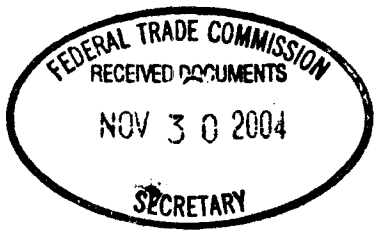
UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES



In the Matter of	)	
BASIC RESEARCH, LLC A.G. WATERHOUSE, LLC KLEIN-BECKER USA, LLC NUTRASPORT, LLC SOVAGE DERMALOGIC LABORATORIES, LLC BAN, LLC d/b/a BASIC RESEARCH, LLC OLD BASIC RESEARCH, LLC, BASIC RESEARCH, A.G. WATERHOUSE, KLEIN-BECKER USA, NUTRA SPORT, and SOVAGE DERMALOGIC LABORATORIES DENNIS GAY DANIEL B. MOWREY d/b/a AMERICAN PHYTOTHERAPY RESEARCH LABORATORY, and MITCHELL K. FRIEDLANDER, Respondents.	)	Docket No. 9318

ORDER DENYING BASIC RESEARCH'S THIRD MOTION TO COMPEL

I.

On November 8, 2004, Respondent Basic Research, LLC ("Respondent") filed its third motion to compel ("Motion"). On November 24, 2004, Complaint Counsel filed its opposition to the Motion ("Opposition"). Upon consideration of the briefs and attachments, and for the reasons set forth below, Respondent's third motion to compel is **DENIED**.

II.

Respondent seeks an order compelling Complaint Counsel to provide answers or clearer answers to Respondent's First Requests for Admission. Motion at 1. Respondent identifies thirteen requests for admission that it contends require better and clearer responses and argues that Complaint Counsel provides evasive answers and improper objections to Respondent's specific requests. Motion at 5-12.

Complaint Counsel contends that Respondent is not entitled to an Order compelling different answers to its requests for admissions; compelling answers to requests that lack relevance to these proceedings; compelling different answers to requests that relate to defenses stricken by the Court; compelling different answers to requests for admissions on legal issues; or compelling different answers to requests which have already been answered adequately. Opposition at 3-14.

III.

A.

Discovery sought in a proceeding before the Commission must be "reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defense of any respondent." 16 C.F.R. § 3.31(c)(1); *see FTC v. Anderson*, 631 F.2d 741, 745 (D.C. Cir. 1979). Discovery may be limited if the discovery sought is unreasonably cumulative or duplicative or is obtainable from some other source that is more convenient, less burdensome, or less expensive, or if the burden and expense of the proposed discovery outweigh its likely benefit. 16 C.F.R. § 3.31(c)(1). Further, the Administrative Law Judge may limit discovery to preserve privileges. 16 C.F.R. § 3.31(c)(2). A purpose of requests for admission is to narrow the issues for trial by relieving the parties of the need to prove facts that will not be disputed at trial and the truth of which can be easily ascertained. *In re Aspen Technology, Inc.*, 2003 FTC LEXIS 178, at *1 (Dec. 2, 2003); *In re General Motors*, 1977 FTC LEXIS 293, at *3 (Jan. 28, 1977). Parties should use requests for admission "to reach agreements as to facts which are not in dispute." *In re Trans Union Corp.*, 1993 FTC LEXIS 116, at * 2 (May 24, 1993).

Federal case law interpreting the analogous Rule 36(a) of the Federal Rules of Civil Procedure which allows the service of requests for admission upon parties to civil actions indicates the purpose of this rule is to reduce the cost of litigation, *Burns v. Phillips*, 50 F.R.D. 187, 188 (N.D. Ga. 1970), by narrowing the scope of disputed issues, *Webb v. Westinghouse Electric Corp.*, 81 F.R.D. 431, 436 (E.D. Pa. 1978), facilitating the succinct presentation of the case to the trier of fact, *Ranger Ins. Co. v. Culberson*, 49 F.R.D. 181, 182-83 (N.D. Ga. 1969), and eliminating the necessity of proving undisputed facts, *Peter v. Arrien*, 319 F. Supp. 1348, 1349 (E.D. Pa. 1970). Properly used, requests for admission serve the expedient purpose of eliminating "the necessity of proving essentially undisputed and peripheral issues of fact." *Syracuse Broadcasting Corp. v. Newhouse*, 271 F.2d 910, 917 (2d Cir. 1959). Their proper, strategic use saves "time, trouble, and expense" for the court and the litigants. *Metropolitan Life Insurance Co. v. Carr*, 169 F. Supp. 377, 378 (D. Md. 1959). Because requests for admission are intended to save time of the parties and the court, burdensome requests distort that purpose and therefore are properly the subject of a protective order. *Wigler v. Electronic Data Systems Corp.*, 108 F.R.D. 204, 207 (D. Md. 1985).

B.

Requests 8 and 9 seek an admission that the terms "rapid" and "substantial" could mean different things to different reasonable consumers. Motion at 5-6. Requests 22, 23, and 24 seek admissions regarding how the FTC defines, in each case, the substantiation needed to constitute a reasonable basis; whether the only substantiation required of an advertiser is the substantiation referenced in the advertisement; and that what constitutes a reasonable basis changes from case to case. Motion at 7-9. Requests 38 and 39 seek an admission that the FTC has not defined competent and reliable scientific evidence to require any specific kinds, types, or amounts of scientific studies or to require any specific testing or research protocol. Motion at 12. These seven requests for admission are not "essentially undisputed or peripheral issues of fact." *In re Aspen Technology, Inc.*, 2003 FTC LEXIS 178, at *1 (Dec. 2, 2003); *see Kosta v. Connolly*, 709 F. Supp. 592, 594 (E.D. Pa 1989). Rather, the requests seek admission of contested legal and factual issues central to the case. Requests for admission should not be employed "to establish facts which are obviously in dispute or to answer questions of law." *Kosta*, 709 F. Supp. at 594. Complaint Counsel will not be compelled to provide answers or clearer answers to these requests for admission.

Requests 25 and 26 seek information regarding whether the FTC proceeded against Respondents in the public interest and whether the FTC had made the requisite reason to believe determination. Motion at 9. The public interest and reason to believe defenses were stricken by Order dated November 4, 2004. Therefore, these requests for admission are not relevant to any currently pending defense in the case. Complaint Counsel will not be compelled to provide answers to these requests for admission.

Requests 27, 28, 29, and 34 seek clarification concerning the reference to J. Howard Beales, III, the FTC's former Director of the Bureau of Consumer Protection, as "Dr." during congressional hearings. Motion at 11-12; Opposition at 10. Whether Beales was referred to as "Dr." during congressional hearings is not relevant to the allegations of the complaint, the proposed relief, or any currently pending defense of any Respondent. Complaint Counsel will not be compelled to provide answers to these requests for admission.

IV.

For the above-stated reasons, Respondent's third motion to compel is **DENIED**.

ORDERED:

Stephen J. McGuire
Chief Administrative Law Judge

Date: November 30, 2004