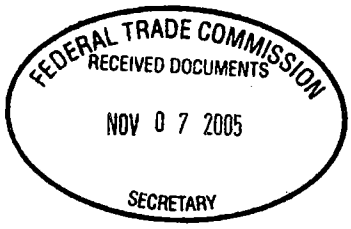
UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES
WASHINGTON, D.C.



In the Matter of

BASIC RESEARCH, LLC
A.G. WATERHOUSE, LLC
KLEIN-BECKER USA, LLC
NUTRASPORT, LLC
SOVAGE DERMALOGIC LABORATORIES, LLC
BAN LLC
DENNIS GAY
DANIEL B. MOWREY
MITCHELL K. FRIEDLANDER,

Respondents

PUBLIC

Docket No. 9318

RESPONDENTS' OPPOSITION TO COMPLAINT COUNSEL'S MOTION TO QUASH CORPORATE RESPONDENTS' SUBPOENAS

Respondents Basic Research, LLC; A.G. Waterhouse, LLC; Klein-Becker USA, LLC; Nutrasport, LLC; Sovage Dermalogic Laboratories, LLC; Ban, LLC; (collectively "Corporate Respondents") respectfully request that the hearing officer deny Complaint Counsel's motion to quash Corporate Respondents' subpoenas issued on Friday, October 21, 2005. The subpoena recipients are the web domain companies that accessed Corporate Respondents' trade secret and confidential materials that FTC unlawfully[1] disclosed on its docket and on its website. Those

[1] "Whoever, being an officer or employee of the United States or of any department or agency thereof, any person acting on behalf of the Office of Federal Housing Enterprise Oversight, or agent of the Department of Justice as defined in the Antitrust Civil Process Act (15 U.S.C. 1311-1314), or being an employee of a private sector organization who is or was assigned to an agency under chapter 37 of title 5 [5 USCS §§ 3701 et seq.], publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; or permits any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; shall be fined under this title, or imprisoned not more than one year, or both; and shall be removed from office or employment." 18 U.S.C. § 1905.

subpoena recipients were identified first in FTC's letter of July 25, 2005 (attached as Exhibit A). The destruction of Corporate Respondents' unique and valuable trade secrets and release of their confidential financial information caused damages that must be weighed against a liability determination, if any, by the hearing officer. That weighing is essential to prevent the risk of a compound penalty against the Corporate Respondents resulting from a failure to compensate them for the value of properties lost due to FTC's own unlawful action. To prevent Corporate Respondents from elucidating the complete nature and scope of those damages is inequitable and denies them evidence that could offset any possible liability arising from finding and conclusions in this case. The disclosure of Corporate Respondents trade secrets is not an abstraction, and the issuance of the July 25, 2005 letter is not a remedy to the severe injury that the disclosure has caused. Corporate Respondents must be permitted to exert every effort to determine the extent of dissemination of their trade secrets disclosed by the FTC in this proceeding. Hindrance of that effort only exacerbates the severity of the harm already inflicted by the disclosure. Corporate Respondents have a right to assess the complete nature and scope of the destruction of their trade secrets. They must determine whether the information was downloaded, printed, or otherwise captured and disseminated by those viewers of the protected information.

I. PERTINENT FACTS

FTC posted Corporate Respondents' trade secrets[2] and confidential material on its website on December 6, 2004 and on January 31, 2005.[3] The January 31 motion was posted on FTC's public docket for this case on February 15, 2005. The December 8th motion was posted

[2] A trade secret is "any formula, patter, device, or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it." Restatement of Torts § 757(b)(1939).

[3] Corporate Respondents have not attached copies of the documents revealing FTC's trade secret disclosures in an effort to avoid further circulation of those documents. They instead refer the presiding officer to the nonpublic filing of those documents in this case.

earlier.[4] Both sets of exhibits were removed on February 17th.

The Corporate Respondents are not publicly traded companies. Their sales figures and financial records (Exhibits R and 15 and 42 to December 6 and January 31st filings, respectively) are not public and are treated as highly confidential financial information. See Respondents' Response to Order to Show Cause, Declaration of Carla Fobbs at 4-6.[5] The product formulations (Exhibit 11 to January 31st filing) are closely guarded trade secrets of the Corporate Respondents and their disclosure allows competitors to easily market identical products, both in this country for the non-ephedra products and in those countries where sale of ephedra products remains legal. Fobbs Declaration at 3.[6] The advertising dissemination schedule (Exhibit 45 to the January 31st filing) is another vital trade secret, developed over a 13 year period at a cost of over 13 million dollars. It defines the best marketing and promotion channels and strategies for all respondents products. The information is immediately usable by, and of tremendous competitive advantage for, the Respondents' competitors. Fobbs Declaration at 7-8. Were it not for FTC's disclosure of that trade secret, it would be virtually impossible for competitors to replicate or acquire the information. Fobbs Declaration at 8. Finally, the customer email is protected by the Corporate Respondents privacy policy and its disclosure harms their goodwill and reputation for respecting their customers' privacy. Id. at 8-9.

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[4] The Commission in its order did not identify the date when the December 6 filing was posted although weblogs reflect access as early as December 10, 2004.

[5] Complaint Counsel argues that the presiding officer's review of Exhibit 42 revealed that the exhibit did not meet the standard for in camera treatment. That argument ignores the fact that his Honor acknowledged before issuance of his opinion that it was not a detailed analysis of the arguments presented and that analysis would be conducted "when and if the exhibits are offered as exhibits at trial." April 6 Order at 8-9.

[6] Two parties identified in the web server logs are outside of the United States and were not served with the 3.34 subpoenas: Chinanet Guangdong Province Network, Beijing China, and Asia Pacific Network Information, Australia. See Rule 3.36 requiring applications for subpoenas to be served in a foreign country. According to the webserver log, Chinanet accessed the product formulas exhibit (Exhibit 11 to the January 31st filing) six times on February 15th. See Exhibit A. The sale of ephedra-containing products is legal in China for different purposes. The use of the herb ephedra in the diet is considered to have originated in China thousands of years ago. See FDA 1995 Briefing Materials for Food Advisory Committee Meeting on the sale of ephedra and ephedrine alkaloid products in the United States.

On April 6, 2005, in response to three motions by Respondents' counsel concerning those disclosures, the Presiding Officer issued an order certifying those motions to the Commission and staying the proceedings. The Presiding Officer's order found, "[n]umerous statutes and rules prohibit and punish the unauthorized disclosure of confidential information obtained by the Commission." Id. at 4 (citing 18 U.S.C. § 1905; 15 U.S.C. § 46(f); 15 U.S.C. § 50). The order further acknowledged: "Courts routinely order companies to provide confidential information to the Commission, noting the protections of statutes and rules that prohibit and punish the unauthorized disclosure of confidential information obtained by the Commission." Id. at 4 (citing FTC v. MacArthur, 532 F.2d 1135, 1143 (7th Cir. 1976); FTC v. Owens-Corining Fiberglass Corp., 626 F.2d 966, 970 n.6 (D.C.Cir. 1980); In re FTC Line of Business Report Litig., 595 F.2d 685, 706 N.129 (D.C. Cir. 1978)). In his preliminary assessment of the nature of the materials disclosed, the Presiding Officer acknowledged that the disclosure of the net gross revenue and advertising expenditures by year for all six products at issue and the advertising dissemination schedule are confidential business records and that the Respondents have demonstrated that "disclosure of this information would result in a **clearly defined, serious competitive injury** to Respondents." Id. at 9 (emphasis added).

On June 17, 2005, the Commission issued its order granting, in part, Respondents' request for FTC to produce web server log information for those exhibits. The Commission granted Respondents access "to aggregate Web log data that reveal the Web domains from which requests to the exhibits in question were received." The Commission further stated,

> Disclosure of this information provides Respondents with information regarding the extent of the disclosures and may allow the Respondents to contact these domains to determine to what extent the domain operators themselves, or users of those domains, may have retrieved, stored, used, shared, or disclosed exhibits from the FTC's servers.
>
> * * *

> [D]isclosure of aggregate data would allow Respondents to contact the operators of the Web domains from which requests for the exhibits originated, and determine if those domains might assist in identifying, retrieving, or destroying any copies of the exhibits that may have been retained by users of those domains or by the domain operators themselves...

Id. at 7-8.[7]

On July 25, 2005 FTC released redacted[8] web server logs to Complaint Counsel. According to FTC's web server logs, the gross sales figures (the December 8th Exhibit) were accessed by **23** different companies (identified by their web domains) starting on December 10, 2004 through and including February 16, 2005. The product ingredients and ratios information (Exhibit 11 to the January 31st motion) were accessed by **six** different companies (identified by their web domains) on February 15th and 16th, 2005. The advertising dissemination schedule was accessed by **five** different companies on February 15th and 16th. The Net gross revenue and advertising expenditures for all six products, the customer email, and the balance sheet were accessed by **seven** different companies on February 15th and 16th.

On October 12, 2005, by letter served on all counsel of record, Corporate Respondents' counsel requested 25 subpoenas stating,

> [The subpoenas would] be served on the domestic parties identified in the Commission's letter of July 27, 2005. The forms will replace those issued to corporate respondents' previous counsel on August 19, 2005. Previous counsel completed the subpoena forms with their service information but did not serve them before being replaced by new counsel. Because of the substitution of counsel, we seek to have new copies executed because they will bear the name of new counsel. We became counsel for the corporate respondents on September 8, 2005.

