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

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | PUBLIC |
| DYNAMIC HEALTH OF FLORIDA, LLC, | ) | |
| CHHABRA GROUP, LLC, | ) | Docket No. 9317 |
| DBS LABORATORIES, LLC, | ) | |
| VINEET K. CHHABRA aka VINCENT K. CHHABRA, and | ) | |
| JONATHAN BARASH, | ) | |
| Respondents. | ) | |

To: Stephen J. McGuire
Chief Administrative Law Judge

**MOTION FOR FINDING OF DEFAULT AND ENTRY OF INITIAL DECISION AND SUPPORTING MEMORANDUM**

Complaint counsel hereby moves for a finding of default by DBS Laboratories, LLC, (hereafter, "DBS"). DBS failed to file an answer in this matter despite being properly served with the complaint. At this juncture, issuance of an initial decision against DBS is proper. In support of its motion, complaint counsel submits as follows:

## I. FACTUAL BACKGROUND

The record clearly establishes that DBS was properly served with the Complaint, Notice, and proposed Order issued in this case, Docket 9317. The Commission Rules provide, *inter alia*, that a complaint may be served by delivering a copy to the principal office of the person, partnership, corporation, or unincorporated association; service under this provision is complete upon delivery. 16 C.F.R. § 4.4(a)(iii).

During the investigatory phase of this matter, at the request of complaint counsel, Civil Investigative Demands were issued to DBS. Among other things, complaint counsel sought information regarding the business address of DBS and related entities. In response, DBS, through counsel, stated that its principal address was 1485 North Park Road, Weston, FL 33326. Declaration of Devenette Cox, attached as Exhibit A. Additionally, DBS submitted a copy of the DBS organizational agreement and a financial disclosure. Both of these documents, too, stated that the principal address of DBS was 1485 North Park Road, Weston, FL 33326. *Id*.

On June 15, 2004, the Commission issued its Complaint in this matter. On June 16, 2004, Ms. Bernita Lofty of the FTC's Office of the Secretary sent a package containing the Complaint, Notice, and proposed Order in Docket 9317 via Express Mail, Return Receipt Requested, addressed to DBS Laboratories, LLC, 1485 North Park Dr., Weston, FL 33326. Declaration of Bernita Lofty, attached as Exhibit B. On June 17, 2004, an individual at that address signed the return receipt for the package and mailed it back to the FTC. *Id*.

The Commission's Rules require that a respondent file its answer within 20 days of being served with a complaint. Having been served on June 17, DBS' answer was due on or before July 7, 2004. DBS has not filed an answer.

## II. DEFAULT JUDGMENT IS APPROPRIATE

Rule 3.12(c) provides that the failure of a respondent to file an answer to a complaint:

> authorize[s] the Administrative Law Judge, without further notice to the respondent, to find the facts to be as alleged in the complaint and to enter an initial decision containing such findings, appropriate conclusions, and order.

There is no question that Rule 3.12(c) authorizes the finding of default and issuance of an initial decision consistent with the complaint and proposed order where, as here, a respondent fails to answer the complaint despite being properly served. *E.g.*, *Automotive Breakthrough Sciences, Inc.*, 1996 FTC LEXIS 470 at *7 (entering default and issuing initial decision consistent with complaint and proposed order following failure to answer the complaint or to respond to discovery requests), *American Tractor Trailer Training, Inc*., 86 F.T.C. 654, 1975 FTC LEXIS 84 at *19 (entering default and issuing initial decision following failure to submit an answer); *TV Stereo City Freight Liquidators, Inc*., 86 F.T.C. 590, 1975 FTC LEXIS 96 at *14 (same); *Joseph Richard Horvath, d/b/a Sew Rite*, 85 F.T.C. 1081; 1975 FTC LEXIS 171 at *10 (same).

## III. CONCLUSION

For the reasons set forth above, complaint counsel respectfully requests that the Administrative Law Judge find that respondent DBS is in default and issue the attached Initial Decision and Order.

Respectfully submitted,

_____

Janet M. Evans
Division of Advertising Practices
FEDERAL TRADE COMMISSION
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Washington, D.C. 20580
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EXHIBIT A

**DECLARATION OF DEVENETTE COX**

**PURSUANT TO 28 U.S.C. § 1746**

1. My name is Devenette Cox. I am a citizen of the United States of America and over twenty-one years of age. I am employed by the Federal Trade Commission ("Commission") as an Investigator in the Division of Advertising Practices of the Bureau of Consumer Protection. I have been employed by the Commission for 29 years. My business address is c/o FTC, 600 Pennsylvania Avenue, N.W. Room 3212, Washington, D.C. 20580. I have personal knowledge of the facts stated herein. If called to testify, I could and would competently testify to the facts set forth below.

