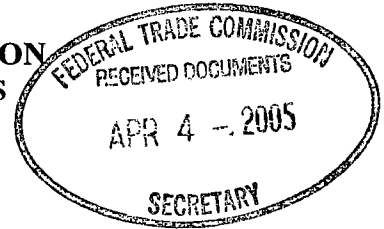


UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES



In the Matter of)
)
)
BASIC RESEARCH, L.L.C.,)
A.G. WATERHOUSE, L.L.C.,)
KLEIN-BECKER USA, L.L.C.,)
NUTRASPORT, L.L.C.,)
SOVAGE DERMALOGIC)
LABORATORIES, L.L.C.,)
BAN, L.L.C.,)
DENNIS GAY,)
DANIEL B. MOWREY, and)
MITCHELL K. FRIEDLANDER,)
)
Respondents.)
_____)

Docket No. 9318

PUBLIC DOCUMENT

**COMPLAINT COUNSEL'S AMENDED SUPPLEMENTAL RESPONSE TO
RESPONDENTS' EMERGENCY MOTION REQUIRING THE COMMISSION TO
PROVIDE RESPONDENTS WITH ELECTRONIC FILES**

Pursuant to the Court's February 22, 2005 Order, Complaint Counsel hereby submits its Supplemental Response to Respondents' motion seeking an Order requiring the production of certain electronic files. The sworn statements directed by the Court are attached to this Response. In addition, Complaint Counsel submits its Opposition to Respondents' Motion because providing the information requested by Respondents would likely violate the Federal Trade Commission's Privacy Policy.

The facts surrounding the inadvertent, temporary posting of certain information marked "SUBJECT TO PROTECTIVE ORDER", the information temporarily posted, and what steps have been taken by Complaint Counsel in connection with the inadvertent posting are set forth in the attached declarations of Laureen Kapin and Joshua Millard, two attorneys from the Division of Enforcement supporting the Complaint issued in this proceeding. and James Reilly Dolan,

Assistant Director for the Division of Enforcement, and *See Kapin, Millard and Dolan* Declarations at Attachments A, B, and C.

Briefly, on the afternoon of February 17th, 2005, upon realizing that certain information marked as “Subject to Protective Order” had been inadvertently posted on the Federal Trade Commission’s on-line docket, Complaint Counsel immediately requested removal of this information. The pertinent information, which consisted of certain exhibits to Complaint Counsel’s Partial Motion for Summary Decision, were removed from the on-line docket by the close of business on February 17, 2005. These exhibits are described with specificity in Attachment B. [Millard Decl.] Out of an abundance of caution, the entire docket was removed from the FTC’s website on February 18, 2005.

In response to Respondents’ concern that pertinent electronic files be preserved, certain information regarding what individuals or entities may have visited the URLs that correspond with information marked as “Subject to Protective Order” has been collected and retained. Because Respondents’ requests raise privacy concerns, and because pursuant to 16 C.F.R. Rule 4.11(h), only the General Counsel may authorize Commission staff to disclose information from Commission records not currently available to the public, Complaint Counsel referred Respondents’ requests to the General Counsel’s Office. As a result, the electronic files implicated by Respondents’ Motion have not been provided to Complaint Counsel. Instead, the General Counsel’s Office has obtained and is retaining the electronic files and information regarding the electronic files pending resolution of this issue.

Respondents’ current Motion seeks 1) a copy of the electronic docket so that Respondents can determine what information was inadvertently posted and 2) the production of

certain electronic files in order to “determine who accessed their highly confidential information.” Resp’ts Mot. at 3. Respondents state they must act quickly to “contact all such persons” and attempt to have such persons execute a non-disclosure agreement, and “seek injunctive relief” against those individuals who refuse to execute such an agreement. Resp’ts Motion at 3. As stated in our Partial Response, Complaint Counsel does not oppose producing a copy of the electronic docket as it existed on February 17th and is providing a disk containing such a copy concurrently with this Response.¹

Respondents’ second request for an array of electronic files is problematic because it seeks information covered by the Federal Trade Commission Privacy Policy. Respondents request is also problematic because it is based upon several flawed premises. First, Respondents presume that the Commission’s electronic files would disclose the identities of “who accessed” Respondents’ information.² Complaint Counsel has been advised, however, that the Commission’s electronic files would not necessarily identify an individual, they may merely identify an IP address of an internet service provider such as an America Online or MSN. Moreover, it is Complaint Counsel’s understanding that internet service providers maintain a

¹ Based upon Respondents’ February 17, 2005 letter, Respondents had a copy of the electronic docket as displayed on February 17, 2005 prior to the filing of its *Motion*. Further, Complaint Counsel identified the documents it had designated as subject to the Protective Order in its February 17, 2005 response to Respondents’ letter. Both letters are attached as Exhibits 1 and 3 to Attachment A [Kapin Decl.].

² Respondents request for electronic files is overbroad. Complaint Counsel has been informed that “error logs” would indicate what entities or individuals *failed* to access certain information, not who successfully accessed information. Moreover, Respondents’ second category of files, system security logs and the other designated files do not apply to public servers such as the server for the on-line docket. It is Complaint Counsel’s understanding that logs, which includes “access” “referrer” and “transfer” information have been retained. These logs list browser requests received by the FTC.

large number of IP addresses that are randomly assigned. In other words, a user may have different IP addresses assigned to them each time they log on. Complaint Counsel has also been advised that the Commission's files would not disclose whether the individual or entity visiting the URL address that corresponded with information marked as "Subject to Protective Order" actually read the information, downloaded it, copied it, shared it, or misused the information, in any fashion. As a result, the production of this information would not necessarily achieve Respondents' stated goals.

More importantly, however, the Federal Trade Commission Privacy Policy explicitly states that while the Commission may store certain electronic information such as an IP address, the Commission only uses such information as "anonymous aggregate data. . . We do not use it to track or record information about individuals." Federal Trade Commission Privacy Policy attached as Exh. 2 to Attachment A [Kapin Decl.]. Therefore, the General Counsel's Office has advised Complaint Counsel that the agency consistent with its own Privacy Policy can not release the requested information. Agreeing to provide electronic files to Respondents for the stated purpose of determining "who" accessed such information, contacting them, and possibly suing them, would violate the Commission's stated policy of not tracking and recording information and could implicate other laws and regulations.

Respondents' motion also presumes that the information posted was truly "highly confidential" as that term is used in the Protective Order and under the Rules of Practice governing *in camera* treatment. In fact, there has not been any showing or determination to this effect. The designation of "Subject to Protective Order" and the Protective Order itself merely "governs the disclosure of information during the course of **discovery**." These designations

reflect Respondents' view of their information but the designation does not reflect a formal determination on the confidentiality of the information at issue. It "does **not** constitute an *in camera* order as provided in Section 3.45 of the Commission's Rules of Practice, 16 C.F.R. § 3.45." Protective Order at ¶11 [emphasis added.]. Discovery has closed in this matter. The posting of the information at issue was not "during the course of discovery," it was in connection with Complaint Counsel's Motion for Partial Summary Decision.

Information or documents included in or attached to motions for summary decision are "offered in evidence." As explained by the Commission, "[t]he use of confidential information or documents in filings related to a ruling on the merits of the case is the same as offering them in evidence, because any documents or information so used may be relied on in deciding the case." *Trans Union Corp.*, No. 9255, 1993 F.T.C. LEXIS 310 at *4 (Nov. 3, 1993). As a result, the Commission concluded that respondent in *Trans Union* "should have sought *in camera* treatment with appropriate justification when it filed, designated as confidential, its memorandum opposing summary decision and related materials." *Id.* at *5; *cf. Dura Lube Corp.*, No. 9292, 1999 FTC LEXIS 255 (denying *in camera* treatment for materials submitted in connection with motion for summary decision because Respondents failed to meet the showing required to attain *in camera* treatment).

Respondents have not taken the steps that are necessary to attain the status *in camera* treatment for their confidential information. Despite service on January 31, 2005, of Complaint Counsel's exhibits designated as Confidential by Respondents, and their own filings including confidential information, to date, Respondents have not moved for *in camera* treatment of the information they designated as Confidential. The Protective Order states that any "Producing

Party may move at any time for *in camera* treatment of any Confidential Discovery Material. . . . An application for *in camera* treatment must meet the standards set forth in 16 C.F.R. § 3.45. . . and must be supported by a declaration or affidavit by a person qualified to explain the nature of the documents.” Protective Order, ¶ 12. Although Respondents submitted certain one-page “Notices” requesting *in camera* treatment for certain exhibits, these “Notices” were not motions that met the standards set forth in either paragraph 12 of the Protective Order or Rule 3.45(b) of the Rules of Practice. Further, Respondents have not filed motions seeking *in camera* treatment for the exhibits relied upon by Complaint Counsel in its Motion for Partial Summary Decision. As a result, there has never been a determination, informed by motions subjected to the adversary process, that any of the documents designated by Respondents as Confidential or Restricted Confidential are actually entitled to that status.

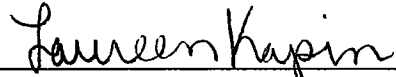
Accordingly, Complaint Counsel requests the Court issue an Order directing Respondents to demonstrate how all information designated by Respondents as “Confidential” or “Restricted Confidential” and submitted in connection with Respondents’ and Complaint Counsel’s motions for summary decision, meets the *in camera* standards and authorities referenced in the Protective Order at paragraph 12, the Court’s Scheduling Order at paragraph 16, and Rule 3.45(b).

Although Respondents have argued in past motions that Complaint Counsel has somehow waived any objections it had to Respondents’ nearly wholesale designation of its documents as “Confidential” or “Restricted Confidential,” the Protective Order states that parties “shall not be obligated to challenge the propriety of any designation or treatment of such information as confidential and the failure to do so promptly shall not preclude any subsequent objection to such designation or treatment.” Protective Order at ¶ 8. This directive is consistent with the notion

that Respondents' designation is merely a preliminary determination until the time a party seeks formal *in camera* treatment. In fact, Complaint Counsel has indicated its frustration with the overbroad designation of Confidential and Restricted Confidential to Respondents but chose to focus on the merits of this matter rather than pursue ancillary issues that would be more properly addressed and resolved if and when Respondents' sought *in camera* treatment for what hopefully will be a far smaller subset of information.

Notwithstanding the concerns and observations set forth above, Complaint Counsel deeply regrets the temporary posting of certain information designated as "Subject to the Protective Order."

Respectfully submitted,



Laureen Kapin (202) 326-3237
Joshua S. Millard (202) 326-2454
Robin M. Richardson (202) 326-2798
Edwin Rodriquez (202) 326- 3147
Laura Schneider (202) 326-2604

Division of Enforcement
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dated: April 4, 2005

ATTACHMENT A

DECLARATION OF LAUREEN KAPIN

I, LAUREEN KAPIN, hereby declare:

1. I am a Senior Attorney in the Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission. My business address is Federal Trade Commission, 600 Pennsylvania Avenue, N.W., NJ 2215, Washington DC 20580. I am lead litigation counsel in the Matter of Basic Research, No. 9318.
2. On January 31, 2005, Complaint Counsel filed and served its Motion for Partial Summary Decision with six volumes of exhibits. The cover page to the Motion and the cover pages to each volume of exhibits were marked in bold letters underneath the docket number as "**SUBJECT TO PROTECTIVE ORDER**" pursuant to Rule 3.45 (e). This filing constituted the "non-public" version of the Motion.
3. The referenced Protective Order was entered by the Court on August 11, 2004. The Court's Protective Order Governing Discovery Material provided that a Producing Party could designate certain specified material as "Confidential Discovery Material" and designate "a limited number of documents that contain highly sensitive commercial information" as "Restricted Confidential, Attorney Eyes Only." Aug. 11, 2004 Protective Order at Definition 20 and ¶2(b).
4. During the discovery process, Respondents had designated the great majority of documents produced by them as either "Confidential" or "Restricted Confidential Attorneys Eyes Only." After reviewing the designations, we concluded they were overbroad and expressed our concerns to opposing counsel. However, we did not formally challenge the designations because we did not wish to pursue adversarial motions on preliminary matters ancillary to the merits.
5. Respondents designations of information as Confidential and Restricted Confidential led Complaint Counsel to prepare two separate versions of its Motion for Partial Summary Decision, a public version and a non-public version. Complaint Counsel never requested or directed that the Secretary's Office post any portion of the "non-public" version of the Motion or its accompanying Statement or Exhibits on the on-line docket sheet.
6. On February 7, 2005, Complaint Counsel served and filed a public version of the Motion and Exhibits. The public version redacted information that had been designated by Respondents as confidential. The cover page to this Motion and exhibits were marked in bold letters underneath the docket number as "**PUBLIC VERSION.**"
7. On the afternoon of Thursday, February 18th, 2005, my supervisor on the Basic Research matter, Reilly Dolan alerted me that he had received a phone call from the Secretary's Office because there was a concern that information marked as "Subject to Protective Order" might have been posted on the Basic Research docket sheet available on the agency's web page. This information appeared to relate to Complaint Counsel's Motion

for Partial Summary Decision.

8. Together, Mr. Dolan and I went to the office of Joshua Millard, intending to discuss this matter with him because he was responsible for serving and filing the non-public version of Complaint Counsel's Motion for Partial Summary Decision.
9. Upon entering Mr. Millard's office, I learned that Mr. Millard, himself, had noticed that the on-line docket posted certain exhibits to Complaint Counsel's Motion for Partial Summary Decision that were marked as **"SUBJECT TO PROTECTIVE ORDER."** Mr. Millard told me that he had requested that Mr. Shapiro, an employee in the Secretary's Office, remove those items.
10. Later that evening after I had left the office, Respondents' Counsel Mr. Feldman contacted me via my cell phone to ask that we preserve certain electronic log files so that records regarding what entities or individuals might have accessed Respondents' confidential information was retained rather than overwritten with subsequent information. I phoned the FTC's help-line and spoke with our technical staff and requested that supervisors be contacted so that the electronic information described by Mr. Feldman could be retained to the extent it existed. I later telephoned the help-line again to follow up on my request and find out what steps had been taken to preserve the pertinent information. I was informed that emergency calls had been placed in response to my request and that the appropriate personnel would be acting on my request and following up with either myself or other members of the litigation team on Friday.
11. On Friday morning, I received a copy of Respondents letter requesting certain electronic files. This letter was faxed at 8:29 pm the evening before, arriving after I had left the office for the evening. This letter is attached as Exhibit 1.
12. That same morning, I also spoke with staff from the Office of Information and Technology Management ("ITM") and the Office of the General Counsel. ITM staff informed me that they were engaged in gathering the information requested by Respondents by that it would take time to gather this information. The estimated time for gathering this information was the end of the day on Tuesday, February 22, 2005.
13. I was not aware of whether I had authority to release the type of information requested by Respondents, therefore I consulted with an attorney from the General Counsel's Office regarding the Commission's Privacy Policy. I was concerned that disclosing the information demanded by Respondents might violate the FTC's privacy policy. A copy of the FTC's Privacy Policy regarding how the FTC handles information it learns when consumers visit the web site is attached as Exhibit 2.
14. On Friday, I updated Respondents' Counsel, Mr. Feldman, and informed him that we were taking steps to preserve the requested information and also that disclosures of specific information would raise privacy issues that needed to be resolved through our General Counsel's Office.

15. That Friday, in addition to making our required filings concerning our witness and exhibit list, Complaint Counsel also filed its partial response to Respondents' Emergency motion. That evening, I also transmitted via electronic mail, a letter in response to Respondents' February 17th letter. This letter dated February 18, 2005, is attached as Exhibit 3.
16. On Tuesday, February 22, 2005, I telephoned Respondents' counsel, Mr. Feldman, at least twice to update him on the status of his requests. After further discussions with the General Counsel's Office, I indicated to Mr. Feldman that we could ultimately convey certain information to him regarding the number of entities or individuals accessing certain information but that conveying more detailed data would likely violate our Privacy Policy. I requested from him information identifying the IP addresses associated with Respondents so we could ascertain how many of the entities or individuals "clicking" on specified URLs associated with the information in question were not affiliated with either Respondents or the FTC. Mr. Feldman would not provide this information.
17. I was informed that day that the electronic files indicating what individuals or entities may have clicked on the URLs associated with the information in question had been gathered and given to the General Counsel's Office. I was also informed that an "electronic mirror" of the web site as it existed on February 17, 2005 had also been made and could be provided to Respondents. I requested sufficient copies for Respondents Counsel and the Secretary and the Court. I am transmitting copies of this electronic mirror to Respondents and the Court along with this submission.
18. To date Respondents have not moved, as required by 16 C.F.R. § 3.45, and noted in the Protective Order, for *in camera* treatment of any of the materials designated by them as Confidential that were attached as exhibits to either their Motions or Complaint Counsel's Motions. Although Respondents' have submitted short "Notices" of *in camera* treatment for certain of their own exhibits, these submissions do not comport with the requirements of Rule 3.45(b).
19. The lack of required motions for *in camera* treatment and concomitant lack of opportunity to oppose such treatment has meant their has been no determination of whether Respondents' information meets the standards for information to be withheld from the Public record.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed on February 25, 2005 in the City of Washington, District of Columbia.

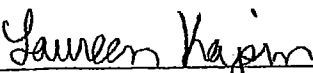

Laureen Kapin

EXHIBIT 1

FELDMAN GALE

A T T O R N E Y S A T L A W

MIAMI CENTER, 19TH FLOOR
201 SOUTH BISCAYNE BOULEVARD
MIAMI, FLORIDA 33134-4112
TEL: 105.358.5001
FAX: 105.358.1109

PROMENADE WEST, SUITE 115
880 WEST FIRST STREET
LOS ANGELES, CALIFORNIA 90012
TEL: 213.625.5992
FAX: 213.625.5993

www.feldman Gale.com

REPLY TO: MIAMI OFFICE

E-MAIL: JFeldman@FeldmanGale.com

February 17, 2005

Copy via E-mail: lkapin@ftc.gov;
jmillard@ftc.gov richardson@ftc.gov
lschneider@ftc.gov erodriguez@ftc.gov

Laureen Kapin, Esq.
Division of Enforcement
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

*Re: Basic Research et al., adv. FTC
Docket No. 9318*

Dear Ms. Kapin:

I am memorializing the telephone conversation we completed late this afternoon regarding the Commission's most recent, and most serious, violation of the Court's August 11, 2004 Protective Order Governing Discovery. This afternoon, while reviewing the FTC's on-line docket of the Basic Research case, my staff discovered that the Commission posted on the World Wide Web a number of my clients' attorney's-eyes only and confidential materials, including highly sensitive financial information. The Commission has already edited the web-index to these documents, an act that we deem an attempted spoliation; however, we kept a copy of the unedited index and it is quite clear from this document that a wholesale violation of the Protective Order has occurred. A copy of that pre-edit index is attached.

Laureen Kapin, Esq.
Division of Enforcement
Bureau of Consumer Protection
Federal Trade Commission
February 17, 2005
Page 2

I informed you that we do not want to act precipitously and deem it appropriate that we give the Commission a full opportunity to account for today's events. Accordingly, we request by close of business tomorrow the following information:

1. A full inventory of the confidential information that the Commission posted on the internet;
2. A representation as to how long said confidential information was on the Internet;
3. A full explanation as to how this confidential information came to be posted on the Commission's web site;
4. The identity of the individuals at the Commission who are responsible for this breach of the Protective Order and
5. A statement as to whether the Commission has previously posted on its web site other Respondent's confidential information that was under protective order and if so, how many times.

Additionally, in an effort to determine the identity of third parties who may have accessed or downloaded my clients' confidential information from the Commission's web site, we request that the Commission preserve and thereafter make available to us the following information:

1) All web server log files, including without limitation the transfer log, access log, error log and referrer log. These files will provide the IP address and/or DNS name of the computer requesting the information, the date and time of the request, the command requesting a web page (shown as "GET /stats/currentstats.html"), the protocol used (HTTP/1.1), the result code and the size of the file sent (eg. 17811 bytes), and

2) The system security log or wtmp file (which show who logged into the system and when—these files will allow us to identify users to find out exactly who pulled our clients' information off the FTC's system).