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[7] The Commission stated that IP addresses would be redacted because of the protections of the Privacy Act, 5 U.S.C. § 552A. Corporate respondents do not agree that the IP addresses are protected by the Privacy Act. IP addresses identify machines, not individual users. There may be, and likely are, multiple users of a machine identified by an IP address.

[8] Not just the IP addresses were redacted from those logs. It appears that web domain identifiers were redacted as well because Corporate Respondents' prior counsel Feldman &Gale was not identified in the logs produced by FTC despite repeated contacts by that firm to the site once the discovery was made of the trade secret disclosures. There was no reason for FTC to redact any user's domain identifiers from the web server logs. Indeed, by having done so the accuracy and completeness of the remaining material is called into question.

Upon receipt of the subpoena forms, the subpoenas were prepared and served on October 21, 2005 on each of the twenty-five parties identified in subpoenas attached to Complaint Counsel's Motion to Quash.

II. PERTINENT RULES

Rule 3.34(b) states in pertinent part:

> A subpoena *duces tecum* may be used by any party for purposes of discovery, for obtaining documents for use in evidence, or for both purposes, and shall specify with reasonable particularity the materials to be produced.

16 C.F.R. § 3.34(b).

Section (c) of Rule 3.34, permitting motions to quash, states, in pertinent part:

> Any motion **by the subject of a subpoena** to limit or quash the subpoena shall be filed within the earlier of ten (10) days after service thereof or the time for compliance therewith. Such motions shall set forth all assertions of privilege or other factual and legal objections to the subpoena, including all appropriate arguments, affidavits, and other supporting documentation, and shall include the statement required by Rule 3.22(f).

Id. at (c)(emphasis added).

Rule 3.31 on discovery states, in pertinent part:

> (1) In general; limitations. Parties may obtain discovery to the extent that it may be reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of any respondent...Information may not be withheld from discovery on grounds that the information will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

16 C.F.R. § 3.31(c)(1).

III. ANALYSIS

Complaint Counsel argues that the subpoenas are untimely, seek irrelevant documents, and are overbroad. In addition to lacking standing to challenge the subpoenas, Complaint

Counsel lacks standing to challenge the subpoenas, and their arguments fail on the merits.[9] Corporate Respondents have acted reasonably and timely following the receipt of the July 25, 2005 web domain identifying information in order to assess the information available from those web server logs and to obtain any additional information related to that log information through the use of the twenty-five subpoenas.[10] The documentation and records sought in the subpoenas are necessary, as the Commission stated, in "identifying, retrieving, or destroying any copies of the exhibits that may have been retained by users of those domains or by the domain operators themselves." Equity demands that the injury inflicted on Corporate Respondents when their trade secrets and confidential commercial information were disclosed be weighed against any liability that may arise in this case. Assessment of the extent of that injury through the subpoenas at issue is necessary to prevent an inequitable liability determination (one that does not account for the economic damage suffered due to FTC's unlawful destruction of the trade secrets). Failure to calculate the cost of the disclosure in arriving at any equitable assessment is wholly inequitable when FTC is liable for the trade secret disclosure – a deprivation of property without due process of law, a tort recognizable under the Federal Tort Claims Act, 28 U.S.C. § 2674 et seq., and a crime punishable under federal law, 18 U.S.C. § 1905. Finally, Complaint Counsel's argument fails to prove the agency subpoenas unduly burdensome. Complaint

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[9] In opposing the subpoenas, Complaint Counsel is "confronted with a [difficult] task." FTC v. Dresser Industries, 1977 U.S.Dist. LEXIS 16178, *8 (D.D.C. 1977)(Exhibit B). One who opposes an agency's subpoena necessarily must bear a heavy burden. That burden is essentially the same even if the subpoena is directed to a third party not involved in the adjudicative or other proceedings out of which the subpoena arose. Dresser Industries, *8-9 (citing FTC v. Tuttle, 244 F.2d 605 (2d Cir. 1957) cert. denied, 354 U.S. 925, FTC v. Bowman, 149 F.Supp. 624 (N.D. Ill.), aff'd 248 F.2d 456 (7th Cir. 1957)(citations omitted)).

[10] The web information supplied is not comprehensible to laymen but requires a computer scientist to evaluate. See Exhibit A. The Corporate Respondents retained that expertise and received professional consults on how to develop appropriate queries to yield information that would reveal the extent of the trade secret disclosures. Some of the information not supplied by FTC is indispensable to the search and may ultimately prevent subpoena recipients from providing meaningful responses. For example, FTC has not supplied IP addresses and without IP addresses for a large company like Microsoft there may be no way for it to identify what machine accessed the trade secret and confidential information. There would be no way then to examine records for that machine and its users' records to determine if any documents were created when those trade secrets and confidential documents were viewed, downloaded, accessed, printed or otherwise used (causing the information to be further disseminated).

Counsel's argument is wholly unsupported by any specific factual allegations, affidavits, or other documents and is based entirely on hypothetical assumptions. Complaint Counsel lack the requisite first-hand knowledge to determine the nature and extent of record-keeping for the companies subject to the subpoena necessary to determine whether the requests are indeed unduly burdensome; in short, Complaint Counsel lack standing to bring the motion.

A. Complaint Counsel Lacks Standing for the Motion to Quash.

Rule 3.34 delineates when the subject of a subpoena may file a motion to quash. It does not give that standing to other parties, including parties to the action. See also, December 9, 2004 Order on Complaint Counsel's Second Motion for Protective Order at 5. Instead it clearly states that, "Any motion **by the subject of a subpoena** to limit or quash the subpoena shall be filed..." Id. at (c)(emphasis added). The reason for the standing requirement, indeed for any standing requirement, is well established. The subpoena recipient is the only one with a personal stake or interest in the production of its own documents and is the only one who bears and can attest to any resulting injury. C.f., Baker v. Carr, 369 U.S. 186, 204 (1962)(Standing afforded to plaintiffs with actual injury). Moreover, the requirement that the subpoena recipient be the party bringing the motion to quash reduces the possibility that the Presiding Officer would be deciding on a motion to quash a subpoena in which no injury would have occurred at all. C.f, e.g., Lujan v. Defenders of Wildlife, 504 U.S. 555, 564, n.2 (1992)(citations omitted). Thus, the Presiding Officer should deny Complaint Counsel's motion in violation Rule 3.34.

B. Corporate Respondents' Subpoenas Seek Documents from Parties Identified For the First Time in FTC's July 25, 2005 Letter and Attached Wed Log.

The subpoenas are a timely and reasonable effort by Corporate Respondents to assess whether parties FTC identified as having accessed the trade secrets and confidential financial information have made any use of that information, downloaded it, copied it or otherwise

disseminated it, exacerbating the effects of the disclosure. The FTC's July 25, 2005 letter was the first time following the December 6th and January 31st filings that Corporate Respondents had notice of those parties that did in fact access the trade secret and confidential financial information. Complaint Counsel's recitation of the deadline for issuing subpoenas *duces tecum* in discovery[11] (November 8, 2004) ignores the fact that the disclosures of the trade secrets took place **after** that date. Respondents first received the web contact information from FTC on July 25, 2005. They then received expert counsel on how to fashion subpoenas to acquire information based on the contact information and acquired executed copies for service on August 14, 2005. New counsel entered the case on September 8, 2005. Newly executed subpoenas were obtained on October 14, 2005 and were served on Friday, October 21. Those steps reveal appropriate diligence and a timely prosecution of this matter. Complaint Counsel's argument that the subpoenas are untimely further ignores the fact that the Commission in its June 17th Order (again, after discovery had closed) encouraged Corporate Respondents to take the information in the web server logs and conduct discovery to determine the extend of the trade secret disclosures. Id. at 7-8. Thus, the subpoenas are timely and reasonable.

C. The Harm Caused to Corporate Respondents When FTC Publicized Their Trade Secrets Is a Defense In this Case

A complete elucidation of the full nature and scope of FTC's dissemination of Corporate Respondents' trade secrets and confidential commercial information is necessary to establish the full scope of the injury inflicted on the Corporate Respondents by the unlawful disclosure of the trade secrets and confidential commercial information. Indeed, there has been no restitution at all to Corporate Respondents by the FTC for that disclosure, let alone restitution equal to the economic value lost by the destruction of the trade secrets.

[11] As discussed in the following section Rule 3.34 (b) does not limit a party's use of subpoena duces tecum to only discovery.

The Commission's June 17th Order acknowledged that its decision was a "remedy designed to prevent a future violation" and did "not necessarily address a past violation." Id. at 6. Indeed, for three of the documents the Presiding Officer stated that "disclosure of this information would result in a clearly defined, serious competitive injury to Respondents." April 6 Order at 9. There is no "would" in this equation. The disclosure has happened and the damages are accruing. The destruction of the trade secrets has resulted in a clearly defined, serious competitive injury to Corporate Respondents. The Presiding Officer acknowledged that "numerous statutes and rules prohibit and punish the unauthorized disclosure of confidential information obtained by the Commission." Id. at 4. There has been no punishment meted out in this case. The perpetrators are free and the injured parties' damages have not been recompensed.

Equity requires that the injury FTC has inflicted on Corporate Respondents by disclosing their trade secrets offset any potential finding of liability or for consumer redress in this case. Without such an equitable assessment, Corporate Respondents would be doubly penalized, in fact penalized far in excess of any remedy available to the Commission under its statutes. The disclosure of the trade secrets and confidential financial information caused irreparable injury and irrecoverable loss that not even monetary relief will completely recompense. Thus, the subpoenas are seeking material that meet the general requirements in Rule 3.31 requiring discovery be reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of any respondent.

