET OF INTERROGATORIES TO RESPONDENTS

Pursuant to Rule 3.35 of the Federal Trade Commission’s Rules of Practice, Complaint Counsel hereby requests that Respondents Dynamic Health of Florida, LLC, Chhabra Group, LLC, and Vineet K. Chhabra respond to these Interrogatories within 20 days and furnish the requested information to Complaint Counsel at the Federal Trade Commission, 601 New Jersey Ave., N.W., Suite 3213, Washington, D.C. 20001, or at such time and place as may be agreed upon by all counsel.

I. INTERROGATORIES¹

1. **Identify** all companies owned, managed, or controlled in whole or in part by Respondent Vineet K. Chhabra at any time after January 1, 2001, that played a role in the formulation, manufacture, advertising, promotion, labeling, offering for sale, sale, distribution, customer service, or fulfillment, relating to any dietary supplement (**including** Dynamic Health of Florida, LLC, Chhabra Group, LLC, DBS Laboratories, LLC, DBS Labs LLC, Chhabra International Ltd., Dynamic Health International, Kreating, LLC, Chhabra Internet Support Center, LLC, Chhabra Internet Fulfillment Services, LLC, Chhabra Management, LLC, Metability of Florida, LLC, CG Fulfillment, USA Prescription); for each such company, set forth Mr. Chhabra’s title(s) and ownership interest, and describe the services provided by the company with regard to dietary supplements.

2. For each of the following individuals or entities: Hill Knowlton & Samcor, TransMedia Group, Nutrition Formulators, Highland Laboratories, Pharmachem Laboratories, Health Tek Laboratories, Executive Label, Inc., Vineet K. Chhabra, Dr. Alberto Guzman, Guy Regalado, Randi Swatt, Gil Herrera, **Arent Fox**, and Jonathan Barash, state:

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

- a. what services the individual or entity provided in connection with the formulation, manufacture, advertising, promotion, labeling, offering for sale, sale, distribution, customer service, or fulfillment, relating to any dietary supplement offered for sale with a label bearing the name "DBS Labs" or "Dynamic Health"; and
 - b. how each individual or entity was compensated for their services; if compensation was in the form of monetary payments, describe the account(s) from which the payment was made (by providing the name and address of the financial institution, the name of the account holder, and the account number) and **identify** the individual(s) with authority to authorize payments from the account(s) at the time compensation was provided.
3. To the extent not set forth in response to Interrogatories 1 and 2, above, **identify** and provide a detailed description of the roles and responsibilities of all **persons (including consultants)** who participated in the creation, development, evaluation, approval, modification, and dissemination of **promotional materials**, media placement or dissemination, telemarketing services, or product pricing strategy for the **challenged products**.
4. **Identify** and provide a detailed description of **communications** between you and all **persons** consulted by you in an effort to evaluate the substantiation for any draft or final **promotional materials** for the **challenged products**.
5. **Identify** and provide a detailed description of **communications** between you and any print, television, or radio media, or any website designer, developer, manager, hoster, or any online service, **referring or relating to** any claims or representations in any proposed or disseminated **promotional materials** for the **challenged products**.
6. **Disclose** the total amount, in dollars, that was spent to advertise, market, or otherwise promote each of the **challenged products**, broken down by each medium used (*i.e.*, television, print, Internet, radio, or other means). (This request **includes**, but is not limited to, all expenditures attributable to the creation, development, evaluation, approval, modification, and dissemination of **promotional materials**.)
7. If you contend that **promotional materials** for the **challenged products** do not make the claims identified in paragraphs 9, 13 and 15 of the Complaint, state the basis for your contention, **including the identification** of any extrinsic evidence, **including market research**, that supports your contention.
8. **Identify** with specificity all dates since January 1, 2003 on which Respondent Vineet K. Chhabra attended an industry trade show **referring or relating to** dietary supplements.
9. State all facts that support each affirmative defense asserted in your Answer to the administrative Complaint issued by the Federal Trade Commission in the above-captioned

matter.

10. For each of the web sites identified in the **CID responses** dated December 12, 2003, at Attachment 2, pp. 5-6, state the dates since January 1, 2002 when each web site was prepared, hosted, managed, or operated by any entity owned in whole or in part by Vineet K. Chhabra, directly or indirectly.

11. **Identify** any response in the **CID responses** that **Respondents** consider to be inaccurate or incomplete; for such response(s) provide an accurate or complete response(s).

12. With regard to each sale of dietary supplements identified in the **CID responses** dated February 3, 2004, Bates number DBS 1175, **identify** the entity to whom the purchaser made or was directed to make a payment, and any other entity to whom a payment was made as a result of that purchase.

13. Provide all addresses where any records of the entities request to be identified in response to Interrogatory #1 of Complaint Counsel's First Set of Interrogatories to Respondents are located; for each address, state on what date those records were searched in an effort to **identify** the existence or nonexistence of **documents** responsive to Complaint Counsel's First Request for Production of Documentary Materials and Tangible Things.

14. **Identify** the individual(s) or entity(s) who currently holds the legal right to market or sell any dietary supplement product that was previously marketed with a label bearing the name "DBS Labs" or "Dynamic Health," and state the terms under which those rights were transferred.

