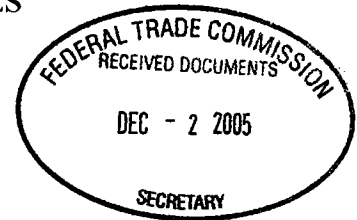


UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES
WASHINGTON, D.C.



In the Matter of

BASIC RESEARCH, LLC
A.G. WATERHOUSE, LLC
KLEIN-BECKER USA, LLC
NUTRASPORT, LLC
SOVAGE DERMALOGIC LABORATORIES, LLC
BAN LLC d/b/a BASIC RESEARCH LLC
OLD BASIC RESEARCH, LLC
BASIC RESEARCH, A.G. WATERHOUSE,
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

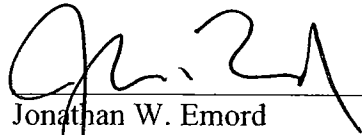
Docket No. 9318

**MOTION FOR LEAVE TO FILE DRAFT ORDERS INADVERTENTLY
OMITTED FORM MOTIONS *IN LIMINE* AND MOTION FOR IN CAMERA
TREATMENT**

On November 23, 2005 all Respondents filed four motions: (1) Respondents' Motion for In Camera Treatment of Trial Exhibits; (2) Respondents' Motion to Exclude Complaint Counsel Witness Heymsfield or, in the Alternative, to Limit His Testimony; (3) Respondents' Motion to Exclude Complaint Counsel Witness Geoffrey D. Nunberg; and (4) Respondents' Motion to Exclude Complaint Counsel Witness Michael B. Mazis. His Honor ruled on the last motion and therein explained that it failed to include a draft order as required by FTC rule 3.22. Respondents erred by inadvertently omitting draft orders from each motion and move here for leave to correct that error in each of the motions still pending. Attached hereto are the draft orders for each of the three pending

motions. Respondents respectfully request that this motion be granted and regret any inconvenience their omission may have caused the presiding officer or Complaint Counsel.

Respectfully submitted,



Jonathan W. Emord
Emord & Associates, P.C.
1800 Alexander Bell Drive
Suite 200
Reston, VA 20191
Tel. (202) 466-6937
Fax (202) 466-6938

Counsel for Basic Research, LLC
A.G. Waterhouse, LLC
Klein-Becker USA, LLC
Nutrasport, LLC
Sovage Dermatologic
Laboratories, LLC, BAN, LLC

Stephen E. Nagin
Nagin, Gallop & Figueredo, P.A.
18001 Old Cutler Road
Miami, Florida 33157
Tel. (305) 854-5353
Fax (305) 854-5351

Counsel for Basic Research, LLC

Richard Burbidge, Esq.
Burbidge & Mitchell
215 South State Street
Suite 920
Salt Lake City, Utah 84111

Counsel for Dennis Gay

Ronald F. Price
PETERS SCOFIELD PRICE

A PROFESSIONAL CORPORATION
340 Broadway Centre
111 East Broadway
Salt Lake City, Utah 84111
Telephone: (801) 322-2002
Facsimile: (801) 322-2003

**Counsel for Respondent Daniel B.
Mowrey**

Mitchell K. Friedlander
5742 West Harold Gatty Drive
Salt Lake City, Utah 84111,

Pro se.

Dated: December 2, 2005

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES
WASHINGTON, D.C.

In the Matter of

BASIC RESEARCH, LLC
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DENNIS GAY
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PHYTOTHERAPY RESEARCH
LABORATORY, and
MITCHELL K. FRIEDLANDER,
Respondents

Docket No. 9318

**ORDER GRANTING RESPONDENTS' MOTION FOR LEAVE TO FILE DRAFT
ORDERS INADVERTENTLY OMITTED FROM MOTIONS IN LIMINE AND
MOTION FOR IN CAMERA TREATMENT**

On December 2, 2005 Respondents filed a motion for leave to file draft orders inadvertently omitted from three pending motions that Respondents filed on November 23, 2005: (1) Respondents' Motion for In Camera Treatment of Trial Exhibits; (2) Respondents' Motion to Exclude Complaint Counsel Witness Heymsfield or, in the Alternative, to Limit His Testimony; and (3) Respondents' Motion to Exclude Complaint Counsel Witness Geoffrey D. Nunberg. In the interests of judicial economy and the lack of prejudice to any party or the presiding officer, Respondents motion is hereby GRANTED.

