

UNITED STATES OF AMERICA
BEFORE 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.,
d/b/a BASIC RESEARCH, L.L.C.,
OLD BASIC RESEARCH, L.L.C.,
BASIC RESEARCH, A.G. WATERHOUSE,
BAN, L.L.C.,
d/b/a KLEIN-BECKER USA, NUTRA SPORT, and
SOVAGE DERMALOGIC LABORATORIES,
DENNIS GAY,
DANIEL B. MOWREY,
d/b/a AMERICAN PHYTOTHERAPY RESEARCH
LABORATORY, and
MITCHELL K. FRIEDLANDER

Respondents.

DOCKET NO. 9318

BASIC RESEARCH, LLC'S FIRST REQUEST FOR ADMISSIONS

Respondent, Basic Research, LLC, by and through its undersigned counsel and pursuant to 16 CFR §3.32 hereby requests that the Federal Trade Commission admit the following within fifteen (15) days of service hereof.

DEFINITIONS

1. "Commission" or "FTC" shall mean the Federal Trade Commission, its employees, agents, attorneys, consultants, representatives, officers, and all other persons acting or purporting to act on its behalf.

2. "Staff Counsel" shall mean any attorney(s) employed by the Federal Trade Commission, excluding the Commissioners, including without limitation Complaint Counsel in the above-captioned matter.

3. "Complaint" shall mean the administrative complaint issued by the Federal Trade Commission and any amendments to that Complaint, in the above-captioned matter.

4. "Challenged Products" shall mean each product referred to in the Complaint, including: Dermalin-APg, Cutting Gel, Tummy Flattening Gel, Leptroprin, Anorex, and PediaLean, both individually and collectively.

5. "Challenged Advertisements" shall mean the advertising, both individually and collectively, for the Challenged Products referred to in the Complaint.

6. "Challenged Claims" shall mean the claims, both express and implied, appearing in the Challenged Advertisements and referred to in the Complaint.

7. "Respondent(s)" shall mean" all Corporate Respondents and all Individual Respondents, both individually and collectively, unless otherwise stated.

8. "Corporate Respondents" shall mean the following Respondents: Basic Research, LLC, A.G. Waterhouse, LLC, Klein-Becker, usa, LLC, Nutrasport, LLC, Söavage Dermalogic Laboratories, LLC and BAN, LLC, both individually and collectively as defined in the Complaint, including all of their operations under any trade names.

9. "Individual Respondents" shall mean: Respondents Dennis Gay, Daniel B. Mowrey, and Mitchell K. Friedlander, both individually and collectively, unless otherwise stated.

10. "Efficacy" shall mean the ability of the product to achieve the results for which it is advertised.

11. "Safety" shall mean the ability of the product to be used without risk or adverse health consequences for the user.

12. "Operating Manual" means the Federal Trade Commission Operating Manual.

INSTRUCTIONS

The Requests for Admissions, as separately set forth below, shall be admitted unless, within fifteen (15) days after service, a sworn written answer or objection addressed to the Requests is served upon Basic Research, LLC and filed with the Secretary. Answers shall specifically deny the Request or set forth in detail the reasons why the Request cannot truthfully be admitted or denied. A denial shall fairly meet the substance of the Request, and when good faith requires that a party qualify its answer or deny only a part of the Request, so much of it as is true shall be specified, and the remainder shall be qualified or denied. Lack of information or knowledge shall not be given as a reason for failure to admit or deny unless a reasonable inquiry that the information known to or readily obtainable is insufficient to enable an admission or denial. If it is believed that a Request presents a genuine issue for trial, the Request may not, on that ground alone, be objected to; the Request may either be denied, or the reasons why the Request cannot be admitted or denied set forth.

REQUESTS FOR ADMISSIONS

1. Admit that the Federal Trade Commission has not conducted any studies regarding the Efficacy of the Challenged Products.

2. Admit that the Federal Trade Commission has not conducted consumer surveys or other research relating to how reasonable consumers would interpret or understand the Challenged Advertisements.

3. Admit that the Federal Trade Commission has not conducted consumer surveys or other research relating to what types of substantiation reasonable consumers would expect the Respondents to possess in order to have a reasonable basis for the Challenged Claims in the Challenged Advertisements.

