

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

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

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To: The Honorable Stephen J. McGuire  
Chief Administrative Law Judge

**SECOND JOINT STATUS REPORT**

On January 12, 2005, this court issued an order granting in part and denying in part Respondents' motion to stay these proceedings. The court's order provided that this proceeding be stayed until entry of a formal sentence in Vincent Chhabra's federal court proceeding in Virginia. The court's order also required the parties to file updated joint status reports every twenty one days covering the anticipated sentencing date of Mr. Chhabra and the status of settlement negotiations. Pursuant to the court's order, the parties hereby file their joint status report.

**Complaint Counsel's Statement**

Since the filing of the last Joint Status Report on January 26, 2005, the United States Attorneys involved in Mr. Chhabra's criminal proceeding have informed Complaint Counsel that there has been very little progress in their efforts to obtain asset disclosures from Mr. Chhabra

which were due on January 21, 2005. We are told that while Mr. Chhabra's attorneys turned over a few documents within the last week, the most important documents requested are still outstanding. No new sentencing date has been set.

Also, since the filing of our last Joint Status Report, Complaint Counsel and Counsel for Respondents have continued to exchange settlement communications. Mr. Kravitz has stated that his client desires a settlement that reflects Mr. Chhabra's lack of responsibility for the challenged practices. In response, by letter to Mr. Kravitz dated January 25, 2005, Complaint Counsel provided Mr. Kravitz with numerous documents showing Mr. Chhabra's extensive involvement in the marketing of the challenged products. *See* Attachment ( Letter from Complaint Counsel to Max Kravitz, dated January 25, 2005, without attachments). We provided this information in an effort to show why Complaint Counsel does not believe it appropriate to enter into a settlement that does not reflect Mr. Chhabra's responsibility for the challenged practices.

Complaint Counsel's letter also suggested a meeting of both sides that could include Mr. Chhabra and management personnel from the FTC. During a telephone conversation on February 14, 2005, Complaint Counsel reiterated its request for a settlement meeting between the parties that includes FTC management and Respondent Vineet Chhabra. Mr. Kravitz stated that he will consider this request and attempt to arrange such a meeting although he is not sure the meeting can be arranged before the due date of the next Joint Status Report.

#### **Statement of Counsel for Respondents**

Respondents incorporate by reference the Statements of Counsel for Respondents in its totality contained in the Joint Status Report filed on or about January 25, 2005.

Attorneys for Mr. Chhabra and the government are working together to resolve outstanding issues prior to his Virginia sentencing. The Virginia criminal case was complex and it is to be expected that issues would remain outstanding after his plea of guilty in the Eastern District of Virginia.

Respondents are receptive to meeting with FTC management in an effort to resolve this case with finality for the parties. At this juncture, there has been no change in the posture of the FTC concerning the settlement of this case. Respondents remain cautiously optimistic that future settlement discussions will be productive.

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**Conclusion**

The next status report in this matter is due on or before March 9, 2005.

Respectfully submitted,



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Dated: 2/16/2005

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 16<sup>th</sup> day of February, 2005 filed and served the attached **SECOND JOINT STATUS REPORT** upon the following as set forth below:

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

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

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

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

I further certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original, and that a paper copy with an original signature is being filed with the Secretary of the Commission on the same day by other means.

  
\_\_\_\_\_  
Sydney Knight



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

**ATTACHMENT**

Division of Advertising Practices

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January 25, 2005

**Via Email:** [mkravitz@kravitzlawnet.com](mailto:mkravitz@kravitzlawnet.com)

Max Kravitz, Esq.  
Kravitz & Kravitz LLC  
145 East Rich Street  
Columbus, OH 43215

**Re: Dynamic Health LLC, et al.**  
**Docket No. 9317**

Dear Mr. Kravitz:

This letter is in response to your email correspondence of January 14, 2005 in which you expressed, among other things, your interest in reaching a settlement in this matter. Complaint Counsel shares your interest. Accordingly, we hope that this letter will facilitate and advance our settlement discussions.

As we proceed with settlement discussions in this matter, please be aware that any settlement of this case would require that the matter be withdrawn from adjudication and approved by the Commission. See Commission Rule 3.25(b), 16 C.F.R. § 3.25(b). Thus, while we are prepared to negotiate a settlement in good faith, we are also bound by our knowledge of what the Commission will accept in light of the notice order that it voted out with the complaint.

In your email correspondence, you maintain that any settlement must reflect Mr. Chhabra's "lack of culpability" in this matter. We cannot agree with your views regarding Mr. Chhabra's liability. In fact, we believe that the law and the evidence that will be introduced at trial in this case would lead to a finding of Mr. Chhabra's liability. As you know, in order to obtain a cease and desist order against an individual, the FTC must prove that the individual either directly participated in the acts at issue or had some measure of control over those acts.

*See In re Telebrands Corp*, 2004 Lexis 228 (2004) (ALJ McGuire) (citing *FTC v. Standard Educ. Soc'y*, 302 U.S. 112, 119-20 (1937); *National Housewares, Inc.*, 90 F.T.C. 572, 598 (1977)). Attached are a small sample of documents which clearly show that individually or in concert with his officers and employees, Vincent Chhabra had authority to and did control the policies, acts and practices of the closely held corporate defendants.<sup>1</sup> The evidence leaves no doubt that Mr. Chhabra played an integral part in the marketing and distribution of the challenged products, including his review of advertising materials, marketing materials, and substantiation materials provided by Dr. Guzman.<sup>2</sup> Further, the documents also demonstrate that Mr. Chhabra made key decisions in the marketing and distribution of the challenged products such as the taste of the Pedia Loss product, the pricing of the products, and the authorization of payments to individuals, including Jonathan Barash and Dr. Alberto Guzman.<sup>3</sup>

Your letter also contends that Mr. Chhabra is not “culpable” in this matter because he relied in good faith upon the representations of Arent Fox as well as Jonathan Barash. The Commission has long established that reliance upon counsel is irrelevant to an action brought under Section 5 of the FTC Act, 15 U.S.C. § 45. *See Orkin Exterminating Company v. FTC*, 849

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<sup>1</sup> For example Document # RS0000467 contains an email communication from Vincent Chhabra stating, “I want to TOTALLY control this aspect of our marketing.” Also Document # RS0000155 contains an email communication from Vincent Chhabra stating, “I want to personally proof all labels now.”