Furthermore, that general discovery rule is subsumed by Rule 3.34 on subpoena *duces tecum*. The subpoena rule state that subpoenas "may be used by any party for purposes of discovery, for obtaining documents for use in evidence, or for both purposes." Id. at (b); see also, FTC v. Dresser Industries, 1977 U.S.Dist. LEXIS 16178, *11 (D.D.C. 1977). The

Commission's longstanding interpretation of 3.34(b)(2) requires only a general showing of relevance. Dresser Industries, at *11. "In the relevance inquiry, the court must be satisfied merely that the material sought is 'reasonably relevant'; there need be no showing that the subpoenaed material is clearly or unquestionably relevant..." Id. at *9 (citations omitted). The subpoenas seek documents that Corporate Respondents' trade secrets and confidential financial information were disseminated to additional entities, republished on the web, printed, downloaded, or otherwise used. Those documents would be used in evidence to offset any potential finding of liability against the Corporate Respondents. Thus, the documents sought are reasonably relevant and meet the general showing requirement.

D. Equity Requires the Corporate Respondents Be Given the Opportunity to Assess the Nature and Scope of Disclosure of Their Trade Secrets by FTC

Complaint Counsel argue, without standing (direct personal injury) and without direct knowledge of each subpoena recipients record-keeping or business practices, that the subpoena requests are overbroad and place unreasonable burdens on "innocent third parties." Unsubstantiated supposition by one not a recipient of a subpoena fails to prove the existence of an undue burden by the actual subpoena recipient. See, Dresser Industries, *12.

> Some burden on subpoenaed parties is to be expected and is necessary in furtherance of the agency's legitimate inquiry and the public interest. The burden of showing that the request is unreasonable is on the subpoenaed party. Further, that burden is not easily met where, as here, the agency inquiry is pursuant to a lawful purpose and the requested documents are relevant to that purpose. Broadness alone is not sufficient justification to refuse enforcement of a subpoena. Thus courts have refused to modify investigative subpoenas unless compliance threatens to unduly disrupt or seriously hinder normal operations of a business.

Id. at *13. Like in Dresser Industries, the fact that many of the subpoena recipients are leading internet service providers (Verizon), web search engines (Microsoft and Google), and legal matter republishers (Lexis and Westgroup) are "what makes the subpoena[s] served upon [them]

critical" to ascertain whether those companies' access of that information resulted in any republication, downloading, copying, printing or further dissemination of Corporate Respondents' trade secrets and confidential financial information to the persons those companies reach. Id. at *14.[12] Moreover, each are large enterprises accustomed to complying with legal process, including subpoenas. Thus, there is no undue burden on the subpoena recipients even if Complaint Counsel's lack of standing were ignored.

Furthermore, any burden on subpoena recipients is outweighed by the necessity that Corporate Respondents be given the opportunity to ascertain the complete nature and extent of the loss inflicted upon them by the FTC's destruction of the Corporate Respondents' confidential and trade secret information. Failing to allow Corporate Respondents that opportunity compounds the harm they suffer and affords them no discovery to ascertain the extent of damages.[13] Without access to full and complete dissemination information, Corporate Respondents are left with only the July 25th letter identifying the companies that accessed the information. They are denied the ability to determine whether those companies used, copied, republished, downloaded, printed or otherwise further disseminated the trade secret and confidential financial information. The Commission clearly stated in its June 17, 2005 Order that the Respondents were expected to use that web log information to further elucidate the dissemination of their trade secrets. Id. at 7-8. Having the trade secrets destroyed through no fault of their own, equity now demands that Corporate Respondents be given the opportunity to exhaust all possibilities to determine the complete nature and scope of the disclosure. Complaint

[12] Ironically in Dresser Industries the subpoena recipient also argued against production of documents because it would require production of "vital trade secrets and other confidential information." Id. at *15. The Court did not find that argument persuasive because "the administrative law judge has entered a comprehensive protective order **which should be sufficient to safeguard the confidentiality of Dresser's secrets.**" Id (emphasis added). Here, Corporate Respondents seek to assess their injury where just such a safeguard was insufficient.

[13] As explained supra at 5, FTC's failure to disclose IP addresses and web domain names may cause the present subpoenas to bear no fruit, warranting revisitation by FTC of its decision not to disclose IP address identifiers.

Counsel's motion to quash should therefore be denied.

IV. CONCLUSION

For the reasons stated above, Corporate Respondents respectfully request that his Honor deny Complaint Counsel's Motion to Quash.

Respectfully Submitted,

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BAN, LLC

Date submitted: November 7, 2005

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES
WASHINGTON, D.C.

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**

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of November, 2005 I caused the Respondents' Opposition to Complaint Counsel's Motion to Quash Corporate Respondents' Subpoenas to be filed and served as follows:

1) an original and one paper copy filed by hand delivery and one electronic copy in PDF format filed by electronic mail to

Donald S. Clark
Secretary
U.S. Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Room H-159
Washington, D.C. 20580
Email: secretary@ftc.gov

2) two paper copies delivered by hand delivery to:

The Hon. Stephen J. McGuire
Chief Administrative Law Judge
U.S. Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Room H-112
Washington, D.C. 20580

3) one paper copy by first class U.S. Mail to:

James Kohm
Associate Director, Enforcement
U.S. Federal Trade Commission
601 New Jersey Avenue, N.W.
Washington, D.C. 20001

4) one paper copy by first class U.S. mail and one electronic copy in PDF format by electronic mail to:

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Lemuel W.Dowdy
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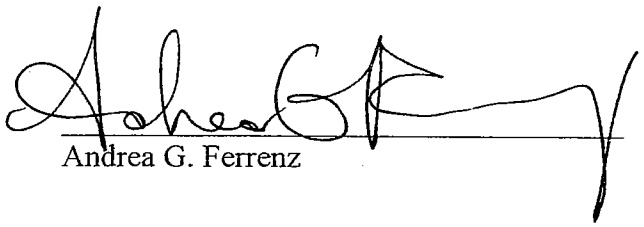

Andrea G. Ferrenz

EXHIBIT A

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the General Counsel

July 27, 2005

Samuel Lewis, Esq.
Feldman Gale
201 S. Biscayne Blvd., 19th Fl.
Miami, Florida 33131-4332

Re: Basic Research et al., D. 9318

Dear Mr. Lewis:

As directed by Paragraph III(2) of the Commission's Order issued June 17, 2005, in the above-captioned matter, I am enclosing redacted FTC Web site server logs for Exhibit R (contained in Exhibits Q-W) accompanying Complaint Counsel's December 6, 2004, Motion to Compel, and for Exhibits 11, 15, 36, 42 and 45 accompanying Complaint Counsel's January 31, 2005, Motion For Partial Summary Decision.

If you have any questions, please feel free to contact Alex Tang of my staff at (202) 326-2447 or atang@ftc.gov.

Sincerely,

Christian S. White

Christian S. White
Deputy General Counsel
For Legal Counsel

cc: Reilly Dolan, Esq.

Exhibits Q-W (containing Exhibit R)