4. Admit that at the time the Complaint was filed, the Federal Trade Commission had no expert opinion as to what express and/or implied claims were made in the Challenged Advertisements.

5. Admit that at the time the Complaint was filed, the Federal Trade Commission had no expert opinion that Respondents lacked a "reasonable basis" for the Challenged Advertisements.

6. Admit that at the time the Complaint was filed, the Federal Trade Commission had no expert opinion to support the allegations in paragraphs 24, 26, 32, and 41 of the Complaint.

7. Admit that the interpretation of Challenged Advertisements used to support the filing of the Complaint was performed by Staff Counsel for the Federal Trade Commission.

8. Admit that the term "Rapid" can mean different things to different reasonable consumers.

9. Admit that the term "Substantial" can mean different things to different reasonable consumers.

10. Admit that at the time the Challenged Advertisements were published, the Federal Trade Commission had no pre-screening protocol for the approval of the Challenged Advertisements.

11. Admit that at the time the Challenged Advertisements were published, the Federal Trade Commission had no pre-screening protocol for determining the adequacy of the substantiation supporting the claims made in the Challenged Advertisements.

12. Admit that the Federal Trade Commission will not give advertisers definitive answers on the adequacy of their claim substantiation before advertisements are disseminated.

13. Admit that 16 C.F.R. §1.1 does not provide a pre-screening protocol for advertisers to receive approval of their advertising.

14. Admit that advice provided by the Federal Trade Commission under 16 C.F.R. §1.1 is not binding on the Federal Trade Commission.

15. Admit that the Federal Trade Commission is under no obligation to issue warning letters if it changes its position regarding advice previously provided under 16 C.F.R. §1.1.

16. Admit that in 2000, the Federal Trade Commission received a petition to adopt a rule for the pre-screening of dietary supplement advertisements.

17. Admit that in 2000, the Federal Trade Commission denied a petition to adopt a rule for the pre-screening of dietary supplement advertisements.

18. Admit that in 2000, the Federal Trade Commission denied a petition to adopt a rule for pre-screening of dietary supplement advertisements because it was impracticable.

19. Admit that the Federal Trade Commission, at one time, had a pre-screening protocol for approving advertisements prior to dissemination.

20. Admit that the Federal Trade Commission abolished its pre-screening protocol for approving advertisements prior to dissemination.

21. Admit that the Federal Trade Commission would pre-screen Respondents' advertisements in the event that a cease and desist order is issued against them.

22. Admit that the Federal Trade Commission defines, in each case, the substantiation needed to constitute a reasonable basis for the Challenged Advertising.

23. Admit that in the case of specific establishment claims, the only substantiation required of the advertiser is the substantiation specifically referenced by the advertiser in the advertisement.

24. Admit that what constitutes a "reasonable basis" changes from case to case.

25. Admit that the Federal Trade Commission coordinated the filing of the Complaint with the Congressional hearings held on June 16, 2004 before the Committee on Energy and Commerce, Subcommittee on Oversight and Investigations, United States House of Representatives ("the Hearings").

26. Admit that the Federal Trade Commission was asked by Congressional representatives to delay filing of the Complaint until the commencement of the Hearings.

27. Admit that J. Howard Beales III is not a medical doctor.

28. Admit that at the Hearings J. Howard Beales III was addressed as "Dr. Beales."

29. Admit that at the Hearings, when addressed as "Dr. Beales," Dr. Beales did not correct any member of Congress that he was not a medical doctor.

30. Admit that Dr. Wexler is not a medical doctor.

31. Admit that the Federal Trade Commission deems Dr. Wexler to be an expert on child obesity.

32. Admit that at the Hearings Dr. Wexler was addressed as "Dr. Wexler."

33. Admit that at the Hearings, when addressed as "Dr. Wexler," Dr. Wexler did not correct any member of Congress that he was not a medical doctor.

34. Admit that there is no Federal Trade Commission rule that prohibits a Ph.D. from being referred to as a "doctor."

35. Admit that the conclusion that Respondents did not possess or rely upon a reasonable basis that substantiated the accused advertising is premised upon the Respondents not having a specific type and amount of substantiation for its claims.

36. Admit that the Federal Trade Commission's authority is limited to determining whether the representations made in the Challenged Advertisements are in accord with the level of substantiation Respondents possessed.

