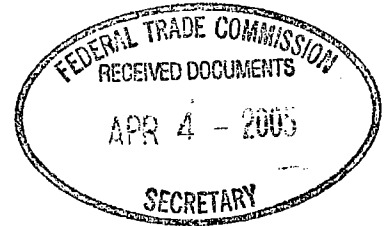


UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES



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.,)
BAN, L.L.C.,)
DENNIS GAY,)
DANIEL B. MOWREY, and)
MITCHELL K. FRIEDLANDER,)

Respondents.)

Docket No. 9318

PUBLIC DOCUMENT

COMPLAINT COUNSEL'S AMENDED PARTIAL RESPONSE TO RESPONDENTS'
EMERGENCY MOTION REQUIRING THE COMMISSION TO PROVIDE
RESPONDENTS WITH ELECTRONIC FILES

Complaint Counsel hereby responds, in part, to Respondents emergency motion, and notifies the Court of the steps taken upon learning of the inadvertent posting of Confidential Material on the Federal Trade Commission's website regarding the Administrative Docket for Basic Research, Docket No. 9318. Complaint Counsel takes this disclosure very seriously and has acted expeditiously to minimize the extent of the disclosure.

Regarding Respondents' requested relief that the FTC provide certain electronic files to Respondents including but not limited to all web server log files and system security log files to Respondents, and preserve an electronic "mirror" of the website so Respondents can determine exactly what information was made public, Complaint Counsel has conferred with both the Chief Information Officer and the General Counsel's Office regarding these issues. Regarding the electronic mirror, Complaint Counsel has consulted with the IT department and they are

investigating whether an electronic mirror exists and have been directed to preserve it if it does exist. If such a mirror exists, then Complaint Counsel does not oppose providing to Respondents. Regarding the electronic files, provision of such files to Respondents raises privacy issues that must be analyzed and considered by the General Counsel's Office. Complaint Counsel will confer with the General Counsel's Office on this issue and attempt to see whether a compromise can be worked out that would meet the needs and responsibilities of both parties. Accordingly, Complaint Counsel requests that the Court stay the issuance of an Order until Complaint Counsel can seek input from the General Counsel and the IT Department and also pursue negotiations with Respondents.

Yesterday, Complaint Counsel discovered that the non-public exhibits to its Motion for Summary Affirmance had been posted to the on-line docket in this matter at approximately noon on Tuesday, February 15, 2005. Yesterday afternoon at approximately 2:45 pm, Mr. Joshua Millard noticed that certain non-public exhibits submitted in connection with Complaint Counsel's Motion for Summary Decision were posted on the public electronic docket for Basic Research. He immediately notified Howard Shapiro, a staff member of the Office of the Secretary and asked that these materials be removed immediately. Shortly thereafter, Mr. Reilly Dolan received a phone call from the Secretary of the Commission about the possibility that non-public documents had been inadvertently placed on the public record. We have been informed by Mr. Shapiro that these materials were removed by 4:50 pm on Thursday, February 17, 2005.

Yesterday evening, Mr. Feldman, Counsel for Respondents, contacted Ms. Lauren Kapin, Complaint Counsel, and asked that she take steps to preserve certain electronic files which could contain information regarding who may have accessed the specific portions of the

web site that contained the Confidential Information. Ms. Kapin immediately contacted the IT department's Help-Line, described the situation, and directed that emergency calls be placed so that this information could be retained and analyzed.

This morning, Ms. Kapin along with other members of Complaint Counsel, followed up with various individuals regarding the technical and privacy issues implicated by Respondents requests. Complaint Counsel sought to ascertain what information electronic files are retained, what information may be gleaned from those files, and whether such information could be turned over to Respondents. Our current understanding is that electronic files from Tuesday February 15th through Thursday February 17th exist and they can be analyzed to determine what IP addresses accessed the Confidential Information and to determine whether those addresses came from outside the Federal Trade Commission. However, such analysis would likely not be concluded until next week given the time necessary to review what are extremely large electronic files and the preliminary steps that need to be taken to cross reference the non-public documents to the URL addresses where they resided in order to isolate the precise portions of the large electronic files that need to be reviewed. We have been informed that that process could be completed by the close of business Tuesday. We are also informed that any release of that information would implicate privacy concerns and the Federal Trade Commission's Privacy Policy and hence we are seeking advice from the General Counsel's Office regarding this matter. Accordingly, we request that the Court allow Complaint Counsel to complete its gathering of information and advice and give Complaint Counsel the opportunity to confer further with Respondents on this matter.

Respectfully submitted,

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Division of Enforcement
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dated: April 4, 2005

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of April, 2005, I caused *Complaint Counsel's Amended Partial Response to Respondents' Emergency Motion* to be filed and served as follows:

- (1) the original, two (2) paper copies filed by hand delivery and one (1) electronic copy via email to:
Donald S. Clark, Secretary
Federal Trade Commission
600 Penn. Ave., N.W., Room H-159
Washington, D.C. 20580

- (2) two (2) paper copies served by hand delivery to:
The Honorable Stephen J. McGuire
Chief Administrative Law Judge
600 Penn. Ave., N.W., Room H-104
Washington, D.C. 20580

- (3) one (1) electronic copy via email and one (1) paper copy by first class mail to the following persons:

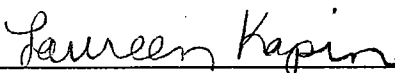
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