2. In my capacity as an Investigator in the Division of Advertising Practices, I assist in the performance of law enforcement investigations. I conduct research, using a variety of investigative tools, and review information submitted by companies and individuals in response to informal and formal requests.

3. The Division of Advertising Practices opened an investigation into the marketing of Pedia Loss in Fall 2004. That investigation was assigned FTC Matter No. FTC Matter No. 042-3002. As part of the investigation, the Commission issued Civil Investigative Demands to DBS Laboratories asking for responses to interrogatories and production of relevant documents. Later in the investigation, DBS Laboratories voluntarily submitted additional information.

4. DBS Laboratories submitted three items of information that identified its address. It submitted its Operating Agreement, dated July 15, 2003. According to the Operating Agreement, the principal office of DBS Laboratories shall be 1485 North Park Road, Weston, FL 33326 or such other location as may hereafter be determined by the Board.

5. Additionally, according to the interrogatory responses submitted by DBS Laboratories on December 12, 2003, the principal address of DBS Laboratories, LLC is 1485 North Park Drive., Weston, FL 3326.

6. Finally, on March 31, 2004, DBS Laboratories, LLC submitted a financial statement. According to that financial statement, the primary address of DBS Laboratories is 1485 N Park Drive, Weston, Fl 33326.

7. I hereby declare under penalty of perjury that the foregoing is true and correct. Executed this _____ day of August, 2004,

_____

DEVENETTE COX

EXHIBIT B

**DECLARATION OF BERNITA LOFTY**

**PURSUANT TO 28 U.S.C. § 1746**

1. My name is Bernita Lofty. I am a citizen of the United States of America and over twenty-one years of age. I am employed by the Federal Trade Commission ("Commission") as a Legal Technician in the Office of the Secretary, Document Processing Branch. I have been employed by the Commission for 25 years. My business address is c/o FTC, 600 Pennsylvania Avenue, Room 159, Washington, D.C. 20580. I have personal knowledge of the facts stated herein. If called to testify, I could and would competently testify to the facts set forth below.

2. In my capacity as a Legal Technician, I serve complaints and other documents issued by the Commission. On June 15, 2004, the Commission issued a complaint against DBS Laboratories, LLC and others. On June 16, 2004, I sent a package containing the Complaint in Docket 9317, along with the accompanying Notice and proposed Order, via Express Mail, Return Receipt Requested, addressed to DBS Laboratories LLC, 1485 North Park Dr., Weston, FL 33326. On June 22, 2004, we received in the Office of the Secretary a return receipt, showing that the package had been delivered as addressed and signed for on June 17, 2004. A copy of that receipt is attached hereto.

3. I hereby declare under penalty of perjury that the foregoing is true and correct. Executed this _____ day of August, 2004,

_____

BERNITA LOFTY

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

| | | |
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| JONATHAN BARASH, | ) | |
| Respondents. | ) | |

To: Stephen J. McGuire
Chief Administrative Law Judge

**[Proposed] INITIAL DECISION AND ORDER AGAINST DBS LABORATORIES, LLC**

## A. PRELIMINARY STATEMENT

The Commission issued a Complaint in this matter on June 15, 2004, charging DBS Laboratories, LLC, and others with unfair or deceptive acts or practices in violation of Sections 5(a) and 12 of the Federal Trade Commission Act. On June 16, 2004, the Commission's Office of the Secretary mailed a copy of the Complaint, Notice, and Order via Express Mail, Return Receipt Requested, addressed to DBS Laboratories, LLC, 1485 North Park Dr., Weston, FL 33326. The documents were delivered on June 17, 2004. Service was proper, consistent with 16 C.F.R. § 4.4(a)(iii).

Pursuant to the Commission's Rules, DBS was required to submit its answer on or before July 7, 2004. 16 C.F.R. § 3.12 (a). DBS has submitted no answer or other response. I hereby find that DBS is in default.