The requested information is very important and must be preserved immediately. It is common for these files to be rotated and dumped on a weekly basis, and for a high-volume web server like the FTC's, it might even be daily. That means if you do not take immediate action, your office will risk disappearance of the requested evidence and my clients will never be able to track the identity of third parties who may now wrongfully possess my clients' trade secret information. Therefore, to avoid greater harm to my clients, the Commission must immediately comply with these requests.

Laureen Kapin, Esq.
Division of Enforcement
Bureau of Consumer Protection
Federal Trade Commission
February 17, 2005
Page 3

I spoke with you this evening about my request for the referenced computer files and emphasized the need for immediate action. You told me that you would call you tech people this evening to request that they immediately preserve this information.

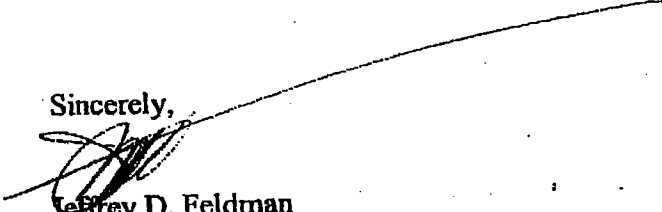
We also request that the Commission preserve a mirror copy of the on-line docket and document links in the Basic Research case, which existed before this afternoon's edits, so we may accurately demonstrate to Judge McGuire what was available to the general public on the Internet.

It goes without saying that the Commission has gravely damaged my clients. There is absolutely no justification for what has occurred here. We are simply shocked by the Commission's repeated and apparent indifference to the Court's Protective Order and its flippant handling of my clients' confidential information.

Needless to say, my clients reserve all claims and remedies they may have, both civil and/or administrative, against the Commission and its staff for all damages incurred.

PLEASE GOVERN YOURSELVES ACCORDINGLY.

Sincerely,



Jeffrey D. Feldman
JDF/mr

In the Matter of Basic Research

**FEDERAL TRADE COMMISSION**
FOR THE CONSUMERSearch: [REDACTED]HOME | CONSUMERS | BUSINESSES | NEWSROOM | FORMAL | ANTITRUST | CONGRESSIONAL | ECONOMIC |
Privacy Policy | About FTC | Commissioners | File a Complaint | HSR | FOIA | IG Office | En Español**In the Matter of Basic Research**

File No. 002-3300, Docket No. 9318

February 16, 2005

- Order on Joint Motion for Enlargement of Time to Serve Exhibit Lists, Witness Lists, Deposition Designations, and to File a to Strike and Motions in Limine [PDF 70K]

February 9, 2005

- Order on Joint Motion for Enlargement of Time to Serve and File Oppositions to Pending Motions for Summary Decision [PDF 65K]

February 3, 2005

- Notice of Filing Responses to Discovery and Transcripts [PDF 217K]
 1. Complaint Counsel's Response to Respondents' First Set of Interrogatories [PDF 507K]
 2. Complaint Counsel's First Supplemental Response to Respondents' First Set of Interrogatories [PDF 151K]
 3. Complaint Counsel's Response to Basic Research, LLC's First Request for Admissions [PDF 2.18M]
 4. Complaint Counsel's Response to Daniel B. Mowrey's First Request for Admissions [PDF 717K]
 5. Complaint Counsel's Response to Daniel B. Mowrey's First Set of Interrogatories [PDF 1016K]
 6. Complaint Counsel's Response to Mitchell K. Friedlander's First Request for Admissions [PDF 403K]
 7. Complaint Counsel's Response to Dennis Gay's First Request for Admissions [PDF 1.52M]
 8. Deposition Transcript of Dr. Steven R. Heymsfield [PDF 7.17M]
 9. Deposition Transcript of Dr. Robert Eckel [PDF 2.81M]
 10. Deposition of Michael B. Mazis Ph.D [PDF 836K]
- Respondents' Motion to File Exhibits 28 and 29 to Motion for Partial Summary Decision and Separate Statement of Undisputed Fact as In Camera Exhibits [PDF 119K].

February 2, 2005

- Order on Complaint Counsel's Motion for Extension of Deadlines [PDF 81K]

January 31, 2005

- Complaint Counsel's Statement of Material Facts as to Which There Is No Genuine Dispute [PDF 180K]
- Complaint Counsel's Motion for Partial Summary Decision [PDF 303K]
 - o Exhibits to Complaint Counsel's Motion for Partial Summary Decision:
 - o Volume One [PDF 33K]
 - Complaint (June 15, 2004) [PDF 1.15M]
 - Answer and Grounds of Defense of Respondent Basic Research, LLC [PDF 578K]
 - Answer and Grounds of Defense of Respondent A.G. Waterhouse, LLC [PDF 452K]
 - Answer and Grounds of Defense of Respondent Klein-Becker USA LLC [PDF 456K]
 - Answer and Grounds of Defense of Respondent Nutrasport LLC [PDF 418K]
 - Answer and Grounds of Defense of Respondent Sovage Dermalogic Laboratories, LLC [PDF 437K]
 - Answer and Grounds of Defense of Respondent BAN, LLC [PDF 559K]
 - Answer of Respondent Dennis Gay [PDF 301K]

In the Matter of Basic Research

Page 2 of 12

- Answer of Respondent Daniel B. Mowrey [PDF 483K]
- Answer of Respondent Mitchell K. Friedlander [PDF 488K]
- o Volume Two [PDF 31K]
 - Response to Complaint Counsel's First Set of Interrogatories [PDF 1.23M]
 - Response of Respondent Dennis Gay to Complaint Counsel's First Set of Interrogatories [PDF 427K]
 - Respondent Daniel B. Mowrey's Objections and Responses to Complaint Counsel's First Set of Interrogatories [PDF 438K]
 - Pro Se Respondent Mitchell K. Friedlander's Objections and Responses to Complaint Counsel's First Set of Interrogatories [PDF 438K]
 - Supplemental Answers and Answers to Complaint Counsel's First Set of Interrogatories [PDF 279K]
 - Complaint Counsel's Requests for Admissions [PDF 713K]
 - Response to Complaint Counsel's Request for Admissions [PDF 1.8M]
- o Volume Three [PDF 23K]
 - Expert Report of Geoffrey Nunberg [PDF 2.51M]
 - Expert Report of Michael B. Mazis, Ph.D. [PDF 3.91M]
- o Volume Four [PDF 24K]
 - Atkinson Deposition [PDF 267K]
 - Chevreau Deposition [PDF 1.24M]
 - Davis Deposition [PDF 3.51M]
 - Fobbs Deposition [PDF 1.31M]
 - Friedlander Deposition [PDF 3.43M]
 - D. Gay Deposition [PDF 3.40M]
- o Volume Five [PDF 24K]
 - G. Gay Deposition [PDF 2.20M]
 - Meade Deposition [PDF 1.18M]
 - Mowrey Deposition [PDF 3.59M]
 - Sandberg Deposition [PDF 2.23M]
 - Solan Deposition [PDF 1.43M]
 - Weight Deposition [PDF 1.72M]
- o Volume Six [PDF 37K]
 - Promotional Materials for Dermalin [PDF 4.28M]
 - Promotional Materials for Cutting Gel [PDF 2.11M]
 - Promotional Materials for Tummy Flattening Gel [PDF 964K]
 - Promotional Materials for Anorex [PDF 4.32M]
 - Promotional Materials for Leptoprin [PDF 2.19K]
 - Promotional Materials for Pedialean [PDF 3.63M]
 - Declaration of Michael B. Mazis, Ph.D [PDF 23K]
 - Documents Cited in Mazis Expert Report [PDF 10.73M]
 - Declaration of Geoffrey Nunberg, Ph.D [PDF 21K]
 - Documents Cited in Nunberg Expert Report [PDF 12.77M]
 - Combined Balance Sheet and Notes [REDACTED] [PDF 10.75M] **Redacted**
 - Certified Copy of the Articles of Organization and Articles of Amendment for Covarix LLC (Registered Dec. 27, 2002) [PDF 267K]
 - Claim Substantiation Bullets [PDF 273]
 - Dissemination Schedules [PDF 1.29M]
- o Respondents' Separate Statement of Undisputed Facts in Support of Respondents' Motion for Partial Summary Decision A to Petitioner on Any Count for Unfair Acts or Practices [PDF 313K]
- o Respondents' Notice of Filing Stipulation and Agreement [PDF 233K]
- o Respondents' Motion for Partial Summary Decision Adverse to Petitioner on Any Count for Unfair Acts or Practices (With Incorporated Memorandum of Law) [PDF 505K]
- o Respondents' Motion to Strike Expert Report of Geoffrey Nunberg [PDF 521K]

In the Matter of Basic Research

- o Exhibit 1 - Nunberg Expert Report [PDF 2.4M]
- o Exhibit 2 - FTC Weight Loss Advertising Workshop [PDF 3.3M]
- o Exhibit 3 - Deposition of Dr. Steven R. Heymsfield [PDF 365K]
- Respondents' Motion to Strike Expert Report of Michael Mazis [PDF 472K]
 - o Exhibit 1 - Mazis Expert Report [PDF 3M]
 - o Exhibit 2 - Deposition of Michael Mazis [PDF 636K]
- Motion in Limine to Preclude Reliance on or Use of "Facial Analysis" to Prove Claims Allegedly Implied By the Advertisement Issue in this Case [PDF 1.11M]
 - o Exhibit 1 - Appendix One Building a Record on Advertising Meaning and Substantiation [PDF 340K]
 - o Exhibit 2 - Deposition of Michael Mazis [PDF 129K]
 - o Exhibit 3 - Mazis Expert Report [PDF 3M]
 - o Exhibit 4 - FTC Weight Loss Advertising Workshop [PDF 3.3M]
 - o Exhibit 5 - Nunberg Expert Report [PDF 2.4M]
 - o Exhibit 6 - Deposition of Dr. Steven R. Heymsfield [PDF 365K]
 - o Exhibit 7 - Complaint Counsel's First Request for Production of Documentary Materials and Tangible Things [PDF 277K]
 - o Exhibit 8 - Enforcement Policy Statement on Food Advertising [PDF 1.1M]
 - o Exhibit 9 - Explanatory Note for Electronic Version of this Report [PDF 3.23M]
 - o Exhibit 10 - Dietary Supplement Guide [PDF 2.2M]

January 28, 2005

- Respondents' Motion for Partial Summary Decision Adverse to Petitioner with Regard to Every Allegation That is Premised or Derives From, the Assertion That the Advertisements in Question Convey Claims of "Rapid" or "Substantial" Weight Loss [2.8M]
- Respondents' Compendium of Exhibits in Support of Motion for Partial Summary Decision [PDF 116K]
 - o Exhibit 1 - FTC Weight Loss Advertising Workshop [PDF 3.3M]
 - o Exhibit 2 - Nunberg Expert Report [PDF 2.4M]
 - o Exhibit 3 - Mazis Expert Report [PDF 3M]
 - o Exhibit 4 - Deposition of Michael Mazis [PDF 129K]
 - o Exhibit 5 - Appendix One Building a Record on Advertising Meaning and Substantiation [PDF 340K]
 - o Exhibit 6 - Deposition of Dr. Steven R. Heymsfield [PDF 365K]
 - o Exhibit 7 - Complaint Counsel's First Request for Production of Documentary Materials and Tangible Things [PDF 277K]
 - o Exhibit 8 - Enforcement Policy Statement on Food Advertising [PDF 1.1M]
 - o Exhibit 9 - Explanatory Note for Electronic Version of this Report [PDF 3.23M]
 - o Exhibit 10 - Dietary Supplement Guide [PDF 2.2M]
- Concise Statement of Material Facts to Which Respondents Contend There Is No Genuine Issue [PDF 240K]
- Respondents' Separate Statement of Undisputed Facts in Support of Motion for Partial Summary Decision [PDF 556K]
- Respondents' Motion for Partial Summary Decision Adverse to Petitioner on Validity of Petitioner's "Competent & Reliable Scientific Evidence" Standard, or in the Alternative, For Certification to the Commission (with Incorporated Memorandum) [PDF 4.7M]

January 27, 2005

- Respondents' Emergency Motion to Strike Dr. Robert Eckel and Dr. Steven Heymsfield as Petitioner's Expert Witnesses at Sanctions and Other Relief - Expedited Briefing and Decision Requested [PDF 15.9M]

January 19, 2005

- Order on Complaint Counsel's Motion to Compel a Document from Respondents' Testifying Expert Solar [PDF 320K]
- Order Granting Joint Motion for Extension of Time to File Motions for Summary Decision and Responses to Motions for Summary Decision [PDF 60K]

January 18, 2005

- **Complaint Counsel and Respondents' Joint Motion for Extension of Time to File Motions for Summary Decision and Respc Motions for Summary Decision [PDF 240K]**

January 8, 2005

- **Respondent Dennis Gay's Memorandum in Opposition to Complaint Counsel's Motion to Compel [PDF 264K]**

December 29, 2004

- **Order on Complaint Counsel's Motion to Compel Production of Documents and Answers to Interrogatories [PDF 268KB]**
- **Order Granting Complaint Counsel's Motion to Compel Complete Privilege Logs and Granting Complaint Counsel's Unopp Motion for Extension of Time to File a Complete Privilege Log [PDF 188KB]**
- **Respondents' Second Unopposed Motion to Extend Time to File Response to Complaint Counsel's Motion to Compel [PDF 101K]**

December 27, 2004

- **Respondents' Opposition to Complaint Counsel's Motion to Compel Production of Documents and Answers to Interrogatori (Corrected) [PDF 1.95M]**
- **Notice of Filing Corrected Opposition to Complaint Counsel's Motion to Compel Production of Documentary Materials and Answers to Interrogatories [PDF 95K]**

December 23, 2004

- **Respondents' Opposition to Complaint Counsel's Motion to Compel Production of Documents and Answers to Interrogatori [PDF 2.16M]**

December 22, 2004

- **Unopposed Motion to Extend Time to File Response to Complaint Counsel's Motion to Compel Production of Respondents' Testifying Expert Lawrence Solar's Documents [PDF 165K]**

December 20, 2004

- **Respondents' Reply to Complaint Counsel's Motion to Compel Privilege Log [PDF 174K]**

December 16, 2004

- **Respondents' Unopposed Amended Motion to Extend Time to File Response To Complaint Counsel's Motion to Compel [F 110K]**

December 15, 2004

- **Respondents' Unopposed Motion to Extend Time to File Response to Complaint Counsel's Motion to Compel [PDF 111K]**

December 14, 2004

- **Complaint Counsel's Unopposed Motion for Extension of Time To File a More Complete Privilege Log [PDF 138K]**

December 13, 2004

in the Matter of Basic Research

- Complaint Counsel's Motion to Compel Production of Documentary Materials And Answers to Interrogatories [PDF 264K]
- Complaint Counsel's Motion to Compel Production of Respondents' Testifying Expert Lawrence Solan's Document [PDF 1.1M]

December 9, 2004

- Order on Complaint Counsel's Second Motion for Protective Order [PDF 492K]

December 7, 2004

- Complaint Counsel's Motion to Compel Respondents' Production of Privilege Logs That Comply with Rule of Practice 3.38. 400K
 - o Exhibits [PDF 5.7M]

December 6, 2004

- Complaint Counsel's Motion to Compel Production of Documentary Materials and Answers to Interrogatories [PDF 3.69M]
 - o Exhibits D - K [PDF 5.08M]
 - o Exhibits L - P [PDF 2.41M]
 - o Exhibits Q - W [PDF 1.48M]

December 2, 2004

- Respondents' Opposition to Complaint Counsel's Motion For Protective Order [PDF 542K]

December 1, 2004

- ALJ's Order Granting Complaint Counsel's Unopposed Motion for Extension of Time to File Responses to First Set of Interrogatories Propounded by Respondents Gay and Friedlander [PDF 47K]
- ALJ's Order Granting Basic Research's Fourth Motion to Compel [PDF 114K]
- Respondents' Second Unopposed Motion for Extension of Time To Provide Expert Report of Daniel B. Mowrey, Ph.D., and Complaint Counsel to Identify Rebuttal Expert and Provide Rebuttal Expert Report Rebutting Matters Set Forth in the Expert Report of Daniel B. Mowrey, Ph.D [PDF 151K]
- Complaint Counsel's Response to Respondent Pro Se Respondent Friedlander's First Request for Production of Documents [PDF 439K]
- Complaint Counsel's Response to Respondent Dennis Gay's First Set of Requests for Production [PDF 358K]
- Complaint Counsel's Response to Respondent Dennis Gay's Requests for Admissions [PDF 2.9M]

November 30, 2004

- ALJ's Order Denying Basic Research's Third Motion to Compel [PDF 181K]
- ALJ's Order on Respondents' Unopposed Motion for Extension of Time to Provide Expert Report of Daniel B. Mowrey, Ph.D for Complaint Counsel to Identify Rebuttal Expert and Provide Rebuttal Expert Report [PDF 51K]
- Expert Report of Lawrence M. Solan [PDF 4.5M]

November 29, 2004

- Complaint Counsel's Unopposed Motion for Extension Of Time to File Responses to Respondent Gay's First Set of Interrogatories and Respondent Friedlander's First Set of Interrogatories [PDF 157K]
- Revised Certificate of Service to Complaint Counsel's Opposition to Basic Research's Motion to Compel Proper Privilege Logs [PDF 46K]

November 26, 2004

In the Matter of Basic Research

- Complaint Counsel's Opposition to Basic Research's Motion to Compel Proper Privilege Log [PDF 1.87M]

November 24, 2004

- Complaint Counsel's Opposition to Basic Research's Motion to Compel [PDF 1.88M]
- Complaint Counsel's Supplemental Response to Basic Research's First Request for Admissions [PDF 122K]

November 23, 2004

- Respondents' Unopposed Motion for Extension of Time to Provide Expert Report of Daniel B. Mowrey, Ph.D., and for Complaint Counsel to Identify Rebuttal Expert and to Provide Rebuttal Expert Report Rebutting Matters Set Forth in the Expert Report of Daniel B. Mowrey, Ph.D. [PDF 171K]

November 22, 2004

- ALJ's Order on Complaint Counsel's Motions for Extension of Time To File Responses to Respondent Gay's Discovery Request, Respondent Basic Research's Third Motion to Compel, and Respondent Friedlander's Discovery Requests [PDF 84K]
- ALJ's Order Denying Complaint Counsel's Motion for Protective Order To Limit Respondents' Discovery Or, in the Alternative, Clarify the Scheduling Order [PDF 182K]

November 19, 2004

- Complaint Counsel's Unopposed Motion for Extension of Time to Respond to Respondent Friedlander's Discovery Request [PDF 149K]

November 18, 2004

- Complaint Counsel's Motion for Protective Order (and Exhibits) [PDF 9.3M]

November 16, 2004

- Pro Se Respondent Friedlander's Notice of Adoption of Respondents Basic Research, LLC, A.G. Waterhouse, LLC, Kleinb USA, LLC, Nutrasport, LLC, Savage Dermalogic Laboratories, LLC, Dennis Gay and Daniel Mowrey's Respective Responses to Complaint Counsel's Motion for Protective Order To Limit Respondents' Discovery Or, in the Alternative, to Clarify Scheduling Order [PDF 358K]
- Respondents' Opposition to Complaint Counsel's Motion For Extension of Time to File Responses to Respondent Dennis Gay's Discovery and To Respond to Basic Research's Motion To Compel [PDF 272K]
- Basic Research, L.L.C., A.G. Waterhouse, L.L.C., Klein-Becker USA L.L.C., Nutrasport, L.L.C. and Savage Dermalogic Laboratories, L.L.C.'s Notice of Adoption of Respondents Dennis Gay and Daniel Mowrey's Respective Responses to Complaint Counsel's Motion for Protective Order to Limit Respondents' Discovery or, in the Alternative, To Clarify Scheduling Order [PDF 448K]

November 15, 2004

- Respondent Daniel B. Mowrey's Response to Complaint Counsel's Motion for Protective Order to Limit Respondents' Discovery Or, in the Alternative, to Clarify Scheduling Order [PDF 953K]
- Respondent Dennis Gay's Reply Memorandum In Opposition to Complaint Counsel's Motion for Protective Order to Limit Respondents' Discovery Or, in the Alternative, to Clarify Scheduling Order [PDF 213K]

November 12, 2004

- Respondent Basic Research LLC's Motion to Compel Proper Privilege Log [PDF 209K]
- Complaint Counsel's [Corrected] Motion for Extension of Time To File Responses to Respondent Dennis Gay's Discovery Request and Respondent Basic Research's Motion to Compel [PDF 172K]

In the Matter of Basic Research

November 10, 2004

- Complaint Counsel's Motion for Extension of Time To File Responses to Respondent Dennis Gay's Discovery and To Respondent Basic Research's Motion to Compel [PDF 149K]

November 9, 2004

- Order Requiring Expedited Response To Complaint Counsel's Motion For Protective Order To Limit Respondents' Discover [PDF 118K]

November 8, 2004

- Order On Basic Research's Second Motion To Compel [PDF 118K]
- Complaint Counsel's Requests for Admissions [PDF 377K]
- Complaint Counsel's Motion for Protective Order to Limit Respondents' Discovery Or, in the Alternative, to Clarify Scheduling Order [PDF 5.4M]

November 4, 2004

- Respondent Dennis Gay's First Set of Interrogatories [PDF 392K]
- Order on Complaint Counsel's Motion to Strike Respondents' Additional Defenses [PDF 654K]
- Order Denying Basic Research's Motion to Compel [PDF 406K]
- Basic Research, LLC's Motion to Compel [PDF 2.7M]
- Response to Complaint Counsel's Second Set of Interrogatories [PDF 3.4M]

November 3, 2004

- Complaint Counsel's Memorandum in Opposition to Respondent Basic Research's Second Motion to Compel [PDF 4.3M]

October 29, 2004

- Complaint Counsel's Supplemental Brief in Support of Pending Motion to Strike Respondents' Additional Defenses [PDF 2.7M]
- Complaint Counsel's Response to Daniel B. Mowrey's First Request for Admissions [PDF 903K]

October 28, 2004

- Respondents' Supplemental Brief Opposing Complaint Counsel's Motion to Strike Respondents' Additional Defenses [PDF 2.7M]

October 26, 2004

- Order on Complaint Counsel's Motion to Stay Response to Parts of Respondents' Second Motion to Compel and for Extension of Time to Respond to Respondents' Second Motion to Compel [PDF 78KB]

October 25, 2004

- Basic Research, LLC's Opposition to Complaint Counsel's Motion to Stay Response to Parts of Respondent's Second Motion to Compel Related to Pending Motion to Strike Defenses, and Opposed Motion for Extension of Time to Respond to the Rest of Respondent's Second Motion to Compel [PDF 275K]

October 21, 2004

- Complaint Counsel's Opposed Motion to Stay Response to Parts of Respondent's Second Motion to Compel Related to Pending Motion to Stay Response to Parts of Respondent's Second Motion to Compel [PDF 275K]

In the Matter of Basic Research

Motion to Strike Defenses, and Opposed Motion for Extension of Time to Respond to the Rest of the Second Motion to Compel
[PDF 260K]

October 18, 2004.

