

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.,  
    dba BASIC RESEARCH, L.L.C.,  
    OLD BASIC RESEARCH, L.L.C.,  
    BASIC RESEARCH, A.G. WATERHOUSE,  
BAN, L.L.C.,  
    dba KLEIN, BECKER, USA, NUTRA SPORT, and  
    SOVAGE DERMALOGIC LABORATORIES,  
DENNIS GAY,  
DANIEL B. MOWREY,  
    dba AMERICAN PHYTOTHERAPY RESEARCH  
    LABORATORY, and  
MITCHELL K. FRIEDLANDER,

Respondents.

**DOCKET NO. 9318**

**RESPONDENT DENNIS GAY'S FIRST SET OF INTERROGATORIES**

Respondent Dennis Gay, by and through his undersigned counsel and pursuant to 16 CFR §3.35, hereby propounds these Interrogatories, to which Complaint Counsel shall respond separately and fully, in writing and under oath, within thirty (30) days of service hereof.

**DEFINITIONS**

Notwithstanding any definition below, each word, term, or phrase used in these Interrogatories is intended to have the broadest meaning permitted under the Federal Trade Commission's Rules of Practice.

1. “FTC,” “you,” and “your” 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. “Complaint” shall mean the administrative complaint issued by the Federal Trade Commission and any amendments to that Complaint, in the above-captioned matter.

3. “Advertisements” shall mean the advertisements referenced in the Complaint.

4. “Respondents” shall mean all Respondents, unless otherwise stated.

5. “Mr. Gay” shall mean Respondent Dennis Gay.

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

7. “Advertising Guide” means the FTC’s publication titled “Dietary Supplements: An Advertising Guide for the Industry.”

8. The phrase “expertise of professionals in the relevant area” refers to the phrase “expertise of professionals in the relevant area” which appears on page 9 of the FTC’s Advertising Guide.

9. “Requests for Admissions” shall mean the RESPONDENT DENNIS GAY’S FIRST SET OF REQUESTS FOR ADMISSIONS, which are served concurrently herewith.

10. The phrase “professionals in the relevant area” refers to the phrase “professionals in the relevant area” which appears on page 9 of the FTC’s Advertising Guide.

11. "Topical Fat Reduction Study" shall mean the article "Topical Fat Reduction" by Frank L. Greenway, George A. Bray, and David Heber which appeared in the journal *Obesity Research* in 1995.

12. "Regional Fat Loss Study" shall mean "Regional fat loss from the thigh in obese women after Adrenergic modulation," by Dr. Frank L. Greenway and Dr. George A. Bray, which appeared in the journal *Clinical Therapeutics*, Vol. 9, No. 6, 1987.

13. "GREENWAY/BRAY/HEBER PUBLISHED STUDIES" shall mean the "Topical Fat Reduction Study" and "Regional Fat Loss Study."

14. "First Fiber Study" shall mean "Effect of glucomannan on obese patients: a clinical study" which appeared in the *International Journal of Obesity* (1984) and was authored by David E. Walsh, Vazgen Yaghoubian, and Ali Behforooz.

15. "Second Fiber Study" shall mean "Usefulness of highly purified extract of *Proteinophallus rivieri* fibers in childhood obesity," by Livieri C., Novazi F., and Lorini R., which appeared in the journal *Ped. Med. Chir.* in 1992.

16. "Ephedrine Study" shall mean "Comparison of Ephedrine/Caffeine Combination and Dexfenfluramine in the Treatment of Obesity. A Double-Blind Multi-Centre Trial in General Practice," which appeared in the *International Journal of Obesity* (1994) 18, 99 - 103 by Leif Breum, et al.

17. The "Garvey case" shall mean *Federal Trade Commission v. Garvey*, 383 F.3d 891 (9th Cir. 2004).

18. "Garvey" shall mean Steven Patrick Garvey, one of the Defendants-Appellees in the Garvey case.

19. “**Challenged Products**” shall mean any of the products (i.e., Cutting Gel, Pedia Lean) referenced in the Complaint.

