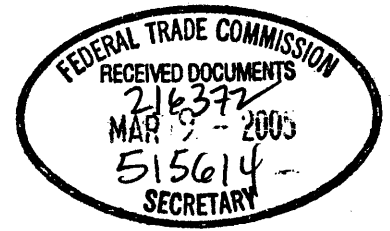


ORIGINAL

**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 FOR RESPONDENTS TO SHOW CAUSE

On February 18, 2005, Respondents Basic Research, LLC and Ban, LLC (“Respondents”) filed a motion seeking an order compelling the Commission to provide Respondents with electronic files showing who accessed Respondents’ confidential information while it was improperly posted on the Commission’s public website (“Motion”).

On February 18, 2005, Complaint Counsel filed a partial response (“Response”) to Respondents’ motion. By Order dated February 22, 2005, Respondents’ request for expedited briefing was granted and Complaint Counsel was ordered to file a supplemental response including sworn statements by February 25, 2005.

On February 25, 2005, Complaint Counsel filed its supplemental response to Respondents’ motion, including sworn statements (“Supp. Response”).

On March 4, 2005, Respondents filed their reply (“Reply”).

Respondents contend that the Federal Trade Commission (“Commission”), in violation of the Court’s Protective Order Governing Discovery Material (“Protective Order”) issued August 11, 2004, improperly posted Respondents’ confidential and attorneys’ eyes only information on its public website. Motion at 2. Respondents’ motion seeks the release of electronic files including: (1) all web server files, including without limitation the transfer log, access log, error log, and referrer log, and (2) the system security log, “wtmp” file, “utmp” file, and “failed login” file. Motion at 2-3.


Respondents’ motion seeks certain electronic files, the release of which may violate the Commission’s privacy policy. *See* Supp. Response at 3-4. Respondents, however, cite no rule or case law to suggest that issuance of an order granting such release is within the authority of the Administrative Law Judge. Indeed, pursuant to Rule 4.11(h), only the General Counsel may authorize Commission staff to disclose information from Commission records not currently available to the public. 16 C.F.R. § 4.11(h). Therefore, the Court has determined that it does not have the authority to order the remedy sought by Respondents and that proper resolution of the motion may require certification to the Commission pursuant to Rule 3.22(a). To determine whether certification is necessary, however, Respondents must first demonstrate whether any of the information posted on the Commission’s website was, in fact, confidential information.

Respondents assert generally that the confidential information posted on the website included certain “product formulation and financial data.” Motion at 2. Respondents do not identify, however, any specific exhibits in which such product formulation and financial data can be found, despite Complaint Counsel’s invitation to do so. *See* Supp. Response at 6. In reviewing the exhibits identified by Complaint Counsel which were posted and which were marked “Subject to Protective Order” it is clear that confidential material was not disclosed in many of the exhibits. For example, a number of the exhibits consist of pages of deposition transcripts where the entire transcript was marked confidential but the pages attached as an exhibit did not include confidential information. *See, e.g.*, Complaint Counsel’s Motion for Partial Summary Decision, Ex. 20, 21, 22.

Therefore, in order to address the above-mentioned questions, it is hereby **ORDERED** that Respondents show cause **within five days** of the date of this Order as to what specific information was posted on the Commission’s website that was, in fact, confidential information, the disclosure of which would result in a clearly defined, serious injury to Respondents. Respondents shall support their arguments with sworn statements or declarations of a person within the company or companies which had confidential information posted. Respondents shall review the electronic mirror they have been provided and shall not limit their response to exhibits to Complaint Counsel’s Motion for Partial Summary Decision.

Moreover, because the challenged exhibits were attached to Complaint Counsel’s Motion for Partial Summary Decision, any action on Complaint Counsel’s Motion for Partial Summary Decision will be **STAYED** pending resolution of these and any other issues that might emanate from this matter.

ORDERED:


Stephen J. McGuire
Chief Administrative Law Judge

Date: March 9, 2005