- ALJ's Order on Respondents' Request for Oral Argument Or, in the Alternative, for Permission to File a Sur-reply and Order Supplemental Briefing [PDF 93K]
- ALJ's Order on Respondents' Motion for Enlargement of Time to Provide Transcribed Testimony [PDF 201K]
- Notice of Appearance and Declaration of Todd M. Malynn [PDF 114K]
- ALJ's Order Requiring Expedited Response [PDF 67K]

October 15, 2004

- Request for Enlargement of Time to Provide Transcribed Testimony [PDF 396K]
- Complaint Counsel's Unopposed Motion for Extension of Time to File Responses to Respondent Mowrey's Discovery [PDF 114K]

October 14, 2004

- Notice of Filing of Proposed Order [PDF 99K]

October 13, 2004

- Basic Research, LLC's Second Motion to Compel [PDF 1.5M]

October 12, 2004

- ALJ's Order Granting Joint Motion for Enlargement of Time [PDF 61K]

October 4, 2004

- Complaint Counsel's Opposition to Basic Research's Motion to Compel [PDF 2.4M]

October 1, 2004

- Complaint Counsel's Opposition to Respondents' Request For Permission to File a Sur-Reply [PDF 140K]

September 29, 2004

- Respondents' Request for Oral Argument or, in the Alternative, for Permission to File a Sur-Reply [PDF 187K]

September 28, 2004

- Complaint Counsel's Reply to Respondents' Opposition to Motion to Strike Respondents' "Additional Defenses" [PDF 1.9M]

September 23, 2004

- Complaint Counsel's Unopposed Motion for Extension of Time to File Opposition to Motion to Compel [PDF 118K]

September 21, 2004

- Order Granting Complaint Counsel's Motion to Submit Reply to Respondents' Opposition to Pending Motion To Strike Respondents' Additional Defenses [PDF 44K]

In the Matter of Basic Research

- Stipulated Request For Enlargement of Time [PDF 478K]

September 16, 2004

- Notice of Non-Objection to Complaint Counsel's Motion to Submit Reply to Respondents' Opposition to Pending Motion to Respondents' Additional Defenses [PDF 163K]
- Notice of Correction [PDF 405K]

September 15, 2004

- Order Requiring Expedited Response [PDF 42K]

September 13, 2004

- Complaint Counsel's Motion for Leave to Submit Reply to Respondents' Opposition to Pending Motion to Strike Respondent "Additional Defenses" [PDF 543K]

September 10, 2004

- Respondent Basic Research, LLC's Notice of Correction [PDF 93K]

September 9, 2004

- Basic Research LLC's First Request for Admissions [PDF 222K]
- Respondents' Opposition to Complaint Counsel's Motion to Strike Respondents' Additional Defenses [PDF 1.3M]
- Basic Research, LLC's Motion to Compel [PDF 1.4M]
- Respondents' Preliminary Witness List [PDF 224K]

September 8, 2004

- Order Granting Respondent's Second Motion for Extension of Time to File Response to Motion to Strike [PDF 44K]

September 1, 2004

- Agreed Motion to Extend Time to File Response to Complaint Counsel's Motion to Strike Respondents' Additional Defense [101K]

August 30, 2004

- Order Granting Respondents' Motion for Extension of Time to File Response to Motion to Strike [PDF 41K]
- Order Granting Respondent's Motion for Extension of Time to File Responses to Interrogatories [PDF 42K]

August 27, 2004

- Complaint Counsel's Response to Basic Research LLC's First Request for Admissions [PDF 330K]

August 25, 2004

- Order Granting Complaint Counsel's Motion of Extension of Time to File Responses to Interrogatories [PDF 40K]

August 23, 2004

In the Matter of Basic Research

- Complaint Counsel's Motion for Extension of Time To File Responses to Interrogatories [PDF 122K]

August 20, 2004

- Complaint Counsel's Motion to Strike Respondents' "Additional Defenses" [PDF 1M]
 - Attachments to Motion [PDF 1M]

August 18, 2004

- Order on Respondents' Motion to Quash In Part and to Limit Subpoenas to Non-Parties [PDF 147K]

August 17, 2004

- Order Denying Motions for Interlocutory Appeal and Motion to Certify [PDF 261K]

August 16, 2004

- Response of Respondent Dennis Gay to Complaint Counsel's First Set of Interrogatories [PDF 32K]

August 12, 2004

- Respondents' Request for Enlargement of Time [PDF 120K]

August 11, 2004

- Protective Order Governing Discovery Material [PDF 619K]
- Scheduling Order [PDF 293K]

August 10, 2004

- Respondents' Initial Disclosures [PDF 318K]

August 9, 2004

- Respondents' Initial Disclosures [PDF 136K]
- Respondent Mitchell K. Friedlander's Initial Disclosures [PDF 451K]
- Respondents' Notice of Appearance [PDF 226K]
- Respondents' Notice of Appearance [PDF 100K]
- Respondent Daniel B. Mowrey's Initial Disclosures [PDF 188K]

August 5, 2004

- Notice of Withdrawal of Appearance [PDF 75K]

August 3, 2004

- Complaint Counsel's Opposition to Respondents' Motions for Interlocutory Appeal and Pro Se Respondent Friedlander's IV for Certification [PDF 43K]
 - Exhibit 1 [PDF 295K]
 - Exhibit 2 [PDF 789K]

In the Matter of Basic Research

August 2, 2004

- Order on Prehearing Conference [PDF 38K]

July 30, 2004

- Answer of Respondent Dennis Gay [PDF 352K]
- Answer and Grounds of Defense of Respondent Basic Research, LLC [PDF 452K]
- Answer and Grounds of Defense of Respondent A.G. Waterhouse, LLC [PDF 356K]
- Answer and Grounds of Defense of Respondent Savage Dermalogic Laboratories, LLC [PDF 347K]
- Answer and Grounds of Defense of Respondent Nuirasport, LLC [PDF 324K]
- Answer and Grounds of Defense of Respondent Klein-Becker USA, LLC [PDF 358K]
- Answer and Grounds of Defense of Respondent BAN, LLC [PDF 442K]
- Answer of Respondent Mitchell K. Friedlander [PDF 381K]
- Answer of Respondent Daniel B. Mowrey [PDF 370K]

July 28, 2004

- Order Reassigning Matter to Administrative Law Judge Stephen J. McGuire [PDF 40K]
- Respondents' Notice of Appearance [PDF 94K]

July 27, 2004

- Certain Respondents' Motion for Interlocutory Appeal [PDF 258K]
- Motion re Certification Or, Alternatively, for an Interlocutory Appeal [PDF 367K]

July 22, 2004

- Order Granting Motion for Extension in the matter of Basic Research [PDF 49K]

July 20, 2004

- Order Denying Motions for a More Definite Statement and Motion to Dismiss the Complaint for Lack of Definiteness [PDF 138K]
- Respondents' Notice of Appearance [PDF 138K]

July 19, 2004

- Complaint Counsel's Opposition to Respondents' Motions to Submit Replies [PDF 210K]
- Respondents' Notice of Appearance [PDF 119K]
- Respondents' Motion to Quash in Part and to Limit Subpoenas on Non-Parties [PDF 565K]

July 16, 2004

- Request for Enlargement of Time [PDF 108K]
- Respondents' Notice of Appearance [PDF 113K]

July 15, 2004

- Respondents' Notice of Appearance [PDF 132K]

July 13, 2004

In the Matter of Basic Research

- Respondent Mitchell K. Friedlander's Reply to Complaint Counsel's Opposition to Respondents' Motions for a More Definite Statement and Motion for Leave to File Same [PDF 214K]
- Respondents' Reply to Complaint Counsel's Opposition to Respondents' Motion for a More-Definite Statement [PDF 58K]
- Respondents' Motion to Submit Reply to Complaint Counsel's Opposition to Respondents' Motion for a More Definite State [PDF 54K]

July 12, 2004

- Complaint Counsel's Notice of Appearance [PDF 58K]

July 8, 2004

- Complaint Counsel's Opposition to Respondents' Motions For a More Definite Statement [PDF 559K]
 - o Attachment 1 [PDF 1.3M]
 - o Attachment 2 [PDF 273K]
 - o Attachment 3 [PDF 4.6M]

July 6, 2004

- Respondent Mitchell K. Friedlander's Motion to Dismiss Complaint for Lack of Definiteness [PDF 303K]
- Complaint Counsel's Notice of Appearance [PDF 34K]

June 28, 2004

- Respondent Mitchell K. Friedlander Joinder and Motion for a More Definite Statement [PDF 230K]
- Respondent Mitchell K. Friedlander Notice of Appearance [PDF 42K]
- Respondent's Motion for a More Definite Statement [PDF 29K]
- Respondent's Counsel Notice of Appearance [PDF 306K]

June 25, 2004

- Complaint Counsel's Notice of Appearance [PDF 36K]

June 23, 2004

- Order Designating Administrative Law Judge [PDF 38KB]

June 16, 2004

- Text of the Administrative Complaint [PDF 59KB]
 - o Exhibits A-L [PDF 3MB]
- News Release

Last Updated: Thursday, February 17, 2005

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INTELLECTUAL PROPERTY LAW

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SENDER: Jeffrey Feldman

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DATE: **February 17, 2005**

FROM: **Jeffrey Feldman**

TOTAL NUMBER OF PAGES (INCLUDING COVER SHEET):

IF THERE ARE ANY PROBLEMS WITH THIS TRANSMISSION, PLEASE CALL US AT (305) 358-5001, AS SOON AS POSSIBLE.

COMMENTS: Re: Basic Research - FTC

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EXHIBIT 2



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Federal Trade Commission Privacy Policy

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If you choose to identify yourself when you call us, write to us, send us email, or use our secure online forms:

Information We Collect

- We collect any personally identifying information, such as your name, street address, email address, and phone number, and any other information you provide to us.
- In accordance with the Children's Online Privacy Protection Act (COPPA), when a visitor files a complaint online and indicates an age under 13, no personally identifying information is collected in conjunction with that submission.

How We Use and Disclose Information

If you choose to provide personally identifying information to us, we will use and disclose it as described in this Privacy Policy. If you do not provide your name or other identifying information, it may be impossible for us to refer, respond to, or investigate your complaint or request. We may share your information with contractors acting on our behalf, such as call center operators and redress administrators, who are subject to confidentiality agreements.

- If you contact us to order publications, we use the information you provide to fulfill your order or contact you about your order.
- If you contact us to complain about a company, individual, or a particular practice, or to report that you have been a victim of identity theft:
 - We make your complaint available to FTC employees involved in law enforcement.
 - We may share your complaint with a variety of government agencies worldwide that enforce consumer protection, competition, and other laws.
 - We may share your complaint with certain private entities, including companies you may have complained about, to help address your complaint. If your complaint concerns identity theft or the accuracy of your credit report, we may share it with credit bureaus to help address your complaint or identity theft-related concern.
 - When you submit a complaint, you may be contacted by the FTC, other law enforcement agencies, or any of the private entities to which your complaint has been referred.
- If you contact us by phone to be included in the National Do Not Call Registry, we will collect your phone number and store it in the registry so that telemarketers and sellers covered by the FTC's rules can remove your phone number from their call lists. If you contact us via the Internet, we also collect your email address to confirm your registration request. We will store your email address in a secure manner, separate from your telephone number. We will not share your email address with telemarketers. Telemarketers are required to search the registry every three months and delete from their call lists phone numbers that are in the registry. Phone numbers in the registry may also be shared with law enforcement to assure compliance with federal and state law.
- In other circumstances, including requests from Congress, Freedom of Information Act requests from private individuals or companies, during litigation, for routine agency uses subject to the Privacy Act, or under our access and public record rules, we may be required or authorized by law to disclose the information you provide.

If you want to get information about you or your company that may be in our records:

- Under the Freedom of Information Act (FOIA) and the Privacy Act of 1974, to the extent applicable, you have certain rights to get information about you or your company that may be in our records. For more information about the circumstances under which you can get and correct this information, click on FOIA and Privacy Act. To access information about you that the FTC may have on file, contact our FOIA office. You will get access to any information that the FOIA and Privacy Act require us to disclose to you.

Here's what you should know about the security of the information you provide to us:

- We use secure socket layer (SSL) encryption to protect the transmission of the information you submit to us when you use our secure online forms. The information you provide to us is stored securely.
- Email that you send us is not necessarily secure against interception. If your email communication includes sensitive information like your Social Security number, your bank account number, or your credit or charge card numbers, contact us through one of our secure online forms or by mail or telephone.

Here's how to contact us about:

- Ordering Publications
- Consumer Fraud, Misleading Advertising, Credit Cards, or other consumer protection matters
- Identity Theft
- Antitrust or Competition Matters
- If you have technical problems with the operation of our Web sites, please report them to our Webmaster.
- If you have questions or complaints regarding our privacy policy or use of your information, please contact us at privacysteeringcommittee@ftc.gov, or by mail at

Privacy Steering Committee
 Federal Trade Commission
 600 Pennsylvania Avenue, N.W.
 Washington, DC 20580
 Attn: Deputy Director, Office of the Executive Director

- Federal Trade Commission Privacy Impact Assessments
- Our Web sites link to documents located on sites maintained by other agencies and organizations. Once you access another site, you are subject to the privacy policy of that site.

Last Updated: Thursday, April 22, 2004

1. Cookie

A "cookie" is a small text file that a Web site can place on your computer's hard drive in order, for example, to collect information about your activities on the site or to make it possible for you to use an online "shopping cart" to keep track of items you wish to purchase. The cookie transmits this information back to the Web site's computer which, generally speaking, is the only computer that can read it. Many consumers do not know that "cookies" are being placed on their computers when they visit Web sites. If you want to know when this happens, or to prevent it from happening, you can set your browser to warn you when a Web site attempts to place a "cookie" on your computer. [\[Back to Top\]](#)

2. Our Secure Online Forms:

- [FTC-Consumer Complaint Form](#)
- [ID Theft Complaint Input Form](#)
- [econsumer.gov Complaint Form](#)
- [National Do Not Call Registry Complaint Form](#)
- [National Do Not Call Registration Form](#)

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EXHIBIT 3



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

Bureau of Consumer Protection
Division of Enforcement

Laureen Kapin
Senior Attorney

Direct Dial:
(202) 326-3237

February 18, 2005

Jeffrey D. Feldman
FeldmanGale, P.A.
Miami Center, 19th Floor
201 South Biscayne Blvd.
Miami, FL 33141-4322

VIA EMAIL

Re: *Basic Research LLC et al.*, Docket No. 9318

Dear Mr. Feldman:

This letter responds to your letter of yesterday evening, February 17th, concerning the posting of materials to the online docket for the *Basic Research* matter.

My response is necessarily curtailed by the fact that you have filed a related motion today, which we have to answer, and the tight time interval (less than 24 hours) in which you requested that I respond. More information may be available shortly, after the federal holiday.

First, I will respond briefly to some of the assertions in the first page of your letter. The FTC staff from the Secretary's Office called your office yesterday afternoon to ask that Respondents review the online docket. As set forth in our response to your motion of today, by that time, Complaint Counsel recognized that certain materials were posted to the online docket and had requested that they be removed. These documents were removed shortly thereafter. You presume that an *Order* violation has occurred, but we do not know at present whether the material was, in fact, disclosed to any party not covered by the *Order*.

Your suggestion that our prompt efforts to remove documents from the website that should not have been posted constitutes attempted spoliation of evidence is unkind, to say the least—like you, we, too, printed a copy of the pre-existing index to preserve the record. Certainly you would not have preferred that the materials remain on-line for additional time.

Based on our inquiries, we have determined that the only non-public information posted on the FTC website consisted of non-public exhibits to Complaint Counsel's *Motion for Partial Summary Decision*. The actual *Motion* and *Statement of Facts* posted to the website were the public versions of those documents. Accordingly, the affected documents would be:

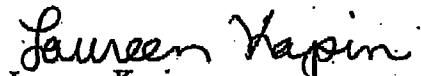
- Exhibit 15, which you marked both as a "public document" and "attorney's eyes only";
- Exhibit 16, our own request for admissions, which you responded to publicly;
- Exhibits 20-25, 27-29, and 31, which are deposition transcripts that we have reserved the right to challenge as improperly-designated material;
- pages R42095-96 from Exhibit 36, an email from your clients' place of business to a consumer;
- page R34328 from Exhibit 37, an advertisement or promotional material for PediaLean;
- Exhibit 42, a summary balance sheet from 2002;
- Exhibit 44, claim substantiation bullets that recite contents of the product advertisements; and
- Exhibit 45, dissemination schedules for publicly-advertised products.

In response to your questions, these materials were posted at approximately noon on February 15th, and removed on February 17th at approximately 4:50 pm. The materials were sent to the Secretary's Office on CD-ROM and via emails to Respondents on the Secretary on January 31st. On February 7th, Complaint Counsel served the public version of the Motion along with redacted exhibits. Shortly around noon on February 15th, the Office of the Secretary inadvertently posted the *Exhibits* from the non-public version of our Motion instead of the redacted *Exhibits* from the Public Version. As previously mentioned, this material was posted for a short amount of time, and was promptly withdrawn from the website once it came to our attention. We are aware of no evidence that FTC staff have posted any other information designated as non-public on the website.