	A	B	C	D	E	F	G	H	I	J	K	L	M	N
1	alexa.com	- -	[08/Feb/2005:	GET /os/adjpro/d9318/041206ccmocompeldocmaterialsexhibq-w.pdf HTTP/1.0	200 1556933	-	"ia_archiver"							
2	almaden.ibm.com	- -	[03/Feb/2005:	GET /os/adjpro/d9318/041206ccmocompeldocmaterialsexhibq-w.pdf HTTP/1.0	200 360448	-	"http://www.almaden.ibm.com/cs/crawler [cc7]"							
3	almaden.ibm.com	- -	[07/Feb/2005:	GET /os/adjpro/d9318/041206ccmocompeldocmaterialsexhibq-w.pdf HTTP/1.0	200 409632	-	"http://www.almaden.ibm.com/cs/crawler [cc7]"							
4	almaden.ibm.com	- -	[13/Feb/2005:	GET /os/adjpro/d9318/041206ccmocompeldocmaterialsexhibq-w.pdf HTTP/1.0	200 393216	-	"http://www.almaden.ibm.com/cs/crawler [cc7]"							
5	APNIC	- -	[21/Jan/2005:	GET /os/adjpro/d9318/041206ccmocompeldocmaterialsexhibq-w.pdf HTTP/1.1	200 425984		http://www.ftc.gov/os/adjpro/d9318/index.htm "Mozilla/4.0 (compatible; MSIE 5.00; Windows 98)"							
6	APNIC	- -	[21/Jan/2005:	GET /os/adjpro/d9318/041206ccmocompeldocmaterialsexhibq-w.pdf HTTP/1.1	206 393216		http://www.ftc.gov/os/adjpro/d9318/index.htm "Mozilla/4.0 (compatible; MSIE 5.00; Windows 98)"							
7	APNIC	- -	[21/Jan/2005:	GET /os/adjpro/d9318/041206ccmocompeldocmaterialsexhibq-w.pdf HTTP/1.1	206 308769		http://www.ftc.gov/os/adjpro/d9318/index.htm "Mozilla/4.0 (compatible; MSIE 5.00; Windows 98)"							
8	APNIC	- -	[21/Jan/2005:	GET /os/adjpro/d9318/041206ccmocompeldocmaterialsexhibq-w.pdf HTTP/1.1	206 393216		http://www.ftc.gov/os/adjpro/d9318/index.htm "Mozilla/4.0 (compatible; MSIE 5.00; Windows 98)"							
9	APNIC	- -	[21/Jan/2005:	GET /os/adjpro/d9318/041206ccmocompeldocmaterialsexhibq-w.pdf HTTP/1.1	206 393216		http://www.ftc.gov/os/adjpro/d9318/index.htm "Mozilla/4.0 (compatible; MSIE 5.00; Windows 98)"							
10	altens.com	- -	[04/Jan/2005:	GET /os/adjpro/d9318/041206ccmocompeldocmaterialsexhibq-w.pdf HTTP/1.0	304 -	-	"FirstGov.gov Search - POC:firstgov.webmasters@gsa.gov"							
11	altens.com	- -	[21/Jan/2005:	GET /os/adjpro/d9318/041206ccmocompeldocmaterialsexhibq-w.pdf HTTP/1.0	304 -	-	"FirstGov.gov Search - POC:firstgov.webmasters@gsa.gov"							
12	altens.com	- -	[26/Dec/2004:	GET /os/adjpro/d9318/041206ccmocompeldocmaterialsexhibq-w.pdf HTTP/1.0	200 1556933	-	"FirstGov.gov Search - POC:firstgov.webmasters@gsa.gov"							
13	bellsouth.net	- -	[13/Dec/2004:	GET /os/adjpro/d9318/041206ccmocompeldocmaterialsexhibq-w.pdf HTTP/1.1	200 32768	-	"Mozilla/4.0 (compatible; MSIE 6.0; Windows NT; DigExt; DTS Agent"							
14	cable.mindspring.com	- -	[01/Feb/2005:	GET /os/adjpro/d9318/041206ccmocompeldocmaterialsexhibq-w.pdf HTTP/1.1	200 32768		http://www.ftc.gov/os/adjpro/d9318/index.htm "Mozilla/4.0 (compatible; MSIE 6.0; Windows NT 5.1)"							
15	cable.mindspring.com	- -	[01/Feb/2005:	GET /os/adjpro/d9318/041206ccmocompeldocmaterialsexhibq-w.pdf HTTP/1.1	200 393216	-	"Mozilla/4.0 (compatible; MSIE 6.0; Windows NT 5.1)"							
16	cable.mindspring.com	- -	[01/Feb/2005:	GET /os/adjpro/d9318/041206ccmocompeldocmaterialsexhibq-w.pdf HTTP/1.0	206 389233	-	"Mozilla/4.0 (compatible; MSIE 6.0; Windows NT 5.1)"							
17	cable.mindspring.com	- -	[01/Feb/2005:	GET /os/adjpro/d9318/041206ccmocompeldocmaterialsexhibq-w.pdf HTTP/1.0	206 389233	-	"Mozilla/4.0 (compatible; MSIE 6.0; Windows NT 5.1)"							
18	cable.mindspring.com	- -	[01/Feb/2005:	GET /os/adjpro/d9318/041206ccmocompeldocmaterialsexhibq-w.pdf HTTP/1.0	206 389234	-	"Mozilla/4.0 (compatible; MSIE 6.0; Windows NT 5.1)"							
19	cable.mindspring.com	- -	[01/Feb/2005:	GET /os/adjpro/d9318/041206ccmocompeldocmaterialsexhibq-w.pdf HTTP/1.1	200 32768		http://ftc.gov/os/adjpro/d9318/index.htm "Mozilla/4.0 (compatible; MSIE 6.0; Windows NT 5.1)"							
20	cable.mindspring.com	- -	[16/Feb/2005:	GET /os/adjpro/d9318/041206ccmocompeldocmaterialsexhibq-w.pdf HTTP/1.0	200 86636		http://www.ftc.gov/os/adjpro/d9318/index.htm "Mozilla/4.0 (compatible; MSIE 6.0; Windows NT 5.1)"							
21	comcast.net	- -	[15/Dec/2004:	GET /os/adjpro/d9318/041206ccmocompeldocmaterialsexhibq-w.pdf HTTP/1.1	200 1556933		http://www.ftc.gov/os/adjpro/d9318/index.htm "Mozilla/5.0 (Macintosh; U; PPC Mac OS X Mach-O; rv:1.7.3) Gecko/20040913 Firefox/0.10.1"							
22	dsl.rcsntx.swbell.net	- -	[13/Dec/2004:	GET /os/adjpro/d9318/041206ccmocompeldocmaterialsexhibq-w.pdf HTTP/1.1	200 1556933		http://www.ftc.gov/os/adjpro/d9318/index.htm "Mozilla/5.0 (Macintosh; U; PPC Mac OS X Mach-O; en-US; rv:1.8a6) Gecko/20041212"							
23	ewebproxy.westgroup.com	- -	[18/Jan/2005:	GET /os/adjpro/d9318/041206ccmocompeldocmaterialsexhibq-w.pdf HTTP/1.0	200 1556933	-	"Mozilla/4.0 (compatible; West Group-Webget/2.0)"							
24	Global Crossing	- -	[11/Jan/2005:	GET /os/adjpro/d9318/041206ccmocompeldocmaterialsexhibq-w.pdf HTTP/1.1	200 65536	-	"Mozilla/4.0 (compatible; MSIE 6.0; Windows NT 5.1; .NET CLR 1.1.4322)"							
25	Global Crossing	- -	[11/Jan/2005:	GET /os/adjpro/d9318/041206ccmocompeldocmaterialsexhibq-w.pdf HTTP/1.1	200 32768	-	"Mozilla/4.0 (compatible; MSIE 6.0; Windows NT 5.1; .NET CLR 1.1.4322)"							
26	Global Crossing	- -	[11/Jan/2005:	GET /os/adjpro/d9318/041206ccmocompeldocmaterialsexhibq-w.pdf HTTP/1.1	206 1558226	-	"Mozilla/4.0 (compatible; MSIE 6.0; Windows NT 5.1; .NET CLR 1.1.4322)"							
27	googlebot.com	- -	[04/Feb/2005:	GET /os/adjpro/d9318/041206ccmocompeldocmaterialsexhibq-w.pdf HTTP/1.0	304 -	-	"Googlebot/2.1 (+http://www.google.com/bot.html)"							
28	googlebot.com	- -	[04/Jan/2005:	GET /os/adjpro/d9318/041206ccmocompeldocmaterialsexhibq-w.pdf HTTP/1.0	304 -	-	"Googlebot/2.1 (+http://www.google.com/bot.html)"							
29	googlebot.com	- -	[08/Jan/2005:	GET /os/adjpro/d9318/041206ccmocompeldocmaterialsexhibq-w.pdf HTTP/1.0	304 -	-	"Googlebot/2.1 (+http://www.google.com/bot.html)"							
30	googlebot.com	- -	[10/Dec/2004:	GET /os/adjpro/d9318/041206ccmocompeldocmaterialsexhibq-w.pdf HTTP/1.0	200 819200	-	Googlebot/2.1 (+http://www.google.com/bot.html)							
31	googlebot.com	- -	[11/Dec/2004:	GET /os/adjpro/d9318/041206ccmocompeldocmaterialsexhibq-w.pdf HTTP/1.0	200 1556933	-	"Googlebot/2.1 (+http://www.google.com/bot.html)"							
32	googlebot.com	- -	[14/Feb/2005:	GET /os/adjpro/d9318/041206ccmocompeldocmaterialsexhibq-w.pdf HTTP/1.0	200 1556933	-	"Googlebot/2.1 (+http://www.google.com/bot.html)"							
33	googlebot.com	- -	[19/Jan/2005:	GET /os/adjpro/d9318/041206ccmocompeldocmaterialsexhibq-w.pdf HTTP/1.0	304 -	-	"Googlebot/2.1 (+http://www.google.com/bot.html)"							
34	googlebot.com	- -	[22/Dec/2004:	GET /os/adjpro/d9318/041206ccmocompeldocmaterialsexhibq-w.pdf HTTP/1.0	200 1556933	-	"Googlebot/2.1 (+http://www.google.com/bot.html)"							
35	googlebot.com	- -	[30/Dec/2004:	GET /os/adjpro/d9318/041206ccmocompeldocmaterialsexhibq-w.pdf HTTP/1.1	200 1556933	-	"Googlebot/2.1 (+http://www.google.com/bot.html)"							
36	inktomisearch.com	- -	[11/Feb/2005:	GET /os/adjpro/d9318/041206ccmocompeldocmaterialsexhibq-w.pdf HTTP/1.0	200 1556933	-	"Mozilla/5.0 (compatible; Yahoo! Slurp; http://help.yahoo.com/help/us/ysearch/slurp)"							
37	inktomisearch.com	- -	[28/Jan/2005:	GET /os/adjpro/d9318/041206ccmocompeldocmaterialsexhibq-w.pdf HTTP/1.0	200 1556933	-	"Mozilla/5.0 (compatible; Yahoo! Slurp; http://help.yahoo.com/help/us/ysearch/slurp)"							
38	LEXIS-NEXIS	- -	[10/Dec/2004:	GET /os/adjpro/d9318/041206ccmocompeldocmaterialsexhibq-w.pdf HTTP/1.1	200 1556933	-	"libwww-perl/5.68"							
39	Microsoft	- -	[13/Dec/2004:	GET /os/adjpro/d9318/041206ccmocompeldocmaterialsexhibq-w.pdf HTTP/1.0	200 1114112	-	msnbot/0.3 (+http://search.msn.com/msnbot.htm)							
40	msnbot.msn.com	- -	[26/Dec/2004:	GET /os/adjpro/d9318/041206ccmocompeldocmaterialsexhibq-w.pdf HTTP/1.0	200 1114112	-	"msnbot/0.3 (+http://search.msn.com/msnbot.htm)"							
41	pitt.east.verizon.net	- -	[10/Jan/2005:	GET /os/adjpro/d9318/041206ccmocompeldocmaterialsexhibq-w.pdf HTTP/1.0	200 1556933		http://www.ftc.gov/os/adjpro/d9318/index.htm "Wget/1.8.2"							
42	proxy.aol.com	- -	[11/Jan/2005:	GET /os/adjpro/d9318/041206ccmocompeldocmaterialsexhibq-w.pdf HTTP/1.0	200 819200		http://www.ftc.gov/os/adjpro/d9318/ "Mozilla/4.0 (compatible; MSIE 6.0; AOL 9.0; Windows NT 5.1; {53E4F68A-2BBB-443A-B0D1-F4AA4D98401B}; SV1)"							
43	proxy.aol.com	- -	[11/Jan/2005:	GET /os/adjpro/d9318/041206ccmocompeldocmaterialsexhibq-w.pdf HTTP/1.0	206 1081344	-	"Mozilla/4.0 (compatible; MSIE 6.0; AOL 9.0; Windows NT 5.1; {53E4F68A-2BBB-443A-B0D1-F4AA4D98401B}; SV1)"							
44	proxy.aol.com	- -	[11/Jan/2005:	GET /os/adjpro/d9318/041206ccmocompeldocmaterialsexhibq-w.pdf HTTP/1.0	206 1559942	-	"Mozilla/4.0 (compatible; MSIE 6.0; AOL 9.0; Windows NT 5.1; {53E4F68A-2BBB-443A-B0D1-F4AA4D98401B}; SV1)"							
45	proxy.aol.com	- -	[11/Jan/2005:	GET /os/adjpro/d9318/041206ccmocompeldocmaterialsexhibq-w.pdf HTTP/1.0	206 458752	-	"Mozilla/4.0 (compatible; MSIE 6.0; AOL 9.0; Windows NT 5.1; {53E4F68A-2BBB-443A-B0D1-F4AA4D98401B}; SV1)"							
46	proxy.aol.com	- -	[11/Jan/2005:	GET /os/adjpro/d9318/041206ccmocompeldocmaterialsexhibq-w.pdf HTTP/1.0	206 657068	-	"Mozilla/4.0 (compatible; MSIE 6.0; AOL 9.0; Windows NT 5.1; {53E4F68A-2BBB-443A-B0D1-F4AA4D98401B}; SV1)"							
47	proxy.aol.com	- -	[11/Jan/2005:	GET /os/adjpro/d9318/041206ccmocompeldocmaterialsexhibq-w.pdf HTTP/1.0	206 1657910	-	"Mozilla/4.0 (compatible; MSIE 6.0; AOL 9.0; Windows NT 5.1; {53E4F68A-2BBB-443A-B0D1-F4AA4D98401B}; SV1)"							
48	res.east.verizon.net	- -	[17/Dec/2004:	GET /os/adjpro/d9318/041206ccmocompeldocmaterialsexhibq-w.pdf HTTP/1.1	200 32768		http://www.ftc.gov/os/adjpro/d9318/index.htm "Mozilla/4.0 (compatible; MSIE 6.0; Windows NT 5.1)"							
49	res.east.verizon.net	- -	[17/Dec/2004:	GET /os/adjpro/d9318/041206ccmocompeldocmaterialsexhibq-w.pdf HTTP/1.1	200 32768	-	"Mozilla/4.0 (compatible; MSIE 6.0; Windows NT 5.1)"							
50	res.east.verizon.net	- -	[17/Dec/2004:	GET /os/adjpro/d9318/041206ccmocompeldocmaterialsexhibq-w.pdf HTTP/1.1	206 1560985	-	"Mozilla/4.0 (compatible; MSIE 6.0; Windows NT 5.1)"							
51	schneider.com	- -	[17/Jan/2005:	GET /os/adjpro/d9318/041206ccmocompeldocmaterialsexhibq-w.pdf HTTP/1.1	200 32768		http://search.ftc.gov/query.html?col=full&col=har&col=news&qt=boycott+and+interrogatories&charset=iso-8859-1 "Mozilla/4.0 (compatible; MSIE 6.0; Windows NT 5.1; .NET CLR 1.1.4322)"							
52	schneider.com	- -	[17/Jan/2005:	GET /os/adjpro/d9318/041206ccmocompeldocmaterialsexhibq-w.pdf HTTP/1.1	206 195608	-	"Mozilla/4.0 (compatible; MSIE 6.0; Windows NT 5.1; .NET CLR 1.1.4322)"							
53	schneider.com	- -	[17/Jan/2005:	GET /os/adjpro/d9318/041206ccmocompeldocmaterialsexhibq-w.pdf HTTP/1.1	206 111221	-	"Mozilla/4.0 (compatible; MSIE 6.0; Windows NT 5.1; .NET CLR 1.1.4322)"							
54	schneider.com	- -	[17/Jan/2005:	GET /os/adjpro/d9318/041206ccmocompeldocmaterialsexhibq-w.pdf HTTP/1.1	206 222648	-	"Mozilla/4.0 (compatible; MSIE 6.0; Windows NT 5.1; .NET CLR 1.1.4322)"							
55	schneider.com	- -	[17/Jan/2005:	GET /os/adjpro/d9318/041206ccmocompeldocmaterialsexhibq-w.pdf HTTP/1.1	206 253056	-	"Mozilla/4.0 (compatible; MSIE 6.0; Windows NT 5.1; .NET CLR 1.1.4322)"							
56	schneider.com	- -	[17/Jan/2005:	GET /os/adjpro/d9318/041206ccmocompeldocmaterialsexhibq-w.pdf HTTP/1.1	206 178877	-	"Mozilla/4.0 (compatible; MSIE 6.0; Windows NT 5.1; .NET CLR 1.1.4322)"							
57	schneider.com	- -	[17/Jan/2005:	GET /os/adjpro/d9318/041206ccmocompeldocmaterialsexhibq-w.pdf HTTP/1.1	206 173075	-	"Mozilla/4.0 (compatible; MSIE 6.0; Windows NT 5.1; .NET CLR 1.1.4322)"							
58	schneider.com	- -	[17/Jan/2005:	GET /os/adjpro/d9318/041206ccmocompeldocmaterialsexhibq-w.pdf HTTP/1.1	206 253124	-	"Mozilla/4.0 (compatible; MSIE 6.0; Windows NT 5.1; .NET CLR 1.1.4322)"							
59	schneider.com	- -	[17/Jan/2005:	GET /os/adjpro/d9318/041206ccmocompeldocmaterialsexhibq-w.pdf HTTP/1.1	206 108287	-	"Mozilla/4.0 (compatible; MSIE 6.0; Windows NT 5.1; .NET CLR 1.1.4322)"							
60	schneider.com	- -	[17/Jan/2005:	GET /os/adjpro/d9318/041206ccmocompeldocmaterialsexhibq-w.pdf HTTP/1.1	206 150711	-	"Mozilla/4.0 (compatible; MSIE 6.0; Windows NT 5.1; .NET CLR 1.1.4322)"							
61	schneider.com	- -	[17/Jan/2005:	GET /os/adjpro/d9318/041206ccmocompeldocmaterialsexhibq-w.pdf HTTP/1.1	206 3117"-"		"Mozilla/4.0 (compatible; MSIE 6.0; Windows NT 5.1; .NET CLR 1.1.4322)"							
62	slkc.qwest.net	- -	[05/Jan/2005:	GET /os/adjpro/d9318/041206ccmocompeldocmaterialsexhibq-w.pdf HTTP/1.1	200 1556933		http://www.ftc.gov/os/adjpro/d9318/index.htm "Mozilla/5.0 (Macintosh; U; PPC Mac OS X; en-us) AppleWebKit/125.5.5 (KHTML, like Gecko) Safari/125.12"							
63	unt.edu	- -	[18/Dec/2004:	GET /os/adjpro/d9318/041206ccmocompeldocmaterialsexhibq-w.pdf HTTP/1.1	200 1556933		http://www.ftc.gov/os/adjpro/d9318/index.htm "Mozilla/4.5 (compatible; unt.edu_bot; www.library.unt.edu/digitalprojects/harvest.htm; HTTrack 3.0x; WindowsXP)"							
64	Verizon Internet Services	- -	[15/Dec/2004:	GET /os/adjpro/d9318/041206ccmocompeldocmaterialsexhibq-w.pdf HTTP/1.1	200 1556933		http://www.ftc.gov/os/adjpro/d9318/index.htm "Mozilla/5.0 (Macintosh; U; PPC Mac OS X; en) AppleWebKit/125.5.5 (KHTML, like Gecko) Safari/125.12"							
65	wcg.net	- -	[12/Dec/2004:	GET /os/adjpro/d9318/041206ccmocompeldocmaterialsexhibq-w.pdf HTTP/1.1	206 404213		http://www.ftc.gov/os/adjpro/d9318/index.htm "Mozilla/4.0 (compatible; MSIE 5.00; Windows 98)"							

Exhibit 11

westgroup.com	- -	[15/Feb/2005:	GET /os/adjpro/d9318/motions/0501ccmosumdec01/050131exhib011.pdf□ HTTP/1.0	200 1291624	-	"Mozilla/4.0 (compatible; West_Group-Webget/2.0)"
wfp2.almaden.ibm.com	- -	[15/Feb/2005:	GET /os/adjpro/d9318/motions/0501ccmosumdec01/050131exhib011.pdf HTTP/1.0	200 425984	-	http://www.almaden.ibm.com/cs/crawler [cc7]
Chinanet-GD	- -	[15/Feb/2005:	GET /os/adjpro/d9318/motions/0501ccmosumdec01/050131exhib011.pdf HTTP/1.1	206 243288		"http://www.ftc.gov/os/adjpro/d9318/index.htm" Mozilla/4.0 (compatible; MSIE 5.00; Windows 98)
Chinanet-GD	- -	[15/Feb/2005:	GET /os/adjpro/d9318/motions/0501ccmosumdec01/050131exhib011.pdf HTTP/1.1	206 243288		"http://www.ftc.gov/os/adjpro/d9318/index.htm" Mozilla/4.0 (compatible; MSIE 5.00; Windows 98)
Chinanet-GD	- -	[15/Feb/2005:	GET /os/adjpro/d9318/motions/0501ccmosumdec01/050131exhib011.pdf HTTP/1.1	206 327680		"http://www.ftc.gov/os/adjpro/d9318/index.htm" Mozilla/4.0 (compatible; MSIE 5.00; Windows 98)
Chinanet-GD	- -	[15/Feb/2005:	GET /os/adjpro/d9318/motions/0501ccmosumdec01/050131exhib011.pdf HTTP/1.1	206 327680		"http://www.ftc.gov/os/adjpro/d9318/index.htm" Mozilla/4.0 (compatible; MSIE 5.00; Windows 98)
Chinanet-GD	- -	[15/Feb/2005:	GET /os/adjpro/d9318/motions/0501ccmosumdec01/050131exhib011.pdf HTTP/1.1	206 327680		"http://www.ftc.gov/os/adjpro/d9318/index.htm" Mozilla/4.0 (compatible; MSIE 5.00; Windows 98)
Chinanet-GD	- -	[15/Feb/2005:	GET /os/adjpro/d9318/motions/0501ccmosumdec01/050131exhib011.pdf HTTP/1.1	206 327680		"http://www.ftc.gov/os/adjpro/d9318/index.htm" Mozilla/4.0 (compatible; MSIE 5.00; Windows 98)
LEXIS-NEXIS	- -	[15/Feb/2005:	GET /os/adjpro/d9318/motions/0501ccmosumdec01/050131exhib011.pdf HTTP/1.1	200 1291624	-	"libwww-perl/5.68"
inktomisearch.com	- -	[16/Feb/2005:	GET /os/adjpro/d9318/motions/0501ccmosumdec01/050131exhib011.pdf□ HTTP/1.0	200 1291624	-	"Mozilla/5.0 (compatible; Yahoo! Slurp; http://help.yahoo.com/help/us/ysearch/slurp)"
cable.mindspring.com	- -	[16/Feb/2005:	GET /os/adjpro/d9318/motions/0501ccmosumdec01/050131exhib011.pdf HTTP/1.1	200 65536		"http://www.ftc.gov/os/adjpro/d9318/index.htm" Mozilla/4.0 (compatible; MSIE 6.0; Windows NT 5.1)

Exhibits 15, 36, 42, 45

187	Abovenet Comm./Became Inc.	[18/Feb/2005:	"GET /oa/adjpro/d9318/motions/0501ccmosumdec01/050131exhib015.pdf HTT	200 285529	"http://www.fte.gov/oa/adjpro/d9318/index.htm" "Mozilla/5.0 (compatible; BecomeBot/1.76; MSIE 6.0 compatible; +http://www.become.com/webmasters.html)"
208	Abovenet Comm./Became Inc.	[16/Feb/2005:	"GET /oa/adjpro/d9318/motions/0501ccmosumdec01/050131exhib038.pdf HTT	200 851968	"http://www.fte.gov/oa/adjpro/d9318/index.htm" "Mozilla/5.0 (compatible; BecomeBot/1.76; MSIE 6.0 compatible; +http://www.become.com/webmasters.html)"
10	amsden.ibm.com	[15/Feb/2005:	"GET /oa/adjpro/d9318/motions/0501ccmosumdec01/050131exhib015.pdf HTT	200 285529	"-" "http://www.amsden.ibm.com/cs/crawler (cc7)"
76	amsden.ibm.com	[15/Feb/2005:	"GET /oa/adjpro/d9318/motions/0501ccmosumdec01/050131exhib038.pdf HTT	200 393216	"-" "http://www.amsden.ibm.com/cs/crawler (cc7)"
91	amsden.ibm.com	[16/Feb/2005:	"GET /oa/adjpro/d9318/motions/0501ccmosumdec01/050131exhib042.pdf HTT	200 417792	"-" "http://www.amsden.ibm.com/cs/crawler (cc7)"
101	amsden.ibm.com	[15/Feb/2005:	"GET /oa/adjpro/d9318/motions/0501ccmosumdec01/050131exhib045.pdf HTT	200 393216	"-" "http://www.amsden.ibm.com/cs/crawler (cc7)"
107	cable.mindspring.com	[16/Feb/2005:	"GET /oa/adjpro/d9318/motions/0501ccmosumdec01/050131exhib015.pdf HTT	200 285529	"http://www.fte.gov/oa/adjpro/d9318/index.htm" "Mozilla/4.0 (compatible; MSIE 6.0; Windows NT 5.1)"
123	cable.mindspring.com	[16/Feb/2005:	"GET /oa/adjpro/d9318/motions/0501ccmosumdec01/050131exhib036.pdf HTT	200 65536	"http://www.fte.gov/oa/adjpro/d9318/index.htm" "Mozilla/4.0 (compatible; MSIE 6.0; Windows NT 5.1)"
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EXHIBIT B

*1977 U.S. Dist. LEXIS 16178, *; 1977-1 Trade Cas. (CCH) P61,400*

Federal Trade Commission (on relation of Kaiser Aluminum & Chemical Corp.) v. Dresser Industries, Inc.

Misc. No. 77-44.

United States District Court for the District of Columbia.

1977 U.S. Dist. LEXIS 16178; 1977-1 Trade Cas. (CCH) P61,400

April 26, 1977, Filed

CASE SUMMARY

PROCEDURAL POSTURE: Plaintiff Federal Trade Commission (FTC) filed a petition for enforcement of a subpoena against defendant chemical corporation. The subpoena originated in a case pending before the FTC, in which an aluminum corporation applied to the FTC's Administrative Law Judge (ALJ) for issuance of subpoenas duces tecum to other chemical manufacturers. The chemical corporation claimed that the subpoenas were too burdensome.

OVERVIEW: The ALJ issued subpoenas to large and small chemical manufacturers. The more elaborate subpoenas were directed to the leading manufacturers of the product. Several companies sought to quash the subpoenas, and the ALJ modified the specifications in order to lessen the burden of compliance. When the chemical company still refused to comply, the FTC filed its action for enforcement. The court ordered the chemical company to comply with the ALJ's subpoenas, finding that the chemical company's claim that compliance would cost it $ 400,000 was insufficient to meet its heavy burden of showing that compliance with the subpoena would unduly disrupt or seriously threaten normal operations. The court found that is was to be expected that the chemical company's burden would be greater that the other subpoenaed companies, because the chemical company was the dominant firm in the industry. Indeed, it was the chemical company's dominance in the industry that made the subpoena served upon it critical to the aluminum company's defense. Thus, the court held that the burden imposed by the subpoena was not an unreasonable one so as to warrant quashing or further limiting the subpoena.

OUTCOME: The court ordered that the ALJ's subpoenas must be enforced against the chemical corporation.

CORE TERMS: subpoena, subpoenaed, discovery, administrative law, specification, relevance, issuance, protective order, civil discovery, adjudicative, unduly, duces tecum, purposes of discovery, reasonably relevant, manufacturers, Federal Trade Commission Act, confidential information, enforcement proceedings, subpoena duces tecum, trade secrets, mere fact, investigative, dissemination, confidential, acquisition, refractories, burdensome, egregious, sweeping, opposing

LexisNexis(R) Headnotes ◆ Hide Headnotes

Administrative Law > Separation & Delegation of Power > Subpoenas

HN1 In a subpoena enforcement proceeding brought by a federal agency, the court's role is a strictly limited one, and the scope of issues which may be litigated in an

enforcement proceeding must be narrow, because of the important governmental interest in the expeditious investigation of possible unlawful activity. In the usual case such matters will be summary in nature in order to facilitate the rapid resolution of issues which may significantly bear upon the agency's law enforcement responsibilities. More Like This Headnote

Administrative Law > Separation & Delegation of Power > Subpoenas

HN2 At least in this circuit, subpoena enforcement proceedings are considered to be summary in nature unless there appears some compelling reason for a fuller procedure. More Like This Headnote

Administrative Law > Separation & Delegation of Power > Subpoenas

HN3 Fed. R. Civ. P. 81(a)(3) provides: These rules apply to proceedings to compel the giving of testimony or production of documents in accordance with a subpoena issued by an officer or agency of the United States under any statute of the United States except as otherwise provided by statute or by rules of the district court or by order of the court in the proceedings. More Like This Headnote