II. DEFINITIONS

1. "**And**" as well as "**or**" shall be construed both conjunctively and disjunctively, as necessary, in order to bring within the scope of any Specification in this First Set of Interrogatories all information that otherwise might be construed to be outside the scope of the request.

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. "**Challenged products**" shall mean the products identified as Pedia Loss and Fabulously Feminine in the administrative Complaint issued by the Federal Trade Commission in

the above-captioned matter, both individually and collectively.

4. **“CID responses”** shall mean the responses to the CIDs filed with the Federal Trade Commission on December 12, 2003, December 17, 2003, and February 3, 2004 by **Arent Fox** on behalf of DBS Laboratories, LLC.

3. **“Communication(s)”** shall mean any transmission or receipt of facts, information, opinions, or thought, whether conveyed in writing, orally, electronically, or by any other means, **including** written memorializations of oral communications.

4. **“Describe”** or **“disclose”** means to offer a comprehensive, complete, accurate and detailed description, explanation or listing of the matter into which the Interrogatory inquires.

5. **“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.

6. **“Each”** and **“any”** include **“all,”** so as to have the broadest meaning whenever necessary to bring within the scope of any Specification all information and/or **documents** that might otherwise be construed to be outside its scope.

7. **“Identify”** or **“identification”** means:

(a) when **referring to** a natural **person**, state the full name, present business address and telephone number, or if a present business affiliation or business address is not known, by the last known business and home addresses and business and home telephone numbers;

(b) when **referring to** any other entity, such as a business or organization, state the legal name as well as any other names under which the entity has done business, address, telephone number and contact **person**, if applicable for that entity; and

(C) when **referring to a document or communication**, state the full name(s) of the author(s) or preparer(s), the full name of the recipient(s), addressee(s), and/or **person(s)** designated to receive copies, the title or subject line of the **document or communication**, a brief description of the subject matter of the **document or communication**, the date it was prepared, its present location, and its present custodian.

8. **“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.

9. **“Market research”** means all information **referring or relating to** testing, measuring or assessing consumers' or individuals' interpretation of, understanding of or reaction to an advertisement, draft advertisement, proposed advertisement, proposed advertising text, copy or creative strategy or platform, any other advertising material, product category, product, entity or information conveyed in an advertisement, **including** consumer perception tests, comprehension tests, recall tests, marketing or consumer surveys or reports, penetration tests, audience reaction tests, focus groups and media research.

10. **“Or”** includes **“and,”** and **“and”** includes **“or,”** so as to have the broadest meaning whenever necessary to bring within the scope of any Specification all information or **documents** that might otherwise be construed to be outside its scope.

11. **“Person” or “Persons”** means all natural persons, corporations, partnerships or other business associations, and all other legal entities, **including** all members, officers, predecessors, assigns, divisions, affiliates and subsidiaries.

12. **“Promotional material”** shall mean any written or oral statement, advertisement, illustration, or depiction that is designed to effect a sale or create interest in the purchasing of goods or services, whether the same appears in a press release, video news release, brochure, newspaper, magazine, pamphlet, leaflet, circular, mailer, book insert, stickers, free standing insert, letter, catalogue, poster, chart, billboard, public transit card, point of purchase display, instructional or education materials, packaging, package insert, package label, film, slide, radio or television broadcast or transmission, Internet or World Wide Web site, streaming video, electronic mail, audio program transmitted over a telephone system, script used to make oral solicitations to consumers, or publication or broadcast in any other medium.

13. **“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.

14. **“Respondents”** means Dynamic Health of Florida, LLC, Chhabra Group, LLC, and Vineet K. Chhabra, individually and collectively, **including** all of their operations under

assumed names.

15. “You” or “Your” means the **Respondents** or **Respondents’**, both individually and collectively, unless otherwise noted.

16. The use of the singular **includes** the plural, and the plural **includes** the singular.

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

18. 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 an Interrogatory shall not be limited and all information responsive to the Interrogatory, regardless of dates or time periods involved, shall be provided.

2. Each Interrogatory should be set forth in full preceding the answer to it and should be answered separately and fully in writing, under oath.

3. All answers shall be served within 20 days after service of these Interrogatories.

4. Information covered by these Interrogatories is that which is in your knowledge or possession, or under your actual or constructive custody or control, whether or not such information is located in the files of, or possessed by your individual officers, directors or employees, and whether or not such information is received from or disseminated to any other **person** or entity **including** attorneys, accountants, directors, officers or employees.

5. All information submitted in response to these Interrogatories shall be clearly and precisely identified as to the **Respondent(s)** who produced the information.

6. Where an Interrogatory requests an answer or portion of an answer that has already been supplied in response to another Interrogatory, the answer or portion of the answer need not be supplied a second time. It is sufficient to specify the responses that contain the answer, and supply any additional information necessary to answer the Interrogatory.

7. All objections to these Interrogatories, or to any individual Interrogatory, must be raised in the initial response or are otherwise waived.