### INSTRUCTIONS

1. Unless otherwise specified, the time period covered by an Interrogatory shall not be limited. All information responsive to the Interrogatory – regardless of dates or time periods involved – must be provided (unless otherwise specified).

2. Each interrogatory must be completely set forth, preceding the answer to it and must be answered separately and fully in writing, under oath.

3. All answers shall be served within fifteen (15) days after service of these interrogatory requests.

4. Information covered by these interrogatory requests shall include all information within your knowledge or possession, or under your actual or constructive custody or control, whether or not such information is located in the files or records of, or may be possessed by: Commission staff, employees or agents of any government agency other than the Federal Trade Commission, expert witnesses, consultants, or otherwise; and whether or not such information is received from or disseminated to any other person or entity including individual Commissioners, Commission staff, employees of any government agencies other than the Federal Trade Commission, and employees of any private consumer protection organizations, attorneys, accountants, economists, statisticians, experts, and consultants.

5. If you object to any interrogatory or a part of any interrogatory, state the interrogatory or part to which you object, state the exact nature of the objection, and describe in detail the facts upon which you base your objection. If any interrogatory cannot be answered in full, it shall be

answered to the fullest extent possible and the reasons for the inability to answer fully shall be provided. If you object to any interrogatory on the grounds of relevance or overbreadth, you shall provide all responsive information that is concededly relevant to claims, defenses, or requested relief in this proceeding.

6. This First Set of Interrogatories is continuing in character so as to require you to produce additional information promptly upon obtaining or discovering different, new or further information before the close of discovery.

7. If any requested information is withheld based on any claim or privilege or otherwise, submit together with such claim for information that is withheld: (a) the specific subject matter; (b) the date of the information; (c) the names, addresses, positions, and organizations of all authors and recipients of the information; and (d) the specific grounds for claiming that the information is privileged or otherwise is withheld. If only part of the responsive information is privileged, all non-privileged portions of the information must be provided.

8. The use of the singular includes the plural, and the plural includes the singular.

9. The use of a verb in any tense shall be construed to include all other tenses.

10. The spelling of a name shall be construed to include all similar variants of such name.

### **INTERROGATORIES**

1. For each response to the Requests for Admissions that is other than an unqualified admission, identify each fact upon which you do or may rely to support your denial or other response, identify each person who witnessed or otherwise has knowledge of such facts and identify each document evidencing, constituting or otherwise relating to such facts.

2. State whether you contend that Mr. Gay had actual knowledge that any of the Advertisements contained a representation that was either false or misleading and, if so, state the following:

a. Identify each and every such representation, including the specific advertisement in which such representation appears;

b. Identify each fact upon which you do or may rely to support any such contention or other response, identify each person who witnessed or otherwise has knowledge of such facts and identify each document evidencing, constituting or otherwise relating to such facts.

3. State whether you contend that Mr. Gay was recklessly indifferent to the truth of any of the representations in the Advertisements or was aware that fraud was highly probable and intentionally avoided the truth and, if so, state the following:

a. Identify each such representation, including the specific advertisement in which the representation appears; and

b. Identify each fact upon which you do or may rely to support any such contention or other response, identify each person who witnessed or otherwise has knowledge of such facts and identify each document evidencing, constituting or otherwise relating to such facts.

4. State whether you contend that Mr. Gay participated directly in the dissemination of any of the Advertisements, and if so, state the following:

a. Identify each such advertisement; and

b. Identify each fact upon which you do or may rely to support any such contention or other response, identify each person who witnessed or otherwise has knowledge of such facts and identify each document evidencing, constituting or otherwise relating to such facts.

5. State whether you contend that Mr. Gay had the authority to control the dissemination of any of the Advertisements, and if so, state the following:

a. Identify each such advertisement; and

b. Identify each fact upon which you do or may rely to support any such contention or other response, identify each person who witnessed or otherwise has knowledge of such facts and identify each document evidencing, constituting or otherwise relating to such facts

6. State what amount of fat loss over what period of time that you contend would constitute a “rapid” fat loss, and identify each fact upon which you do or may rely to support any such contention or other response, identify each person who witnessed or otherwise has knowledge of such facts and identify each document evidencing, constituting or otherwise relating to such facts.