As set forth in our response to your motion of today, Complaint Counsel has taken steps to preserve the evidentiary record and, to the fullest extent possible, determine the identity of third parties who may have accessed the material. FTC staff are engaged in doing this now.

We understand that you and your clients are distressed. Please understand that we are distressed at this turn of events as well. However, the facts, not your assumptions, control whether your clients have suffered the damage that you suggest. We will contact you on Tuesday to discuss what further steps may be taken to address this matter.

Sincerely,


Laureen Kapin
Attorney, Division of Enforcement

copies to:

Richard D. Burbidge, Esq.
215 S. State St., St. 920
Salt Lake City UT 84111

Stephen E. Nagin, Esq.
3225 Aviation Ave. 3rd Fl.
Miami, FL 33133-4741

Mitchell Friedlander
5742 W. Harold Gatty Dr.
SLC, UT 84116

Ronald Price, Esq.
340 Broadway Ctr.
111 East Broadway
SLC, UT 84111

ATTACHMENT B

ATTACHMENT B

DECLARATION OF JOSHUA S. MILLARD

1. I am an Attorney in the Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission ("FTC"). My business address is Federal Trade Commission, 600 Pennsylvania Avenue, N.W., NJ-2122, Washington, D.C. 20580. I have worked at FTC for three years. Before joining the agency, I served as a law clerk to two federal trial judges. I graduated from the American University Washington College of Law in 1998. At present, I am one of several counsel supporting the complaint ("Complaint Counsel") in *In re Basic Research LLC*, FTC Docket No. 9318.

2. On January 31, 2005, Complaint Counsel in the above-referenced matter served and filed a *Motion for Partial Summary Decision* ("*Motion*") with six separately bound volumes of exhibits, and a separate *Statement of Material Facts as to Which There is No Genuine Dispute* ("*Statement*"). A copy of the *Certificate of Service* for the *Motion* is attached as **Exhibit 1** to this Declaration.

3. I caused Complaint Counsel's *Motion* to be filed and served as discussed below. First, I provided the original *Motion* and its bound exhibits, and the *Statement*, with identical hard copies of those documents, to my FTC colleague Edwin Rodriguez and FTC support staff, with instructions to file these materials with the Office of the Secretary ("Secretary"), and to deliver copies to the chambers of the Chief Administrative Law Judge. The FTC support staff also mailed copies to Respondents' counsel at my instruction. *See Ex. 1.*

4. I marked the *Motion*, each bound volume of exhibits thereto, and the *Statement*, as "**SUBJECT TO PROTECTIVE ORDER**" by typing this legend on their respective cover pages. Copies of all of these marked cover pages are attached as **Exhibit 2** hereto. Many of the exhibit documents were public documents, such as the *Complaint* and *Answers*, public discovery responses, expert reports obtained by Complaint Counsel, several deposition transcripts, and promotional materials for the products at issue in this case. Among the exhibit documents were other documents that had been previously marked by Respondents or Complaint Counsel as "confidential," "attorney eyes only," or "subject to protective order" ("non-public documents"). In some instances, this mark appeared on the first page of the document only.

5. In addition to the above documents, I prepared a CD-ROM disc containing the *Motion* and its exhibits, and the *Statement*, in electronic files. I asked my co-counsel, Mr. Rodriguez, and the FTC support staff, to deliver it to the Secretary's Office, which I am advised, they did. *See Ex. 1.*

6. Also on January 31st, I served and filed the *Motion* and its exhibits, and the *Statement*, in electronic files via email as discussed below. *See Ex. 1.* Copies of these emails are attached as **Exhibit 3** hereto. There were a total of 53 files attached to emails—the *Motion*, the *Statement*, forty-five exhibits, and six exhibit volume cover pages. I separated these 53 files into a total of 23 emails for emailing, due to the large size of the electronic files. *See Ex. 3.*

7. As with the hard copies, the electronic files of the *Motion*, each exhibit volume cover page, and the *Statement*, were marked "SUBJECT TO PROTECTIVE ORDER." See Ex. 2. The electronic files of the six exhibit volume cover pages bearing the mark, "SUBJECT TO PROTECTIVE ORDER," were named "Volume One.pdf," through "Volume Six.pdf." See Ex. 3. Each of these six exhibit volume cover pages was attached to a separate email containing one or more exhibits from that particular volume. See Ex. 3 at pp. 3, 5, 7, 9, 12, 16.

8. The text of all 23 emails that I sent identified the *Motion*, stated that the exhibits were attached in separate electronic files, stated that these documents were submitted for filing with the Secretary of the Commission, and further identified the attached electronic files by exhibit volume, number, and/or name. See Ex. 3.

9. I sent these aforementioned emails to the following persons, all of whom were identified as the recipients: the Secretary of the Commission, Respondents' counsel Jeffrey Feldman, Respondents' counsel Stephen Nagin, Respondents' counsel Richard Burbidge, Respondents' counsel Ronald Price, and Respondent *pro se* Mitchell K. Friedlander. See Ex. 3. Every one of the emails identified all of these persons as the recipients. *Id.* After I emailed these documents, I sent a follow-up email addressed to all Respondents' counsel advising them that the email transmission of the *Motion* and its exhibits, and the *Statement* was complete.

10. Other persons identified as "carbon copy" recipients of the 23 emails were: Howard Shapiro of the Office of the Secretary, Complaint Counsel Lauren Kapin, Complaint Counsel Walter C. Gross, Complaint Counsel Robin Richardson, Complaint Counsel Edwin Rodriguez, Complaint Counsel Laura Schneider, and FTC Legal Technician Leslie Lewis. See Ex. 3.

11. I received emailed confirmations of receipt of my emails from each of Respondents' counsel with the exception of Respondent Mowrey. Copies of these receipts are attached as Exhibit 4 hereto. On January 31st, I received numerous emailed "read" receipts from the law firm of Respondent Gay's counsel, Mr. Burbidge. See Ex. 4 at 1-23. I also received an email from Corporate Respondents' counsel, Mr. Feldman, confirming receipt of the emails on that date. See Ex. 4 at 24-25. Additionally, I received numerous emailed "read" receipts from the email account of Respondent Friedlander on February 1st. See Ex. 4 at 26-48.

12. The electronic file of the *Motion*, like the original hard copies that were filed and served, contained a *Certificate of Service* indicating that the filing was submitted to the Secretary both on CD-ROM and email. See Ex. 1.

13. I filed the *Motion* and its exhibits, and the *Statement*, in electronic files via email, and served the files on Respondents via email, consistent with how Complaint Counsel filed and served non-public pleadings in this matter until February 17, 2005. Neither the Secretary's Office nor Respondents' counsel communicated with me, or any other Complaint Counsel to my knowledge, regarding the practice of emailing non-public filings to the Secretary before that date.

14. Respondents' counsel did not contact me, or to my knowledge, anyone else at the FTC, regarding the emailing of the *Motion* and its exhibits, and the *Statement*, to the Secretary. They never asked me, or anyone else to my knowledge, to retrieve the emails from the Secretary. To my knowledge, they have not moved for *in camera* treatment of *Motion* exhibits designated as "confidential" or "attorney eyes only" documents.

15. On February 7, 2005, five business days after the filing of Complaint Counsel's *Motion* and exhibits, and the *Statement*, each of which I had marked as "**SUBJECT TO PROTECTIVE ORDER,**" my co-counsel Edwin Rodriguez and I prepared the public version of exhibit volumes for the *Motion*. I personally reviewed several exhibit volumes and identified documents for redaction or removal. For example, I removed exhibit 15 in exhibit volume 2, which Respondents had marked "public document" and "attorney eyes only" on the same cover page. I also removed exhibit 16, which was our *Request for Admissions*. I had previously designated this document as, "**SUBJECT TO PROTECTIVE ORDER,**" as it referred to documents designated "confidential" or "attorney eyes only" by Respondents. Even though Respondents responded to this non-public *Request* with public answers, as exhibit 17 to the *Motion* demonstrates, I removed exhibit 16 from the public exhibit volume. These were not the only exhibits that I redacted or removed. Other staff attorneys reviewed other volumes and redacted information from the *Motion* and *Statement*.

16. I prepared the exhibit volume cover pages for Volumes 1-6. Copies of these pages are attached as **Exhibit 5**. I marked these cover pages with the notation, "**PUBLIC VERSION,**" and identified redacted exhibits by their exhibit numbers or, where applicable, page numbers. *See Ex. 5.*¹ These cover pages also indicated that Complaint Counsel reserved its previous objections concerning Respondents' designation of certain documents as "confidential" or "eyes only." *See Ex. 5.*

17. Identical hard copies of the public version of the *Motion* and its exhibits, and the *Statement*, were served and filed like the original, non-public version of our *Motion*. I did not prepare a CD-ROM for filing this public document.

18. I emailed the public version of the *Motion* and its exhibits, and the *Statement*, in another series of emails addressed both to the Secretary and to Respondents' counsel. These emails stated that this was the "Public Version" of the filing. Both these emails and the names of numerous electronic files attached to these emails referred to the fact that certain exhibits were presented in redacted form. Copies of these emails are attached as **Exhibit 6** hereto.

¹ The electronic file of the cover page to public exhibit volume 1 identified that volume as "**SUBJECT TO PROTECTIVE ORDER,**" when, in fact, the contents of volume 1 consisted entirely of public documents. The hard copy of the cover page to public exhibit volume 1 that was filed and served did correctly identify that volume as a public volume with the legend, "**PUBLIC VERSION,**" and a photocopy of that hard copy is attached.

19. Ten days later, on February 17, 2005, at approximately 2:45pm, I visited the online docket for *In re Basic Research LLC* at ftc.gov. I had not visited the docket earlier in the week. Upon review of the docket, I saw that exhibits to volume 5 of Complaint Counsel's *Motion* were identified by name. This raised the question in my mind of whether non-public documents might have been placed on the online docket. I immediately placed a call to Howard Shapiro in the Office of the Secretary.

20. I told Mr. Shapiro that I was concerned that non-public exhibits to the *Motion* might have been posted on the FTC website. While we were on the phone, I opened an electronic file, Exhibit 15, and saw that this document, which I had removed from the public version of the exhibits (even though Respondents designated it both as "attorney's eyes only" and "public document"), was available on the website. I then opened the *Motion* and *Statement*, and noted that the versions of these documents on the online docket were, in fact, the *public* versions.

21. I asked Mr. Shapiro to remove all documents that Complaint Counsel had redacted or removed from the public version of the *Motion* exhibits, as soon as possible. He concurred and asked me to identify those exhibits. I then identified for Mr. Shapiro all of the redacted or removed exhibits that I could recall, and told him that I would call back after consulting the public version of the *Motion* exhibit volumes if there were any additional non-public exhibits that I had not mentioned.

22. In the same conversation, Mr. Shapiro advised me that the non-public *Motion* exhibits had been posted because he had not realized that they were designated as such. Based on our conversation, it was my understanding that it was Mr. Shapiro's practice to review emailed documents to determine whether they are public or non-public. Later that day, Mr. Shapiro advised me via phone that he did not have the emailed files of the public exhibits to the *Motion* because he had previously deleted them. Mr. Shapiro told me that he had deleted these files because he thought that they were the same as the exhibits previously filed.

23. After 3:00pm, Reilly Dolan, Assistant Director of the Division of Enforcement, and Laureen Kapin, Complaint Counsel, visited my office. As Mr. Dolan and Ms. Kapin entered my office, I informed them that I had found non-public material on the online docket for *In re Basic Research LLC*, and that I had just called Mr. Shapiro to ask him to remove all non-public material from the online docket.

24. Mr. Dolan advised me that the Secretary of the Commission, Donald Clark, had just called him, stating that someone in the chambers of the Administrative Law Judge had informed Mr. Clark that non-public material might be present on the online docket. Mr. Dolan and I called Mr. Clark from my office to confirm to Mr. Clark that Mr. Shapiro had already been notified and had agreed to remove non-public material from the docket.

25. Mr. Dolan asked me to review the entire docket for *In re Basic Research LLC* and determine whether, apart from exhibits to the *Motion* referenced above, there were any other non-public documents listed on the online docket. I printed the page for my records, a copy of which is attached hereto as **Exhibit 7**. After reviewing the entire docket, I did notice that Respondents had filed the deposition transcripts of Dr. Steven Heymsfield and Dr. Robert Eckel on the public record. I recalled that the deposition transcripts referred to documents designated as “confidential” or “attorney’s eyes only” by Respondents.

26. Around 3:30pm, I called Mr. Shapiro again. Following up on our previous phone conversation, noted above in Paragraph 21, I told Mr. Shapiro that I had reviewed the hard copy of the public version of our *Motion* exhibit volumes, and that I had identified an additional two pages that had been redacted from Exhibit 36 (an email to a consumer) and one page redacted from Exhibit 37 (a PediaLean promotional material). Additionally, I reviewed the last two weeks of Complaint Counsel’s email filings with Mr. Shapiro. I identified recent filings that Complaint Counsel had designated as “**SUBJECT TO PROTECTIVE ORDER,**” and Mr. Shapiro indicated that he would not post those filings.

27. As noted above in Paragraph 22, Mr. Shapiro advised me during this conversation that he did not have the emailed copies of the exhibits to the public version of Complaint Counsel’s *Motion* because he had deleted them.

28. Based on my conversations with Mr. Shapiro and my review of the online docket, this is my good faith estimate of what may have been disclosed to the public that was designated as non-public:

- Exhibit 15, *Supplemental Answers to Interrogatories* that Respondents marked both as a “public document” and “attorney’s eyes only”;
- Exhibit 16, our *Request for Admissions*, which Respondents answered publicly;
- Exhibits 20-25, 27-29, and 31, excerpts of deposition transcripts submitted concerning the issues of commerce, common enterprise, and advertising addressed in the *Motion*;
- Page R42095-96 from Exhibit 36, an email from Respondents to a consumer;
- Page R34328 from Exhibit 37, an advertisement for PediaLean;
- Exhibit 42, a summary balance sheet from **Redacted**;
- Exhibit 44, claim substantiation bullets that recite contents of product ads; and
- Exhibit 45, dissemination schedules for publicly-advertised products.

29. Around 5:00pm on February 17th, Assistant Director Dolan, Ms. Kapin, and I called Mr. Clark and Mr. Shapiro. At this time, it was my understanding that Mr. Clark had called Respondents and asked them to review the online docket and that Respondents were aware that exhibits to the non-public version of the *Motion* had been posted. Mr. Shapiro indicated that the *Motion* and its exhibits, and the *Statement*, had been posted earlier that same week. Mr. Clark confirmed that the documents had been removed before the close of business, at approximately 4:50pm.

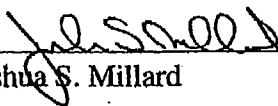
30. We requested that Mr. Clark and Mr. Shapiro determine, if possible, the number of hits to the online docket and specifically, if possible, to documents designated as non-public, acknowledging that the number would include internal FTC use of the webpage on that day. We also asked whether it was possible to determine the identities of any persons who might have accessed the documents designated as non-public. Messrs. Clark and Shapiro indicated that they would attempt to obtain this information.

31. The following morning, February 18th, at 9:10am, I received Respondents' request for the immediate preservation of technical website information. I immediately forwarded that request to agency IT employees. It was my understanding that my co-counsel, Ms. Kapin, had already contacted these persons. I retyped the verbatim request of Respondents' counsel into an email and forwarded it to these persons, with "carbon copies" to Mr. Dolan and Ms. Kapin.

32. Just after 10:00am, I participated in a phone call with Mr. Dolan and Ms. Elaine Sullivan, manager of the agency's web support team, to confirm that her team had received the request and understood its urgency. We also asked her to make sure that no electronic documents or copies of the online docket for *In re Basic Research LLC* would be overwritten or deleted until further notice.

Pursuant to 28 U.S.C. § 1746(2), I declare under penalty of perjury that the foregoing is true and correct.

February 24, 2005
Washington, D.C.



Joshua S. Millard

EXHIBIT 1

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of January 2005, I caused *Complaint Counsel's Motion for Partial Summary Decision* to be served and filed:

- (1) the original, one paper copy, and one CD-ROM copy filed by hand delivery and one (1) additional electronic copy via email, to:
Donald S. Clark, Secretary
Federal Trade Commission
600 Penn. Ave., N.W., Room H-159
Washington, D.C. 20580
- (2) two (2) paper copies served by hand delivery to:
The Honorable Stephen J. McGuire
Administrative Law Judge
600 Penn. Ave., N.W., Room H-104
Washington, D.C. 20580
- (3) one (1) electronic copy via email and one (1) paper copy by first class mail to the following persons:


Stephen E. Nagin
Nagin Gallop Figueroa P.A.
3225 Aviation Ave.
Miami, FL 33133-4741
(305) 854-5353
(305) 854-5351 (fax)
snagin@ngf-law.com
For Respondents

Jeffrey D. Feldman
FeldmanGale
201 S. Biscayne Blvd., 19th Fl.
Miami, FL 33131-4332
(305) 358-5001
(305) 358-3309 (fax)
JFeldman@FeldmanGale.com
For Respondents
A.G. Waterhouse, LLC,
Klein-Becker USA, LLC,
Nutrasport, LLC, Sovage
Dermalogic Laboratories,
LLC, and BAN, LLC

Richard D. Burbidge
Burbidge & Mitchell
215 S. State St., Suite 920
Salt Lake City, UT 84111
(801) 355-6677
(801) 355-2341 (fax)
rburbidge@burbidgeandmitchell.com
For Respondent Gay

Ronald F. Price
Peters Scofield Price
340 Broadway Centre
111 East Broadway
Salt Lake City, UT 84111
(801) 322-2002
(801) 322-2003 (fax)
rfp@psplawyers.com
For Respondent Mowrey

Mitchell K. Friedlander
5742 West Harold Gatty Dr.
Salt Lake City, UT 84116
(801) 517-7000
(801) 517-7108 (fax)
Respondent Pro Se
mkf555@msn.com



COMPLAINT COUNSEL

EXHIBIT 2

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

In the Matter of)
)
)

BASIC RESEARCH, L.L.C.,)
A.G. WATERHOUSE, L.L.C.,)
KLEIN-BECKER USA, L.L.C.,)
NUTRASPORT, L.L.C.,)
SOVAGE DERMALOGIC)
LABORATORIES, L.L.C.,)
BAN, L.L.C.,)
DENNIS GAY,)
DANIEL B. MOWREY, and)
MITCHELL K. FRIEDLANDER,)

Docket No. 9318

**SUBJECT TO
PROTECTIVE ORDER**

Respondents.)
)

**COMPLAINT COUNSEL'S STATEMENT OF MATERIAL FACTS
AS TO WHICH THERE IS NO GENUINE DISPUTE**

Pursuant to RULE OF PRACTICE 3.24, and in support of their *Motion for Summary Decision*, Complaint Counsel submit this separate *Statement of Material Facts as to which There is No Genuine Dispute*.

I. CORPORATE RESPONDENTS

1. Respondent Basic Research, LLC, is a Utah limited liability company with its principal office or place of business at 5742 W. Harold Gatty Dr., Salt Lake City, Utah 84116. Tab 2, Answer, Resp't Basic Research ¶ 1.
2. Respondent A.G. Waterhouse, LLC, is a Wyoming limited liability company with its principal office or place of business at 5742 W. Harold Gatty Dr., Salt Lake City, Utah 84116. Tab 2, Answer, Resp't Basic Research ¶ 2; Tab 3, Answer, Resp't A.G. Waterhouse ¶ 2.
3. Respondent Klein-Becker usa, LLC, is a Utah limited liability company with its principal office or place of business at 5742 W. Harold Gatty Dr., Salt Lake City, Utah 84116. Tab 2, Answer, Resp't Basic Research ¶ 3; Tab 4, Answer, Resp't Klein-Becker usa ¶ 3.
4. Respondent Nutrasport, LLC, is a Utah limited liability company with its principal office or place of business at 5742 W. Harold Gatty Dr., Salt Lake City, Utah 84116. Tab 2, Answer, Resp't Basic Research ¶ 4; Tab 5, Answer, Resp't Nutrasport ¶ 4.