Rule 3.12(c) authorizes the finding of default and issuance of an initial decision consistent with the complaint and proposed order where, as here, a respondent fails to answer the complaint despite being properly served. *E.g.*, *Automotive Breakthrough Sciences, Inc.*, 1996 FTC LEXIS 470 at *7 (entering default and issuing initial decision consistent with complaint and proposed order following failure to answer the complaint or to respond to discovery requests), *American Tractor Trailer Training, Inc*., 86 F.T.C. 654, 1975 FTC LEXIS 84 at *19 (entering default and issuing initial decision following failure to submit an answer); *TV Stereo City Freight Liquidators, Inc*., 86 F.T.C. 590, 1975 FTC LEXIS 96 at *14 (same); *Joseph Richard Horvath, d/b/a Sew Rite*, 85 F.T.C. 1081; 1975 FTC LEXIS 171 at *10 (same). Accordingly, the following findings, conclusions and order are issued:

## B. FINDINGS AND CONCLUSIONS

4. Respondent DBS Laboratories, LLC, ("DBS" or "respondent") is a Florida limited liability company with offices located at 1485 North Park Dr., Weston, Florida.

5. DBS has advertised, labeled, offered for sale, sold, and distributed products to the public, including Pedia Loss, a weight loss supplement, and Fabulously Feminine, a female sexual enhancement supplement. Pedia Loss and Fabulously Feminine are either a "food" or a "drug" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act, 15 U.S.C. §§ 52 and 55.

6. The acts and practices of respondent have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

**PEDIA LOSS**

7. Respondent has disseminated or caused to be disseminated advertisements for Pedia Loss through various Internet websites, including www.pedialoss.com, www.dynamichealthproducts.com, and www.dbslabs.com, as well as print advertising in Cosmopolitan magazine. According to the product labels, Pedia Loss contains, among other ingredients, fructose, inulin, glutamine, lecithin, citric acid, and hydroxycitric acid (HCA). Advertisements for Pedia Loss products include, but are not necessarily limited to, Complaint Exhibits A through C. The advertisements contain the following statements, among others:

a. **Pedia Loss**

* * *

Child obesity is a growing problem in North America. Pedia Loss is an appetite suppressant for children 6 years and older. Allow children to enjoy their favorite foods without gaining weight. This revolutionary new formula slows the absorption of carbohydrates, allowing more to be burned for energy and less to be stored as fat. This highly effective and natural dietary supplement comes in berry-flavored chewable tablets for easy consumption. In conjunction with a proper diet and exercise program, Pedia Loss can keep your child from becoming a statistic.

Please consult your healthcare provider before giving Pedia Loss to your child.

* * *

This synergistic formula was designed to aide in a child's glucose metabolism. Since many of their favorite foods are rich in carbohydrates but very low in dietary fiber, their digestive tracts and insulin never function properly. Now with Pedia Loss children can still enjoy their favorite food but with the help of Inulin their bodies with [sic] slow down the absorption of carbohydrate, allowing more to be burned for energy and less to be stored as fat, and give a great source of soluble fiber. In addition to this highly advanced ingredient, we have included supplemental amounts of both glutamine and FOS, which have both been proven to

drastically improve intestinal health. Finally this product contains a highly effective compound called HCA. This compound has been shown to safely burn fat without any form of stimulants.

(Complaint Exhibit A: web page from www.dynamichealthproducts.com)

b. Pedia Loss is highly effective for children 6 years of age and older. Children can still enjoy their favorite food in moderation while slowing the absorption of carbohydrates, allowing more to be burned for energy and less to be stored as fat. For best results use in conjunction with an exercise program and a low fat low calorie diet. Please consult your healthcare provider before giving this product to your child.

(Complaint Exhibit B: product label)

c. **Child Obesity**

an american [sic] reality

According to the Centers for Disease Control and Prevention, childhood obesity is a growing problem in the U.S., with one in ten pre-schoolers considered clinically obese. Pedia Loss addresses this growing health care issue in children 6 years of age and older. Children can still enjoy their favorite foods in moderation, while slowing the absorption of carbohydrates. The use of Pedia Loss enables more carbs to be burned for energy and less to be stored as fat. This highly effective and natural dietary supplement comes in berry-flavored chewable tablets that will appeal to children. Best of all is the feeling of strength and confidence they'll experience by overcoming childhood weight problems. . . .

(Complaint Exhibit C: ad in Cosmopolitan Magazine)

5. Through the means described in Paragraph 4, respondent has represented, expressly or by implication, that:

a. Pedia Loss causes weight loss in overweight or obese children ages 6 and over, and

b. When taken by overweight or obese children ages 6 and over, Pedia Loss causes weight loss by suppressing appetite, increasing fat burning, and slowing carbohydrate absorption.

6. Through the means described in Paragraph 4, respondent has represented, expressly or by implication, that it possessed and relied upon a reasonable basis that substantiated the representations set forth in Paragraph 5, at the time the representations were made.

7. In truth and in fact, respondent did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraph 5, at the time the representations were made. Therefore, the representation set forth in Paragraph 6 was, and is, false or misleading.

**FABULOUSLY FEMININE**

8. Respondent has disseminated or caused to be disseminated advertisements for Fabulously Feminine through various Internet websites, including www.usaprescription.com, www.dbslabs.com, and www.medprescribe.com, as well as print ads in various newspaper publications. According to the product labels, Fabulously Feminine contains L-arginine, ginseng, damiana leaf, gingko biloba leaf, and horny goat weed, among other ingredients. Advertisements for Fabulously Feminine products include, but are not necessarily limited to, Complaint Exhibits D through F. The advertisements contain the following statements, among others:

a. **Fabulously Feminine**

Do you crave more from sexual intimacy? Rev up your sex drive with FABULOUSLY FEMININE. All-natural FABULOUSLY FEMININE can help you build the stamina you need to make your sexual experiences more intense and lasting. . . It's all a matter of stimulating blood flow and increasing sensitivity, and FABULOUSLY FEMININE'S herbal and amino acid formula accomplishes this naturally, yet powerfully. . . .

* * *

**PRODUCT INFORMATION**

Fabulously Feminine is a safe, natural way to enhance sexual desire, satisfaction and enjoyment. The ingredients in Fabulously Feminine, when taken daily with a multivitamin, have been shown in a double-blind, placebo-controlled Stanford University study to enhance satisfaction with sex life, the level of sexual desire and frequency of sexual encounters.

It is estimated that 43% of women experience a loss of sexual vitality at some time in their lives. External factors such as stress and fatigue may contribute to the decline in sexual interest. . . .

(Complaint Exhibit D : web page from www.usaprescription.com)

b. It is not unusual for men and women, young or old, to lose desire, arousal and overall satisfaction in the bedroom. Let **DBS Laboratories** give you the fuel you need to re-kindle the fire inside you.

LIBIDO ENHANCER

**FABULOUSLY FEMININE**

Dietary Supplement

Millions of women are dealing with the same issues you are. Put your confidence and your relationship in the hands of **Fabulously Feminine** – The safe, natural way to enhance sexual desire, satisfaction and enjoyment. A special libido enhancing formula designed specifically for women, **Fabulously Feminine** contains a proprietary blend of traditional libido enhancing herbs. Not being in the mood for sex is often times the result of poor stimulation; lack of energy, and hormonal imbalance. This product was

specially formulated to address these issues. These all-natural ingredients are known to stimulate blood flow and increase sensitivity, making this product one of the most potent available on the market.

(Complaint Exhibit E: National Examiner newspaper ad)

c. LIBIDO ENHANCER
**FABULOUSLY ™**
**FEMININE**
Dietary Supplement
* * *
A scientific formula designed especially for women, **Fabulously Feminine** contains a proprietary blend of clinically proven ingredients for libido health. Not being in the mood for sex is oftentimes the result of poor stimulation, lack of energy, and hormonal imbalance. This product has been formulated to address these issues. . . .

(Complaint Exhibit F: National Enquirer newspaper ad)

9. Through the means described in Paragraph 8, respondent has represented, expressly or by implication, that clinical testing proves that Fabulously Feminine enhances a woman's satisfaction with her sex life and level of sexual desire.

10. In truth and in fact, clinical testing does not prove that Fabulously Feminine enhances a woman's satisfaction with her sex life and level of sexual desire. Therefore, the representation set forth in Paragraph 9 was, and is, false or misleading.

11. Through the means described in Paragraph 8, respondent has represented, expressly or by implication, that Fabulously Feminine will increase a woman's libido, sexual desire, and sexual satisfaction by stimulating blood flow and increasing sensitivity.

12. Through the means described in Paragraph 8, respondent has represented, expressly or by implication, that it possessed and relied upon a reasonable basis that substantiated the representation set forth in Paragraph 11, at the time the representation was made.

13. In truth and in fact, respondent did not possess and rely upon a reasonable basis that substantiated the representation set forth in Paragraph 11, at the time the representation was made. Therefore, the representation set forth in Paragraph 12 was, and is, false or misleading.

14. The acts and practices of respondent set forth above constitute unfair or deceptive acts or practices in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

## ORDER

## DEFINITIONS

For purposes of this Order, the following definitions shall apply:

A. Unless otherwise specified, "respondent" shall mean DBS Laboratories, LLC, a limited liability company, its successors and assigns, and their agents, representatives, and employees.

B. "Competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

C. "Pedia Loss" shall mean "Pedia Loss Dietary Supplement" and any other product containing one or more of the ingredients in the current product that is marketed for weight loss or control.

D. "Fabulously Feminine" shall mean "Fabulously Feminine Dietary Supplement" and any other product containing one or more of the ingredients in the current product that is marketed for sexual enhancement.

E. "Food," "drug," and "device," shall mean as "food," "drug," and "device," are defined in Section 15 of the Federal Trade Commission Act, 15 U.S.C. § 55.

F. “Covered product or service” shall mean any dietary supplement, food, drug, or device, and any health-related service or program promoting weight loss or sexual enhancement.

G. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

H. “Endorsement” shall mean as defined in 16 C.F.R. § 255.0(b).

I. The term “including” in this Order shall mean “without limitation.”

J. The terms “and” and “or” in this Order shall be construed conjunctively or disjunctively as necessary, to make the applicable phrase or sentence inclusive rather than exclusive.

**I.**

**IT IS ORDERED** that:

A. Respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Pedia Loss or any other covered product or service, shall not make any representation, in any manner, expressly or by implication, including through the use of endorsements or the product name, that:

1. Such product or service causes weight loss, suppresses appetite, increases fat burning, or slows carbohydrate absorption;

2. Such product or service causes weight loss in overweight or obese children ages 6 and over; or

3. Such product or service, when taken by overweight or obese children ages 6 and over, suppresses appetite, increases fat burning, or slows carbohydrate absorption,

unless, at the time the representation is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation; and

B. Respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Fabulously Feminine or any other covered product or service, shall not make any representation, in any manner, expressly or by implication, including through the use of endorsements or the product name, that such product or service will increase a woman's libido, sexual desire, or sexual satisfaction, unless, at the time the representation is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

**II.**

**IT IS FURTHER ORDERED** that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any covered product or service, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, including through the use of endorsements or the product name, about the benefits, performance, or efficacy of such product or service, unless, at the time the representation is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

**III.**

**IT IS FURTHER ORDERED** that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any covered product or service, in or affecting commerce, shall not misrepresent, in any manner, directly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test or study.

**IV.**

. **IT IS FURTHER ORDERED** that:

A. Nothing in this Order shall prohibit respondent from making any representation for any drug that is permitted in labeling for such drug under any tentative final or final standard promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration; and

B. Nothing in this Order shall prohibit respondent from making any representation for any product that is specifically permitted in labeling for such product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

**V.**

**IT IS FURTHER ORDERED** that respondent DBS Laboratories, LLC, and its successors and assigns shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available for inspection and copying:

A. All advertisements and promotional materials containing the representation;

B. All materials that were relied upon in disseminating the representation; and

C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the

representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

**VI.**

**IT IS FURTHER ORDERED** that respondent DBS Laboratories, LLC, and its successors and assigns shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each person a signed and dated statement acknowledging receipt of the order. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

**VII.**

**IT IS FURTHER ORDERED** that respondent DBS Laboratories, LLC, and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including, but not limited to, a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or

affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. ***Provided, however***, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Attention: In the Matter of DBS Laboratories, LLC.

**VIII.**

**IT IS FURTHER ORDERED** that respondent DBS Laboratories, LLC, and its successors and assigns shall, within sixty (60) days after service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

**IX.**

This order will terminate twenty (20) years from the date of its issuance, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any Part in this order that terminates in less than twenty (20) years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

## CERTIFICATE OF SERVICE

I hereby certify that I have this 5th day of August, 2004, filed and served the attached **MOTION FOR FINDING OF DEFAULT AND ENTRY OF INITIAL DECISION AND SUPPORTING MEMORANDUM** and **[Proposed] INITIAL DECISION AND ORDER AGAINST DBS LABORATORIES, LLC,** upon the following as set forth below:

Donald S. Clark
Secretary
FTC, Room 172
600 Pennsylvania Ave., NW
Washington, D.C. 20580
**via electronic mail and hand-delivery**

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

Max Kravitz, Esq.
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614-464-2000
fax: 614-464-2002
**via electronic mail and express mail**

DBS Laboratories LLC
1485 North Park Dr.,
Weston, FL 33326.
**via express mail**

_____
Janet M. Evans