7. State the amount of fat loss you contend that is required to constitute a “visibly obvious” fat loss, and identify each fact upon which you do or may rely to support any such contention or other response, identify each person who witnessed or otherwise has knowledge of such facts and identify each document evidencing, constituting or otherwise relating to such facts.

8. State whether you contend that the GREENWAY/BRAY/HEBER STUDIES do not provide a reasonable basis to substantiate the representation that, when applied in the manner described in the GREENWAY/BRAY/HEBER STUDIES, aminophylline causes a “rapid” and “visibly obvious” fat loss in women’s thighs, and if so, identify each fact upon which you do or may rely to support any such contention or other response, identify each person who witnessed or otherwise has knowledge of such facts and identify each document evidencing, constituting or otherwise relating to such facts.

9. State whether you contend that the GREENWAY/BRAY/HEBER STUDIES do not provide a reasonable basis to substantiate the representation that Dermalin-APg, Cutting Gel, and Tummy Flattening Gel cause “rapid” and “visibly obvious” fat loss in the areas of the body to which they are applied, and if so, identify each fact upon which you do or may rely to support your denial or other response, identify each person who witnessed or otherwise has knowledge of such facts and identify each document evidencing, constituting or otherwise relating to such facts.

10. State whether you contend that the GREENWAY/BRAY/HEBER STUDIES do not provide a reasonable basis to substantiate the representation that published, clinical testing proves that Cutting Gel and Tummy Flattening Gel cause “rapid” and “visibly obvious” fat loss in the areas of the body to which they are applied, and if so, identify each fact upon which you do or may rely to support your contention or other response, identify each person who witnessed or otherwise has knowledge of such facts and identify each document evidencing, constituting or otherwise relating to such facts.

11. State whether you contend that the First Fiber Study and/or Second Fiber Study do not provide a reasonable basis to substantiate the representation that PediaLean causes substantial weight loss in overweight or obese children, and if so, identify each fact upon which you do or may rely to support your contention or other response, identify each person who witnessed or otherwise has knowledge of such facts and identify each document evidencing, constituting or otherwise relating to such facts.

12. State whether you contend that the First Fiber Study and/or the Second Fiber Study do not provide a reasonable basis to substantiate the representation that clinical testing proves that PediaLean causes substantial weight loss in overweight or obese children, and if so, identify each



fact upon which you do or may rely to support your contention or other response, identify each person who witnessed or otherwise has knowledge of such facts and identify each document evidencing, constituting or otherwise relating to such facts.

13. State whether you contend that the Ephedrine Study does not provide a reasonable basis to substantiate the representation that, when ingested in the manner described in the Ephedrine Study, a mixture of ephedrine and caffeine can cause a loss of weight of more than 20 lbs. in significantly overweight users, and if so, identify each fact upon which you do or may rely to support your contention or other response, identify each person who witnessed or otherwise has knowledge of such facts and identify each document evidencing, constituting or otherwise relating to such facts.

14. State whether you contend that the Ephedrine Study does not provide a reasonable basis to substantiate the representation that clinical testing proves that, when ingested in the manner described in the Ephedrine Study, a mixture of ephedrine and caffeine can cause loss of weight of more than 20 pounds in significantly overweight users, and if so, identify each fact upon which you do or may rely to support your contention or other response, identify each person who witnessed or otherwise has knowledge of such facts and identify each document evidencing, constituting or otherwise relating to such facts.

15. State whether you contend that weight losses of 50, 60, and/or 147 pounds in significantly overweight individuals, which losses occurred during a clinical test of the efficacy of a mixture of ephedrine and caffeine in promoting weight loss, do not provide a reasonable basis to substantiate the representation that a mixture ephedrine and caffeine can cause a weight loss as much as 50, 60 and 147 pounds, and if so, identify each fact upon which you do or may rely to support your contention or other response, identify each person who witnessed or otherwise has

knowledge of such facts and identify each document evidencing, constituting or otherwise relating to such facts.