8. If you object to any Interrogatory or a part of any Interrogatory, state the Interrogatory or part to which you object, state the exact nature of the objection, and **describe** in

detail the facts upon which you base your objection. If any Interrogatory cannot be answered in full, it shall be answered to the fullest extent possible and the reasons for the inability to answer fully shall be provided. If you object to any Interrogatory on the grounds of relevance or overbreadth, you shall provide all responsive information that is concededly relevant to the parties' claims or defenses or the requested relief. For each Interrogatory that cannot be answered in full, you shall **describe** the efforts made to locate information needed for such answer.

9. If any **documents** or **communications** are not identified in response to an Interrogatory on grounds 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** or **communication** is privileged, all non-privileged portions of the item must be identified.

10. These Interrogatories are continuing in character so as to require you to produce additional information promptly upon obtaining or discovering different, new or further information before the close of discovery. Further instructions pertinent to a particular Interrogatory appear in parentheses within or following that Interrogatory.

Respectfully submitted,

Janet M. Evans (202) 326-2125
Sydney M. Knight (202) 326-2162
Division of Advertising Practices
FEDERAL TRADE COMMISSION
600 Pennsylvania Avenue, N.W.
Mail drop NJ-3212
Washington, D.C. 20580
jevans@ftc.gov
sknight@ftc.gov
Fax: (202) 326-3259

CERTIFICATE OF SERVICE

I hereby certify that I have this 25th day of October, 2004 filed and served the attached **COMPLAINT COUNSEL'S FIRST SET OF INTERROGATORIES TO RESPONDENTS** 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

Sydney M. Knight

Exhibit C

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

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

**COMPLAINT COUNSEL’S FIRST REQUEST TO RESPONDENTS FOR
PRODUCTION OF DOCUMENTARY MATERIALS AND TANGIBLE THINGS**

Pursuant to Rule 3.37(a) of the Federal Trade Commission’s Rules of Practice, Complaint Counsel hereby requests that Respondents Dynamic Health of Florida, LLC, Chhabra Group, LLC, and Vineet K. Chhabra produce the documentary materials and tangible things identified below for inspection and copying within 20 days at the Federal Trade Commission, 601 New Jersey Ave., N.W., Suite 3213, Washington, D.C. 20001, or at such time and place as may be agreed upon by all counsel.

I. SPECIFICATIONS¹

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

1. **All documents referring or relating to** the structure and management of any company that has played a role in the formulation, manufacture, labeling, advertising, marketing, promotion, offering for sale, sale, distribution, customer service, or fulfillment of any dietary supplement product, including but not limited to Dynamic Health of Florida, LLC, Chhabra Group, LLC, Chhabra International Ltd., Kreating, LLC, Chhabra Internet Support Center, LLC, Chhabra Internet Fulfillment Services, LLC, Chhabra Management, LLC, Metability of Florida, LLC, CG Fulfillment, and USA Prescription, Inc. (This request **includes** but is not limited to **documents** showing articles of incorporation, by-laws, minutes, the date and place of company formation, company form, parent, subsidiary and affiliate companies, and filings with State or Federal corporate regulatory authorities; **documents** showing the names and titles of directors,

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

officers, supervisors, and managers, and organizational charts; **documents** showing the ownership interests of all owners; **documents** describing the authority, duties, and responsibilities of officers, managers, directors, and supervisors; and any **documents** delegating authority to engage in any act on behalf of Vineet K. Chhabra or act as agent for Vineet K. Chhabra.)

2. **All documents and communications referring or relating to the duties, responsibilities, and services performed or anticipated to be performed by Dynamic Health of Florida, LLC, Chhabra Group, LLC, DBS Laboratories, LLC, DBS Labs, LLC, Chhabra International Ltd., Dynamic Health International, Kreating, LLC, Chhabra Internet Support Center, LLC, Chhabra Internet Fulfillment Services, LLC, Chhabra Management, LLC, Metability of Florida, LLC, CG Fulfillment, USA Prescription, Inc., Hill Knowlton & Samcor, TransMedia Group, Nutrition Formulators, Highland Laboratories, Pharmachem Laboratories, Health Tek Laboratories, Executive Label, Inc., Vineet K. Chhabra, Dr. Alberto Guzman, Guy Pegalado, Randi Swatt, Gil Herrera, Arent Fox, and Jonathan Barash with respect to the formulation, manufacture, labeling, advertising, marketing, promotion, offering for sale, sale, distribution, customer service, or fulfillment of any dietary supplement product.**

3. **Two complete packages, including the product contained therein, of each of the challenged products.** (If any product has been sold under more than one label or reformulated, provide two complete packages, including the product contained therein and all packaging inserts, of each version of the product that has been marketed and sold).