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

In the Matter of

BASIC RESEARCH, L.L.C.,
A.G. WATERHOUSE, L.L.C.,
KLEIN-BECKER USA, L.L.C.,
NUTRASPORT, L.L.C.,
SOVAGE DERMALOGIC
LABORATORIES, L.L.C.,
BAN, L.L.C.,
DENNIS GAY,
DANIEL B. MOWREY, and
MITCHELL K. FRIEDLANDER,

Respondents.

Docket No. 9318

SUBJECT TO
PROTECTIVE ORDER

**EXHIBITS TO COMPLAINT COUNSEL'S
MOTION FOR PARTIAL SUMMARY DECISION**

Volume One
Complaint and Answers

1. Complaint (June 15, 2004)
2. Answer, Resp't Basic Research LLC (July 30, 2004)
3. Answer, Resp't A.G. Waterhouse LLC (July 30, 2004)
4. Answer, Resp't Klein-Becker usa LLC (July 30, 2004)
5. Answer, Resp't Nutrasport LLC (July 30, 2004)
6. Answer, Resp't Sovage Dermalogic Laboratories LLC (July 30, 2004)
7. Answer, Resp't BAN (July 30, 2004)
8. Answer, Resp't Dennis Gay (July 30, 2004)
9. Answer, Resp't Daniel B. Mowrey (July 30, 2004)
10. Answer, Resp't Mitchell K. Friedlander (July 30, 2004)

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

In the Matter of)
)
)

BASIC RESEARCH, L.L.C.,)
A.G. WATERHOUSE, L.L.C.,)
KLEIN-BECKER USA, L.L.C.,)
NUTRASPORT, L.L.C.,)
SOVAGE DERMALOGIC)
LABORATORIES, L.L.C.,)
BAN, L.L.C.,)
DENNIS GAY,)
DANIEL B. MOWREY, and)
MITCHELL K. FRIEDLANDER,)

Respondents.)
)

Docket No. 9318

SUBJECT TO
PROTECTIVE ORDER

**EXHIBITS TO COMPLAINT COUNSEL'S
MOTION FOR PARTIAL SUMMARY DECISION**

Volume Two
Discovery Responses

11. Resp. to Compl. Counsel's First Set of Interrogs.,
Corporate Resp'ts (Aug. 16, 2004)
12. Resp. to Compl. Counsel's First Set of Interrogs.,
Resp't Gay (Aug. 16, 2004)
13. Resp. to Compl. Counsel's First Set of Interrogs.,
Resp't Mowrey (Aug. 16, 2004)
14. Resp. to Compl. Counsel's First Set of Interrogs.,
Resp't Friedlander (Aug. 16, 2004)
15. Resp'ts' Supp. Answers to Compl. Counsel's First Set of Interrogs.
(Jan. 13, 2005)
16. Compl. Counsel's Reqs. for Admissions (Nov. 8, 2004)
17. Resp. to Compl. Counsel's Req. for Admission (Dec. 1, 2004)

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

In the Matter of

**BASIC RESEARCH, L.L.C.,
A.G. WATERHOUSE, L.L.C.,
KLEIN-BECKER USA, L.L.C.,
NUTRASPORT, L.L.C.,
SOVAGE DERMALOGIC
LABORATORIES, L.L.C.,
BAN, L.L.C.,
DENNIS GAY,
DANIEL B. MOWREY, and
MITCHELL K. FRIEDLANDER,**

Respondents.

Docket No. 9318

**SUBJECT TO
PROTECTIVE ORDER**

**EXHIBITS TO COMPLAINT COUNSEL'S
MOTION FOR PARTIAL SUMMARY DECISION**

Volume Three
Expert Reports

18. Expert Report of Michael B. Mazis, Ph.D (Oct. 20, 2004)
19. Expert Report of Geoffrey Nunberg (Oct. 19, 2004)

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

In the Matter of)	
)	
BASIC RESEARCH, L.L.C.,)	
A.G. WATERHOUSE, L.L.C.,)	
KLEIN-BECKER USA, L.L.C.,)	
NUTRASPORT, L.L.C.,)	
SOVAGE DERMALOGIC)	Docket No. 9318
LABORATORIES, L.L.C.,)	
BAN, L.L.C.,)	SUBJECT TO
DENNIS GAY,)	PROTECTIVE ORDER
DANIEL B. MOWREY, and)	
MITCHELL K. FRIEDLANDER,)	
.....)
Respondents.)	

**EXHIBITS TO COMPLAINT COUNSEL'S
MOTION FOR PARTIAL SUMMARY DECISION**

Volume Four
Excerpts of Deposition Transcripts

- 20. Atkinson Dep. (Dec. 27, 2004)
- 21. Chevreau Dep. (Dec. 9, 2004)
- 22. Davis Dep. (Dec. 27, 2004)
- 23. Fobbs Dep. (Jan. 5, 2005)
- 24. Friedlander Dep. (Jan. 6, 2005)
- 25. D. Gay Dep. (Jan. 7, 2005)

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

<hr/> In the Matter of)	
)	
BASIC RESEARCH, L.L.C.,)	
A.G. WATERHOUSE, L.L.C.,)	
KLEIN-BECKER USA, L.L.C.,)	
NUTRASPORT, L.L.C.,)	
SOVAGE DERMALOGIC)	Docket No. 9318
LABORATORIES, L.L.C.,)	
BAN, L.L.C.,)	SUBJECT TO
DENNIS GAY,)	PROTECTIVE ORDER
DANIEL B. MOWREY, and)	
MITCHELL K. FRIEDLANDER,)	
)	
Respondents.)	
<hr/>)	

**EXHIBITS TO COMPLAINT COUNSEL'S
MOTION FOR PARTIAL SUMMARY DECISION**

Volume Five
Excerpts of Deposition Transcripts

- 26. G. Gay Dep. (Jan. 8, 2005)
- 27. Meade Dep. (Dec. 10, 2004)
- 28. Mowrey Dep. (Jan. 13-14, 2005)
- 29. Sandberg Dep. (Dec. 28, 2004)
- 30. Solan Dep. (Dec. 8, 2004)
- 31. Weight Dep. (Dec. 28, 2004)

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

In the Matter of

BASIC RESEARCH, L.L.C.;
A.G. WATERHOUSE, L.L.C.,
KLEIN-BECKER USA, L.L.C.,
NUTRASPORT, L.L.C.,
SOVAGE DERMALOGIC
LABORATORIES, L.L.C.,
BAN, L.L.C.,
DENNIS GAY,
DANIEL B. MOWREY, and
MITCHELL K. FRIEDLANDER,


Respondents.

Docket No. 9318

SUBJECT TO
PROTECTIVE ORDER

EXHIBITS TO COMPLAINT COUNSEL'S
MOTION FOR PARTIAL SUMMARY DECISION

Volume Six
Additional Documents¹

32. Promotional materials for Dermalin
33. Promotional materials for Cutting Gel
34. Promotional materials for Tummy Flattening Gel
35. Promotional materials for Anorex
36. Promotional materials for Leptoprin
37. Promotional materials for PediaLean
38. Declaration of Michael B. Mazis, Ph.D
39. Documents cited in Mazis Expert Report
40. Declaration of Geoffrey Nunberg, Ph.D
41. Documents cited in Nunberg Expert Report
42. Combined Balance Sheet and Notes  **Redacted**
43. Certified Copy of the Articles of Organization and Articles of Amendment for Covarix LLC (registered Dec. 27, 2002)
44. Claim Substantiation Bullets
45. Dissemination Schedules

¹ These materials are ordered by Bates number whenever applicable.

EXHIBIT 3

Millard, Joshua S.

From: Millard, Joshua S.
Sent: Monday, January 31, 2005 4:44 PM
To: 'snagin@ngf-law.com'; 'jfeldman@feldmangale.com'; 'rburbidge@burbidgeandmitchell.com'; 'rfp@psplawyers.com'; 'mkf555@msn.com'; Secretary
Cc: Kapin, Lauren; Gross III, Walter; Richardson, Robin M.; Schneider, Laura; Lewis, Leslie; Rodriguez, Edwin; Shapiro, Howard
Subject: In re Basic Research, Docket No. 9318

Motion

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Joshua S. Millard
Attorney, Division of Enforcement
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Room NJ-2102
Washington, DC 20580
202.326.2454



FTC MSD.pdf (4
MB)

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Statement

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Federal Trade Commission
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Room NJ-2102
Washington, DC 20580
202.326.2454



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Facts As To...

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Volume One.pdf (33 KB)



ex1 Complaint.pdf (1 MB)



ex2 Answer and Grounds of Defe...



ex3 Answer and Grounds of Defe...



ex4 Answer and Grounds of Defe...



ex5 Answer and Grounds of Defe...

Volume One - Exs. 1

thru 5

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ex6 Answer and Grounds of Defe... ex7 Answer and Grounds of Defe... ex8 Answer of Respondent Denni.. Respondent D. Mo... ex9 Answer of Respondent D. Mo... ex10 Answer of Respondent Mltc...

Volume One - Exs. 6 thru 10

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Tracking:	Recipient	Delivery	Read
	'snagin@ngf-law.com'		
	'jfeldman@feldmangale.com'		
	'rurbidge@burbidgeandmitchell.com'		
	'rfp@psplawyers.com'		
	'mkf555@msn.com'		
	Secretary	Failed: 11/18/2004 4:37 PM	
	Kapin, Laureen		Read: 1/31/2005 4:44 PM
	Gross III, Walter		Read: 1/3/2005 10:58 AM
	Richardson, Robin M.		Read: 12/13/2004 5:05 PM
	Schneider, Laura		Read: 12/6/2004 3:41 PM
	Lewis, Leslie		Read: 12/23/2004 4:12 PM
	Rodríguez, Edwin		
	Shapiro, Howard		Read: 11/19/2004 7:27 AM

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Volume Two.pdf (34 KB) ex11 Corporate Resp To FTC's F... ex12 D. Gay's Resp To FTC's Fl... ex13 D. Mowrey's Resp To FTC's...

Volume Two - Exs. 11 thru 13

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ex14 M. ex15 Supp Ans And ex16 FTC Request ex17 Resp To FTC's
ledlander's Resp To Ans To FTC's... For Admission... Req For Adm... Volume Two - Exs. 14.thru 17

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Subject: In re Basic Research, Docket No. 9318



Volume Three.pdf
(25 KB)



Expert Report Of
G. Nunberg.pd...

Volume 3 - Nunberg

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Expert Report Of
M. Mazis.pdf ...

Volume 3 - Mazis

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Subject: In re Basic Research, Docket No. 9318



Volume Four.pdf
(26 KB)



Exhibit 20.pdf (266
KB)



Exhibit 21.pdf (1
MB)



Exhibit 22.pdf (3
MB)

Volume 4 - Exs. 20 thru 22

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Exhibit 23.pdf (1
MB)



Exhibit 24.pdf (3
MB)

Volume Four - Exs. 23 thru 24

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Exhibit 25.pdf (3
MB)

Volume Four - Ex. 25

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Volume Five.pdf (25 KB)



Exhibit 26.pdf (2 MB)



Exhibit 27.pdf (1 MB)

Volume Five - Exs. 26-27

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Exhibit 28.pdf (3
MB)

Volume Five - Ex. 28

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Exhibit 29.pdf (2
MB)

Volume Five - Ex. 29

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Exhibit 30.pdf (1 MB)



Exhibit 31.pdf (1 MB)

Volume Five - Ex. 30 thru 31

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Volume Six.pdf (39 KB)



Exhibit 32.pdf (4 MB)

Volume Six - Ex. 32

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Exhibit 33.pdf (2 MB) Exhibit 34.pdf (963 KB)

Volume six - Ex. 33 thru 34

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Exhibit 35.pdf (4
MB)

Volume Six - Ex. 35

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Exhibit 36.pdf (2
MB)



Exhibit 37.pdf (3
MB)



Exhibit 38.pdf (22
KB)

Volume Six - Ex. 36 thru 38

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Exhibit 39.pdf (10 MB)

Volume Six - Ex. 39

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Exhibit 40.pdf (20 KB)



Exhibit 41.pdf (12 MB)

Volume Six - Ex. 40 and 41

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Exhibit 42.pdf (10
MB)

Volume Six - Ex. 42

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Exhibit 43.pdf (267 KB) Exhibit 44.pdf (272 KB) Exhibit 45.pdf (1 MB)

Volume Six - Exs. 43 thru 45

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EXHIBIT 4

Millard, Joshua S.

From: Jan Sears [jsears@burbridgeandmitchell.com]
Sent: Monday, January 31, 2005 5:34 PM
To: Millard, Joshua S.
Subject: Read: In re Basic Research, Docket No. 9318



ATT152585.txt
(371 B)

This is a receipt for the mail you sent to <snagin@ngf-law.com>; <jfeldman@feldmangale.com>; <burbridge@burbridgeandmitchell.com>; <rfp@psplawyers.com>; <mkf555@msn.com>; "Secretary" <Secretary@ftc.gov> at 1/31/2005 2:43 PM

This receipt verifies that the message has been displayed on the recipient's computer at 1/31/2005 3:33 PM

Millard, Joshua S.

From: Jan Sears [jsears@burbidgeandmitchell.com]
Sent: Monday, January 31, 2005 5:34 PM
To: Millard, Joshua S.
Subject: Read: In re Basic Research, Docket No. 9318



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ATT152586.txt
(371 B)

This is a receipt for the mail you sent to <snagin@ngf-law.com>; <jfeldman@feldmangale.com>; <rurbidge@burbidgeandmitchell.com>; <rfp@psplawyers.com>; <mkf555@msn.com>; "Secretary" <Secretary@ftc.gov> at 1/31/2005 2:43 PM

This receipt verifies that the message has been displayed on the recipient's computer at 1/31/2005 3:34 PM

Millard, Joshua S.

From: Jan Sears [jsears@burbidgeandmitchell.com]
Sent: Monday, January 31, 2005 5:35 PM
To: Millard, Joshua S.
Subject: Read: In re Basic Research, Docket No. 9318



ATT152587.txt
(371 B)

This is a receipt for the mail you sent to <snagin@ngf-law.com>; <jfeldman@feldmangale.com>; <rurbidge@burbidgeandmitchell.com>; <rfp@psplawyers.com>; <mkf555@msn.com>; "Secretary" <Secretary@ftc.gov> at 1/31/2005 2:43 PM

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Millard, Joshua S.

From: Jan Sears [jsears@burbidgeandmitchell.com]
Sent: Monday, January 31, 2005 5:35 PM
To: Millard, Joshua S.
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From: Jan Sears [jsears@burbidgeandmitchell.com]
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This receipt verifies that the message has been displayed on the recipient's computer at 1/31/2005 3:37 PM

Millard, Joshua S.

From: Jan Sears [jsears@burbidgeandmitchell.com]
Sent: Monday, January 31, 2005 5:38 PM
To: Millard, Joshua S.
Subject: Read: In re Basic Research, Docket No. 9318



ATT152590.txt
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Millard, Joshua S.

From: Jan Sears [jsears@burbidgeandmitchell.com]
Sent: Monday, January 31, 2005 5:39 PM
To: Millard, Joshua S.
Subject: Read: In re Basic Research, Docket No. 9318



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This receipt verifies that the message has been displayed on the recipient's computer at 1/31/2005 3:38 PM

Millard, Joshua S.

From: Jan Sears [jsears@burbidgeandmitchell.com]
Sent: Monday, January 31, 2005 5:39 PM
To: Millard, Joshua S.
Subject: Read: In re Basic Research, Docket No. 9318



ATT152591.txt
(371 B)

This is a receipt for the mail you sent to <snagin@ngf-law.com>; <jfeldman@feldmangale.com>; <rurbidge@burbidgeandmitchell.com>; <rfp@psplawyers.com>; <mkf555@msn.com>; "Secretary" <Secretary@ftc.gov> at 1/31/2005 2:44 PM

This receipt verifies that the message has been displayed on the recipient's computer at 1/31/2005 3:38 PM

Millard, Joshua S.

From: Jan Sears [jsears@burbidgeandmitchell.com]
Sent: Monday, January 31, 2005 5:39 PM
To: Millard, Joshua S.
Subject: Read: In re Basic Research, Docket No. 9318



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This receipt verifies that the message has been displayed on the recipient's computer at 1/31/2005 3:38 PM

Millard, Joshua S.

From: Jan Sears [jsears@burbridgeandmitchell.com]
Sent: Monday, January 31, 2005 5:40 PM
To: Millard, Joshua S.
Subject: Read: In re Basic Research, Docket No. 9318



ATT152591.txt
(371 B)

This is a receipt for the mail you sent to <snagin@ngf-law.com>; <jfeldman@feldmangale.com>; <rburbridge@burbridgeandmitchell.com>; <rfp@psplawyers.com>; <mkf555@msn.com> at 1/31/2005 2:52 PM

This receipt verifies that the message has been displayed on the recipient's computer at 1/31/2005 3:39 PM

Millard, Joshua S.

From: Jan Sears [jsears@burbidgeandmitchell.com]
Sent: Monday, January 31, 2005 5:37 PM
To: Millard, Joshua S.
Subject: Read: In re Basic Research, Docket No. 9318



ATT153289.txt
(371 B)

This is a receipt for the mail you sent to <snagin@ngf-law.com>; <jfeldman@feldmangale.com>; <rburbidge@burbidgeandmitchell.com>; <rpf@psplawyers.com>; <mkf555@msn.com>; "Secretary" <Secretary@ftc.gov> at 1/31/2005 2:43 PM

This receipt verifies that the message has been displayed on the recipient's computer at 1/31/2005 3:37 PM

Millard, Joshua S.

From: Jan Sears [jsears@burbidgeandmitchell.com]
Sent: Monday, January 31, 2005 5:38 PM
To: Millard, Joshua S.
Subject: Read: In re Basic Research, Docket No. 9318



ATT153290.txt
(371 B)

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Millard, Joshua S.

From: Jan Sears [jsears@burbidgeandmitchell.com]
Sent: Monday, January 31, 2005 5:38 PM
To: Millard, Joshua S.
Subject: Read: In re Basic Research, Docket No. 9318



ATT153290.txt
(371 B)

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This receipt verifies that the message has been displayed on the recipient's computer at 1/31/2005 3:37 PM

Millard, Joshua S.

From: Jeffrey D. Feldman [jfeldman@FeldmanGale.com]
Sent: Wednesday, February 02, 2005 9:12 AM
To: Millard, Joshua S.
Subject: RE: In re Basic Research, Docket No. 9318

Josh:

I did not get your emails until well after 5:00 pm. I do not know if service is complete at the time you press the button or at the time we receive. I am just letting you know, I did not get some of your emails until after 9 pm.

JDF

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

From: Millard, Joshua S. [mailto:JMILLARD@ftc.gov]
Sent: Wednesday, February 02, 2005 9:01 AM
To: Jeffrey D. Feldman
Cc: Kapin, Laureen
Subject: RE: In re Basic Research, Docket No. 9318

Jeff:

Our service was not late. We emailed our MSD—including all exhibits—before 5pm EST.

Joshua S. Millard
Attorney, Division of Enforcement
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Room NJ-2102
Washington, DC 20580
202.326.2454

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

From: Jeffrey D. Feldman [mailto:jfeldman@FeldmanGale.com]
Sent: Monday, January 31, 2005 6:21 PM
To: Millard, Joshua S.
Subject: Re: In re Basic Research, Docket No. 9318

Josh

Your service is late....all of this was due by 5 pm

Sent from my BlackBerry Wireless Handheld

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

From: Millard, Joshua S. <JMILLARD@ftc.gov>
To: snagin@ngf-law.com <snagin@ngf-law.com>; Jeffrey D. Feldman <jfeldman@FeldmanGale.com>; rburbridge@burbridgeandmitchell.com <rburbridge@burbridgeandmitchell.com>; rfp@psplawyers.com <rfp@psplawyers.com>; mkf555@msn.com <mkf555@msn.com>; Secretary <Secretary@ftc.gov>
CC: Kapin, Laureen <LKAPIN@ftc.gov>; Gross III, Walter <WGROSS@ftc.gov>; Richardson, Robin M. <RRICHARDSON@ftc.gov>; Schneider, Laura <LSCHNEIDER@ftc.gov>; Lewis, Leslie <LLEWIS@ftc.gov>; Rodriguez, Edwin <ERODRIGUEZ@ftc.gov>; Shapiro, Howard <HSHAPIRO@ftc.gov>
Sent: Mon Jan 31 16:43:38 2005
Subject: In re Basic Research, Docket No. 9318

Please see the attached document, Complaint Counsel's Motion for Partial Summary Decision, with exhibits attached in separate electronic files, submitted today for filing in In re Basic Research LLC, et al., Docket No. 9318. I 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.

