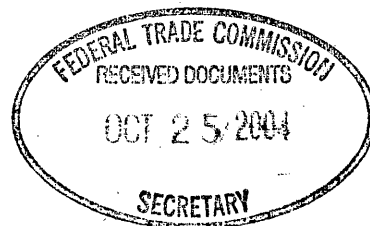


UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES



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,

DOCKET NO. 9318

Respondents.

**RESPONDENT BASIC RESEARCH, LLC'S OPPOSITION TO COMPLAINT
COUNSEL'S MOTION TO STAY RESPONSE TO PARTS OF RESPONDENT'S
SECOND MOTION TO COMPEL RELATED TO PENDING MOTION TO STRIKE
DEFENSES, AND OPPOSED MOTION FOR EXTENSION OF TIME TO RESPOND TO
THE REST OF THE SECOND MOTION TO COMPEL**

Respondent Basic Research, LLC ("Basic Research"), hereby files its Opposition to Complaint Counsel's Motion to Stay Response to Parts of Respondent's Second Motion to Compel Related to Pending Motion to Strike Defenses, and Opposed Motion for Extension of Time to Respond to the Rest of The Second Motion to Compel ("Motion to Stay"), and in support states:

1. On October 13, 2004, Basic Research served its Second Motion to Compel ("Motion to Compel"), seeking better responses and document production directed to Complaint

Counsel's case in chief, including but not limited to the FTC's substantiation standards applicable in this case.

2. Complaint Counsel's response to the Motion to Compel is due on October 25, 2004.

3. This Court's Scheduling Order dated August 11, 2004 has instituted a tight pretrial schedule for the parties, with a written discovery cut off date of November 8, 2004. Expert reports are currently due from Basic Research on November 29, 2004. The discovery that is the subject of the Motion to Compel is relevant to every facet of this case including the work of Basic Research's experts.

4. By this Motion to Stay, Complaint Counsel improperly seeks to evade their discovery obligations in anticipation of a ruling on another motion, Complaint Counsel's Motion to Strike Defenses. Complaint Counsel's assertion that discovery at issue in Basic Research's Motion to Compel, specifically Requests to Produce 6,7, 27 and 29, is solely directed to Basic Research's affirmative defenses is flatly wrong and is one more example of the FTC's overall strategy. From the very filing of the Complaint in this case, Complaint Counsel has studiously avoiding producing specific evidence concerning the level of substantiation against which it has judged and intends to try the claims in the Challenged Advertisements.

5. When Basic Research challenged the lack of detail contained in the Complaint in a Motion for More Definite Statement, Complaint Counsel assured that any difficulty that Basic Research might have identifying the standards against which the FTC has judged the Challenged Advertisements would be easily remedied in discovery. See Complaint Counsel's July 8th, 2004 Opposition to Motion for More Definite Statement. But as Basic Research has attempted to identify the standards and the substantiation the FTC required, the FTC has interposed baseless

objections and refused to produce answers or, failing that, evidence that would allow Basic Research to divine the standards themselves.

6. This new Motion is part and parcel of the same tactic. Requests for production 6, 7, 27 and 29 aim at the same goal Basic Research has sought since the start of this case, identifying the benchmark against which the FTC has evaluated Basic Research's substantiation for the Challenged Advertisements. Complaint Counsel can not avoid its obligation to produce discovery on matters as fundamental to its own case in chief as this by merely asserting that the discovery relates to Basic Research's Affirmative Defenses.

7. Complaint Counsel's representation in the rest of its Motion, i.e., that a stay should be entered because it is unable to respond to discovery, engage in their own affirmative discovery, and attend to the additional briefing schedule while responding to the Motion to Compel borders on ludicrous. This week alone the FTC has served new rounds of discovery including a Second Set of Interrogatories and a Third Request for Production of Documents. Discovery is not the one way street that the FTC believes it to be. The fact that the FTC is continuing to propound discovery on Respondents while protesting at the same time their obligation to give Respondents discovery of the most fundamental elements of their case best evidences the double standard the FTC is applying in this matter.

8. Although subject to the same rigid schedule, Basic Research has met its obligations in this case and has not delayed the discovery sought by the FTC. As Respondents have previously asserted in this case, it seems that the FTC failed to adequately complete their pre-filing investigation obligations prior to bringing this suit. Perhaps if more extensive pre-filing investigation had been conducted, Complaint Counsel would not have the problems it currently asserts regarding discovery in this case.

9. Complaint Counsel has shown only excuses and not good cause for evading its discovery obligations in this case. Therefore, Complaint Counsel's Motion to Stay should be denied.

Respectfully submitted this 12th day of October, 2004

A handwritten signature in cursive script, appearing to be "J. H. ...", written above a horizontal line.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was provided to the following parties this 22nd day of October, 2004 as follows:

(1) One (1) original and one (2) 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; rrichardson@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.

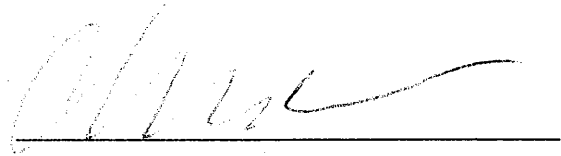
(7) One (1) copy via United States Postal Service to Richard Burbidge, Esq., Jefferson W. Gross, Esq. and Andrew J. Dymek, Esq., Burbidge & Mitchell, 215 South State Street, Suite 920, Salt Lake City, Utah 84111, Counsel for Dennis Gay.

(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 October 22nd, 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.

A handwritten signature in black ink, appearing to be "A. J. [unclear]", is written above a solid horizontal line.

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