4. **All labels and promotional materials for the challenged products, whether in draft or final form.**

5. **All documents and communications referring or relating to draft or final labels and promotional materials for the challenged products.** (This request **includes** but is not limited to contracts, **documents**, and **communications** evidencing the creation, modification, approval, execution, evaluation, dissemination, clearance, or placement of labels and **promotional materials**, and **documents referring or relating to the contents of draft or final labels and promotional materials, including** but not limited to any claims, messages, or **communication** in any draft or final labels and **promotional material(s).**)

6. **All documents and communications referring or relating to the efficacy of the any dietary supplement relating to female sexual health or children's weight or any ingredient therein (including but not limited to tests, reports, studies, scientific literature, written opinions, and any other documents referring or relating to the amount, type, or quality of testing or substantiation), including all documents and communications that are relied upon as substantiation for, or that tend to refute, the claims alleged in the Complaint (¶¶ 9, 13, and 15) regardless of whether you contest that those claims were made.**

7. **All documents and communications that refer or relate to any advice or counsel**

provided by the law firm of **Arent Fox** regarding the formulation, manufacture, labeling, advertising, marketing, **promotion**, offering for sale, sale, distribution, customer service, or fulfillment of any dietary supplement **relating to** female sexual health or children's body weight.

8. **All documents and communications that refer or relate to** the formulation, manufacture, labeling, advertising, marketing, promotion, offering for sale, sale, distribution, customer service, or fulfillment of any dietary supplement **relating to** female sexual health or children's body weight.

9. **All documents and communications referring or relating to** the marketing of each of the **challenged products**. (This request **includes** but is not limited to **market research**, marketing plans or strategies, and all other **document(s)** and **communications referring or relating to** copy tests, marketing or consumer surveys and reports, penetration tests, target audiences, recall tests, audience reaction tests, **communications** tests, consumer perception of any **promotional materials** for any of the **challenged products**.)

10. **All documents and communications referring or relating to** complaints or investigations of any of the **challenged products** or their labels or **promotional materials**. (This request **includes** but is not limited to **documents** and **communications** relating to lawsuits, demand letters, refund requests, warranty or guarantee claims, and complaints or inquiries by any local, state, or federal government legislature, agency or entity, or other **persons** (including but not limited to consumers, competitors, and entities such as the Better Business Bureau or the National Advertising Division).

11. **All documents referring or relating to**, or constituting a **dissemination schedule** for advertisements relating to the **challenged products**.

12. All tax returns for **Respondents** for 2000 to present, including but not limited to all supporting **documents** and attachments, requests for extension for filing any tax return, and any statement(s) of the reasons for which any extension(s) were requested. (This request **includes** all returns and related information pertaining to the payment of payroll and unemployment taxes, social security taxes, medicare, and Federal, State and local and sales, business, gross receipts, licensing, property, and income taxes.)

13. From the date of the first sale of each of the **challenged products** to date, all **documents** that show gross and net sales figures and profit figures for each of the **challenged products**.

14. One copy of any plea, stipulation, statement, admission, and agreement signed by any **Respondent** in connection with any State or Federal civil or criminal law enforcement matter.

15. **All documents referring or relating to** transfer or sale of any of the

Respondent's interest in, or rights to market or sell, any dietary supplement.

16. **All documents and communications** consulted or used in preparing your responses to Complaint Counsel's **interrogatories**.

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. **"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 First Set of Requests for Production of Documentary Materials and Tangible Things all information that otherwise might be construed to be outside the scope of the request.

3. **"Any"** shall be construed to **include** the word **"all,"** and the word **"all"** shall be construed to **include** the word **"any."**

4. **"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.

5. **"Challenged products"** means the products identified as Pedia Loss and Fabulously Feminine in the administrative **Complaint** issued by the Federal Trade Commission in the above-captioned matter, both individually and collectively.

6. **"Communication"** means any transmission or receipt of facts, information, opinions, or thought, whether conveyed in writing, orally, electronically, or by any other means, including written memorializations of oral **communication**.

7. **"Complaint"** means the administrative **Complaint** issued by the Federal Trade Commission, and any amendments thereto, in the above-captioned matter.

8. **"Dissemination schedule"** includes, but is not limited to, the following: (a) for radio, audio, television, and video **promotional materials**, the date, time of day, location and station name; (b) for product packaging, the names of distributors and retailers to whom the

packaging or other **promotional material** was transmitted, the date of transmittal, and the number of pieces transmitted; (c) for printed **promotional materials**, the name and date of the publication or place in which the **promotional material** appeared; and (d) for Internet materials, the date that the **promotional material** was first placed on the Internet, the date (if any) that it was removed from the Internet, and the number of "hits" that the advertisement registered.

9. "**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.

10. "**Each**" and "**any**" include "**all**," so as to have the broadest meaning whenever necessary to bring within the scope of any Specification all information and/or **documents** that might otherwise be construed to be outside its scope.

11. "**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.

12. "**Interrogatories**" means any and all **Interrogatories** served on the Respondents in the above-captioned matter.

13. "**Market research**" means all information **referring or relating to** testing, measuring or assessing consumers' or individuals' interpretation of, understanding of or reaction to a draft, proposed, or final **promotional material**, proposed advertising text, copy or creative strategy or platform, product category, product, entity or information conveyed in an advertisement, including consumer perception tests, comprehension tests, recall tests, marketing or consumer surveys or reports, penetration tests, audience reaction tests, focus groups and media research.

14. "**Or**" includes "**and**," and "**and**" includes "**or**," so as to have the broadest meaning whenever necessary to bring within the scope of any Specification all information or **documents** that might otherwise be construed to be outside its scope.