Administrative Law > Separation & Delegation of Power > Subpoenas

HN4 It is sufficient if the inquiry is within the authority of the agency, the demand is not too indefinite and the information sought is reasonably relevant. In view of this standard and the "strictly limited" role of the court, one who opposes an agency's subpoena necessarily must bear a heavy burden. That burden is essentially the same even if the subpoena is directed to a third party not involved in the adjudicative or other proceedings out of which the subpoena arose. More Like This Headnote

Administrative Law > Separation & Delegation of Power > Subpoenas

HN5 The Federal Trade Commission's rule for the issuance of subpoenas duces tecum, 16 C.F.R. § 3.34(b), provides, in pertinent part: (1) Application for issuance of a subpoena requiring a person to appear and depose or testify and to produce specified documents, papers, books, or other physical exhibits at the taking of a deposition, or at a prehearing conference, or at an adjudicative hearing shall be made in writing to the administrative law judge, and shall specify as exactly as possible the material to be produced, showing the general relevancy of the material and the reasonableness of the scope of the subpoena. (2) Subpoenas duces tecum may be used by any party for purposes of discovery or for obtaining documents, papers, books or other physical exhibits for use in evidence, or for both purposes. When used for discovery purposes, a subpoena may require a person to produce and permit the inspection and copying of non-privileged documents, papers, books, or other physical exhibits which constitute or contain evidence relevant to the subject matter involved and which are in the possession, custody, or control of such person. More Like This Headnote | *Shepardize:* Restrict By Headnote

Administrative Law > Separation & Delegation of Power > Subpoenas

HN6 Subpoenas duces tecum may be used by any party for purposes of discovery or for obtaining documents, papers, books or other physical exhibits for use in evidence, or for both purposes. The Federal Trade Commission's (FTC) longstanding interpretation of 16 C.F.R. § 3.34(b)(2) is that it only requires a general showing of relevance. In the absence of a clear error, the FTC's reading of its own regulation is entitled to great deference from this court. More Like This Headnote | *Shepardize:* Restrict By Headnote

Administrative Law > Separation & Delegation of Power > Subpoenas

HN7 The Court of Appeals for the District of Columbia Circuit recently defined the showing of burden that would be necessary in order successfully to oppose an agency

subpoena: the question is whether the demand is unduly burdensome or unreasonably broad. Some burden on subpoenaed parties is to be expected and is necessary in furtherance of the agency's legitimate inquiry and the public interest. The burden of showing that the request is unreasonable is on the subpoenaed party. Further, that burden is not easily met where, as here, the agency inquiry is pursuant to a lawful purpose and the requested documents are relevant to that purpose. Broadness alone is not sufficient justification to refuse enforcement of a subpoena. Thus courts have refused to modify investigative subpoenas unless compliance threatens to unduly disrupt or seriously hinder normal operations of a business. More Like This Headnote

Administrative Law > Separation & Delegation of Power > Subpoenas
Civil Procedure > Discovery Methods > Requests for Production & Inspection
Trade Secrets Law > Federal & State Regulation > U.S. Federal Trade Commission
HN8 The mere fact that some of the subpoenaed material may be confidential does not excuse compliance with the subpoena. More Like This Headnote

OPINIONBY: [*1]

FLANNERY

OPINION: Memorandum Opinion

FLANNERY, D.J.: This is an action brought by the Federal Trade Commission on petition for enforcement of a subpoena. The subpoena was issued pursuant to the Commission's authority under Section 9 of the Federal Trade Commission Act, 15 U.S.C. § 49, which provides that "the Commission shall have power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation." The subpoena originated in an adjudicatory proceeding currently pending before the Commission in which Kaiser Aluminum and Chemical Corporation is alleged to have violated Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, by its acquisition of the Lavino Division of International Minerals and Chemical Corporation. The acquired division is a major producer of basic refractories, which are non-metallic insulating materials. Although Kaiser raised a number of defenses, those defenses generally contended that the acquired division had ceased to be a significant competitor in the industry and that the acquisition actually increased **[*2]** competition in the relevant markets.

In order to obtain the information necessary for its defense, Kaiser applied to the Commission's Administrative Law Judge for issuance of subpoenas duces tecum to other manufacturers of basic refractories. Sixteen subpoenas, directed to smaller manufacturers, contained only six specifications. Fourteen other subpoenas were more complex and contained 22 specifications. The more elaborate subpoenas were directed to the leading manufacturers of the product. One company, respondent Dresser Industries, One company, respondent Dresser Industries, Inc., was directed to answer a twenty-third specification concerning a major raw materials supply contract between Dresser and Lavino. Several of the subpoenaed companies moved to quash the subpoenas, and in a thorough and carefully reasoned Order of November 12, 1976, the Administrative Law Judge denied the motions to quash but did modify 13 of the 22 specifications in order to lessen the burden of compliance. Appeals from this Order were denied by the Commission, which found that the Administrative Law Judge had not abused his discretion in upholding the subpoenas. Subsequent to that decision by the **[*3]** Commission on December 16, 1976, four companies continued to refuse to comply with the subpoenas. The Commission, through its General Counsel, then initiated the instant petition for enforcement in the district court. As of the hearing of this

matter on April 7, 1977, only Dresser remained in noncompliance, the other companies having elected to obey the subpoenas.

At the April 7 hearing, two of the pending motions were decided from the bench. First, the court denied Dresser's motion to stay the proceedings or, in the alternative, to transfer them to the Northern District of Texas, where Dresser had earlier filed an action for declaratory relief from the subpoena. Second, the court granted Kaiser's motion to intervene pursuant to Rule 24(a) of the Federal Rules of Civil Procedure. Argument was then heard on the remaining matters: (1) the motion by Dresser for civil discovery and (2) Dresser's opposition to the petition for subpoena enforcement. With respect to its motion for civil discovery, Dresser contends that the circumstances presented here require the granting of such discovery to enable it to probe the motives of Kaiser and the Commission. In its opposition to the subpoena, **[*4]** Dresser argues that the subpoena fails to meet the standards of relevance prescribed by the Commission's rules, that compliance with the subpoena would be too burdensome, and that the subpoenaed material would not be adequately safeguarded from disclosure of confidential information. Dresser further urges that, if the subpoena is found to be valid and enforceable, the court issue a protective order designed to prevent dissemination of this confidential material.

At the outset, certain basic principles should be stated which must guide the court in its consideration of the issues. HN1 In an enforcement proceeding of this sort, the court's role is "a strictly limited one," and "the scope of issues which may be litigated in an enforcement proceeding must be narrow, because of the important governmental interest in the expeditious investigation of possible unlawful activity." Federal Trade Commission v. Texaco, Inc., No. 74-1547 (D.C. Cir. Feb. 23, 1977), slip opinion at 16, 18. In the usual case such matters will be summary in nature in order to facilitate the rapid resolution of issues which may significantly bear upon the agency's law enforcement responsibilities.

Despite the specific **[*5]** ruling of Judge Parker in the Order to Show Cause of March 4, 1977, Dresser insists, contrary to that Order, that this is not a summary proceeding. HN2 At least in this circuit, subpoena enforcement proceedings are considered to be summary in nature unless there appears some compelling reason for a fuller procedure. See Federal Trade Commission v. Texaco, Inc., supra at 39 n. 48; Federal Trade Commission v. Sherry, 1969 TRADE CASES. [*] 72,906 (D.D.C. 1969). See also In Re FTC Corporate Patterns Report Litigation, F. Supp. , Misc. No. 76-126 (D.D.C. Jan. 31, 1977). Even HN3 Rule 81 (a)(3) of the Federal Rules of Civil Procedure, upon which Dresser relies for its claim of a right to civil discovery, provides:

These rules apply to proceedings to compel the giving of testimony or production of documents in accordance with a subpoena issued by an officer or agency of the United States under any statute of the United States except as otherwise provided by statute or by rules of the district court or by order of the court in the proceedings.

(Emphasis added.) Here the Order to Show Cause clearly specified that the proceeding was to be summary with no discovery for any party **[*6]** in the absence of further order by the court.

In a proceeding such as this, discovery is available only upon a strong showing of need. The areas in which Dresser requests discovery and which it alleges to be central to its opposition to the subpoena are as follows: (1) the possibility that Kaiser's motive in requesting the subpoenas was only to delay the adjudicative proceeding against it; (2) the fact that Kaiser has settled with other parties subpoenaed but not with Dresser; (3) the Commission's alleged abuse of its subpoena power; (4) the Commission's alleged failure to protect Dresser's rights as a non-party to the adjudicative proceeding; and (5) the Commission's alleged failure to follow its own rules in the issuance of the subpoena. Some of these issues appear to require

no discovery as they involve purely legal issues, such as whether the Commission has in fact failed to follow its rules of procedure. Others appear not to be genuine issues at all. For example, counsel for Kaiser revealed at the hearing that Dresser had been offered essentially the same terms for compliance with the subpoena as the other companies, but that Dresser had refused those terms while the other **[*7]** companies had accepted them. In light of that fact, which was not contradicted by Dresser, it is difficult to see how Dresser can allege that the other companies were the beneficiaries of a favorable or preferential settlement.