37. Admit that it is the Federal Trade Commission's position that "competent and reliable scientific evidence" can mean different types and amounts of evidence in different cases.

38. Admit that the Federal Trade Commission has not defined "competent and reliable scientific evidence" to require any specific kinds, types or amounts of scientific studies.

39. Admit that the Federal Trade Commission has not defined "competent and reliable scientific evidence" to require any specific testing or research protocol or controls.

40. Admit that the Federal Trade Commission's position is that the state of the science renders all the representations made in the Challenged Advertisements unsupported.

41. Admit that it is the Federal Trade Commission's position that claims about the Safety and Efficacy of dietary supplements must be substantiated by competent and reliable scientific evidence.

42. Admit that it is the Federal Trade Commission's position that Respondents needed competent and reliable scientific evidence to substantiate the representations made in the Challenged Advertisements.

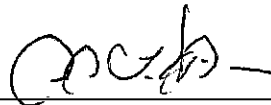
43. Admit that the FTC Commissioners have no formal training or expertise in advertising interpretation.

44. Admit that the FTC Commissioners are not given any formal training in advertising interpretation prior to being commissioned.

45. Admit that the FTC Commissioners have no formal training or expertise in the interpretation of science and/or medical studies.

46. Admit that the FTC Commissioners are not given any formal training in the interpretations of science and/or medical studies prior to being commissioned.

47. Admit that the attorneys for the Federal Trade Commission are bound to follow the procedures specifically discussed in the FTC Operating Manual.



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**Counsel for Respondents 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. and Ban, L.L.C**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was provided to the following parties this 9th day of September, 2004 as follows:

(1) One (1) original and one (1) copy by Federal Express to Donald S. Clark, Secretary, Federal Trade Commission, Room H-159, 600 Pennsylvania Avenue, N.W., Washington, D.C., 20580;

(2) One (1) electronic copy via e-mail attachment in Adobe® “.pdf” format to the Secretary of the FTC at Secretary@ftc.gov;

(3) Two (2) copies by Federal Express to Administrative Law Judge Stephen J. McGuire, Federal Trade Commission, Room H-104, 600 Pennsylvania Avenue N.W., Washington, D.C. 20580;

(4) One (1) copy via e-mail attachment in Adobe® “.pdf” format to Commission Complaint Counsel, Laureen Kapin, Joshua S. Millard, and Laura Schneider, all care of lkapin@ftc.gov, jmillard@ftc.gov; r-richardson@ftc.gov; lschneider@ftc.gov with one (1) paper courtesy copy via U. S. Postal Service to Laureen Kapin, Bureau of Consumer Protection, Federal Trade Commission, Suite NJ-2122, 600 Pennsylvania Avenue, N.W., Washington, D.C., 20580;

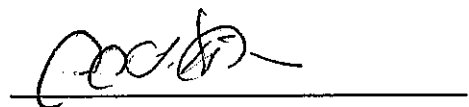
(5) One (1) copy via U. S. Postal Service to Elaine Kolish, Associate Director in the Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580

(6) One (1) copy via United States Postal Service to Stephen Nagin, Esq., Nagin Gallop & Figueredo, 3225 Aviation Avenue, Suite 301, Miami, Florida 33131.

(7) One (1) copy via United States Postal Service to Richard Burbidge, Esq., Jefferson W. Gross, Esq. and Andrew J. Dymek, Esq., Burbidge & Mitchell, 215 South State Street, Suite 920, Salt Lake City, Utah 84111, Counsel for Dennis Gay.

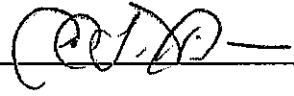
(8) One (1) copy via United States Postal Service to Ronald F. Price, Esq., Peters Scofield Price, A Professional Corporation, 340 Broadway Centre, 111 East Broadway, Salt Lake City, Utah 84111, Counsel for Daniel B. Mowrey.

(9) One (1) copy via United States Postal Service to Mitchell K. Friedlander, 5742 West Harold Gatty Drive, Salt Lake City, Utah 84111, Pro Se.



CERTIFICATION FOR ELECTRONIC FILING

I HEREBY CERTIFY that the electronic version of the foregoing is a true and correct copy of the original document being filed this same day of September 9, 2004 via Federal Express with the Office of the Secretary, Room H-159, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

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