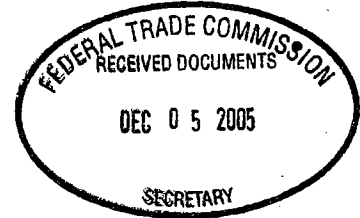


**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES**

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

**ORDER ON RESPONDENTS' REQUEST FOR OFFICIAL NOTICE**

Respondents filed a request for official notice of portions of the Federal Trade Commission ("FTC") public website on February 3, 2005 ("Request"). Complaint Counsel filed its response on February 14, 2005 ("Response").


Respondents request the Court to take official notice of the contents of seven sections of the FTC public website. Request at 2-4. Respondents do not seek official notice that the statements contained in the FTC's web pages are true, merely that such statements were made. Complaint Counsel does not object to the Court's ability to take official notice of the documents requested, but does object to the relevancy and materiality of these documents to this proceeding. Response at 1.

Commission Rule of Practice 3.43(d) states: "When any decision of an Administrative Law Judge or of the Commission rests, in whole or in part, upon the taking of official notice of a material fact not appearing in evidence of record, opportunity to disprove such noticed fact shall be granted any party making timely motion therefor." 16 C.F.R. § 3.43(d); *see also* 5 U.S.C. § 556(e). Because the Commission Rule does not define official notice, it is appropriate to look to Federal Rule of Evidence 201(b). "A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b).

Under Commission precedent, official notice may be taken of references “generally accepted as reliable.” *In re Thompson Medical Co.*, 104 F.T.C. 648, 790 (1984); *In re Rambus*, 2003 WL 22064718 (Aug. 27, 2003). Further, it is appropriate to take official notice of government records where there is a guarantee of trustworthiness. *E.g.*, *In re Beauty-Style Modernizers, Inc.*, 83 F.T.C. 1761, 1780-81 (1974) (taking official notice of a Federal Reserve Board publication); *In re Avnet, Inc.*, 82 F.T.C. 391, 464 n.31 (1973) (taking official notice of U.S. census data).

In this case, it is appropriate to take official notice of the existence of the documents identified. However, Respondents must demonstrate that the statements are relevant, material, and true for them to have any weight. The documents will not be admitted into evidence, but may be cited to in briefs. Pursuant to Commission Rule 3.43, official notice relates to “a material fact not appearing in evidence of record.” 16 C.F.R. § 3.43(d); *see also Sykes v. Apfel*, 228 F.3d 259, 272 (3rd Cir. 2000); *York v. AT&T Co.*, 95 F.3d 948, 958 (10th Cir. 1996). Accordingly, Respondents’ request to take official notice of the seven documents identified from the FTC public website is **GRANTED**.

ORDERED:

  
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Stephen J. McGuire  
Chief Administrative Law Judge

Date: December 5, 2005