This case features none of the egregious circumstances found in a case like United States v. Wright Motor Co., 536 F.2d 1090 (5th Cir. 1976). Nor does it appear that Dresser has been subjected to a "sweeping or irrelevant" subpoena request, as in United States v. Theodore, 479 F.2d 749, 754 (4th Cir. 1973), where the particular summons involved was described by the court as "unprecedented in its breadth." Most importantly, Dresser has alleged no specific facts to support its claim of bad faith on the part of Kaiser and the Commission. Some such specific factual allegations are necessary before the court will abrogate the usual rule that discovery is not allowed in summary proceedings. See United States v. Fensterwald, No. 76-1290 (D.C. Cir. Mar. 8, 1977). In the absence of these allegations and of any indication of bad faith or improper motive on the part of Kaiser or the Commission, the court must refuse Dresser's request for civil discovery. The mere **[*8]** fact that Dresser is not a party to the pending adjudicative proceeding does not alter the basic principle the discovery rights are inconsistent with the summary nature of subpoena enforcement. See Federal Trade Commission v. United States Pipe and Foundry Co., 304 F. Supp. 1254 (D.D.C. 1969). Any other result might seriously threaten the Commission's investigative powers, as well as prejudice the rights of parties such as Kaiser who are engaged in litigation with the Commission.

In opposing the subpoena on the merits, Dresser is confronted with a task at least as difficult as overcoming the presumption against discovery in summary enforcement proceedings. The basic standard for challenges to agency subpoena power is set forth in United States v. Morton Salt Co., 338 U.S. 632, 652, 94 L. Ed. 401, 70 S. Ct. 357 (1950), where the Supreme Court said:

HN4[It] is sufficient if the inquiry is within the authority of the agency, the demand is not too indefinite and the information sought is reasonably relevant.

In view of this standard and the "strictly limited" role of the court, see Federal Trade Commission v. Texaco, Inc., supra at 16, one who opposes an agency's subpoena necessarily must bear a heavy burden. **[*9]** That burden is essentially the same even if the subpoena is directed to a third party not involved in the adjudicative or other proceedings out of which the subpoena arose, Federal Trade Commission v. Tuttle, 244 F.2d 605 (2d Cir. 1957), cert. denied, 354 U.S. 925, 1 L. Ed. 2d 1436, 77 S. Ct. 1379; Federal Trade Commission v. Bowman, 149 F. Supp. 624 (N.D. Ill.), aff'd, 248 F.2d 456 (7th Cir. 1957); Federal Trade Commission v. United States Pipe and Foundry Co., supra.

Dresser does not contend that the subpoena is beyond the statutory authority of the Commission, but instead focuses upon the other two elements discussed in Morton Salt, supra. Specifically, Dresser asserts that the subpoena violates the Commission's own standards of relevance and that the subpoena is so indefinite and sweeps so broadly that Dresser is unduly burdened. In the relevance inquiry, the court must be satisfied merely that the material sought is "reasonably relevant"; there need be no showing that the subpoenaed material is clearly or unquestionably relevant or, as Dresser contends, "relevant and necessary." Federal Trade Commission v. Texaco, Inc., supra at 20-21 n. 23.

Dresser's arguments concerning relevance revolve primarily **[*10]** about HN5the Commission's rule for the issuance of subpoenas duces tecum. 16 C.F.R. § 3.34(b) (1976). That rule provides, in pertinent part:

(1) Application for issuance of a subpoena requiring a person to appear and depose or testify and to produce specified documents, papers, books, or other physical exhibits at the taking of a deposition, or at a prehearing conference, or at an adjudicative hearing shall be made in writing to the administrative law judge, and shall specify as exactly as possible the material to be produced, showing the general relevancy of the material and the reasonableness of the scope of the subpoena....

(2) Subpoenas duces tecum may be used by any party for purposes of discovery or for obtaining documents, papers, books or other physical exhibits for use in evidence, or for both purposes. When used for discovery purposes, a subpoena may require a person to produce and permit the inspection and copying of non-privileged documents, papers, books, or other physical exhibits which constitute or contain evidence relevant to the subject matter involved and which are in the possession, custody, or control of such person.

Dresser apparently views the language **[*11]** of "constitute or contain evidence" found in § 3.34(b)(2) as requiring a determination, prior to issuance of a subpoena, that subpoenaed material would be admissible in evidence. Such an interpretation is clearly inconsistent with the statement in the same rule to the effect that HN6"[subpoenas] duces tecum may be used by any party for purposes of discovery or for obtaining documents, papers, books or other physical exhibits for use in evidence, or for both purposes." Furthermore, it is inconsistent with the Commission's own longstanding interpretation of § 3.34(b)(2), which is that it only requires a general showing of relevance. In the absence of a clear error, the Commission's reading of its own regulation is entitled to great deference from this court. See Udall v. Tallman, 380 U.S. 1, 16, 13 L. Ed. 2d 616, 85 S. Ct. 792 (1965). If Dresser's view of the rule were adopted by the court, the use of a subpoena duces tecum, at least for purposes of discovery, would be completely undermined.

Dresser also alleges that the application for issuance of a subpoena duces tecum was insufficient in that it failed to make a strong showing of relevance and need. As noted above, such is not the correct standard. Instead, **[*12]** the applicant for a subpoena need only show that the materials sought are generally or reasonably relevant. Even if there were some inadequacy in the application - and the court does not believe that there was in this instance - Dresser would not have been prejudiced by it for the administrative law judge made a specification-by-specification finding of relevancy. In the process, he limited the scope of some of the specifications where he deemed it appropriate. The court has examined the complaint, the defenses raised by Kaiser, the specifications found in the subpoena, and the findings of the administrative law judge with reference to each of the specifications, and must conclude that the documents and other material subpoenaed meet the standard of "reasonable relevance" and that the administrative law judge did not abuse his discretion in upholding the specifications, as modified by his order.

In opposing the subpoena on the ground that it imposes too great a burden, Dresser again faces a very difficult task. HN7The court of appeals for this circuit recently defined the showing of burden that would be necessary in order successfully to oppose an agency subpoena:

We emphasize **[*13]** that the question is whether the demand is unduly burdensome or unreasonably broad. Some burden on subpoenaed parties is to be expected and is necessary in furtherance of the agency's legitimate inquiry and the public interest. The burden of showing that the request is unreasonable is on the subpoenaed party. Further, that burden is not easily met where, as here, the agency inquiry is pursuant to a lawful purpose and the requested documents are relevant to that purpose. Broadness alone is not sufficient justification to refuse enforcement of a subpoena. Thus courts have refused to modify investigative subpoenas unless compliance threatens to unduly disrupt or seriously hinder normal operations of a business.

Federal Trade Commission v. Texaco, Inc., supra at 39-40.

Based on an uncontradicted affidavit, Dresser claims that the cost of compliance with the subpoena would be $ 400,000. Even if the affidavit were totally convincing in the statistics which it presents, this would not necessarily satisfy Dresser's burden. Dresser must show that compliance with the subpoena would "unduly disrupt or seriously threaten normal operations." This Dresser has not done. As the court **[*14]** of appeals observed in Federal Trade Commission v. Texaco, Inc., supra at 40, it is not insignificant that other companies were willing and able to comply with similar subpoenas without undue effort. Here all the other companies which were subpoenaed, including those with subpoenas virtually identical to that of Dresser, have agreed to comply, a fact which strains the credibility of Dresser's claim of unreasonable burden. It may very well be that Dresser's burden is greater than that of the other subpoenaed companies, but that is to be expected from the fact that Dresser is the dominant firm in the industry with by far the largest volume of sales. Indeed, it is Dresser's dominance in the industry which makes the subpoena served upon it critical to Kaiser's defense. Thus, as the record now stands, the court must find that the burden imposed by the subpoena is not an unreasonable one so as to warrant quashing or further limiting the subpoena. Furthermore, though the subpoena is admittedly a sweeping one, it is not illegal or overbroad, for the breadth of the request is dictated by the scope of the adjudicative proceeding.

Finally, Dresser urges that the subpoena not be enforced **[*15]** because inadequate protection is afforded for vital trade secrets and other confidential information. HN8 The mere fact that some of the subpoenaed material may be confidential does not, however, excuse compliance with the subpoena. Federal Trade Commission v. Lonning, 176 U.S. App. D.C. 200, 539 F.2d 202, 211 (D.C. Cir. 1976); Federal Trade Commission v. Tuttle, 244 F.2d 605, 616 (2d Cir. 1957), cert. denied, 354 U.S. 925, 1 L. Ed. 2d 1436, 77 S. Ct. 1379. The administrative law judge has entered a comprehensive protective order which should be sufficient to safeguard the confidentiality of Dresser's secrets. Dresser's primary fear appears to be that the protective order does not bind the Commission itself. It is not clear that Dresser's fear is wellfounded in this regard, but in any event there are other barriers to dissemination by the Commission. First, such material is exempt from disclosure requirements under the Freedom of Information Act. 5 U.S.C. § 552(b)(4). Second, 15 U.S.C. § 46(f) bars the Commission from making public trade secrets and other confidential information such as the names of customers. And the court cannot lightly assume that the Commission will fail to discharge diligently and in good faith its responsibilities **[*16]** under the law. Under the circumstances, a protective order by this court would be neither necessary nor appropriate.

The court believes that the subpoena, as modified by order of the administrative law judge, should be enforced, and an appropriate order to that effect accompanies this memorandum opinion. The court is not unmindful of the tremendous impact which compliance with such subpoenas can have upon companies which appear to be innocent bystanders. The cost of effective economic regulation, however, is one which must be shared by all industry, indeed by the entire society. The expeditious enforcement of such subpoenas, usually without the civil discovery and the protective order which were requested of the court in this case, is an integral part of the regulatory scheme, and only in the most egregious of circumstances should a court intervene to delay or hinder the enforcement process.

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