15. **“Person” or “Persons”** means all natural persons, corporations, partnerships or other business associations, and all other legal entities, including all members, officers, predecessors, assigns, divisions, affiliates and subsidiaries.

16. **“Promotional material”** means any written or oral statement, advertisement, illustration, or depiction that is designed to effect a sale or create interest in the purchasing of goods or services, whether the same appears in a press release, video news release, brochure, newspaper, magazine, pamphlet, leaflet, circular, mailer, book insert, sticker, free standing insert, letter, catalogue, poster, chart, billboard, public transit card, point of purchase display, instructional or education materials, packaging, package insert, package label, film, slide, radio or television broadcast or transmission, Internet or World Wide Web site, streaming video, electronic mail, audio program transmitted over a telephone system, script used to make oral solicitations to consumers, or publication or broadcast in any other medium.

17. **“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.

18. **“Respondent(s)”** means Dynamic Health of Florida, LLC, Chhabra Group, LLC, and Vineet K. Chhabra, individually and collectively, including all of their operations under assumed names.

19. **“You” or “Your”** means the **Respondents or Respondents’**, both individually and collectively, unless otherwise noted.

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

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

22. 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 a 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. Each page submitted should be marked with a unique "Bates" document tracking number.

4. **Documents** covered by these Specifications 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. All information submitted shall be clearly and precisely identified as to the Respondent(s) who produced the information. You shall do so by: (a) marking each submitted item with a notation identifying the Respondent(s) who produced that item; or (b) providing a separate list of submitted items, in numeric "Bates" document tracking number order, that identifies the Respondent(s) who produced each item.

6. **Documents** that may be responsive to more than one Specification need not be submitted more than once; however, your response should indicate, for each **document** submitted, each Specification to which the **document** is responsive. If any **documents** responsive to a Specification have been previously supplied to the Commission, you may comply with the Specification by identifying the **document(s)** previously provided and the date of submission; identification shall be by Bates number if the **document(s)** were so numbered when submitted, or by author and subject matter if not so numbered.

7. If any of the documentary materials requested in these Specifications are 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.

8. **Promotional materials** submitted in response to these Specifications 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.

9. All objections to these Document Specifications, or to any individual Specification, must be raised in the initial response or are otherwise waived.

10. 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.

11. This First Request to Respondents for Production of Documentary Materials and Tangible Things is continuing in character so as to require you to produce additional information promptly upon obtaining or discovering different, new or further information before the close of discovery. Further instructions pertinent to a particular Document Specification appear in parentheses within or following that Specification.

Respectfully submitted,

Janet M. Evans (202) 326-2125
Sydney M. Knight (202) 326-2162
Division of Advertising Practices
FEDERAL TRADE COMMISSION
600 Pennsylvania Avenue, N.W.
Mail drop NJ-3212
Washington, D.C. 20580
jevans@ftc.gov
sknight@ftc.gov
Fax: (202) 326-3259

CERTIFICATE OF SERVICE

I hereby certify that I have this 25th day of October, 2004 filed and served the attached **COMPLAINT COUNSEL'S FIRST REQUEST TO RESPONDENTS FOR PRODUCTION OF DOCUMENTARY MATERIALS AND TANGIBLE THINGS** 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

Sydney M. Knight

Exhibit D

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

In the Matter of)	
)	
TELEBRANDS CORP.,)	
a corporation,)	
)	
TV SAVINGS, LLC,)	
a limited liability company, and)	Docket No. 9313
)	
AJIT KHUBANI,)	PUBLIC DOCUMENT
individually and as president of)	
Telebrands Corp. and sole member)	
of TV Savings, LLC.)	

**COMPLAINT COUNSEL'S FIRST SET OF REQUESTS
FOR PRODUCTION OF DOCUMENTARY MATERIALS AND TANGIBLE THINGS
DIRECTED TO TELEBRANDS CORP., TV SAVINGS, LLC, AND AJIT KHUBANI**

Pursuant to Rule 3.37(a) of the Federal Trade Commission's Rules of Practice, and the Pretrial Scheduling Order entered by Chief Administrative Law Judge Stephen J. McGuire on November 5, 2003, Complaint Counsel hereby requests that Telebrands Corp., TV Savings, LLC, and Ajit Khubani produce the documentary materials and tangible things identified below for inspection and copying within 20 days at the Federal Trade Commission, 601 New Jersey Avenue, N.W., Suite NJ-2122, Washington, D.C. 20580, or at such time and place as may be agreed upon by all counsel.

DEFINITIONS

1. "Ab Force" shall mean the Electronic Muscle Stimulation ("EMS") device advertised as "Ab Force," all of its parts, and the electro-conductive, water-based gel advertised for use with Ab Force.
2. "Ab Force spot" means the one minute and two minute commercials attached as Exhibits A, C, and E to the Complaint, or any substantially similar version thereof.
3. "All documents" shall mean 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.

4. **“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 First Set of Requests for Production of Documentary Materials and Tangible Things all information that otherwise might be construed to be outside the scope of the request.