16. State whether you contend that the Ephedrine Study does not provide a reasonable basis to substantiate the representation that Leptoprin can cause weight losses as much as 50, 60 or 147 pounds, and if so, identify each fact upon which you do or may rely to support your contention or other response, identify each person who witnessed or otherwise has knowledge of such facts and identify each document evidencing, constituting or otherwise relating to such facts.

17. State whether you contend that the Ephedrine Study does not provide a reasonable basis to substantiate the representation that clinical testing proves that Leptoprin can cause weight losses as much as 50, 60 or 147 pounds, and if so, identify each fact upon which you do or may rely to support your contention or other response, identify each person who witnessed or otherwise has knowledge of such facts and identify each document evidencing, constituting or otherwise relating to such facts.

18. State whether you contend that the Topical Fat Reduction Study, Regional Fat Loss Study, GREEWAY/BRAY/HEBER PUBLISHED STUDIES, First Fiber Study, Second Fiber Study, or the Ephedrine Study provide a less reasonable basis to substantiate the Advertisements than the basis upon which Garvey relied to substantiate the advertisements in the Garvey case, and if so, identify each fact upon which you do or may rely to support your contention or other response, identify each person who witnessed or otherwise has knowledge of such facts and identify each document evidencing, constituting or otherwise relating to such facts.

19. State whether you contend that Mr. Gay's circumstances, actions, or mens rea regarding the Advertisements are distinguishable from Garvey's circumstances, actions, or mens rea

regarding the advertisements in the Garvey case such that Mr. Gay should be found to have violated either Section 5 or Section 12 of the Federal Trade Commission Act, and if so, identify each fact upon which you do or may rely to support your contention or other response, identify each person who witnessed or otherwise has knowledge of such facts and identify each document evidencing, constituting or otherwise relating to such facts.

20. Identify all documents and things that the FTC has considered, reviewed, or relied upon in evaluating Respondents' Advertisements.

21. Identify all documents and things that the FTC has considered, reviewed, or relied upon in evaluating the Challenged Products.

22. Identify all documents and things that the FTC has considered, reviewed, or relied upon in evaluating any of the substantiation or documents (e.g., GREENWAY/BRAY/HEBER PUBLISHED STUDIES) Respondents have provided in support of the Advertisements and/or Challenged Products.

23. Identify all persons with whom the FTC has communicated relating to any of the Advertisements, and the subject matter of any such communication.

24. Identify all persons with whom the FTC has communicated relating to any of the Challenged Products, and the subject matter of any such communication.

25. Identify all persons with whom the FTC has communicated relating to any of the substantiation or documents (e.g., GREENWAY/BRAY/HEBER PUBLISHED STUDIES) Respondents have provided in support of the Advertisements and/or Challenged Products, and the subject matter of any such communication.



CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was provided to the following parties on the 29<sup>th</sup> day of October, 2004 as follows:

(1) One (1) copy via e-mail to Commission Complaint Counsel, Laureen Kapin, Joshua S. Millard, and Laura Schneider, all care of [lkapin@ftc.gov](mailto:lkapin@ftc.gov), [jmillard@ftc.gov](mailto:jmillard@ftc.gov), [rrichardson@ftc.gov](mailto:rrichardson@ftc.gov), and [lschneider@ftc.gov](mailto: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;

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

(3) One (1) copy via United States Postal Service to Ronald F. Price, Peters Scofield Price, 310 Broadway Centre, 111 East Broadway, Salt Lake City, UT 84111, counsel for Dr. Mowrey.

(4) One (1) copy via United States Postal Service to Jeffrey D. Feldman FELDMANGALE, P.A., Miami Center – 19<sup>th</sup> Floor 201 S. Biscayne Blvd., Miami, Florida 33131, Counsel for Respondents, A.G. Waterhouse, L.L.C., Klein-Becker, L.L.C. Nutrasport, L.L.C., Sovage, Dermallogic Laboratories, L.L.C., and BAN, L.L.C.

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

\s/  
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Kathy Wisner