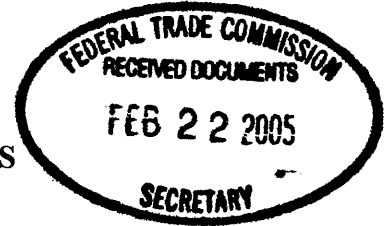


UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES



In the Matter of)
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)
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

PUBLIC DOCUMENT

**RESPONDENTS' EMERGENCY MOTION REQUIRING THE COMMISSION TO
PROVIDE RESPONDENTS WITH ELECTRONIC FILES SHOWING WHO
ACCESSED RESPONDENTS' CONFIDENTIAL INFORMATION WHILE IT WAS ON
THE COMMISSION'S WEBSITE—EXPEDITED BRIEFING REQUESTED**

Respondents Basic Research, LLC, and Ban, LLC, (collectively "Respondents"), by and through undersigned counsel seek an order requiring the Commission to immediately produce to them all electronic files that show who accessed Respondents' confidential information while it

was improperly and illegally posted on the FTC's website, www.ftc.gov ("FTC Website"), and in support thereof state as follows:

On February 15, 2005,¹ the FTC posted Respondents' confidential and attorneys' eyes only information on the its website, www.ftc.gov, as exhibits in support of Complaint Counsel's Motion for Partial Summary Decision. Respondents' highly confidential information, including but not limited to, product formulation and financial data, was publicly available for several days in clear violation of the Protective Order entered in this case and various federal civil and criminal statutes and regulations

Respondents have spoken with Complaint Counsel and requested that the FTC provide Respondents with all electronic files that describe the identity of all persons who accessed Respondents' highly confidential information on the FTC's Website. Specifically, Respondents need the following two types of files ("Electronic Files"):

- 1) All web server log files, including without limitation the transfer log, access log, error log, and referrer log. These files will provide the internet protocol address (commonly called the "IP address") and/or domain name server (commonly called the "DNS") of each computer that accessed the FTC Website, the date and time of the access, the command requesting a web page (commonly shown as "GET/stats/currentstats.html"), the protocol used (HTTP/1.1), the result code, and the size of the file sent (e.g., 17811 bytes); and

¹ Respondents' counsel spoke with Howard Shapiro, from the FTC's office of public affairs, regarding the posting on the FTC Website. Mr. Shapiro informed Respondents' counsel that Complaint Counsel's exhibits containing Respondents' highly confidential information was posted to the FTC Website at approximately 12:00 noon, EST, on Tuesday, February 15, 2005. Mr. Shapiro also stated that he was made aware that Complaint Counsel's exhibits contained Respondents' trade secret information at approximately 3:00PM, EST, on Thursday, February 17, 2005, and that the exhibits were removed from the FTC Website by 5:00PM, EST, on Thursday, February 17, 2005.

2) The system security log, "wtmp" file, "utmp" file, and "failedlogin" file.

These files contain information that shows who logged into the system and when and will allow Respondents to identify users to find out exactly who accessed Respondents' highly confidential information from the FTC Website.

The Electronic Files are the only means by which Respondents can determine who accessed their highly confidential information that was made public by Complaint Counsel and attempt to prevent any unauthorized use of such information. Respondents must act quickly in order to 1) determine who accessed Respondents' highly confidential information; 2) contact all such persons and notify them that the disclosure of Respondents' trade secrets was inadvertent;² 3) attempt to have all such persons execute a non-disclosure agreement; and 4) seek injunctive relief against all persons who accessed Respondents' trade secrets and other highly confidential information and who refuse to execute a non-disclosure agreement.

Respondents have requested that Complaint Counsel ensure that a copy of the FTC Website be electronically mirrored and provided to Respondents in order for Respondents to determine exactly what information was made public. Respondents have further requested that Complaint Counsel provide a copy of the Electronic Files so that Respondents can determine who accessed their highly confidential information. Respondents have sought Complaint Counsel's position on these requests via a telephone conversation with Complaint Counsel this morning. Complaint Counsel has advised Respondents that they have located web logs for February 17, 2005 and are attempting to locate web logs for February 15-16, 2005. Complaint

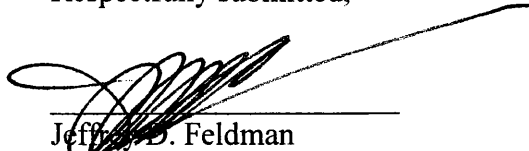
² Respondents' trade secrets have not lost their protected status through Complaint Counsel's disclosure. *See Masonite Corp. v. County of Modocino Air Quality Mgmt. Dist.*, 49 Cal. Rptr. 2d 639 (Cal. Ct. App. 1996) (holding that Masonite's statutorily-required disclosure of trade secrets to a government agency and the agency's subsequent disclosure of those trade secrets to members of environmental activist groups did not destroy the protected status of the trade secrets).

Counsel further advised that, due to the Commission's privacy policy, the Commission could not agree, without further consideration by its General Counsel's office, to release this information to Respondents. Respondents do not have the luxury of awaiting an opinion from the Commission's lawyer and therefore request that this Court direct the Commission to immediately produce the Electronic Files requested herein as well as a copy of Respondents' information that was posted on the FTC's website. Any delay in the receipt of this information will only compound the grave harm that the Commission has already caused Respondents by breaching yet again this Court's August 11, 2004 Protective Order.³

The instant Motion is filed as an emergency motion because Respondents must act quickly in order to prevent and/or limit the unauthorized use of Respondents' trade secrets by third parties. Therefore, Respondents respectfully request that this Court enter an Order requiring Complaint Counsel and any other employee of the Commission with possession, custody, or control over the Electronic Files and/or the mirrored copy of the FTC Website to immediately produce a copy of same to Respondents, by the close of business today, February 18, 2005.

³ Respondents will be filing a Motion for an Order to Show Cause Why Complaint Counsel Should Not Be Held in Contempt for this additional and most serious breach of the Protective Order.

Respectfully submitted,



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Attorneys for Respondents Basic Research, LLC,
A.G. Waterhouse, LLC, Klein-Becker USA, LLC,
Nutrasport, LLC, Sövage Dermalogic Laboratories,
LLC and Ban, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was provided to the following parties this 18 day of February, 2005 as follows:

(1) One (1) original and one (2) copies 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, Lauren 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 Lauren 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.

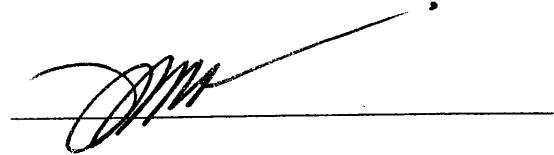
(8) One (1) copy via United States Postal Service to Ronald F. Price, Esq., Peters Scofield Price, A Professional Corporation, 340 Broadway Centre, 111 East Broadway, Salt Lake City, Utah 84111, Counsel for Daniel B. Mowrey.

(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 February 18, 2005 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, consisting of stylized initials, is written above a horizontal line.

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