5. **“Any”** shall be construed to include the word **“all,”** and the word **“all”** shall be construed to include the word **“any.”**

6. **“Communication”** or **“communications”** shall mean any transmission or receipt of facts, information, opinions, or thought, whether conveyed in writing, orally, electronically, or by any other means, including written memorializations of oral communications.

7. **“Complaint”** shall mean the complaint issued by the Federal Trade Commission, and any amendments thereto, in the above-captioned action, Docket No. 9313.

8. **“Document”** shall mean 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, pamphlet, book, periodical, contract, file, invoice, memorandum, note, telegram, report, record, working paper, routing slip, chart, graph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, agenda, minute, code book, tests, reports, clinical studies, test reports, scientific literature, articles, expert opinions, handwritten notes, correspondence, written or recorded communications, opened electronic mail, 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.

9. **“Including”** shall mean “including but not limited to,” so as to avoid excluding any information that might otherwise be construed to be within the scope of any Document Specification in this First Set of Requests for Production of Documents and Tangible Things.

10. **“Market research”** shall mean all information referring or relating to testing, measuring or assessing consumers’ or individuals’ interpretation of, understanding of or reaction to an advertisement, draft advertisement, proposed advertisement, proposed advertising text, copy or creative strategy or platform, any other advertising material, product category, product, entity or information conveyed in an advertisement, including consumer perception tests, comprehension tests, recall tests, marketing or consumer surveys or reports, penetration tests, audience reaction tests, focus groups, and media research.

11. **“Person”** or **“persons”** shall mean all natural persons, corporations, partnerships or other business associations, and all other legal entities, including all members, officers, predecessors, assigns, divisions, affiliates, and subsidiaries.

12. **“Promotional material”** shall mean any written or oral statement, advertisement, illustration, or depiction that is designed to effect a sale or create interest in the purchasing of goods or services, whether the same appears in a brochure, newspaper, magazine, pamphlet, leaflet, circular, mailer, book insert, free standing insert, letter, electronic communication, news release, catalogue, poster, chart, billboard, public transit card, point of purchase material (including, but not limited to, a display or an item worn by salespeople), package insert, package label, film, slide, radio, broadcast or cable television, audio program transmitted over a telephone system, script used to make oral solicitations to consumers, program-length commercial (“infomercial”), the Internet, or any other medium.

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

14. **“Respondents”** shall mean Telebrands Corp., TV Savings, LLC, and Ajit Khubani.

15. **“You”** or **“your”** shall mean the Respondents or the Respondents’, individually and collectively.

16. The singular shall be construed to include the plural, and the plural shall be construed to include the singular.

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

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

INSTRUCTIONS

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

2. Documents covered by these Specifications 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.

3. All information submitted shall be clearly and precisely identified as to the

Specification(s) to which it is responsive. You should mark a unique "Bates" number on each page in your submission.

4. If any documents responsive to a Specification have been previously supplied to the Commission, you shall identify the document(s) previously provided and the date of submission instead of re-submitting the document(s). Identification shall be by Bates number if the documents were so numbered when submitted, or by author, date, and subject matter if not so numbered. Documents that may be responsive to more than one Document Specification need not be submitted more than once; however, your response shall indicate, for each document submitted, each Specification to which the document is responsive.

5. A complete copy of each document shall 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.

6. If any of the information requested in these Specifications 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.

7. All objections to these Document Specifications, or to any individual Specification, must be raised in the initial response or are otherwise waived.

8. 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.

9. This First Set of Requests for Production of Documents and Tangible Things is continuing in character so as to require you to produce additional information promptly upon obtaining or discovering different, new or further information before the close of discovery.

DOCUMENT SPECIFICATIONS

1. All documents supporting, referring, or relating to your contention that the respondents have not operated as a common enterprise as alleged in Paragraph 4 of the Complaint.

2. All documents (including market research) supporting, referring, or relating to your contention that the respondents have not made the representations set forth in Paragraphs 9, 19, and 21 of the Complaint. **Respond fully to the Specification even if you contest whether the representations were made.**

3. All documents supporting, referring, or relating to your contention that the Ab Force promotional materials, including the Ab Force spots, do not refer to the devices identified in Paragraph 11 of the Complaint.

4. All documents supporting, referring, or relating to each claim you contend the Ab Force promotional materials made other than those identified in the Complaint, including massage claims and product comparison claims.

5. All documents supporting, referring, or relating to the contention that Ab Force promotional materials referenced or referred to EMS devices other than the devices identified in Paragraph 11 of the Complaint.

6. Two complete packages (including all components contained therein) of all versions of Ab Force that the respondents have marketed in the United States or any other nation.

7. All promotional materials disseminated or approved for dissemination for Ab Force in the United States or any other nation.

8. Documents sufficient to identify the date, time, and medium (*i.e.*, the specific television channel, newspaper, Internet website, or other forum) that the respondents used to disseminate all promotional materials for Ab Force.

9. All instructional or educational materials referring to the promotion and sale of Ab Force.

10. All documents referring or relating to the promotion and sale of Ab Force, including the following:

- a. documents (including contracts, agreements, and written or recorded communications) between the respondents and any other person or entity who furnished or offered to furnish any product or service to the respondents;
- b. documents (including marketing plans, advertising proposals, advertising messages, draft promotional materials, and written or recorded communications) referring or relating to any promotional material, regardless of whether that promotional material was disseminated or not;
- c. documents (including market research, copy tests, consumer surveys, and written or recorded communications) referring or relating to consumer perception of any promotional material; and

- d. documents referring or relating to the reasons why promotional materials were not disseminated, either in the United States or any other nation.
11. All documents constituting, referring or relating to advertisements and promotional materials for any EMS device other than Ab Force.
12. All documents referring or relating to the efficacy of Ab Force, including all documents that tend to call into question or disprove the efficacy of Ab Force or any other EMS device.
13. All documents (including written or recorded communications) referring or relating to substantiation for claims made in promotional materials for Ab Force or any other EMS device.
14. All documents referring or relating to the U.S. Food and Drug Administration and EMS devices, including Ab Force.
15. All documents sufficient to show the technical specifications for all versions of Ab Force offered for sale in the United States or any other nation, including: the voltage, the pulse duration (*i.e.*, the length of the pulse, typically expressed in micro-seconds), the waveform (*i.e.*, the shape of the electrical current being transmitted through the skin), the peak current (*i.e.*, amplitude, measured in milliamps), the phase charge, and, for any interrupted current settings, the amount of time the current is on or off.
16. All documents referring or relating to any change or variation in the technical specifications for Ab Force offered for sale in the United States or any other nation.
17. All documents referring or relating to the physical characteristics (such as size, color, and shape) of Ab Force.
18. All documents referring or relating to the respondents' duties or responsibilities with respect to Ab Force.
19. All documents referring or relating to all compensation, payments, and other benefits (whether in the form of cash, loans, real property, or other form) made to Ajit Khubani by Telebrands Corp. and TV Savings, LLC in conjunction with Ab Force.
20. All versions of Ab Force product labels, package labels, package inserts, and instructions distributed to consumers in the United States or any other nation.
21. All documents constituting, referring, or relating to complaints, investigations, or legal proceedings initiated by any person or entity (including any consumer, consumer groups, government agencies, Better Business Bureaus, or competitors), relating to Ab Force.

22. All documents referring or relating to Complaint Counsel's First Set of Interrogatories to you, including all documents used to prepare your responses to the Interrogatories.

Respectfully submitted,

Constance Vecellio (202) 326-2966
Walter C. Gross III (202) 326-3319
Joshua S. Millard (202) 326-2454
Amy M. Lloyd (202) 326-2394

Complaint Counsel
Division of Enforcement
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Ave., N.W, Suite NJ-2122
Washington, D.C. 20580

Dated: November 21, 2003

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of November, 2003, a copy of *Complaint Counsel's First Request for Production of Documents and Tangible Things Directed to Telebrands Corp., TV Savings, LLC, and Ajit Khubani* was served upon the following person by fax, first class mail, and e-mail:

Edward F. Glynn, Jr., Esq.
VENABLE LLP
575 Seventh St., N.W.
Washington, D.C. 20004
TEL: (202) 344-4805
FAX: (202) 344-8300
efglynn@venable.com


JOSHUA S. MILLARD

Exhibit E

L02000032452

PLEASE READ THE INSTRUCTIONS BEFORE COMPLETING THIS FORM.

LIMITED LIABILITY COMPANY REINSTATEMENT



FLORIDA DEPARTMENT OF STATE
Secretary of State
DIVISION OF CORPORATIONS

FILED
03 OCT -8 PM 3:00
TALLAHASSEE, FLORIDA

DOCUMENT # L02000032452
1. Limited Liability Company's Name
DYNAMIC HEALTH OF FLORIDA, LLC

9/26/03

200023801012
12/15/03--01010--010 **\$50.00

2. Principal Office Address 1455 North Park Drive		3. Mailing Office Address 2665 S. Bayshore Drive		4. State/Country of Formation Florida	
Suite, Apt. #, etc.		Suite, Apt. #, etc. Suite 703		5. Date Organized or Qualified To Do Business in Florida 12/4/02	
City & State Weston, Florida		City & State Miami, Florida		6. FEI Number <input type="checkbox"/> Applied For <input checked="" type="checkbox"/> Not Applicable	
Zip 33326	Country USA	Zip 33133	Country USA	7. CERTIFICATE OF STATUS DESIRED <input type="checkbox"/> \$5.00 Add Local Fee required for a Certificate of Status	

8. Name and Address of Current Registered Agent

Name
World Corporate Services, Inc.

Street Address (P.O. Box Number is Not Acceptable)

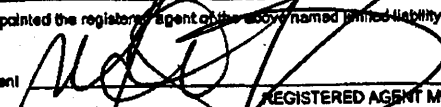
Suite, Apt. #, Etc.
2665 S. Bayshore Drive, Suite 703

City
Miami

State
FL

Zip Code
33133

9. I, being appointed the registered agent of the above named limited liability company, am familiar with and accept the obligations of Chapter 608, F.S.