Millard, Joshua S.

From: MKF555 [mkf555@msn.com]
Sent: Tuesday, February 01, 2005 2:05 PM
To: Millard, Joshua S.
Subject: Read: In re Basic Research, Docket No. 9318



ATT165737.txt
(371 B)

This is a receipt for the mail you sent to <snagin@ngf-law.com>; <jfeldman@feldmangale.com>; <rurbidge@rurbidgeandmitchell.com>; <rfr@psplawyers.com>; <mkf555@msn.com>; "Secretary" <Secretary@ftc.gov> at 1/31/2005 2:43 PM

This receipt verifies that the message has been displayed on the recipient's computer at 2/1/2005 12:05 PM

Millard, Joshua S.

From: MKF555 [mkf555@msn.com]
Sent: Tuesday, February 01, 2005 1:57 PM
To: Millard, Joshua S.
Subject: Read: In re Basic Research, Docket No. 9318



ATT165736.txt
(371 B)

This is a receipt for the mail you sent to <snagin@ngf-law.com>; <jfeldman@feldmangale.com>; <rurbidge@rurbidgeandmitchell.com>; <rfr@psplawyers.com>; <mkf555@msn.com>; "Secretary" <Secretary@ftc.gov> at 1/31/2005 2:43 PM

This receipt verifies that the message has been displayed on the recipient's computer at 2/1/2005 11:57 AM

Millard, Joshua S.

From: MKF555 [mkf555@msn.com]
Sent: Tuesday, February 01, 2005 8:02 AM
To: Millard, Joshua S.
Subject: Read: In re Basic Research, Docket No. 9318



ATT161329.txt
(371 B)

This is a receipt for the mail you sent to <snagin@ngf-law.com>; <jfeldman@feldmangale.com>; <rurbidge@rurbidgeandmitchell.com>; <rfp@psplawyers.com>; <mkf555@msn.com>; "Secretary" <Secretary@ftc.gov> at 1/31/2005 2:43 PM

This receipt verifies that the message has been displayed on the recipient's computer at 2/1/2005 6:02 AM

Millard, Joshua S.

From: MKF555 [mkf555@msn.com]
Sent: Tuesday, February 01, 2005 8:01 AM
To: Millard, Joshua S.
Subject: Read: In re Basic Research, Docket No. 9318



ATT161325.txt
(371 B)

This is a receipt for the mail you sent to <snagin@ngf-law.com>; <jfeldman@feldmangale.com>; <rurbidge@rurbidgeandmitchell.com>; <rfp@psplawyers.com>; <mkf555@msn.com>; "Secretary" <Secretary@ftc.gov> at 1/31/2005 2:44 PM

This receipt verifies that the message has been displayed on the recipient's computer at 2/1/2005 6:01 AM

Millard, Joshua S.

From: MKF555 [mkf555@msn.com]
Sent: Tuesday, February 01, 2005 8:02 AM
To: Millard, Joshua S.
Subject: Read: In re Basic Research, Docket No. 9318



ATT161328.txt
(371 B)

This is a receipt for the mail you sent to <snagin@ngf-law.com>; <jfeldman@feldmangale.com>; <rurbidge@rurbidgeandmitchell.com>; <rfp@psplawyers.com>; <mkf555@msn.com>; "Secretary" <Secretary@ftc.gov> at 1/31/2005 2:44 PM

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Millard, Joshua S.

From: MKF555 [mkf555@msn.com]
Sent: Tuesday, February 01, 2005 8:01 AM
To: Millard, Joshua S.
Subject: Read: In re Basic Research, Docket No. 9318



ATT161324.txt
(371 B)

This is a receipt for the mail you sent to <snagin@ngf-law.com>; <jfeldman@feldmangale.com>; <rurbidge@rurbidgeandmitchell.com>; <rfp@psplawyers.com>; <mkf555@msn.com>; "Secretary" <Secretary@ftc.gov> at 1/31/2005 2:43 PM

This receipt verifies that the message has been displayed on the recipient's computer at 2/1/2005 6:01 AM

Millard, Joshua S.

From: MKF555 [mkf555@msn.com]
Sent: Tuesday, February 01, 2005 8:02 AM
To: Millard, Joshua S.
Subject: Read: In re Basic Research, Docket No. 9318



ATT161327.txt
(371 B)

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(371 B)

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Millard, Joshua S.

From: MKF555 [mkf555@msn.com]
Sent: Tuesday, February 01, 2005 8:01 AM
To: Millard, Joshua S.
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ATT161326.txt
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This receipt verifies that the message has been displayed on the recipient's computer at 2/1/2005 6:01 AM

Millard, Joshua S.

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Sent: Tuesday, February 01, 2005 8:01 AM
To: Millard, Joshua S.
Subject: Read: In re Basic Research, Docket No. 9318



ATT161322.txt
(371 B)

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Millard, Joshua S.

From: MKF555 [mkf555@msn.com]
Sent: Tuesday, February 01, 2005 8:01 AM
To: Millard, Joshua S.
Subject: Read: In re Basic Research, Docket No. 9318



ATT161323.txt
(371 B)

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This receipt verifies that the message has been displayed on the recipient's computer at 2/1/2005 6:00 AM

Millard, Joshua S.

From: MKF555 [mkf555@msn.com]
Sent: Tuesday, February 01, 2005 7:59 AM
To: Millard, Joshua S.
Subject: Read: In re Basic Research, Docket No. 9318



ATT161320.txt
(371 B)

This is a receipt for the mail you sent to <snagin@ngf-law.com>; <ifeldman@feldmangale.com>; <rurbidge@rurbidgeandmitchell.com>; <rpf@psplawyers.com>; <mkf555@msn.com>; "Secretary" <Secretary@ftc.gov> at 1/31/2005 2:43 PM

This receipt verifies that the message has been displayed on the recipient's computer at 2/1/2005 5:59 AM

Millard, Joshua S.

From: MKF555 [mkf555@msn.com]
Sent: Tuesday, February 01, 2005 7:59 AM
To: Millard, Joshua S.
Subject: Read: In re Basic Research, Docket No. 9318



ATT161321.txt
(371 B)

This is a receipt for the mail you sent to <snagin@ngf-law.com>; <jfeldman@feldmangale.com>; <burbidge@burbidgeandmitchell.com>; <rfp@psplawyers.com>; <mkf555@msn.com>; "Secretary" <Secretary@ftc.gov> at 1/31/2005 2:43 PM

This receipt verifies that the message has been displayed on the recipient's computer at 2/1/2005 5:59 AM

Millard, Joshua S.

From: MKF555 [mkf555@msn.com]
Sent: Tuesday, February 01, 2005 7:59 AM
To: Millard, Joshua S.
Subject: Read: In re Basic Research, Docket No. 9318



ATT161319.txt
(371 B)

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Millard, Joshua S.

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Sent: Tuesday, February 01, 2005 7:59 AM
To: Millard, Joshua S.
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ATT161319.txt
(371 B)

This is a receipt for the mail you sent to <snagin@ngf-law.com>; <jfeldman@feldmangale.com>; <rurbidge@rurbidgeandmitchell.com>; <rfp@psplawyers.com>; <mkf555@msn.com>; "Secretary" <Secretary@ftc.gov> at 1/31/2005 2:43 PM

This receipt verifies that the message has been displayed on the recipient's computer at 2/1/2005 5:59 AM

Millard, Joshua S.

From: MKF555 [mkf555@msn.com]
Sent: Tuesday, February 01, 2005 7:59 AM
To: Millard, Joshua S.
Subject: Read: In re Basic Research, Docket No. 9318



ATT161321.txt
(371 B)

This is a receipt for the mail you sent to <snagin@ngf-law.com>; <jfeldman@feldmangale.com>; <rurbidge@rurbidgeandmitchell.com>; <rfr@psplawyers.com>; <mkf555@msn.com>; "Secretary" <Secretary@ftc.gov> at 1/31/2005 2:43 PM

This receipt verifies that the message has been displayed on the recipient's computer at 2/1/2005 5:59 AM

Millard, Joshua S.

From: MKF555 [mkt555@msn.com]
Sent: Tuesday, February 01, 2005 7:59 AM
To: Millard, Joshua S.
Subject: Read: In re Basic Research, Docket No. 9318



ATT161318.txt
(371 B)

This is a receipt for the mail you sent to <snagin@ngf-law.com>; <jfeldman@feldmangale.com>; <rurbidge@rurbidgeandmitchell.com>; <rpf@psplawyers.com>; <mkt555@msn.com>; "Secretary" <Secretary@ftc.gov> at 1/31/2005 2:43 PM

This receipt verifies that the message has been displayed on the recipient's computer at 2/1/2005 5:58 AM

Millard, Joshua S.

From: MKF555 [mkf555@msn.com]
Sent: Tuesday, February 01, 2005 7:59 AM
To: Millard, Joshua S.
Subject: Read: In re Basic Research, Docket No. 9318



ATT161317.txt
(371 B)

This is a receipt for the mail you sent to <snagin@ngf-law.com>; <jfeldman@feldmangale.com>; <rurbidge@rurbidgeandmitchell.com>; <rfp@psplawyers.com>; <mkf555@msn.com>; "Secretary" <Secretary@ftc.gov> at 1/31/2005 2:44 PM

This receipt verifies that the message has been displayed on the recipient's computer at 2/1/2005 5:58 AM

Millard, Joshua S.

From: MKF555 [mkf555@msn.com]
Sent: Tuesday, February 01, 2005 7:59 AM
To: Millard, Joshua S.
Subject: Read: In re Basic Research, Docket No. 9318



ATT161318.txt
(371 B)

This is a receipt for the mail you sent to <snagin@ngf-law.com>; <jfeldman@feldmangale.com>; <rurbidge@rurbidgeandmitchell.com>; <rfp@psplawyers.com>; <mkf555@msn.com>; "Secretary" <Secretary@ftc.gov> at 1/31/2005 2:43 PM

This receipt verifies that the message has been displayed on the recipient's computer at 2/1/2005 5:59 AM

EXHIBIT 5

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

In the Matter of)
)
)

BASIC RESEARCH, L.L.C.,)
A.G. WATERHOUSE, L.L.C.,)
KLEIN-BECKER USA, L.L.C.,)
NUTRASPORT, L.L.C.,)
SOVAGE DERMALOGIC)
LABORATORIES, L.L.C.,)
BAN, L.L.C.,)
DENNIS GAY,)
DANIEL B. MOWREY, and)
MITCHELL K. FRIEDLANDER,)

Respondents.)
)
)

Docket No. 9318

PUBLIC VERSION

**EXHIBITS TO COMPLAINT COUNSEL'S
MOTION FOR PARTIAL SUMMARY DECISION**

Volume One
Complaint and Answers

1. Complaint (June 15, 2004)
2. Answer, Resp't Basic Research LLC (July 30, 2004)
3. Answer, Resp't A.G. Waterhouse LLC (July 30, 2004)
4. Answer, Resp't Klein-Becker usa LLC (July 30, 2004)
5. Answer, Resp't Nutrasport LLC (July 30, 2004)
6. Answer, Resp't Sovage Dermalogic Laboratories LLC (July 30, 2004)
7. Answer, Resp't BAN (July 30, 2004)
8. Answer, Resp't Dennis Gay (July 30, 2004)
9. Answer, Resp't Daniel B. Mowrey (July 30, 2004)
10. Answer, Resp't Mitchell K. Friedlander (July 30, 2004)

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

In the Matter of)
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A.G. WATERHOUSE, L.L.C.,)
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NUTRASPORT, L.L.C.,)
SOVAGE DERMALOGIC)
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BAN, L.L.C.,)
DENNIS GAY,)
DANIEL B. MOWREY, and)
MITCHELL K. FRIEDLANDER,)

Respondents.)
)

Docket No. 9318

PUBLIC VERSION

**EXHIBITS TO COMPLAINT COUNSEL'S
MOTION FOR PARTIAL SUMMARY DECISION**

Volume Two
Discovery Responses

11. Resp. to Compl. Counsel's First Set of Interrogs.,
Corporate Resp'ts (Aug. 16, 2004)
12. Resp. to Compl. Counsel's First Set of Interrogs.,
Resp't Gay (Aug. 16, 2004)
13. Resp. to Compl. Counsel's First Set of Interrogs.,
Resp't Mowrey (Aug. 16, 2004)
14. Resp. to Compl. Counsel's First Set of Interrogs.,
Resp't Friedlander (Aug. 16, 2004)
15. **Redacted¹**
16. Compl. Counsel's Reqs. for Admissions (**public version substituted**)
17. Resp. to Compl. Counsel's Req. for Admission (Dec. 1, 2004)
(**stamped as "Public Document" as Respondents'
sole response to non-public request**)

¹ Respondents stamped Exhibit 15 of the non-public version of Complaint Counsel's *Motion for Partial Summary Decision*, as both a "Public Document" and a "Attorney Eyes Only" document. We believe that the former designation controls, but we have chosen to redact that document from this Exhibit Volume out of an abundance of caution.

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

In the Matter of)	
)	
BASIC RESEARCH, L.L.C.,)	
A.G. WATERHOUSE, L.L.C.,)	
KLEIN-BECKER USA, L.L.C.,)	
NUTRASPORT, L.L.C.,)	
SOVAGE DERMALOGIC)	Docket No. 9318
LABORATORIES, L.L.C.,)	
BAN, L.L.C.,)	PUBLIC VERSION
DENNIS GAY,)	
DANIEL B. MOWREY, and)	
MITCHELL K. FRIEDLANDER,)	
)	
Respondents.)	

**EXHIBITS TO COMPLAINT COUNSEL'S
MOTION FOR PARTIAL SUMMARY DECISION**

Volume Three
Expert Reports

18. Expert Report of Michael B. Mazis, Ph.D (Oct. 20, 2004)
19. Expert Report of Geoffrey Nunberg (Oct. 19, 2004)

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

In the Matter of)	
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KLEIN-BECKER USA, L.L.C.,)	
NUTRASPORT, L.L.C.,)	
SOVAGE DERMALOGIC)	Docket No. 9318
LABORATORIES, L.L.C.,)	
BAN, L.L.C.,)	PUBLIC VERSION
DENNIS GAY,)	
DANIEL B. MOWREY, and)	
MITCHELL K. FRIEDLANDER,)	
)	
Respondents.)	

**EXHIBITS TO COMPLAINT COUNSEL'S
MOTION FOR PARTIAL SUMMARY DECISION**

Volume Four
Excerpts of Deposition Transcripts

- 20. Redacted¹
- 21. Redacted
- 22. Redacted
- 23. Redacted
- 24. Redacted
- 25. Redacted

¹ Complaint Counsel has withdrawn deposition transcripts designated as "confidential" or "Eyes Only" by Respondents. As set forth in those depositions, Complaint Counsel reserves the right to challenge Respondents' designations of these transcripts.

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

In the Matter of)
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A.G. WATERHOUSE, L.L.C.,)
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NUTRASPORT, L.L.C.,)
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Respondents.)
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Docket No. 9318

PUBLIC VERSION

**EXHIBITS TO COMPLAINT COUNSEL'S
MOTION FOR PARTIAL SUMMARY DECISION.**

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- 20. Redacted¹
- 21. Redacted
- 22. Redacted
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UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
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NUTRASPORT, L.L.C.,)
SOVAGE DERMALOGIC)
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BAN, L.L.C.,)
DENNIS GAY,)
DANIEL B. MOWREY, and)
MITCHELL K. FRIEDLANDER,)

Respondents.)
)
)

Docket No. 9318

PUBLIC VERSION

**EXHIBITS TO COMPLAINT COUNSEL'S
MOTION FOR PARTIAL SUMMARY DECISION**

Volume Six
Additional Documents¹

32. Promotional materials for Dermalin
33. Promotional materials for Cutting Gel
34. Promotional materials for Tummy Flattening Gel
35. Promotional materials for Anorex
36. Promotional materials for Leptoprin (page R00423095 redacted)
37. Promotional materials for PediaLean (page R0040746 redacted)
38. Declaration of Michael B. Mazis, Ph.D
39. Documents cited in Mazis Expert Report
40. Declaration of Geoffrey Nunberg, Ph.D
41. Documents cited in Nunberg Expert Report
42. **Redacted**
43. Certified Copy of the Articles of Organization and Articles of Amendment for Covarix LLC (registered Dec. 27, 2002)
44. **Redacted**
45. **Redacted**

¹ These materials are ordered by Batsc number whenever applicable.

EXHIBIT 6

Millard, Joshua S.

From: Millard, Joshua S.
Sent: Monday, February 07, 2005 4:35 PM
To: 'snagin@ngf-law.com'; 'jfeldman@feldmangale.com'; 'rburbidge@burbidgeandmitchell.com'; 'rfp@psplawyers.com'; 'mkf555@msn.com'; Secretary
Cc: Kapln, Lauren; Gross III, Walter; Richardson, Robin M.; Schneider, Laura; Lewis, Leslie; Rodriguez, Edwin; Shapiro, Howard
Subject: In re Basic Research, Docket No. 9318



Statement of facts
- public re...



FTC MSD pub
ver.pdf (3 MB)

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Tracking:	Recipient	Delivery	Read
	'snagin@ngf-law.com'		
	'jfeldman@feldmangale.com'		
	'rburbidge@burbidgeandmitchell.com'		
	'rfp@psplawyers.com'		
	'mkf555@msn.com'		
	Secretary	Failed: 11/18/2004 4:37 PM	
	Kapln, Lauren		Read: 1/3/2005 10:00 AM
	Gross III, Walter	Failed: 2/7/2005 4:36 PM	Read: 1/3/2005 10:58 AM
	Richardson, Robin M.		Read: 2/7/2005 4:54 PM
	Schneider, Laura		Read: 12/6/2004 3:41 PM
	Lewis, Leslie	Failed: 2/7/2005 4:36 PM	Read: 12/23/2004 4:12 PM
	Rodriguez, Edwin		Read: 2/7/2005 4:37 PM
	Shapiro, Howard		Read: 11/19/2004 7:27 AM

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Cc: Kapin, Lauren; Gross III, Walter; Richardson, Robin M.; Schneider, Laura; Lewis, Leslie; Rodriguez, Edwin; Shapiro, Howard
Subject: In re Basic Research, Docket No. 9318



exhibit to complaint
counsel's...



ex 25 redacted
exhibit to comp...



ex 26 page
0008965 redacted e.



ex 27 redacted
exhibit to comp...



ex 28 redacted
exhibit to comp...



ex29 redacted.pdf
(10 KB)



ex30 redacted.pdf
(10 KB)



Exhibit 30.pdf (1
MB)



5.pub.pdf (32 KB)

Volume 5 - Exs. 25 thru 30

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Cc: Kapin, Lauren; Gross III, Walter; Richardson, Robin M.; Schneider, Laura; Lewis, Leslie; Rodriguez, Edwin; Shapiro, Howard
Subject: In re Basic Research, Docket No. 9318



Exhibit 41.pdf (12 MB)



Exhibit 43.pdf (267 KB)



ex 42 redacted exhibit to comp...



ex 44exhiblt to complaint coun...



6.pub.pdf (32 KB)

Vol 6 - Exs. 41 thru 45 (42, 44, and 45

redacted)

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Cc: Kapin, Laureen; Gross III, Walter; Richardson, Robin M.; Schneider, Laura; Lewis, Leslie; Rodriguez, Edwin; Shapiro, Howard
Subject: In re Basic Research, Docket No. 9318



Exhibit 32.pdf (4 MB)



Exhibit 33.pdf (2 MB)



Exhibit 34.pdf (963 KB)



Exhibit 35.pdf (4 MB)

volume 6 - Exs. 32 thru 35

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Cc: Kapin, Lauren; Gross III, Walter; Richardson, Robin M.; Schneider, Laura; Lewis, Leslie; Rodriguez, Edwin; Shapiro, Howard
Subject: In re Basic Research, Docket No. 9318



Exhibit 38.pdf (22 KB)



Exhibit 39.pdf (10 MB)



Exhibit 40.pdf (20 KB)



Exhibit 36 exhibit to complain...



Ex 37 exhibit to complaint cou...

Vol 6 - Exs. 36 thru 40

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Cc: Kapin, Lauren; Gross III, Walter; Richardson, Robin M.; Schneider, Laura; Lewis, Leslie; Rodriguez, Edwin; Shapiro, Howard
Subject: In re Basic Research, Docket No. 9318



Exhibit 30.pdf (1 MB)



ex 27 redacted exhibit to comp...



ex 28 redacted exhibit to comp...



ex29 redacted.pdf (10 KB)



ex 26 w redacted exhibit.pdf (...



ex 26 page 0008965 redacted e.



ex 31redacted.pdf (10 KB)

Volume

5 - Exs. 26 thru 31 (26 ex. redacted, 27, 28, 29, and 31 redacted)

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Cc: Kapin, Lauren; Gross III, Walter; Richardson, Robin M.; Schneider, Laura; Lewis, Leslie; Rodriguez, Edwin; Shapiro, Howard
Subject: In re Basic Research, Docket No. 9318



ex 21 redacted
exhibit to comp...



ex 22 redacted
exhibit to comp...



wx 23 redacted
exhibit to comp...



ex 24 redacted
exhibit to comp...



ex 25 redacted
exhibit to comp...



Ex. 20 redacted
(exhibit to co...



exhibit to complaint
counsel's...

Volume 4 - Exs. 20 thru 25

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Cc: Kapin, Lauren; Gross III, Walter; Richardson, Robin M.; Schneider, Laura; Lewis, Leslie; Rodriguez, Edwin; Shapiro, Howard
Subject: In re Basic Research, Docket No. 9318



ex18 Expert Report ex19 Expert Report vol 3 pub.pdf (29
Of M. Mazis... Of G. Nunbe... KB)

Vol 3 - Exs. 18 and 19

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Cc: Kapin, Lauren; Gross III, Walter; Richardson, Robin M.; Schneider, Laura; Lewis, Leslie; Rodriguez, Edwin; Shapiro, Howard
Subject: In re Basic Research, Docket No. 9318



FTC Request For ex17 Resp To FTC's Ex 15 redacted
Admissions (Pu... Req For Adm... (exhibit to com...

Vol 2- exs 15 thru 17

(Ex 15 redacted)

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Subject: In re Basic Research, Docket No. 9318



ex11 Corporate Resp To FTC's F... ex12 D. Gay's Resp To FTC's Fl... ex13 D. Mowrey's Resp To FTC's... ex14 M. Exhibits to complaint's counse..

Vol 2 - Exs 11 thru 14

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Cc: Kapin, Lauren; Gross III, Walter; Richardson, Robin M.; Schneider, Laura; Lewis, Leslie; Rodriguez, Edwin; Shapiro, Howard
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ex6 Answer and Grounds of Defe...
ex7 Answer and Grounds of Defe...
ex8 Answer of Respondent Denni..
ex9 Answer of Respondent D. Mo...
ex10 Answer of Respondent Mltc...

Vol 1 - exs 6 thru 10

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Subject: In re Basic Research, Docket No. 9318



ex1 Complaint.pdf
(1 MB)



ex2 Answer and
Grounds of Defe...



ex3 Answer and
Grounds of Defe...



ex4 Answer and
Grounds of Defe...



ex5 Answer and
Grounds of Defe...



Volume One.pdf (33ex1 Exhibits.pdf (6
KB)



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Volume

1 - exs 1 thru 5

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EXHIBIT 7



FEDERAL TRADE COMMISSION
FOR THE CONSUMER

HOME | CONSUMERS | BUSINESSES | NEWSROOM | FORMAL | ANTITRUST | CONGRESSIONAL | ECONOMIC | LEGAL
Privacy Policy | About FTC | Commissioners | File a Complaint | HSR | FOIA | IG Office | En Español

Search:

In the Matter of Basic Research

File No. 002-3300, Docket No. 9318

February 16, 2005

- Order on Joint Motion for Enlargement of Time to Serve Exhibit Lists, Witness Lists, Deposition Designations, and to File Motions to Strike and Motions in Limine [PDF 70K]

February 9, 2005

- Order on Joint Motion for Enlargement of Time to Serve and File Oppositions to Pending Motions for Summary Decision [PDF 55K]

February 3, 2005

- Notice of Filing Responses to Discovery and Transcripts [PDF 217K]
 1. Complaint Counsel's Response to Respondents' First Set of Interrogatories [PDF 507K]
 2. Complaint Counsel's First Supplemental Response to Respondents' First Set of Interrogatories [PDF 151K]
 3. Complaint Counsel's Response to Basic Research, LLC's First Request for Admissions [PDF 2.18M]
 4. Complaint Counsel's Response to Daniel B. Mowrey's First Request for Admissions [PDF 717K]
 5. Complaint Counsel's Response to Daniel B. Mowrey's First Set of Interrogatories [PDF 1016K]
 6. Complaint Counsel's Response to Mitchell K. Friedlander's First Request for Admissions [PDF 403K]
 7. Complaint Counsel's Response to Dennis Gay's First Request for Admissions [PDF 1.52M]
 8. Deposition Transcript of Dr. Steven R. Heymsfield [PDF 7.17M]
 9. Deposition Transcript of Dr. Robert Eckel [PDF 2.81M]
 10. Deposition of Michael B. Mazis Ph.D [PDF 636K]
- Respondents' Motion to File Exhibits 28 and 29 to Motion for Partial Summary Decision and Separate Statement of Undisputed Fact as In Camera Exhibits [PDF 119K]

February 2, 2005

- Order on Complaint Counsel's Motion for Extension of Deadlines [PDF 81K]

January 31, 2005

- Complaint Counsel's Statement of Material Facts as to Which There Is No Genuine Dispute [PDF 180K]
- Complaint Counsel's Motion for Partial Summary Decision [PDF 303K]
 - Exhibits to Complaint Counsel's Motion for Partial Summary Decision:
 - Volume One [PDF 33K]
 - Complaint (June 15, 2004) [PDF 1.15M]
 - Answer and Grounds of Defense of Respondent Basic Research, LLC [PDF 578K]
 - Answer and Grounds of Defense of Respondent A.G. Waterhouse, LLC [PDF 452K]
 - Answer and Grounds of Defense of Respondent Klein-Becker USA LLC [PDF 456K]
 - Answer and Grounds of Defense of Respondent Nutrasport LLC [PDF 418K]
 - Answer and Grounds of Defense of Respondent Savage Dermalogic Laboratories, LLC [PDF 437K]
 - Answer and Grounds of Defense of Respondent BAN, LLC [PDF 559K]
 - Answer of Respondent Dennis Gay [PDF 301K]
 - Answer of Respondent Daniel B. Mowrey [PDF 483K]
 - Answer of Respondent Mitchell K. Friedlander [PDF 488K]
 - Volume Two [PDF 31K]
 - Response to Complaint Counsel's First Set of Interrogatories [PDF 1.23M]
 - Response of Respondent Dennis Gay to Complaint Counsel's First Set of Interrogatories [PDF 427K]
 - Respondent Daniel B. Mowrey's Objections and Responses to Complaint Counsel's First Set of Interrogatories [PDF 450K]
 - Pro Se Respondent Mitchell K. Friedlander's Objections and Responses to Complaint Counsel's First Set of Interrogatories [PDF 438K]
 - Supplemental Answers and Answers to Complaint Counsel's First Set of Interrogatories [PDF 279K]
 - Complaint Counsel's Requests for Admissions [PDF 713K]
 - Response to Complaint Counsel's Request for Admissions [PDF 1.8M]
 - Volume Three [PDF 23K]
 - Expert Report of Geoffrey Nunberg [PDF 2.51M]
 - Expert Report of Michael B. Mazis, Ph.D [PDF 3.91M]
 - Volume Four [PDF 24K]
 - Atkinson Deposition [PDF 267K]
 - Chevreau Deposition [PDF 1.24M]
 - Davis Deposition [PDF 3.51M]
 - Fobbs Deposition [PDF 1.31M]
 - Friedlander Deposition [PDF 3.43M]
 - D. Gay Deposition [PDF 3.40M]
 - Volume Five [PDF 24K]
 - G. Gay Deposition [PDF 2.20M]
 - Meade Deposition [PDF 1.18M]
 - Mowrey Deposition [PDF 3.59M]

- Sandberg Deposition [PDF 2.23M]
- Solan Deposition [PDF 1.43M]
- Weight Deposition [PDF 1.72M]
- Volume Six [PDF 37K]
 - Promotional Materials for Dermalin [PDF 4.28M]
 - Promotional Materials for Cutting Gel [PDF 2.11M]
 - Promotional Materials for Tummy Flattening Gel [PDF 964K]
 - Promotional Materials for Anorex [PDF 4.32M]
 - Promotional Materials for Leptoprin [PDF 2.19K]
 - Promotional Materials for Pedialean [PDF 3.63M]
 - Declaration of Michael B. Mazis, Ph.D [PDF 29K]
 - Documents Cited in Mazis Expert Report [PDF 10.73M]
 - Declaration of Geoffrey Nunberg, Ph.D [PDF 21K]
 - Documents Cited in Nunberg Expert Report [PDF 12.77M]
 - Combined Balance Sheet and Notes [PDF 10.75M]
 - Certified Copy of the Articles of Organization and Articles of Amendment for Covarix LLC (Registered Dec. 27, 2002) [PDF 267K]
 - Claim Substantiation Bullets [PDF 273]
 - Dissemination Schedules [PDF 1.29M]
- Respondents' Separate Statement of Undisputed Facts in Support of Respondents' Motion for Partial Summary Decision Adverse to Petitioner on Any Count for Unfair Acts or Practices [PDF 313K]
- Respondents' Notice of Filing Stipulation and Agreement [PDF 233K]
- Respondents' Motion for Partial Summary Decision Adverse to Petitioner on Any Count for Unfair Acts or Practices (With Incorporated Memorandum of Law) [PDF 505K]
- Respondents' Motion to Strike Expert Report of Geoffrey Nunberg [PDF 521K]
 - Exhibit 1 - Nunberg Expert Report [PDF 2.4M]
 - Exhibit 2 - FTC Weight Loss Advertising Workshop [PDF 3.3M]
 - Exhibit 3 - Deposition of Dr. Steven R. Heymsfield [PDF 365K]
- Respondents' Motion to Strike Expert Report of Michael Mazis [PDF 472K]
 - Exhibit 1 - Mazis Expert Report [PDF 3M]
 - Exhibit 2 - Deposition of Michael Mazis [PDF 636K]
- Motion in Limine to Preclude Reliance on or Use of "Facial Analysis" to Prove Claims Allegedly Implied By the Advertisements at Issue in this Case [PDF 1.11M]
 - Exhibit 1 - Appendix One Building a Record on Advertising Meaning and Substantiation [PDF 340K]
 - Exhibit 2 - Deposition of Michael Mazis [PDF 129K]
 - Exhibit 3 - Mazis Expert Report [PDF 3M]
 - Exhibit 4 - FTC Weight Loss Advertising Workshop [PDF 3.3M]

Redacted

- o Exhibit 5 - Nunberg Export Report [PDF 2.4M]
- o Exhibit 6 - Deposition of Dr. Steven R. Heymsfield [PDF 365K]
- o Exhibit 7 - Complaint Counsel's First Request for Production of Documentary Materials and Tangible Things [PDF 277K]
- o Exhibit 8 - Enforcement Policy Statement on Food Advertising [PDF 1.1M]
- o Exhibit 9 - Explanatory Note for Electronic Version of this Report [PDF 3.23M]
- o Exhibit 10 - Dietary Supplement Guide [PDF 2.2M]

January 28, 2005

- Respondents' Motion for Partial Summary Decision Adverse to Petitioner with Regard to Every Allegation That Is Premised Upon, or Derives From, the Assertion That the Advertisements in Question Convey Claims of "Rapid" or "Substantial" Weight Loss [PDF 2.8M]
- Respondents Compendium of Exhibits in Support of Motion for Partial Summary Decision [PDF 116K]
 - o Exhibit 1 - FTC Weight Loss Advertising Workshop [PDF 3.3M]
 - o Exhibit 2 - Nunberg Export Report [PDF 2.4M]
 - o Exhibit 3 - Mazis Expert Report [PDF 3M]
 - o Exhibit 4 - Deposition of Michael Mazis [PDF 129K]
 - o Exhibit 5 - Appendix One Building a Record on Advertising Meaning and Substantiation [PDF 340K]
 - o Exhibit 6 - Deposition of Dr. Steven R. Heymsfield [PDF 365K]
 - o Exhibit 7 - Complaint Counsel's First Request for Production of Documentary Materials and Tangible Things [PDF 277K]
 - o Exhibit 8 - Enforcement Policy Statement on Food Advertising [PDF 1.1M]
 - o Exhibit 9 - Explanatory Note for Electronic Version of this Report [PDF 3.23M]
 - o Exhibit 10 - Dietary Supplement Guide [PDF 2.2M]
- Concise Statement of Material Facts to Which Respondents Contend There Is No Genuine Issue [PDF 240K]
- Respondents' Separate Statement of Undisputed Facts In Support of Motion for Partial Summary Decision [PDF 556K]
- Respondents' Motion for Partial Summary Decision Adverse to Petitioner on Validity of Petitioner's "Competent & Reliable Scientific Evidence" Standard, or in the Alternative, For Certification to the Commission (with Incorporated Memorandum of Law) [PDF 4.7M]

January 27, 2005

- Respondents' Emergency Motion to Strike Dr. Robert Eckel and Dr. Steven Heymsfield as Petitioner's Expert Witnesses and for Sanctions and Other Relief - Expedited Briefing and Decision Requested [PDF 15.9M]

January 19, 2005

- Order on Complaint Counsel's Motion to Compel a Document from Respondents' Testifying Expert Solan [PDF 320K]
- Order Granting Joint Motion for Extension of Time to File Motions for Summary Decision and Responses to Motions for Summary

Decision [PDF 60K]

January 18, 2005

- Complaint Counsel and Respondents' Joint Motion for Extension of Time to File Motions for Summary Decision and Responses to Motions for Summary Decision [PDF 240K]

January 6, 2005

- Respondent Dennis Gay's Memorandum in Opposition to Complaint Counsel's Motion to Compel [PDF 264K]

December 29, 2004

- Order on Complaint Counsel's Motion to Compel Production of Documents and Answers to Interrogatories [PDF 265KB]
- Order Granting Complaint Counsel's Motion to Compel Complete Privilege Logs and Granting Complaint Counsel's Unopposed Motion for Extension of Time to File a Complete Privilege Log [PDF 188KB]
- Respondents' Second Unopposed Motion to Extend Time to File Response to Complaint Counsel's Motion to Compel [PDF 399K]

December 27, 2004

- Respondents' Opposition to Complaint Counsel's Motion to Compel Production of Documents and Answers to Interrogatories (Corrected) [PDF 1.95M]
- Notice of Filing Corrected Opposition to Complaint Counsel's Motion to Compel Production of Documentary Materials and Answers to Interrogatories [PDF 95K]

December 23, 2004

- Respondents' Opposition to Complaint Counsel's Motion to Compel Production of Documents and Answers to Interrogatories [PDF 2.16M]

December 22, 2004

- Unopposed Motion to Extend Time to File Response to Complaint Counsel's Motion to Compel Production of Respondents' Testifying Expert Lawrence Solan's Documents [PDF 165K]

December 20, 2004

- Respondents' Reply to Complaint Counsel's Motion to Compel Privilege Log [PDF 174K]

December 16, 2004

- Respondents' Unopposed Amended Motion to Extend Time to File Response To Complaint Counsel's Motion to Compel [PDF 110K]

December 15, 2004

- Respondents' Unopposed Motion to Extend Time to File Response to Complaint Counsel's Motion to Compel [PDF 111K]

December 14, 2004

- Complaint Counsel's Unopposed Motion for Extension of Time To File a More Complete Privilege Log [PDF 138K]

December 13, 2004

- Complaint Counsel's Motion to Compel Production of Documentary Materials And Answers to Interrogatories [PDF 264K]
- Complaint Counsel's Motion to Compel Production of Respondents' Testifying Expert Lawrence Solan's Document [PDF 1.71M]

December 9, 2004

- Order on Complaint Counsel's Second Motion for Protective Order [PDF 492K]

December 7, 2004

- Complaint Counsel's Motion to Compel Respondents' Production of Privilege Logs That Comply with Rule of Practice 3.38A [PDF 400K]
 - Exhibits [PDF 5.7M]

December 6, 2004

- Complaint Counsel's Motion to Compel Production of Documentary Materials and Answers to Interrogatories [PDF 3.69M]
 - Exhibits D - K [PDF 5.08M]
 - Exhibits L - P [PDF 2.41M]
 - Exhibits Q - W [PDF 1.48M]

December 2, 2004

- Respondents' Opposition to Complaint Counsel's Motion For Protective Order [PDF 542K]

December 1, 2004

- ALJ's Order Granting Complaint Counsel's Unopposed Motion for Extension of Time to File Responses to First Set of Interrogatories Propounded by Respondents Gay and Friedlander [PDF 47K]
- ALJ's Order Granting Basic Research's Fourth Motion to Compel [PDF 114K]
- Respondents' Second Unopposed Motion for Extension of Time To Provide Expert Report of Daniel B. Mowrey, Ph.D., and for Complaint Counsel to Identify Rebuttal Expert and Provide Rebuttal Expert Report Rebutting Matters Set Forth in the Expert Report of Daniel B. Mowrey, Ph.D [PDF 151K]
- Complaint Counsel's Response to Respondent Pro Se Respondent Friedlander's First Request for Production of Documents [PDF 439K]
- Complaint Counsel's Response to Respondent Dennis Gay's First Set of Requests for Production [PDF 358K]
- Complaint Counsel's Response to Respondent Dennis Gay's Requests for Admissions [PDF 2.9M]

November 30, 2004

- ALJ's Order Denying Basic Research's Third Motion to Compel [PDF 181K]
- ALJ's Order on Respondents' Unopposed Motion for Extension of Time to Provide Expert Report of Daniel B. Mowrey, Ph.D. and for Complaint Counsel to Identify Rebuttal Expert and Provide Rebuttal Expert Report [PDF 51K]
- Expert Report of Lawrence M. Solan [PDF 4.5M]

November 29, 2004

- Complaint Counsel's Unopposed Motion for Extension Of Time to File Responses to Respondent Gay's First Set of Interrogatories and Respondent Friedlander's First Set of Interrogatories [PDF 157K]
- Revised Certificate of Service to Complaint Counsel's Opposition to Basic Research's Motion to Compel Proper Privilege Log [PDF 46K]

November 26, 2004

- Complaint Counsel's Opposition to Basic Research's Motion to Compel Proper Privilege Log [PDF 1.87M]

November 24, 2004

- Complaint Counsel's Opposition to Basic Research's Motion to Compel [PDF 1.86M]
- Complaint Counsel's Supplemental Response to Basic Research's First Request for Admissions [PDF 122K]

November 23, 2004

- Respondents' Unopposed Motion for Extension of Time to Provide Expert Report of Daniel B. Mowrey, Ph.D., and for Complaint

Counsel to Identify Rebuttal Expert and to Provide Rebuttal Expert Report Rebutting Matters Set Forth in the Expert Report of Daniel B. Mowrey, Ph.D. [PDF 171K]

November 22, 2004

- ALJ's Order on Complaint Counsel's Motions for Extension of Time To File Responses to Respondent Gay's Discovery Requests, Respondent Basic Research's Third Motion to Compel, and Respondent Friedlander's Discovery Requests [PDF 84K]
- ALJ's Order Denying Complaint Counsel's Motion for Protective Order To Limit Respondents' Discovery Or, in the Alternative To Clarify the Scheduling Order [PDF 182K]

November 19, 2004

- Complaint Counsel's Unopposed Motion for Extension of Time to Respond to Respondent Friedlander's Discovery Requests [PDF 149K]

November 18, 2004

- Complaint Counsel's Motion for Protective Order (and Exhibits) [PDF 9.3M]

November 16, 2004

- Pro Se Respondent Friedlander's Notice of Adoption of Respondents Basic Research, LLC, A.G. Waterhouse, LLC, Kleinbecker USA, LLC, Nutrasport, LLC, Savage Dermalogic Laboratories, LLC, Dennis Gay and Daniel Mowrey's Respective Responses to Complaint Counsel's Motion for Protective Order To Limit Respondents' Discovery Or, in the Alternative, to Clarify Scheduling Order [PDF 356K]
- Respondents' Opposition to Complaint Counsel's Motion For Extension of Time to File Responses to Respondent Dennis Gay's Discovery and To Respond to Basic Research's Motion To Compel [PDF 272K]
- Basic Research, L.L.C., A.G. Waterhouse, L.L.C., Klein-Becker USA L.L.C., Nutrasport, L.L.C. and Savage Dermalogic Laboratories, L.L.C.'s Notice of Adoption of Respondents Dennis Gay and Daniel Mowrey's Respective Responses to Complaint Counsel's Motion for Protective Order to Limit Respondents' Discovery or, in the Alternative, To Clarify Scheduling Order [PDF 448K]

November 15, 2004

- Respondent Daniel B. Mowrey's Response to Complaint Counsel's Motion for Protective Order to Limit Respondents' Discovery Or, in the Alternative, to Clarify Scheduling Order [PDF 953K]
- Respondent Dennis Gay's Reply Memorandum In Opposition to Complaint Counsel's Motion for Protective Order to Limit Respondents' Discovery Or, in the Alternative, to Clarify Scheduling Order [PDF 213K]

November 12, 2004

- Respondent Basic Research LLC's Motion to Compel Proper Privilege Log [PDF 209K]
- Complaint Counsel's [Corrected] Motion for Extension of Time To File Responses to Respondent Dennis Gay's Discovery and To Respondent Basic Research's Motion to Compel [PDF 172K]

November 10, 2004

- Complaint Counsel's Motion for Extension of Time To File Responses to Respondent Dennis Gay's Discovery and To Respondent Basic Research's Motion to Compel [PDF 149K]

November 9, 2004

- Order Requiring Expedited Response To Complaint Counsel's Motion For Protective Order To Limit Respondents' Discovery [PDF 118K]

November 8, 2004

- Order On Basic Research's Second Motion To Compel [PDF 118K]
- Complaint Counsel's Requests for Admissions [PDF 377K]
- Complaint Counsel's Motion for Protective Order to Limit Respondents' Discovery Or, in the Alternative, to Clarify Scheduling Order [PDF 5.4M]

November 4, 2004

- Respondent Dennis Gay's First Set of Interrogatories [PDF 392K]
- Order on Complaint Counsel's Motion to Strike Respondents' Additional Defenses [PDF 654K]
- Order Denying Basic Research's Motion to Compel [PDF 406K]
- Basic Research, LLC's Motion to Compel [PDF 2.7M]
- Response to Complaint Counsel's Second Set of Interrogatories [PDF 3.4M]

November 3, 2004

- Complaint Counsel's Memorandum in Opposition to Respondent Basic Research's Second Motion to Compel [PDF 4.3M]

October 29, 2004

- Complaint Counsel's Supplemental Brief in Support of Pending Motion to Strike Respondents' Additional Defenses [PDF 2.65M]
- Complaint Counsel's Response to Daniel B. Mowrey's First Request for Admissions [PDF 903K]

October 28, 2004

- Respondents' Supplemental Brief Opposing Complaint Counsel's Motion to Strike Respondents' Additional Defenses [PDF 2.1M]

October 26, 2004

- Order on Complaint Counsel's Motion to Stay Response to Parts of Respondents' Second Motion to Compel and for Extension of Time to Respond to Respondents' Second Motion to Compel [PDF 78KB]

October 25, 2004

- Basic Research, LLC's Opposition to Complaint Counsel's Motion to Stay Response to Parts of Respondent's Second Motion to Compel Related to Pending Motion to Strike Defenses, and Opposed Motion for Extension of Time to Respond to the Rest of the Second Motion to Compel [PDF 275K]

October 21, 2004

- Complaint Counsel's Opposed Motion to Stay Response to Parts of Respondent's Second Motion to Compel Related to Pending Motion to Strike Defenses, and Opposed Motion for Extension of Time to Respond to the Rest of the Second Motion to Compel [PDF 260K]

October 18, 2004

- ALJ's Order on Respondents' Request for Oral Argument Or, in the Alternative, for Permission to File a Sur-reply and Ordering Supplemental Briefing [PDF 93K]
- ALJ's Order on Respondents' Motion for Enlargement of Time to Provide Transcribed Testimony [PDF 201K]
- Notice of Appearance and Declaration of Todd M. Malynn [PDF 114K]
- ALJ's Order Requiring Expedited Response [PDF 67K]

October 15, 2004

- Request for Enlargement of Time to Provide Transcribed Testimony [PDF 396K]
- Complaint Counsel's Unopposed Motion for Extension of Time to File Responses to Respondent Mowrey's Discovery [PDF 189K]

October 14, 2004

- Notice of Filing of Proposed Order [PDF 99K]

October 13, 2004

- Basic Research, LLC's Second Motion to Compel [PDF 1.5M]

October 12, 2004

- ALJ's Order Granting Joint Motion for Enlargement of Time [PDF 61K]

October 4, 2004

- Complaint Counsel's Opposition to Basic Research's Motion to Compel [PDF 2.4M]

October 1, 2004

- Complaint Counsel's Opposition to Respondents' Request For Permission to File a Sur-Reply [PDF 140K]

September 29, 2004

- Respondents' Request for Oral Argument or, in the Alternative, for Permission to File a Sur-Reply [PDF 167K]

September 28, 2004

- Complaint Counsel's Reply to Respondents' Opposition to Motion to Strike Respondents' "Additional Defenses" [PDF 1.9M]

September 23, 2004

- Complaint Counsel's Unopposed Motion for Extension of Time to File Opposition to Motion to Compel [PDF 118K]

September 21, 2004

- Order Granting Complaint Counsel's Motion to Submit Reply to Respondents' Opposition to Pending Motion To Strike Respondents' Additional Defenses [PDF 44K]
- Stipulated Request For Enlargement of Time [PDF 478K]

September 16, 2004

- Notice of Non-Objection to Complaint Counsel's Motion to Submit Reply to Respondents' Opposition to Pending Motion to Strike Respondents' Additional Defenses [PDF 163K]

- [Notice of Correction \[PDF 405K\]](#)
- September 15, 2004**
 - [Order Requiring Expedited Response \[PDF 42K\]](#)
- September 13, 2004**
 - [Complaint Counsel's Motion for Leave to Submit Reply to Respondents' Opposition to Pending Motion to Strike Respondents' "Additional Defenses" \[PDF 543K\]](#)
- September 10, 2004**
 - [Respondent Basic Research, LLC's Notice of Correction \[PDF 93K\]](#)
- September 9, 2004**
 - [Basic Research LLC's First Request for Admissions \[PDF 222K\]](#)
 - [Respondents' Opposition to Complaint Counsel's Motion to Strike Respondents' Additional Defenses \[PDF 1.3M\]](#)
 - [Basic Research, LLC's Motion to Compel \[PDF 1.4M\]](#)
 - [Respondents' Preliminary Witness List \[PDF 224K\]](#)
- September 8, 2004**
 - [Order Granting Respondent's Second Motion for Extension of Time to File Response to Motion to Strike \[PDF 44K\]](#)
- September 1, 2004**
 - [Agreed Motion to Extend Time to File Response to Complaint Counsel's Motion to Strike Respondents' Additional Defenses \[PDF 101K\]](#)
- August 30, 2004**
 - [Order Granting Respondents' Motion for Extension of Time to File Response to Motion to Strike \[PDF 41K\]](#)
 - [Order Granting Respondent's Motion for Extension of Time to File Responses to Interrogatories \[PDF 42K\]](#)
- August 27, 2004**

- Complaint Counsel's Response to Basic Research LLC's First Request for Admissions [PDF 330K]
- August 25, 2004**
- Order Granting Complaint Counsel's Motion of Extension of Time to File Responses to Interrogatories [PDF 40K]
- August 23, 2004**
- Complaint Counsel's Motion for Extension of Time To File Responses to Interrogatories [PDF 122K]
- August 20, 2004**
- Complaint Counsel's Motion to Strike Respondents' "Additional Defenses" [PDF 1M]
 - o Attachments to Motion [PDF 1M]
- August 18, 2004**
- Order on Respondents' Motion to Quash in Part and to Limit Subpoenas to Non-Parties [PDF 147K]
- August 17, 2004**
- Order Denying Motions for Interlocutory Appeal and Motion to Certify [PDF 261K]
- August 16, 2004**
- Response of Respondent Dennis Gay to Complaint Counsel's First Set of Interrogatories [PDF 32K]
- August 12, 2004**
- Respondents' Request for Enlargement of Time [PDF 120K]
- August 11, 2004**
- Protective Order Governing Discovery Material [PDF 619K]
- Scheduling Order [PDF 293K]
- August 10, 2004**

- Respondents' Initial Disclosures [PDF 318K]

August 9, 2004

- Respondents' Initial Disclosures [PDF 136K]
- Respondent Mitchell K. Friedlander's Initial Disclosures [PDF 451K]
- Respondents' Notice of Appearance [PDF 226K]
- Respondents' Notice of Appearance [PDF 100K]
- Respondent Daniel B. Mowrey's Initial Disclosures [PDF 188K]

August 5, 2004

- Notice of Withdrawal of Appearance [PDF 75K]

August 3, 2004

- Complaint Counsel's Opposition to Respondents' Motions for Interlocutory Appeal and Pro Se Respondent Friedlander's Motion for Certification [PDF 43K]
 - Exhibit 1 [PDF 295K]
 - Exhibit 2 [PDF 789K]

August 2, 2004

- Order on Prehearing Conference [PDF 38K]

July 30, 2004

- Answer of Respondent Dennis Gay [PDF 352K]
- Answer and Grounds of Defense of Respondent Basic Research, LLC [PDF 452K]
- Answer and Grounds of Defense of Respondent A.G. Waterhouse, LLC [PDF 356K]
- Answer and Grounds of Defense of Respondent Savage Dermalogic Laboratories, LLC [PDF 347K]
- Answer and Grounds of Defense of Respondent Nutrasport, LLC [PDF 324K]
- Answer and Grounds of Defense of Respondent Klein-Becker USA, LLC [PDF 358K]
- Answer and Grounds of Defense of Respondent BAN, LLC [PDF 442K]
- Answer of Respondent Mitchell K. Friedlander [PDF 381K]
- Answer of Respondent Daniel B. Mowrey [PDF 370K]

July 28, 2004

- Order Reassigning Matter to Administrative Law Judge Stephen J. McGuire [PDF 40K]
- Respondents' Notice of Appearance [PDF 94K]

July 27, 2004

- Certain Respondents' Motion for Interlocutory Appeal [PDF 258K]
- Motion re Certification Or, Alternatively, for an Interlocutory Appeal [PDF367K]

July 22, 2004

- Order Granting Motion for Extension in the matter of Basic Research [PDF 49K]

July 20, 2004

- Order Denying Motions for a More Definite Statement and Motion to Dismiss the Complaint for Lack of Definiteness [PDF 242K]
- Respondents' Notice of Appearance [PDF 138K]

July 19, 2004

- Complaint Counsel's Opposition to Respondents' Motions to Submit Replies [PDF 210K]
- Respondents' Notice of Appearance [PDF 119K]
- Respondents' Motion to Quash in Part and to Limit Subpoenas on Non-Parties [PDF 565K]

July 16, 2004

- Request for Enlargement of Time [PDF 108K]
- Respondents' Notice of Appearance [PDF 113K]

July 15, 2004

- Respondents' Notice of Appearance [PDF 132K]

July 13, 2004

- Respondent Mitchell K. Friedlander's Reply to Complaint Counsel's Opposition to Respondents' Motions for a More Definite

- Statement and Motion for Leave to File Same [PDF 214K]
- Respondents' Reply to Complaint Counsel's Opposition to Respondents' Motion for a More Definite Statement [PDF 58K]
- Respondents' Motion to Submit Reply to Complaint Counsel's Opposition to Respondents' Motion for a More Definite Statement [PDF 54K]

July 12, 2004

- Complaint Counsel's Notice of Appearance [PDF 58K]

July 8, 2004

- Complaint Counsel's Opposition to Respondents' Motions For a More Definite Statement [PDF 559K]
 - Attachment 1 [PDF 1.3M]
 - Attachment 2 [PDF 273K]
 - Attachment 3 [PDF 4.6M]

July 6, 2004

- Respondent Mitchell K. Friedlander's Motion to Dismiss Complaint for Lack of Definiteness [PDF 303K]
- Complaint Counsel's Notice of Appearance [PDF 34K]

June 28, 2004

- Respondent Mitchell K. Friedlander Joinder and Motion for a More Definite Statement [PDF 230K]
- Respondent Mitchell K. Friedlander Notice of Appearance [PDF 42K]
- Respondent's Motion for a More Definite Statement [PDF 29K]
- Respondent's Counsel Notice of Appearance [PDF 306K]

June 25, 2004

- Complaint Counsel's Notice of Appearance [PDF 36K]

June 23, 2004

- Order Designating Administrative Law Judge [PDF 38KB]

June 16, 2004

- [Text of the Administrative Complaint \[PDF 59KB\]](#)
- [Exhibits A-L \[PDF 3MB\]](#)
- [News Release](#)

Last Updated: Thursday, February 17, 2005

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ATTACHMENT C

Declaration of James Reilly Dolan

I, JAMES REILLY DOLAN, hereby declare:

1. I am an Assistant Director in the Enforcement Division, Bureau of Consumer Protection, Federal Trade Commission. My business address is Federal Trade Commission, 600 Pennsylvania Avenue, N.W., NJ-2221, Washington, D.C. 20580.
2. My duties as Assistant Director include supervising the attorneys who have entered an appearance as counsel supporting the Complaint ("Complaint Counsel") in the litigation in *In re Basic Research, L.L.C. et al.*, (Docket No. 9318), currently pending pursuant to Part III of the FTC's Rules of Practice.
3. I submit this declaration pursuant to Chief Administrative Law Judge McGuire's February 22, 2005 Order. I have personal knowledge of the events discussed herein.
4. On Thursday, February 17, 2005, at approximately 3:00 p.m., I received a telephone call from Donald Clark, Secretary for the Federal Trade Commission. Mr. Clark informed me that someone in the Office of Administrative Law Judges had noticed that there might be non-public information posted on the *Basic Research* docket sheet located on the agency website. He had been asked to consult with Complaint Counsel and with the Respondents regarding this matter. Mr. Clark then asked me to have someone on the litigation team review the docket to confirm whether non-public information had been posted. Mr. Clark advised me that he would contact the Respondents with the same request.
5. I informed Mr. Clark that it was my understanding that the attorneys working on the case had properly marked material subject to the protective order as non-public when filing documents with his office, but that I would instruct the litigation team to review the docket sheet immediately and then contact his office to confirm whether there was, or was not, non-public information on the docket sheet on the agency's web page.
6. Promptly after my conversation with Don Clark ended, I went to the office of the lead Complaint Counsel, Lauren Kapin, and briefed her on my conversation with Mr. Clark. We then went down to Complaint Counsel Joshua Millard's office because he was responsible for filing recent submissions that included materials marked as non-public.
7. As soon as Ms. Kapin and I walked into Mr. Millard's office, and before we could explain the purpose of our visit, he informed us that he had just ended a telephone conversation with Howard Shapiro, in the Office of the Secretary. Mr. Millard then told us about his conversation with Mr. Shapiro. Specifically, he stated that he told Mr. Shapiro that when recently he had visited the docket sheet, he noticed certain exhibits to Complaint Counsel's Motion for Partial Summary Decision that were marked as non-public for purposes of the filing. He then stated that he requested that the specified exhibits be removed immediately from the public website.

8. While still in Mr. Millard's office, Mr. Millard and I called Don Clark back to tell him that Mr. Millard had just spoken with Mr. Shapiro about removing specified documents from the web page and that we would review immediately the remainder of the docket sheet for other potential non-public documents that either Complaint Counsel or Respondents had submitted. In my presence, Mr. Millard printed out a copy of the docket sheet to review.
9. At about 5:00 p.m., Mr. Millard, Ms. Kapin, and I again called Mr. Clark and Mr. Shapiro to ascertain the status of the website. They confirmed that the documents Mr. Millard had specified as purportedly non-public had been removed from the website at approximately 4:50 p.m.
10. During that call, either Mr. Millard or I raised with Mr. Clark that we thought there was additional information posted at Respondents' request that Respondents previously had asserted was non-public. We noted that on February 3, 2005, Respondents had filed a Notice of Filing Discovery and Transcripts, which included what appeared to be the full deposition transcripts of Dr. Heymsfield and Dr. Eckel (this is based on my online review of the deposition transcripts, looking for any noticeable redactions to the transcript text, for which I noticed none). It is my understanding that both depositions discussed information Respondents had marked confidential, and are related directly to Respondents' pending motion to strike Drs. Heymsfield and Eckel's expert testimony, including their expert reports, for alleged violations of the protective order in this case. Mr. Clark responded that he had contacted Respondents' counsel earlier about the possibility of non-public information on the website and Respondents had not identified any material they had submitted as non-public as being on the website.
11. During that same call, we asked Messrs. Clark and Shapiro whether it would be possible to confirm how many, if any, "hits" to the "URL's" for the specific documents in question. They responded they would look into that with the web team.
12. When I arrived to work on the morning of Friday, February 18, 2005, I learned that Jeffrey Feldman, Counsel for Respondents, had requested certain IT information the night before and that Ms. Kapin promptly had passed that request onto the FTC's web support team. I also learned that Mr. Millard had forwarded the request to the web support team again in the morning.
13. Shortly after 10:00 a.m. on Friday, Mr. Millard and I called Elaine Sullivan, manager for the agency's web support team, to confirm her team had received the request and understood the urgency of the request. We also asked her to make sure that documents and electronic copies of the *Basic Research* web page would be preserved until further notice.

14. At approximately 12:45 p.m., Messrs. Clark and Shapiro called me to inform me that they had decided to take down the entire docket sheet for the *Basic Research* matter until further notice.
15. At sometime shortly after 1:30 p.m., Mr. Shapiro informed me that according to his records, the purported non-public exhibits to Complaint Counsel's Motion for Partial Summary Decision were posted to the docket sheet website at approximately at 12:00 p.m., Tuesday, February 15, 2005. According to Mr. Shapiro, the entire docket sheet was removed from the web page shortly after he and Mr. Clark had spoken with me. That means the entire docket sheet was removed from the FTC's web page sometime between 12:45 p.m. and 1:30 p.m., Friday, February 17, 2005.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on February 25, 2005, in the City of Washington, District of Columbia.



James Reilly Dolan

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of February, 2005, I caused *Complaint Counsel's Supplemental Response to Respondents' Emergency Motion Requiring the Commission to Provide Respondents with Electronic Files* to be filed and served as follows:

- (1) the original, two (2) paper copies filed by hand delivery and one (1) electronic copy via CD ROM to:
Donald S. Clark, Secretary
Federal Trade Commission
600 Penn. Ave., N.W., Room H-159
Washington, D.C. 20580

- (2) two (2) paper copies served by hand delivery to:
The Honorable Stephen J. McGuire
Chief Administrative Law Judge
600 Penn. Ave., N.W., Room H-104
Washington, D.C. 20580

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

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CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of April, 2005, I caused *Complaint Counsel's Supplemental Response to Respondents' Emergency Motion Requiring the Commission to Provide Respondents with Electronic Files* to be filed and served as follows:

- (1) the original, two (2) paper copies filed by hand delivery and one (1) electronic copy via e-mail to:
Donald S. Clark, Secretary
Federal Trade Commission
600 Penn. Ave., N.W., Room H-159
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The Honorable Stephen J. McGuire
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600 Penn. Ave., N.W., Room H-104
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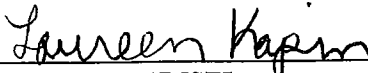
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