It is ORDERED that the draft orders attached to the Respondents' motion are hereby filed with each of the pending motions before the presiding officer.

ORDERED:

Stephen J. McGuire
Chief Administrative Law Judge

Date:

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES
WASHINGTON, D.C.**

In the Matter of

**BASIC RESEARCH, LLC
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KLEIN-BECKER USA, LLC
NUTRASPORT, LLC
SOVAGE DERMALOGIC LABORATORIES, LLC
BAN LLC d/b/a BASIC RESEARCH LLC
 **OLD BASIC RESEARCH, LLC
 BASIC RESEARCH, A.G. WATERHOUSE,
 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

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of December, 2005, I caused Respondents' Motion for Leave to File Draft Orders Inadvertently Omitted From Motions in Limine and Motion for In Camera Treatment to be filed and served as follows:

- 1) an original and one paper copy filed by hand delivery and one electronic copy in PDF format filed by electronic mail to

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

2) two paper copies delivered by hand delivery to:

The Hon. Stephen J. McGuire
Chief Administrative Law Judge
U.S. Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Room H-112
Washington, D.C. 20580

3) one paper copy by first class U.S. Mail to:

James Kohm
Associate Director, Enforcement
U.S. Federal Trade Commission
601 New Jersey Avenue, N.W.
Washington, D.C. 20001

4) one paper copy by first class U.S. mail and one electronic copy in PDF format by electronic mail to:

Laureen Kapin
Joshua S. Millard
Laura Schneider
Walter C. Gross III
Lemuel W. Dowdy
Edwin Rodriguez
U.S. Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Suite NJ-2122
Washington, D.C. 20580
Email: lkapin@ftc.gov
jmillard@ftc.gov
lschneider@ftc.gov
wgross@ftc.gov
ldowdy@ftc.gov
erodriguez@ftc.gov

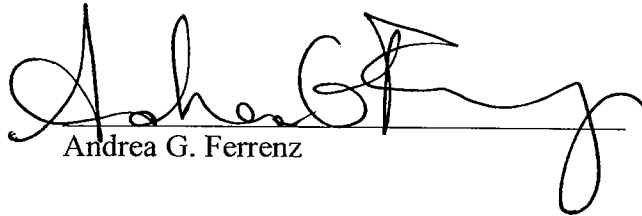
Stephen E. Nagin
Nagin, Gallop & Figueredo, P.A.
3225 Aviation Avenue
Third Floor
Miami, FL 33133-4741
Email: snagin@ngf-law.com

Richard D. Burbidge
Burbidge & Mitchell

215 South State Street
Suite 920
Salt Lake City, UT 84111
Email: rurbidge@urbidgeandmitchell.com

Ronald F. Price
Peters Scofield Price
340 Broadway Center
111 East Broadway
Salt Lake City UT 84111
Email: rfp@psplawyers.com

Mitchell K. Friedlander
c/o Compliance Department
5742 West Harold Gatty Drive
Salt Lake City, UT 84116
Email: mkf555@msn.com



Andrea G. Ferrenz

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES
WASHINGTON, D.C.