Signature of Registered Agent  Date _____

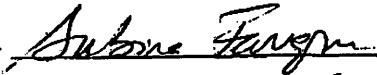
REGISTERED AGENT MUST SIGN

10. Names and Street Addresses of Managing Members/Managers

Titles	Name of Managing Members/Managers	Street Address of Each Managing Member/Manager	City / State / Zip
MANAG	CHHABRA, VINCENT	1455 North Park Drive	Weston, Florida 33326
MANAG	FARUQUI, SABINA	1455 North Park Drive	Weston, Florida 33326

REINSTATEMENT 2003

11. I certify that I am managing member/manager or the receiver or trustee empowered to execute this application as provided for in chapter 608, F.S. I further certify that when filing this reinstatement application the reason for dissolution has been eliminated, the limited liability company name satisfies the requirements of section 608.408, F.S., and that all fees owed by the limited liability company have been paid. The information indicated on this application is true and accurate, and my signature shall have the same legal effect as if made under oath.

Signature of Managing Member/Manager  Date **10/3/03** Daytime Phone # **(305) 858-9900**

Typed or printed name of signing Managing Member/Manager **SABINA FARUQUI**

C202011 (10/02)

L02000032452

October 3, 2003

Florida Department of State
Division of Corporations
409 East Gaines Street
Tallahassee, Florida 32399

FILED
03 OCT - 8 PM 3:00
TALLAHASSEE, FLORIDA

Attn: Reinstatement Division

Re: **Dynamic Health of Florida, LLC (the "LLC")**

Dear Sir or Madam:

As our office advised your department, the LLC never received the Annual Report the 2003 calendar year. Thus, we respectfully request that the LLC be reinstated and that the reinstatement penalty fee be waived.

In accordance with the instructions received, enclosed herewith please find the following in order to reinstate the LLC with the Florida Secretary of State:

1. State of Florida Application For Reinstatement; and
2. Check no. 2013 payable to the Secretary of State in the amount of \$50.00 to cover the Filing Fee for the 2003 calendar year.

Your assistance in this matter is greatly appreciated.

Sincerely,

Sabrina Faruqi

2003 UNIFORM BUSINESS REPORT (UBR)

FILED
Apr 30, 2003
Secretary of State

DOCUMENT# L02000003496

Entity Name: CHHABRA GROUP LLC

Current Principal Place of Business:

5400 S. UNIVERSITY DRIVE, SUITE 107
DAVIE, FL 33328

New Principal Place of Business:

1455 N. PARK DR.
WESTON, FL 33327

Current Mailing Address:

5400 S. UNIVERSITY DRIVE, SUITE 107
DAVIE, FL 33328

New Mailing Address:

1455 N. PARK DR.
WESTON, FL 33327

FEI Number: 01-0943500

FEI Number Applied For ()

FEI Number Not Applicable ()

Certificate of Status Desired ()

Name and Address of Current Registered Agent:

SIMMONS, SHERWIN P P.A.
200 S. BISCAYNE BOULEVARD, SUITE 4000
MIAMI, FL 33131 US

Name and Address of New Registered Agent:

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE: _____

Electronic Signature of Registered Agent

_____ Date

MANAGING MEMBERS/MEMBERS:

Title: () Delete
Name:
Address:
City-St-Zip:

Title: () Delete
Name:
Address:
City-St-Zip:

ADDITIONS/CHANGES:

Title: MGRM () Change (X) Addition
Name: CHHABRA, VINCENT K
Address: 1455 N PARK DR.
City-St-Zip: WESTON, FL 33327

Title: MGRM () Change (X) Addition
Name: FARUQUI, SABINA
Address: 1455 N. PARK DR.
City-St-Zip: WESTON, FL 33327

I hereby certify that the information supplied with this filing does not qualify for the for the exemption stated in Section 119.07(3)(i), Florida Statutes. I further certify that the information indicated on this report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am a managing member or manager of the limited liability company or the receiver or trustee empowered to execute this report as required by Chapter 608, Florida Statutes.

SIGNATURE: SABIAN FARUQUI

MGRM

04/30/2003

Electronic Signature of Signing Managing Member, Manager, or Authorized Representative / Date

CERTIFICATE OF SERVICE

I hereby certify that I have this date December 6, 2004 filed and served the attached **“COMPLAINT COUNSEL’S OPPOSITION TO RESPONDENTS’ MOTION REGARDING FORM OF DISCOVERY SPECIFICATIONS”** upon the following as set forth below:

- (1) the original and one (1) paper copy filed by hand delivery and one electronic copy via email to:

Donald S. Clark, Secretary
Federal Trade Commission
600 Pennsylvania Ave., N.W., Room H-159
Washington, D.C. 20580
E-mail: secretary@ftc.gov

- (2) two (2) paper copies served by hand delivery to:

The Honorable Stephen J. McGuire
Chief Administrative Law Judge
600 Pennsylvania Ave., N.W. Room H-112
Washington, D.C. 20580

- (3) one (1) electronic copy via email and one (1) paper copy via first class mail to:

Max Kravitz, Esq.
Kravitz & Kravitz LLC
145 East Rich Street
Columbus, OH 43215
mkravitz@kravitzlawnet.com
614-464-2000
fax: 614-464-2002

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