<sup>2</sup> *See Documents ## RS0000155* (email from Vincent Chhabra states “I want to personally proof all labels now”); *RS0000254-260* (Vincent Chhabra present at meeting to discuss Pedia Loss ads); *RS0000365* (email from Vincent Chhabra discusses need for public relations firm to handle Pedia Loss, “[W]e have launched Pedia Loss. . . It is important that we handle the media properly. We are not equipped nor trained to handle these inquiries. We have hired the best PR firm in the US to handle this for us.”); *RS0000218* (Vincent Chhabra meets with Public Relations firm to discuss marketing of nutraceutical line of products including Pedia Loss); *RS0000196* (Vincent Chhabra makes decision to promote “Pedia Loss and ALL Dynamic weight loss products” on “MASS SCALE” through use of sample inserts); *RS0000291* (Vincent Chhabra receives document that discusses all the substantiation info that was being provided to public relations firm).

<sup>3</sup> *See Documents ## RS0000440* (email from Vincent Chhabra to “Team” advising that, “This product is supposed to be a good-tasting chewable tablet. According to this, it’s capsules that can be crushed. Please make sure this gets resolved. NO KID wants to swallow 2-3 capsules a day. We need to make this PERFECT as I believe it will be our biggest seller.”); *RS0000215* (Vincent Chhabra discusses pricing of products for Dynamic Health); *RS0000271A* (email shows Vincent Chhabra personally involved in decision to make payments to Jonathan Barash, Nutrition Formulators, and Dr. Guzman); *RS0000273* (email from Vincent Chhabra states, “please make check out to Guzman directly”); *RS0000385* (email where Vincent Chhabra makes decision on the size and placement of ads for Pedia Loss).

F. 2d 1354, 1368 (11<sup>th</sup> Cir. 1988). Indeed, the Commission's opinion in *Orkin* noted that such a defense would virtually eliminate a remedy for violations of section 5 as long as an attorney recommended the conduct. Moreover, courts have rejected advertisers' attempts to escape liability by contending that they had a good faith belief that their advertised claims are substantiated. See *FTC v. USA Sales Corp.*, 785 F. Supp. 737, 748 (N.D. Ill. 1992) (holding that "an advertiser's good faith belief that [the] claim is substantiated is not enough"); *F.T.C. v. World Travel Vacation Brokers, Inc.*, 861 F.2d 1020, 1029 (7th Cir. 1988); see also *United States v. Andreadis*, 366 F.2d 423, 430 (2<sup>nd</sup> Cir. 1966) (holding weight loss drug marketer liable for the campaign's false claims, because a person "should not be able to insulate himself from liability . . . by contending he was not told that the claim made for his product by his advertising agency were false" since the advertiser has "an affirmative duty to insure that the claims . . . were true").

Furthermore, despite your insistence that Mr. Chhabra relied upon advice from Arent Fox, the documents demonstrate that Arent Fox provided respondents with a lengthy analysis of the "risky" nature of the Pedia Loss product, and the need to obtain adequate substantiation given the regulatory concerns about marketing such products to children.<sup>4</sup> However, the Reference Sheets/Substantiation provided by Dr. Guzman, also submitted to Mr. Chhabra, clearly state that human studies of the HCA active ingredient in Pedia Loss, HCA, have been "equivocal."<sup>5</sup> Also, they demonstrate that the dosages used (750mg to 1500mg) in the supportive studies were substantially higher than those used in the Pedia Loss product (50mg). Accordingly, Mr. Chhabra knew or should have known that scientific evidence did not support the claims for the Pedia Loss product.

Finally, your representations regarding Mr. Chhabra's good faith reliance on Mr. Barash do not appear to be supported by the documents. The documents indicate that although Mr. Barash was president of DBS Laboratories, he was, in fact, employed by Mr. Chhabra in that role.<sup>6</sup> The documents further indicate that Mr. Chhabra advised Mr. Barash "I am willing to provide you with ALL of Chhabra Group's infrastructure as my 'skin.' Plus, I am investing all the money."<sup>7</sup> Thus any reliance by Mr. Chhabra on the representations of Mr. Barash would be based upon an agency relationship between the parties.

We hope that this information will assist you and your clients in our settlement discussions. Further, we would like to suggest a telephone or personal meeting between our

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<sup>4</sup> See Document ## FTC-P 00042 - 46.

<sup>5</sup> See Document ## RS0000307 ( Pedia Loss Reference Sheet states "Studies of HCA supplementation in humans have been equivocal. . . . Typical doses associated with suppression of appetite and reductions in body weight are 750-1500 mg of Garcinia cambogia").

<sup>6</sup> See Document ## FDA0000113 -115

<sup>7</sup> See Document # RS0000272



Max Kravitz, Esq.  
January 25, 2005  
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managers and you and your clients to try to address a settlement prior to the due date for our next joint status report. Such a meeting could be held in Columbus, in Washington, D.C., or in Florida.

We look forward to hearing from you.

Very truly yours,



Sydney M. Knight