In the Matter of

BASIC RESEARCH, LLC
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KLEIN-BECKER USA, LLC
NUTRASPORT, LLC
SOVAGE DERMALOGIC LABORATORIES, LLC
BAN LLC d/b/a BASIC RESEARCH LLC
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 BASIC RESEARCH, A.G. WATERHOUSE,
 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

**ORDER GRANTING RESPONDENTS' MOTION FOR IN CAMERA
TREATMENT OF TRIAL EXHIBITS**

On November 23, 2005, Respondents filed a motion for in camera treatment of trial exhibits pursuant to 16 C.F.R. § 3.45. Respondents have identified those of Respondents' and Complaint Counsel's proposed trial exhibits pertaining to Respondents' trade secret, commercial, customer and financial information. Respondents have shown that disclosure of the confidential information in those exhibits would result in a clearly defined, serious injury to Respondents. Accordingly, Respondents' motion is **GRANTED**.

It is hereby **ORDERED** that pursuant to 16 C.F.R. § 3.45 Respondents' and Complaint Counsel's proposed trial exhibits identified in Respondents motion shall be granted in camera treatment for this proceeding.

ORDERED:

Stephen J. McGuire
Chief Administrative Law Judge

Date:

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES
WASHINGTON, D.C.

In the Matter of

BASIC RESEARCH, LLC
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 BASIC RESEARCH, A.G. WATERHOUSE,
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DENNIS GAY
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 PHYTOTHERAPY RESEARCH
 LABORATORY, and
MITCHELL K. FRIEDLANDER,
 Respondents

Docket No. 9318

**ORDER GRANTING RESPONDENTS' MOTION TO EXCLUDE COMPLAINT
COUNSEL WITNESS HEYMSFIELD**

On November 23, 2005, Respondents filed a motion to exclude Complaint Counsel witness Steven B. Heymsfield, M.D., or, in the alternative, to limit his testimony based on his failure to satisfy the requirements of FTC Rule 3.31 (16 C.F.R. § 3.31, Federal Rule of Evidence 702, and the Daubert standard, Daubert v. Merrell Dow Pharmaceuticals, Inc., 113 S.Ct. 2786 (1993). Respondents have shown that Dr. Heymsfield lacks scientific knowledge in specific and critical areas that he would need to possess to deliver an evaluation of the scientific literature upon which he attempts to opine. Further he impermissibly bases his opinions on subjective belief and unsupported speculation and has a conflict of interest in appearing in this case against a competitor of his employer. Accordingly, Respondents' motion is **GRANTED**.

It is hereby **ORDERED** that the expert report and testimony of Complaint Counsel's witness Dr. Heymsfield is hereby deemed inadmissible.

ORDERED:

Stephen J. McGuire
Chief Administrative Law Judge

Date:

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES
WASHINGTON, D.C.

In the Matter of

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 LABORATORY, and
MITCHELL K. FRIEDLANDER,
 Respondents

Docket No. 9318

**ORDER GRANTING RESPONDENTS' MOTION TO EXCLUDE COMPLAINT
COUNSEL WITNESS GEOFFREY D. NUNBERG**

On November 23, 2005, Respondents filed a motion to exclude Complaint Counsel witness Geoffrey D. Nunberg, Ph.D., based on his testimony on all of the same substantive points as Complaint Counsel witness Michael D. Mazis, Ph.D. and his lack of requisite knowledge, basing his opinion on subjective belief and unsupported speculation. Respondents have shown that Dr. Nunberg lacks the requisite training, skills and experience to testify on consumer perception of the PediaLean advertising. Respondents have shown that Dr. Nunberg's expert report lacks any empirical basis to measure consumer perception as the basis for his opinion. Thus, Respondents have shown that Dr. Nunberg's testimony fails to satisfy the requirements of FTC Rule 3.31 (16 C.F.R. § 3.31, Federal Rules of Evidence 403 and 702, and Daubert v. Merrell Dow Pharmaceuticals, Inc., 113 S.Ct. 2786 (1993)). Accordingly, Respondents' motion is **GRANTED**.

It is hereby **ORDERED** that the expert report and testimony of Complaint Counsel's witness Dr. Nunberg is hereby deemed inadmissible.

ORDERED:

Stephen J. McGuire
Chief Administrative Law Judge

Date: