

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

In the Matter of)
)
)
DYNAMIC HEALTH OF FLORIDA, LLC,)
CHHABRA GROUP, LLC,)
DBS LABORATORIES, LLC,)
VINEET K. CHHABRA aka VINCENT K. CHHABRA, and)
JONATHAN BARASH,)
Respondents.)
_____)

PUBLIC DOCUMENT
Docket No. 9317

To: Stephen J. McGuire
Chief Administrative Law Judge

**SECOND MOTION FOR FINDING OF DEFAULT AND ENTRY OF INITIAL
DECISION AND SUPPORTING MEMORANDUM**

Complaint counsel hereby files its second motion requesting a finding of default by DBS Laboratories, LLC, (hereafter, "DBS") and requesting entry of an Initial Decision. In support of its motion, complaint counsel submits as follows:

I. BACKGROUND

On August 5, 2004, complaint counsel filed a "Motion for Finding of Default and Entry of Initial Decision and Supporting Memorandum" (First Motion for Default). On September 8, 2004, the Court denied that motion without prejudice, noting that the motion stated in some

3. the financial statement states that the address is [“

See Second Declaration of Devenette Cox, Exhibit A hereto, at ¶ 3.

The statement in the DBS Operating Agreement that the DBS address is on [] appears to reflect a typographic error. Complaint counsel apologizes for the fact that it compounded this error by not recognizing the conflict in the underlying documentation as well as by misstating that information in its own arguments. Additional research described in the Second Declaration establishes that there is, in fact, no such address as North Park Road in Weston, FL. The steps taken to verify this include communications with the office of the US Postal Service in Weston, FL, a Mapquest search, and a Lexis search. *Id.*, ¶¶ 4--6.

In addition, complaint counsel provides the following information in response to the questions posed in the Court's Order:

A. Was DBS' counsel contacted? Yes. DBS was represented by the law firm of Arent, Fox from approximately November 2003 to February 2004. DBS and Jonathan Barash, its 25% owner and manager, were represented by the law firm of Bass & Martinez from March 2004 until June 8, 2004, one week before issuance of the complaint in Docket 9317. Indeed, in the course of negotiations, Bass & Martinez reviewed the complaint in this matter, which states that the address of DBS was 1485 North Park Drive. Counsel for DBS and Barash suggested changes to the complaint, but raised no issue with the address for DBS.

B. Did DBS provide any additional addresses? DBS did not, but complaint counsel obtained additional information as a result of its own research. According to the Florida Department of State website, DBS filed electronic articles of incorporation on March 31, 2003,

indicating that the address for DBS was 20711 Avenel Run, Boca Raton, FL. There has been no filing with the State of Florida to change the address of the company. See Exhibit A, ¶ 7. However, the financial disclosures provided by DBS a year after its incorporation, in March 2004, states that its address was

relocated from [] Id., ¶ 3(c) and 8. It appears that DBS [] as of the date of the DBS Operating Agreement.

C. Has there been prior contact with DBS at a particular address? No, all communications with DBS have been conducted through the counsel identified in response to Question A.

D. Has there been any attempt to determine the correct current address of DBS? Given the information and communications discussed above, as well as the fact that the complaint, addressed to "DBS Laboratories LLC" at 1485 North Park Drive, was sent via certified mail and signed for at that address, we are confident that this was the correct address for service upon DBS. See Declaration of Bernita Lofty, resubmitted as Exhibit B hereto.

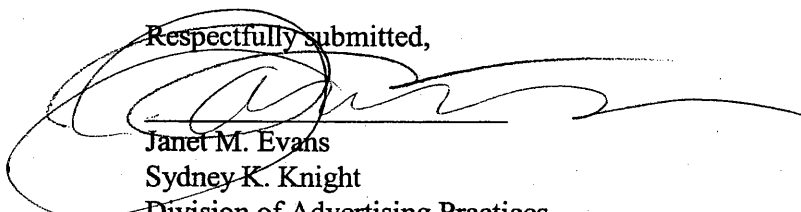
In sum, DBS was served at its principal place of business, 1485 North Park Drive, consistent with 16 C.F.R. § 4.4(a)(iii). Accordingly, complaint counsel requests that the Administrative Law Judge find that respondent DBS is in default and issue the Initial Decision and Order attached to the First Motion for Default. E.g., *Automotive Breakthrough Sciences, Inc.*, 1996 FTC LEXIS 470 at *7 (entering default and issuing initial decision consistent with complaint and proposed order following failure to answer the complaint or to respond to discovery requests), *American Tractor Trailer Training, Inc.*, 86 F.T.C. 654, 1975 FTC LEXIS

84 at *19 (entering default and issuing initial decision following failure to submit an answer); *TV Stereo City Freight Liquidators, Inc.*, 86 F.T.C. 590, 1975 FTC LEXIS 96 at *14 (same); *Joseph Richard Horvath, d/b/a Sew Rite*, 85 F.T.C. 1081; 1975 FTC LEXIS 171 at *10 (same).

III. CONCLUSION

For the reasons set forth above, complaint counsel respectfully requests that the Administrative Law Judge find that respondent DBS is in default and issue the Initial Decision and Order attached hereto.

Respectfully submitted,



Janet M. Evans
Sydney K. Knight
Division of Advertising Practices
FEDERAL TRADE COMMISSION
600 Pennsylvania Avenue, N.W.
Mail drop NJ-3212
Washington, D.C. 20580
jevans@ftc.gov
(202) 326-2125
fax: (202) 326-3259

EXHIBIT A

SECOND DECLARATION OF DEVENETTE COX

PURSUANT TO 28 U.S.C. § 1746

1. My name is Devenette Cox. I am a citizen of the United States of America and over twenty-one years of age. I am employed by the Federal Trade Commission ("Commission") as an Investigator in the Division of Advertising Practices of the Bureau of Consumer Protection. I have been employed by the Commission for 29 years. My business address is c/o FTC, 600 Pennsylvania Avenue, N.W. Room 3212, Washington, D.C. 20580. I have personal knowledge of the facts stated herein. If called to testify, I could and would competently testify to the facts set forth below.

2. In my capacity as an Investigator in the Division of Advertising Practices, I assist in the performance of law enforcement investigations. I conduct research, using a variety of investigative tools, and review information submitted by companies and individuals in response to informal and formal requests.

3. I have again reviewed the information submitted by DBS Laboratories in the course of our inquiry. They contain the following information:

a. The DBS Operating Agreement states that the principal office of DBS Laboratories [redacted]

.] A copy of the page of the Operating Agreement containing this statement is attached as Exhibit A, Att. 1.

b. The interrogatory responses submitted by DBS Laboratories state that the address of DBS Laboratories, LLC is [redacted] A copy of the

page of the interrogatory responses containing this response is attached as Exhibit A, Att.

2.

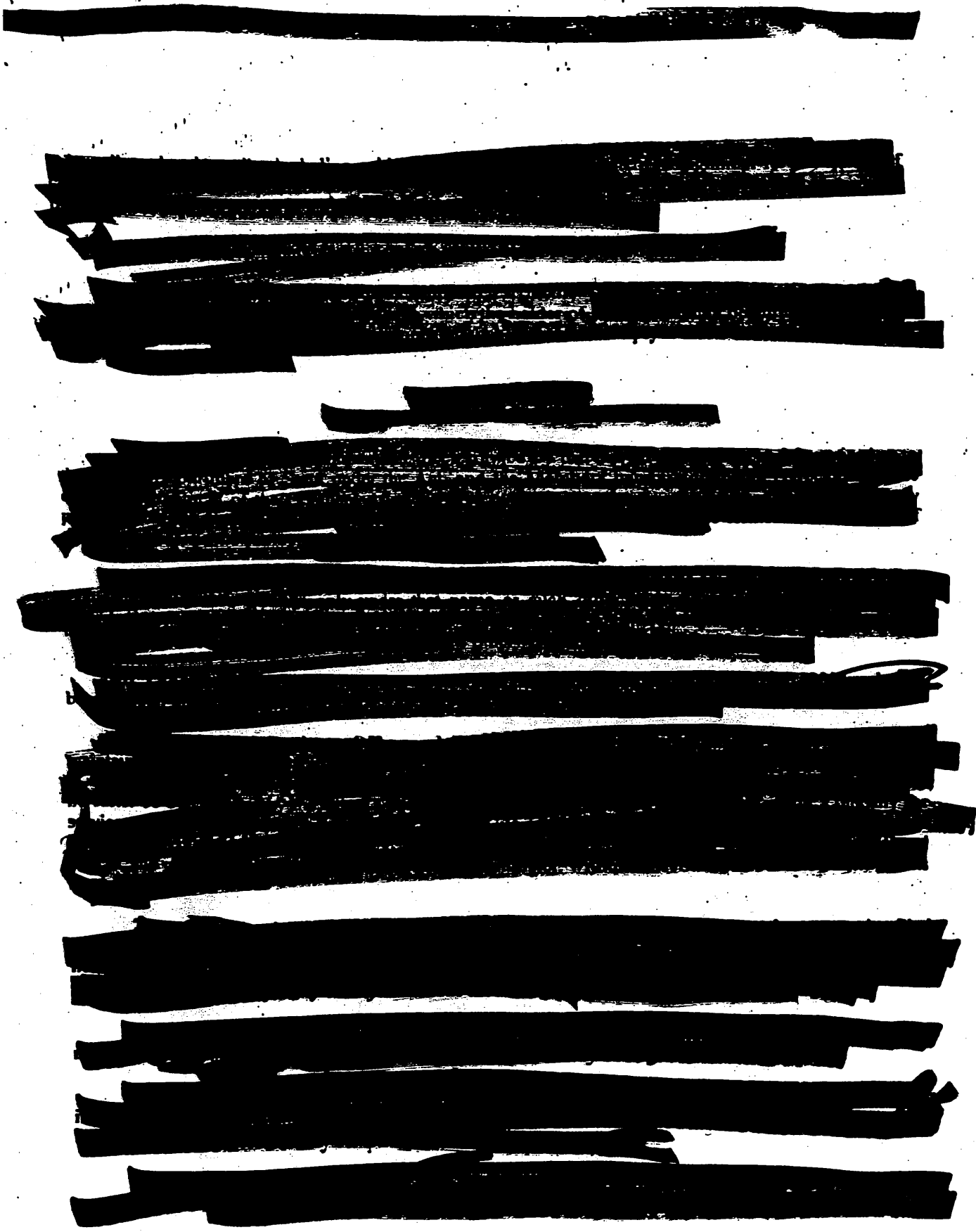
c. The financial disclosures submitted by DBS identify the primary business address of DBS Laboratories as

The page of

the financial disclosure containing the address information (but with confidential information redacted) is attached as Exhibit A, Att. 3.

4. On September 10, 2004, I called the US Postal Service in Weston, Florida. I spoke with Shiela Fischetti. Ms. Fischetti is an Aims Technician at the Weston Branch; she is responsible for overseeing address issues, including audits of mail forwarding and assigning addresses in new retail and residential developments. I asked Ms. Frischetti whether 1485 North Park Drive is an actual address. She said yes. I asked whether 1485 North Park Road is an actual address. She said no.

5. On September 10, 2004, I also engaged in two additional tasks to verify that North Park Road is not an actual address. First, I searched on the internet mapping service, www.mapquest.com, for information. Mapquest has a "find it" function that will provide a map for an address or intersection. I searched for "1485 North Park Drive, Weston, FL." It took me to a page that had the statement "*1485 N Park Dr Weston, FL 33325-3215" at the top and showed a map with a star next to a street labeled "N Park Dr." See Exhibit A, Att. 4. I also searched for "1485 North Park Road, Weston, FL." In response, the program took me to a page that stated, "Mapquest found * 1485 N Park Dr Weston, FL 33325-3215." It provided no map for 1485 North Park Road. See Exhibit A, Att. 5.



DBS LABORATORIES, LLC

Interrogatory 1. For USA Prescription, Inc., state its full legal name, principal address, telephone number, state and date of incorporation or licensing, and all other names under which the company has done business, and identify all of its officers, directors, principals, and shareholders with five percent or more ownership, stating each shareholder's percentage of ownership.

Response:

[REDACTED]

Interrogatory 2. For each advertisement requested in Specification 2 of the CID for Documents, describe fully the dates, times, and locations the ads were disseminated. For print ads, identify every publication, date, and community of dissemination; for television or radio ads, provide every network, system or station, date, and community of dissemination; for all other materials, provide sufficient information to permit a determination of how many items were disseminated, when, where, and to whom.

[REDACTED]

Interrogatory 3. Identify each of the persons or entities listed below and describe the role, if any, that that person or entity plays in the ownership, manufacturing, packaging, advertising, marketing (including telemarketing, web site design), sale, and distributing (including fulfillment) of the products identified in Specification 1 of the CID for Documents:

BACKGROUND INFORMATION

Item 1. General Information

Corporation's Full Name _____ From (Date) _____

Primary Business Address _____

Telephone No. _____ Fax No. _____

E-Mail Address _____ Internet Home Page _____

All other current addresses & previous addresses for past five years, including post office boxes and mail drops:

Address _____ From/Until _____

Address _____ From/Until _____

Address _____ From/Until _____

All predecessor companies for past five years:

Name & Address _____ From/Until _____

Name & Address _____ From/Until _____

Name & Address _____ From/Until _____

Item 2. Legal Information

Federal Taxpayer ID No. _____ State & Date of Incorporation _____

State Tax ID No. _____ State _____ Profit or Not For Profit _____

Corporation's Present Status: Active _____ Inactive _____ Dissolved _____

If Dissolved: Date dissolved _____ By Whom _____

Reasons _____

Fiscal Year-End (Mo./Day) _____ Corporation's Business Activities _____

Item 3. Registered Agent

Name of Registered Agent _____

Address _____ Telephone No. _____



FIND IT



MAPS



DIRECTIONS



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YELLOW PAGES

MapQuest Find It
Search by Address,
Airport, Category or
Business Name



Book online for a chance to win a trip to the
spectacular Hilton Waikoloa Village® in Hawaii.

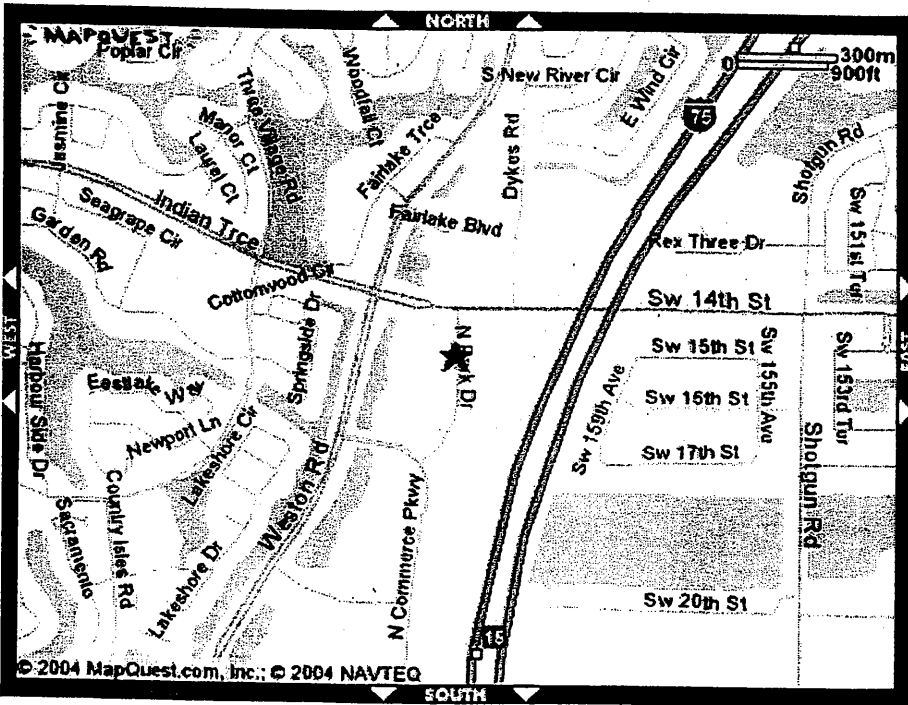


NO PURCHASE NECESSARY. VOID WHERE PROHIBITED. [CLICK HERE FOR DETAILS](#)

1485 N Park Dr Weston, FL 33326-3215, US [Hotel Offers](#) - [Flight Deals](#)

Street Map

[Print](#) | [E-Mail](#) | [Download to PDA](#) | [New Map](#)



ZOOM IN



Weston Offers:

Hotels

Discount Hotels

Guaranteed Lowest Rates
OrbitzSaver Hotels. Book
www.ORBITZ.com

Expedia: Discount Hotels

Hot Deals at Over 10,000
Save up to 50% on hotel
www.Expedia.com

Hotels For Less

Fall Savings on Hotels!
Get Ready to Relax - Book
www.travelocity.com

Cheap Hotels

70% off rates at 29,000+
Book online now Lodging.
www.Lodging.com

Discount Hotel Room

Our Exclusive Rates Come
A 110% Lowest Price Guarantee
www.CheapTickets.com

Priceline Discount Hotels

Incredibly Low Prices - Save
40% on Hotels with Price
www.priceline.com

Weston Hotel

Compare prices and find the
best hotel deals for your trip
www.tripadvisor.com

Choice Hotels

Off Exhibit A Save
Attachment 4

Get Directions To Above Location

Address or Intersection

City State/Prov.

Search for a Business

Business Name or Category

Address City State

1485 N Park Dr Weston FL

© 2004 MapQuest.com, Inc.; © 2004 NAVTEQ



This map is informational only. No representation is made or warranty given as to its content. User assumes all risk of use. MapQuest and its providers assume no responsibility for any loss or delay resulting from such use.



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MAPS



DIRECTIONS



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YELLOW PAGES

MapQuest Find It
Search by [Address](#),
[Airport](#), [Category](#) or
[Business Name](#)

[Revise Search](#) | [New Search](#)

MapQuest Found: ★ [1485 N Park Dr Weston, FL 33326-3215](#)

[Site Index](#) | [About](#) | [Partners](#) | [Advertise](#) | [Privacy Policy & Legal Notices](#) © 2004 MapQuest.com, Inc. All rights reserved.

485 NORTH PARK ROAD

our search request has found no RECORDS.

our search request can be converted into a FREESTYLE search.
FREESTYLE will retrieve the top 50 documents based on statistical ranking.
o run your search as a FREESTYLE search, type .fr and press ENTER.

o enter a new search request, type it and press the ENTER key, or you may
edit the current request using the arrow keys. Be sure to move the cursor
o the end of the request before entering it.

for further explanation, press the H key (for HELP) and then the ENTER key.

185 N PARK ROAD

Your search request has found no RECORDS.

Your search request can be converted into a FREESTYLE search.
FREESTYLE will retrieve the top 50 documents based on statistical ranking.
To run your search as a FREESTYLE search, type .fr and press ENTER.

To enter a new search request, type it and press the ENTER key, or you may edit the current request using the arrow keys. Be sure to move the cursor to the end of the request before entering it.

For further explanation, press the H key (for HELP) and then the ENTER key.

485 NORTH PARK RD

our search request has found no RECORDS.

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REESTYLE will retrieve the top 50 documents based on statistical ranking.
o run your search as a FREESTYLE search, type .fr and press ENTER.

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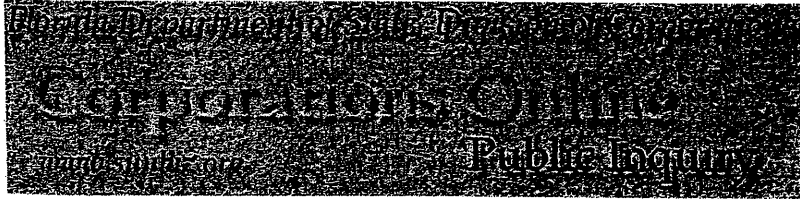
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o for further explanation, press the H key (for HELP) and then the ENTER key.



Florida Limited Liability

DBS LABORATORIES, LLC

PRINCIPAL ADDRESS

20911 AVENEL RUN
BOCA RATON FL 33428 US

MAILING ADDRESS

20911 AVENEL RUN
BOCA RATON FL 33428 US

Document Number
L03000011364

FEI Number
NONE

Date Filed
03/31/2003

State
FL

Status
ACTIVE

Effective Date
03/31/2003

Total Contribution
0.00

Registered Agent

Name & Address
BARASH, LISA 20911 AVENEL RUN BOCA RATON FL 33428

Manager/Member Detail

Name & Address	Title

NONE

Annual Reports

Report Year

Filed Date

[Previous Filing](#)

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No Events
No Name History Information

Document Images

Listed below are the images available for this filing.

[07/01/2004 -- Off/Dir Resignation](#)

[03/31/2003 -- Florida Limited Liability](#)

**THIS IS NOT OFFICIAL RECORD; SEE DOCUMENTS IF QUESTION OR
CONFLICT**

[Corporations Inquiry](#)

[Corporations Help](#)

**Electronic Articles of Organization
For
Florida Limited Liability Company**

L03000011364
FILED 8:00 AM
March 31, 2003
Sec. Of State

Article I

The name of the Limited Liability Company is:

DBS LABORATORIES, LLC

Article II

The street address of the principal office of the Limited Liability Company is:

20911 AVENEL RUN
BOCA RATON, FL. US 33428

The mailing address of the Limited Liability Company is:

20911 AVENEL RUN
BOCA RATON, FL. US 33428

Article III

The name and Florida street address of the registered agent is:

LISA BARASH
20911 AVENEL RUN
BOCA RATON, FL. 33428

Having been named as registered agent and to accept service of process for the above stated limited liability company at the place designated in this certificate, I hereby accept the appointment as registered agent and agree to act in this capacity. I further agree to comply with the provisions of all statutes relating to the proper and complete performance of my duties, and I am familiar with and accept the obligations of my position as registered agent.

Registered Agent Signature: LISA BARASH

Article IV

The effective date for this Limited Liability Company shall be:

03/31/2003

Signature of member or an authorized representative of a member

Signature: JONATHAN BARASH

DECLARATION OF BERNITA LOFTY

PURSUANT TO 28 U.S.C. § 1746

1. My name is Bernita Lofty. I am a citizen of the United States of America and over twenty-one years of age. I am employed by the Federal Trade Commission ("Commission") as a Legal Technician in the Office of the Secretary, Document Processing Branch. I have been employed by the Commission for 25 years. My business address is c/o FTC, 600 Pennsylvania Avenue, Room 159, Washington, D.C. 20580. I have personal knowledge of the facts stated herein. If called to testify, I could and would competently testify to the facts set forth below.
2. In my capacity as a Legal Technician, I serve complaints and other documents issued by the Commission. On June 15, 2004, the Commission issued a complaint against DBS Laboratories, LLC and others. On June 16, 2004, I sent a package containing the Complaint in Docket 9317, along with the accompanying Notice and proposed Order, via Express Mail, Return Receipt Requested, addressed to DBS Laboratories LLC, 1485 North Park Dr., Weston, FL 33326. On June 22, 2004, we received in the Office of the Secretary a return receipt, showing that the package had been delivered as addressed and signed for on June 17, 2004. A copy of that receipt is attached hereto.
3. I hereby declare under penalty of perjury that the foregoing is true and correct. Executed this 2nd day of August, 2004,



BERNITA LOFTY

(FRONT)

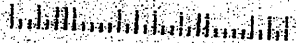
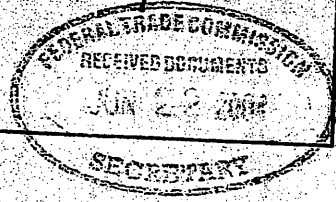
UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

FEDERAL TRADE COMMISSION
DOCUMENT PROCESSING SECTION, RM. 169
6th AND PA. AVE, N.W.
WASHINGTON, D.C. 20580



(BACK)

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

DBS Laboratories LLC
1485 North Park Dr.
Weston, FL 33326

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
[Signature] Addressee

B. Received by: (Printed Name) C. Date of Delivery
DELEE C. MASTER *6/17/04*

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number

(Transfer from service label)

E1 38968453 U.S. 511243 0423012 D09317

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

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In the Matter of)
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DYNAMIC HEALTH OF FLORIDA, LLC,)
CHHABRA GROUP, LLC,)
DBS LABORATORIES, LLC,)
VINEET K. CHHABRA aka VINCENT K. CHHABRA, and)
JONATHAN BARASH,)
Respondents.)
<hr/>	

Docket No. 9317

To: Stephen J. McGuire
Chief Administrative Law Judge

**[Proposed] INITIAL DECISION AND ORDER
AGAINST DBS LABORATORIES, LLC**

A. PRELIMINARY STATEMENT

The Commission issued a Complaint in this matter on June 15, 2004, charging DBS Laboratories, LLC, and others with unfair or deceptive acts or practices in violation of Sections 5(a) and 12 of the Federal Trade Commission Act. On June 16, 2004, the Commission's Office of the Secretary mailed a copy of the Complaint, Notice, and Order via Express Mail, Return Receipt Requested, addressed to DBS Laboratories, LLC, 1485 North Park Dr., Weston, FL 33326. The documents were delivered on June 17, 2004. Service was proper, consistent with 16 C.F.R. § 4.4(a)(iii).

Pursuant to the Commission's Rules, DBS was required to submit its answer on or before July 7, 2004. 16 C.F.R. § 3.12 (a). DBS has submitted no answer or other response. I hereby find that DBS is in default.

Rule 3.12(c) authorizes the finding of default and issuance of an initial decision consistent with the complaint and proposed order where, as here, a respondent fails to answer the complaint despite being properly served. *E.g.*, *Automotive Breakthrough Sciences, Inc.*, 1996 FTC LEXIS 470 at *7 (entering default and issuing initial decision consistent with complaint and proposed order following failure to answer the complaint or to respond to discovery requests), *American Tractor Trailer Training, Inc.*, 86 F.T.C. 654, 1975 FTC LEXIS 84 at *19 (entering default and issuing initial decision following failure to submit an answer); *TV Stereo City Freight Liquidators, Inc.*, 86 F.T.C. 590, 1975 FTC LEXIS 96 at *14 (same); *Joseph Richard Horvath, d/b/a Sew Rite*, 85 F.T.C. 1081; 1975 FTC LEXIS 171 at *10 (same). Accordingly, the following findings, conclusions and order are issued:

B. FINDINGS AND CONCLUSIONS

4. Respondent DBS Laboratories, LLC, (“DBS” or “respondent”) is a Florida limited liability company with offices located at 1485 North Park Dr., Weston, Florida.
5. DBS has advertised, labeled, offered for sale, sold, and distributed products to the public, including Pedia Loss, a weight loss supplement, and Fabulously Feminine, a female sexual enhancement supplement. Pedia Loss and Fabulously Feminine are either a “food” or a “drug” within the meaning of Sections 12 and 15 of the Federal Trade Commission Act, 15 U.S.C. §§ 52 and 55.
6. The acts and practices of respondent have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.

PEDIA LOSS

7. Respondent has disseminated or caused to be disseminated advertisements for Pedia Loss through various Internet websites, including www.pedialoss.com, www.dynamichealthproducts.com, and www.dbslabs.com, as well as print advertising in Cosmopolitan magazine. According to the product labels, Pedia Loss contains, among other ingredients, fructose, inulin, glutamine, lecithin, citric acid, and hydroxycitric acid (HCA). Advertisements for Pedia Loss products include, but are not necessarily limited to, Complaint Exhibits A through C. The advertisements contain the following statements, among others:

a. **Pedia Loss**

* * *

Child obesity is a growing problem in North America. Pedia Loss is an appetite suppressant for children 6 years and older. Allow children to enjoy their favorite foods without gaining weight. This revolutionary new formula slows the absorption of carbohydrates, allowing more to be burned for energy and less to be stored as fat. This highly effective and natural dietary supplement comes in berry-flavored chewable tablets for easy consumption. In conjunction with a proper diet and exercise program, Pedia Loss can keep your child from becoming a statistic.

Please consult your healthcare provider before giving Pedia Loss to your child.

* * *

This synergistic formula was designed to aide in a child's glucose metabolism. Since many of their favorite foods are rich in carbohydrates but very low in dietary fiber, their digestive tracts and insulin never function properly. Now with Pedia Loss children can still enjoy their favorite food but with the help of Inulin their bodies with [sic] slow down the absorption of carbohydrate, allowing more to be burned for energy and less to be stored as fat, and give a great source of soluble fiber. In addition to this highly advanced ingredient, we have included supplemental amounts of

both glutamine and FOS, which have both been proven to drastically improve intestinal health. Finally this product contains a highly effective compound called HCA. This compound has been shown to safely burn fat without any form of stimulants.

(Complaint Exhibit A: web page
from
www.dynamichealthproducts.com)

- b. Pedia Loss is highly effective for children 6 years of age and older. Children can still enjoy their favorite food in moderation while slowing the absorption of carbohydrates, allowing more to be burned for energy and less to be stored as fat. For best results use in conjunction with an exercise program and a low fat low calorie diet. Please consult your healthcare provider before giving this product to your child.

(Complaint Exhibit B: product label)

c. **Child Obesity**

an american [sic] reality

According to the Centers for Disease Control and Prevention, childhood obesity is a growing problem in the U.S., with one in ten pre-schoolers considered clinically obese. Pedia Loss addresses this growing health care issue in children 6 years of age and older. Children can still enjoy their favorite foods in moderation, while slowing the absorption of carbohydrates. The use of Pedia Loss enables more carbs to be burned for energy and less to be stored as fat. This highly effective and natural dietary supplement comes in berry-flavored chewable tablets that will appeal to children. Best of all is the feeling of strength and confidence they'll experience by overcoming childhood weight problems. . . .

(Complaint Exhibit C: ad in Cosmopolitan Magazine)

5. Through the means described in Paragraph 4, respondent has represented, expressly or by implication, that:

- a. Pedia Loss causes weight loss in overweight or obese children ages 6 and over, and
- b. When taken by overweight or obese children ages 6 and over, Pedia Loss causes weight loss by suppressing appetite, increasing fat burning, and slowing carbohydrate absorption.

6. Through the means described in Paragraph 4, respondent has represented, expressly or by implication, that it possessed and relied upon a reasonable basis that substantiated the representations set forth in Paragraph 5, at the time the representations were made.

7. In truth and in fact, respondent did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraph 5, at the time the representations were made. Therefore, the representation set forth in Paragraph 6 was, and is, false or misleading.

FABULOUSLY FEMININE

8. Respondent has disseminated or caused to be disseminated advertisements for Fabulously Feminine through various Internet websites, including www.usaprescription.com, www.dbslabs.com, and www.medprescribe.com, as well as print ads in various newspaper publications. According to the product labels, Fabulously Feminine contains L-arginine, ginseng, damiana leaf, ginkgo biloba leaf, and horny goat weed, among other ingredients. Advertisements for Fabulously Feminine products include, but are not necessarily limited to, Complaint Exhibits D through F. The advertisements contain the following statements, among others:

- a. **Fabulously Feminine**

Do you crave more from sexual intimacy? Rev up your sex drive with FABULOUSLY FEMININE. All-natural FABULOUSLY FEMININE can help you build the stamina you need to make your sexual experiences more intense and lasting. . . It's all a matter of stimulating blood flow and increasing sensitivity, and FABULOUSLY FEMININE'S herbal and amino acid formula accomplishes this naturally, yet powerfully. . . .

* * *

PRODUCT INFORMATION

Fabulously Feminine is a safe, natural way to enhance sexual desire, satisfaction and enjoyment. The ingredients in Fabulously Feminine, when taken daily with a multivitamin, have been shown in a double-blind, placebo-controlled Stanford University study to enhance satisfaction with sex life, the level of sexual desire and frequency of sexual encounters.

It is estimated that 43% of women experience a loss of sexual vitality at some time in their lives. External factors such as stress and fatigue may contribute to the decline in sexual interest. . . .

(Complaint Exhibit D : web page from
www.usaprescription.com)

- b. It is not unusual for men and women, young or old, to lose desire, arousal and overall satisfaction in the bedroom. Let **DBS Laboratories** give you the fuel you need to re-kindle the fire inside you.

LIBIDO ENHANCER
**FABULOUSLY
FEMININE**
Dietary Supplement

Millions of women are dealing with the same issues you are. Put your confidence and your relationship in the hands of **Fabulously Feminine** – The safe, natural way to enhance sexual desire, satisfaction and enjoyment. A special libido enhancing formula designed specifically for women, **Fabulously Feminine** contains a proprietary blend of traditional libido enhancing herbs. Not being in the mood for sex is often times the result of poor stimulation; lack of energy, and hormonal imbalance. This product was specially formulated to address these issues. These all-natural

ingredients are known to stimulate blood flow and increase sensitivity, making this product one of the most potent available on the market.

(Complaint Exhibit E: National Examiner newspaper ad)

c. LIBIDO ENHANCER
FABULOUSLY™
FEMININE
Dietary Supplement
* * *

A scientific formula designed especially for women, **Fabulously Feminine** contains a proprietary blend of clinically proven ingredients for libido health. Not being in the mood for sex is oftentimes the result of poor stimulation, lack of energy, and hormonal imbalance. This product has been formulated to address these issues. . . .

(Complaint Exhibit F: National Enquirer newspaper ad)

9. Through the means described in Paragraph 8, respondent has represented, expressly or by implication, that clinical testing proves that Fabulously Feminine enhances a woman's satisfaction with her sex life and level of sexual desire.

10. In truth and in fact, clinical testing does not prove that Fabulously Feminine enhances a woman's satisfaction with her sex life and level of sexual desire. Therefore, the representation set forth in Paragraph 9 was, and is, false or misleading.

11. Through the means described in Paragraph 8, respondent has represented, expressly or by implication, that Fabulously Feminine will increase a woman's libido, sexual desire, and sexual satisfaction by stimulating blood flow and increasing sensitivity.

12. Through the means described in Paragraph 8, respondent has represented, expressly or by implication, that it possessed and relied upon a reasonable basis that substantiated the representation set forth in Paragraph 11, at the time the representation was made.

13. In truth and in fact, respondent did not possess and rely upon a reasonable basis that substantiated the representation set forth in Paragraph 11, at the time the representation was made. Therefore, the representation set forth in Paragraph 12 was, and is, false or misleading.

14. The acts and practices of respondent set forth above constitute unfair or deceptive acts or practices in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

ORDER

DEFINITIONS

For purposes of this Order, the following definitions shall apply:

- A. Unless otherwise specified, “respondent” shall mean DBS Laboratories, LLC, a limited liability company, its successors and assigns, and their agents, representatives, and employees.
- B. “Competent and reliable scientific evidence” shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.
- C. “Pedia Loss” shall mean “Pedia Loss Dietary Supplement” and any other product containing one or more of the ingredients in the current product that is marketed for weight loss or control.
- D. “Fabulously Feminine” shall mean “Fabulously Feminine Dietary Supplement” and any other product containing one or more of the ingredients in the current product that is marketed for sexual enhancement.
- E. “Food,” “drug,” and “device,” shall mean as “food,” “drug,” and “device,” are defined in Section 15 of the Federal Trade Commission Act, 15 U.S.C. § 55.

F. "Covered product or service" shall mean any dietary supplement, food, drug, or device, and any health-related service or program promoting weight loss or sexual enhancement.

G. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

H. "Endorsement" shall mean as defined in 16 C.F.R. § 255.0(b).

I. The term "including" in this Order shall mean "without limitation."

J. The terms "and" and "or" in this Order shall be construed conjunctively or disjunctively as necessary, to make the applicable phrase or sentence inclusive rather than exclusive.

I.

IT IS ORDERED that:

A. Respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Pedia Loss or any other covered product or service, shall not make any representation, in any manner, expressly or by implication, including through the use of endorsements or the product name, that:

1. Such product or service causes weight loss, suppresses appetite, increases fat burning, or slows carbohydrate absorption;
2. Such product or service causes weight loss in overweight or obese children ages 6 and over; or
3. Such product or service, when taken by overweight or obese children ages 6 and over, suppresses appetite, increases fat burning, or slows carbohydrate absorption,

unless, at the time the representation is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation; and

B. Respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Fabulously Feminine or any other covered product or service, shall not make any representation, in any manner, expressly or by implication, including through the use of endorsements or the product name, that such product or service will increase a woman's libido, sexual desire, or sexual satisfaction, unless, at the time the representation is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

II.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any covered product or service, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, including through the use of endorsements or the product name, about the benefits, performance, or efficacy of such product or service, unless, at the time the representation is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

III.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any covered product or service, in or affecting commerce, shall not misrepresent, in any manner, directly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test or study.

IV.

IT IS FURTHER ORDERED that:

A. Nothing in this Order shall prohibit respondent from making any representation for any drug that is permitted in labeling for such drug under any tentative final or final standard promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration; and

B. Nothing in this Order shall prohibit respondent from making any representation for any product that is specifically permitted in labeling for such product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

V.

IT IS FURTHER ORDERED that respondent DBS Laboratories, LLC, and its successors and assigns shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available for inspection and copying:

- A. All advertisements and promotional materials containing the representation;
- B. All materials that were relied upon in disseminating the representation; and
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the

representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

VI.

IT IS FURTHER ORDERED that respondent DBS Laboratories, LLC, and its successors and assigns shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each person a signed and dated statement acknowledging receipt of the order. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

VII.

IT IS FURTHER ORDERED that respondent DBS Laboratories, LLC, and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including, but not limited to, a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or

affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. *Provided, however,* that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Attention: In the Matter of DBS Laboratories, LLC.

VIII.

IT IS FURTHER ORDERED that respondent DBS Laboratories, LLC, and its successors and assigns shall, within sixty (60) days after service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

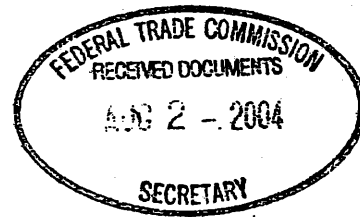
IX.

This order will terminate twenty (20) years from the date of its issuance, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

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



In the Matter of

DYNAMIC HEALTH OF FLORIDA, LLC
CHHABRA GROUP, LLC
DBS LABORATORIES, LLC
VINEET K. CHHABRA aka VINCENT K. CHHABRA, and
JONATHAN BARASH,
Respondent.

Docket No. 9317

PROTECTIVE ORDER GOVERNING DISCOVERY MATERIAL

For the purpose of protecting the interests of the parties and third parties in the above captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material ("Protective Order") shall govern the handling of all Discovery Material, as hereafter defined.

DEFINITIONS

1. "Matter" means the matter captioned *In the Matter of Dynamic Health of Florida, LLC, Chhabra Group, LLC, DBS Laboratories, LLC, Vineet K. Chhabra (aka Vincent K. Chhabra) and Jonathan Barash*, Docket Number 9317, pending before the Federal Trade Commission, and all subsequent appellate or other review proceedings related thereto.
2. "Commission" or "FTC" means the Federal Trade Commission, or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this Matter.
3. "Dynamic Health" means Dynamic Health of Florida, LLC; a Florida limited liability company with offices located at 1455 North Park Drive, Weston, Florida.
4. "Chhabra Group" means Chhabra Group, LLC, a Florida limited liability company located at 1455 North Park Drive, Weston, Florida.

5. "Chhabra" means Vineet K. Chhabra, also known as Vincent K. Chhabra, individually and as an officer of Dynamic Health and Chhabra Group, with a principal place of business at 1455 North Park Drive, Weston, Florida.

6. "Respondents" means Dynamic Health, Chhabra Group, and Chhabra.

7. "Outside Counsel" means the law firms that are counsel of record for Respondents in this Matter and their associated attorneys; or other persons regularly employed by such law firms, including legal assistants, clerical staff, and information management personnel and temporary personnel retained by such law firm(s) to perform legal or clerical duties, or to provide logistical litigation support with regard to this Matter; provided that any attorney associated with Outside Counsel shall not be a director, officer or employee of Respondents. The term Outside Counsel does not include persons retained as consultants or experts for the purposes of this Matter.

8. "Counsel of Record" means counsel who have filed notices of appearance in this matter.

9. "Producing Party" means a Party or Third Party that produced or intends to produce Confidential Discovery Material to any of the Parties. For purposes of Confidential Discovery Material of a Third Party that either is in the possession, custody or control of the FTC or has been produced by the FTC in this Matter, the Producing Party shall mean the Third Party that originally provided the Confidential Discovery Material to the FTC. The Producing Party shall also mean the FTC for purposes of any document or material prepared by, or on behalf of the FTC.

10. "Third Party" means any natural person, partnership, corporation, association, or other legal entity not named as a party to this Matter and their employees, directors, officers, attorneys and agents.

11. "Expert/Consultant" means experts or other persons who are retained to assist Complaint Counsel or Respondents' counsel in preparation for trial or to give testimony at trial.

12. "Document" means the complete original or a true, correct and complete copy and any non-identical copies of any written or graphic matter, no matter how produced, recorded, stored or reproduced, including, but not limited to, any writing, letter, envelope, telegraph meeting minute, memorandum statement, affidavit, declaration, book, record, survey, map, study, handwritten note, working paper, chart, index, tabulation, graph, tariff, tape, data sheet, data processing card, printout, microfilm, index, computer readable media or other electronically stored data, appointment book, diary, diary entry, calendar, desk pad, telephone message slip, note of interview or communication or any other data compilation, including all drafts of all such documents. "Document" also includes every writing, drawing, graph, chart, photograph, phono record, tape, compact disk, video tape, and other data compilations from which information can be obtained, and includes all drafts and all copies of every such writing or record that contain any commentary, notes, or marking whatsoever not appearing on the original.

13. "Discovery Material" includes without limitation deposition testimony, deposition exhibits, interrogatory responses, admissions, affidavits, declarations, documents produced pursuant to compulsory process or voluntarily in lieu thereof, and any other documents or information produced or given to one Party by another Party or by a Third Party in connection with discovery in this Matter.

14. "Confidential Discovery Material" means all Discovery Material that is designated by a Producing Party as confidential and that is covered by Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. § 46(f), and Commission Rule of Practice § 4.10(a)(2), 16 C.F.R. § 4.10(a)(2); or Section 26(c)(7) of the Federal Rules of Civil Procedure and precedents thereunder. Confidential Discovery Material shall include non-public commercial information, the disclosure of which to Respondents or Third Parties would cause substantial commercial harm or personal embarrassment to the disclosing party. The following is a nonexhaustive list of examples of information that likely will qualify for treatment as Confidential Discovery Material: consumer complaints received by the Federal Trade Commission, strategic plans (involving pricing, marketing, research and development, product roadmaps, corporate alliances, or mergers and acquisitions) that have not been fully implemented or revealed to the public; trade secrets; customer-specific evaluations or data (e.g., prices, volumes, or revenues); personnel files and evaluations; information subject to confidentiality or non-disclosure agreements; proprietary technical or engineering information; proprietary financial data or projections; and proprietary consumer, customer or market research or analyses applicable to current or future market conditions, the disclosure of which could reveal Confidential Discovery Material.

TERMS AND CONDITIONS OF PROTECTIVE ORDER

1. Discovery Material, or information derived therefrom, shall be used solely by the Parties for purposes of this Matter, and shall not be used for any other purpose, including without limitation any business or commercial purpose, except that with notice to the Producing Party, a Party may apply to the Administrative Law Judge for approval of the use or disclosure of any Discovery Material, or information derived therefrom, for any other proceeding. Provided, however, that in the event that the Party seeking to use Discovery Material in any other proceeding is granted leave to do so by the Administrative Law Judge, it will be required to take appropriate steps to preserve the confidentiality of such material. Additionally, in such event, the Commission may only use or disclose Discovery Material as provided by (1) its Rules of Practice, Sections 6(f) and 21 of the Federal Trade Commission Act and any cases so construing them; and (2) any other legal obligation imposed upon the Commission. The Parties, in conducting discovery from Third Parties, shall attach to such discovery requests a copy of this Protective Order and a cover letter that will apprise such Third Parties of their rights hereunder.

2. This paragraph concerns the designation of material as "Confidential," "Restricted Confidential, Attorney Eyes Only," and "Restricted Confidential, Attorney of Record Eyes Only."

(a) Designation of Documents as CONFIDENTIAL - FTC Docket No. 9317.

Discovery Material may be designated as Confidential Discovery Material by Producing Parties by placing on or affixing, in such manner as will not interfere with the legibility thereof, the notation "CONFIDENTIAL - FTC Docket No. 9317" (or other similar notation containing a reference to this Matter) to the first page of a document containing such Confidential Discovery Material, or, by Parties by instructing the court reporter to denote each page of a transcript containing such Confidential Discovery Material as "Confidential." Such designations shall be made within fourteen days from the initial production or deposition and constitute a good-faith representation by counsel for the Party or Third Party making the designations that the document constitutes or contains "Confidential Discovery Material."

(b) Designation of Documents as "RESTRICTED CONFIDENTIAL, ATTORNEY EYES ONLY - FTC Docket No. 9317."

In order to permit Producing Parties to provide additional protection for a limited number of documents that contain highly sensitive commercial information, Producing Parties may designate documents as "Restricted Confidential, Attorney Eyes Only, FTC Docket No. 9317" by placing on or affixing such legend on each page of the document. It is anticipated that documents to be designated Restricted Confidential, Attorney Eyes Only may include certain marketing plans, sales forecasts, business plans, the financial terms of contracts, operating plans, pricing and cost data, price terms, analyses of pricing or competition information, and limited proprietary personnel information; and that this particularly restrictive designation is to be utilized for a limited number of documents. Documents designated Restricted Confidential, Attorney Eyes Only may be disclosed to Outside Counsel, Complaint Counsel, and to Experts/Consultants (paragraph 4(c), hereof). Such materials may not be disclosed to Experts/Consultants or to witnesses or deponents at trial or deposition (paragraph 4(d) hereof), except in accordance with subsection (d) of this paragraph 2. In all other respects, Restricted Confidential, Attorney Eyes Only material shall be treated as Confidential Discovery Material and all references in this Protective Order and in the exhibit hereto to Confidential Discovery Material shall include documents designated Restricted Confidential, Attorney Eyes Only.

(c) Designation of Documents as "RESTRICTED CONFIDENTIAL, ATTORNEY OF RECORD EYES ONLY - FTC Docket No. 9317."

It is anticipated that Complaint Counsel may produce documents relating to Electronic Products Distribution, LLC, or Energizer Products, Inc., defendants in *FTC v. Electronic Products Distribution, LLC*. The designation of "Restricted Confidential, Attorney of Record Eyes Only," may be necessary for many of those documents to the extent that they contain sensitive financial, proprietary, or personal information about defendants, their officers or directors inasmuch as a member of the law firm of Respondents' counsel is representing parties who have sued Electronic Products Distribution, LLC and Energizer Products, Inc., in Bankruptcy in *In re: Electronic Products Distribution, LLC, Debtor, Case No.02-10366-JH*; and *In re: Energizer Products, Inc., Debtor, Case No. SV02-17005 KL*.

Documents relating to Electronic Products Distribution, LLC or Energizer Products, Inc. may be designated "Restricted Confidential, Attorney of Record Eyes Only," to prevent sensitive information from being disclosed to counsel representing parties who are suing those companies in Bankruptcy. Documents designated as Restricted Confidential, Attorney of Record Eyes Only may be disclosed only to Attorneys of Record for Outside Counsel in this matter. Such materials may not be disclosed to persons other than Attorneys of Record for Outside Counsel in this matter. In all other respects, Restricted Confidential, Attorney Eyes Only and Restricted Confidential, Attorney of Record Eyes Only, material shall be treated as Confidential Discovery Material. All references in this Protective Order and in the exhibit hereto to Confidential Discovery Material shall include documents designated as Restricted Confidential, Attorney Eyes Only and Restricted Confidential, Attorney of Record Eyes Only.

- (d) Disclosure of Restricted Confidential, Attorney Eyes Only Material to Witnesses or Deponents at Trial or Deposition

If any Party desires to disclose Restricted Confidential, Attorney Eyes Only material to witnesses or deponents at trial or deposition, the disclosing Party shall notify the Producing Party of its desire to disclose such material. Such notice shall identify the specific individual to whom the Restricted Confidential, Attorney Eyes Only material is to be disclosed. Such identification shall include, but not be limited to, the full name and professional address and/or affiliation of the identified individual. The Producing Party may object to the disclosure of the Restricted Confidential, Attorney Eyes Only material within five business days of receiving notice of an intent to disclose the Restricted Confidential, Attorney Eyes Only material to an individual by providing the disclosing Party with a written statement of the reasons for objection. If the Producing Party timely objects, the disclosing Party shall not disclose the Restricted Confidential, Attorney Eyes Only material to the identified individual, absent a written agreement with the Producing Party, order of the Administrative Law Judge or ruling on appeal. The Producing Party lodging an objection and the disclosing Party shall meet and confer in good faith in an attempt to determine the terms of disclosure to the identified individual. If at the end of five business days of negotiating the parties have not resolved their differences or if counsel determine in good faith that negotiations have failed, the disclosing Party may make written application to the Administrative Law Judge as provided by paragraph 6(b) of this Protective Order. If the Producing Party does not object to the disclosure of Restricted Confidential, Attorney Eyes Only material to the identified individual within five business days, the disclosing Party may disclose the Restricted Confidential, Attorney Eyes Only material to the identified individual.

- (e) Disputes Concerning Designation or Disclosure of Restricted Confidential, Attorney Eyes Only Material.

Disputes concerning the designation or disclosure of Restricted Confidential, Attorney Eyes Only material shall be resolved in accordance with the provisions of paragraph 6.

(f) No Presumption or Inference.

No presumption or other inference shall be drawn that material designated Restricted Confidential, Attorney Eyes Only is entitled to the protections of this paragraph.

(g) Due Process Savings Clause.

Nothing herein shall be used to argue that a Party's right to attend the trial of, or other proceedings in, this Matter is affected in any way by the designation of material as Restricted Confidential, Attorney Eyes Only.

3. All documents heretofore obtained by the Commission through compulsory process or voluntarily from any Party or Third Party, regardless of whether designated confidential by the Party or Third Party, and transcripts of any investigational hearings, interviews and depositions, that were obtained during the pre-complaint stage of this Matter shall be treated as "Confidential," in accordance with paragraph 2(a) on page five of this Order. Furthermore, Complaint Counsel shall, within five business days of the effective date of this Protective Order, provide a copy of this Order to all Parties or Third Parties from whom the Commission obtained documents during the pre-Complaint investigation and shall notify those Parties and Third Parties that they shall have thirty days from the effective date of this Protective Order to determine whether their materials qualify for the higher protection of Restricted Confidential, Attorney Eyes Only and to so designate such documents.

4. Confidential Discovery Material shall not, directly or indirectly, be disclosed or otherwise provided to anyone except to:

- (a) Complaint Counsel and the Commission, as permitted by the Commission's Rules of Practice;
- (b) Outside Counsel;
- (c) Experts/Consultants (in accordance with paragraph 5 hereto);
- (d) witnesses or deponents at trial or deposition;
- (e) the Administrative Law Judge and personnel assisting him;
- (f) court reporters and deposition transcript reporters;
- (g) judges and other court personnel of any court having jurisdiction over any appeal proceedings involving this Matter; and
- (h) any author or recipient of the Confidential Discovery Material (as indicated on the face of the document, record or material), and any individual who was in the direct chain of supervision of the author

at the time the Confidential Discovery Material was created or received.

5. Confidential Discovery Material, including material designated as "Confidential" and "Restricted Confidential, Attorney Eyes Only," shall not, directly or indirectly, be disclosed or otherwise provided to an Expert/Consultant, unless such Expert/Consultant agrees in writing:

- (a) to maintain such Confidential Discovery Material in separate locked rooms or locked cabinet(s) when such Confidential Discovery Material is not being reviewed;
- (b) to return such Confidential Discovery Material to Complaint Counsel or Respondents' Outside Counsel, as appropriate, upon the conclusion of the Expert/Consultant's assignment or retention or the conclusion of this Matter;
- (c) to not disclose such Confidential Discovery Material to anyone, except as permitted by the Protective Order; and
- (d) to use such Confidential Discovery Material and the information contained therein solely for the purpose of rendering consulting services to a Party to this Matter, including providing testimony in judicial or administrative proceedings arising out of this Matter.

6. This paragraph governs the procedures for the following specified disclosures and challenges to designations of confidentiality.

- (a) Challenges to Confidentiality Designations.

If any Party seeks to challenge a Producing Party's designation of material as Confidential Discovery Material or any other restriction contained within this Protective Order, the challenging Party shall notify the Producing Party and all Parties to this action of the challenge to such designation. Such notice shall identify with specificity (i.e., by document control numbers, deposition transcript page and line reference, or other means sufficient to locate easily such materials) the designation being challenged. The Producing Party may preserve its designation within five business days of receiving notice of the confidentiality challenge by providing the challenging Party and all Parties to this action with a written statement of the reasons for the designation. If the Producing Party timely preserves its rights, the Parties shall continue to treat the challenged material as Confidential Discovery Material, absent a written agreement with the Producing Party or order of the Administrative Law Judge. The Producing Party, preserving its rights, and the challenging Party shall meet and confer in good faith in an attempt to negotiate changes to any challenged designation. If at the end of five business days of negotiating the parties have not resolved their differences or if counsel determine in good faith that negotiations have failed, the challenging Party may make written application to the Administrative Law Judge as provided by paragraph 6(b) of this Protective Order. If the Producing Party does not preserve

its rights within five business days, the challenging Party may alter the designation as contained in the notice. The challenging Party shall notify the Producing Party and the other Parties to this action of any changes in confidentiality designations.

Regardless of confidential designation, copies of published magazine or newspaper articles, excerpts from published books, publicly available tariffs, and public documents filed with the Securities and Exchange Commission or other governmental entity may be used by any Party without reference to the procedures of this subparagraph.

(b) Resolution of Disclosure or Confidentiality Disputes.

If negotiations under subparagraph 6(a) of this Protective Order have failed to resolve the issues, a Party seeking to disclose Confidential Discovery Material or challenging a confidentiality designation or any other restriction contained within this Protective Order may make written application to the Administrative Law Judge for relief. Such application shall be served on the Producing Party and the other Party, and be accompanied by a certification that the meet and confer obligations of this paragraph have been met, but that good faith negotiations have failed to resolve outstanding issues. The Producing Party and any other Parties shall have five business days to respond to the application. While an application is pending, the Parties shall maintain the pre-application status of the Confidential Discovery Material. Nothing in this Protective Order shall create a presumption or alter the burden of persuading the Administrative Law Judge of the propriety of a requested disclosure or change in designation.

7. Confidential Discovery Material shall not be disclosed to any person described in subparagraphs 4(c) and 4(d) of this Protective Order until such person has executed and transmitted to Respondents' counsel or Complaint Counsel, as the case may be, a declaration or declarations, as applicable, in the form attached hereto as Exhibit "A," which is incorporated herein by reference. Respondents' counsel and Complaint Counsel shall maintain a file of all such declarations for the duration of the litigation. Confidential Discovery Material shall not be copied or reproduced for use in this Matter except to the extent such copying or reproduction is reasonably necessary to the conduct of this Matter, and all such copies or reproductions shall be subject to the terms of this Protective Order. If the duplication process by which copies or reproductions of Confidential Discovery Material are made does not preserve the confidentiality designations that appear on the original documents, all such copies or reproductions shall be stamped "CONFIDENTIAL - FTC Docket No. 9317."

8. The Parties shall not be obligated to challenge the propriety of any designation or treatment of information as confidential and the failure to do so promptly shall not preclude any subsequent objection to such designation or treatment, or any motion seeking permission to disclose such material to persons not referred to in paragraph 4. If Confidential Discovery Material is produced without the legend attached, such document shall be treated as Confidential from the time the Producing Party advises Complaint Counsel and Respondents' counsel in writing that such material should be so designated and provides all the Parties with an appropriately labeled replacement. The Parties shall return promptly or destroy the unmarked

documents.

9. If the FTC: (a) receives a discovery request that may require the disclosure by it of a Third Party's Confidential Discovery Material; or (b) intends to or is required to disclose, voluntarily or involuntarily, a Third Party's Confidential Discovery Material (whether or not such disclosure is in response to a discovery request), the FTC promptly shall notify the Third Party of either receipt of such request or its intention to disclose such material. Such notification shall be in writing and, if not otherwise done, sent for receipt by the Third Party at least five business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the Third Party of its rights hereunder.

10. If any person receives a discovery request in another proceeding that may require the disclosure of a Producing Party's Confidential Discovery Material, the subpoena recipient promptly shall notify the Producing Party of receipt of such request. Such notification shall be in writing and, if not otherwise done, sent for receipt by the Producing Party at least five business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the Producing Party of its rights hereunder. The Producing Party shall be solely responsible for asserting any objection to the requested production. Nothing herein shall be construed as requiring the subpoena recipient or anyone else covered by this Order to challenge or appeal any such order requiring production of Confidential Discovery Material, or to subject itself to any penalties for noncompliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission.

11. This Order governs the disclosure of information during the course of discovery and does not constitute an *in camera* order as provided in Section 3.45 of the Commission's Rules of Practice, 16 C.F.R. § 3.45.

12. Nothing in this Protective Order shall be construed to conflict with the provisions of Sections 6, 10, and 21 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 50, 57b-2, or with Rules 3.22, 3.45 or 4.11(b)-(e), 16 C.F.R. §§ 3.22, 3.45 and 4.11(b)-(e).¹

Any Party or Producing Party may move at any time for *in camera* treatment of any Confidential Discovery Material or any portion of the proceedings in this Matter to the extent necessary for proper disposition of the Matter. An application for *in camera* treatment must meet the standards set forth in 16 C.F.R. § 3.45 and explained in *In re Dura Lube Corp.*, 1999 FTC LEXIS 255 (Dec. 23, 1999) and *In re Hoechst Marion Roussel, Inc.*, 2000 FTC LEXIS 157 (Nov. 22, 2000) and 2000 FTC LEXIS 138 (Sept. 19, 2000) and must be supported by a declaration or affidavit by a person qualified to explain the nature of the documents.

¹ The right of the Administrative Law Judge, the Commission, and reviewing courts to disclose information afforded *in camera* treatment or Confidential Discovery Material, to the extent necessary for proper disposition of the proceeding, is specifically reserved pursuant to Rule 3.45, 16 C.F.R. § 3.45.

13. At the conclusion of this Matter, Respondents' counsel shall return to the Producing Party, or destroy, all originals and copies of documents and all notes, memoranda, or other papers containing Confidential Discovery Material which have not been made part of the public record in this Matter. Complaint Counsel shall dispose of all documents in accordance with Rule 4.12, 16 C.F.R. § 4.12.

14. The provisions of this Protective Order, insofar as they restrict the communication and use of Confidential Discovery Material shall, without written permission of the Producing Party or further order of the Administrative Law Judge hearing this Matter, continue to be binding after the conclusion of this Matter.

15. This Protective Order shall not apply to the disclosure by a Producing Party or its Counsel of such Producing Party's Confidential Discovery Material to such Producing Party's employees, agents, former employees, board members, directors, and officers.

16. The production or disclosure of any Discovery Material made after entry of this Protective Order which a Producing Party claims was inadvertent and should not have been produced or disclosed because of a privilege will not automatically be deemed to be a waiver of any privilege to which the Producing Party would have been entitled had the privileged Discovery Material not inadvertently been produced or disclosed. In the event of such claimed inadvertent production or disclosure, the following procedures shall be followed:


(a) The Producing Party may request the return of any such Discovery Material within twenty days of discovering that it was inadvertently produced or disclosed (or inadvertently produced or disclosed without redacting the privileged content). A request for the return of any Discovery Material shall identify the specific Discovery Material and the basis for asserting that the specific Discovery Material (or portions thereof) is subject to the attorney-client privilege or the work product doctrine and the date of discovery that there had been an inadvertent production or disclosure.

(b) If a Producing Party requests the return, pursuant to this paragraph, of any such Discovery Material from another Party, the Party to whom the request is made shall return immediately to the Producing Party all copies of the Discovery Material within its possession, custody, or control—including all copies in the possession of experts, consultants, or others to whom the Discovery Material was provided—unless the Party asked to return the Discovery Material in good faith reasonably believes that the Discovery Material is not privileged. Such good faith belief shall be based on either (i) a facial review of the Discovery Material, or (ii) the inadequacy of any explanations provided by the Producing Party, and shall not be based on an argument that production or disclosure of the Discovery Material waived any privilege. In the event that only portions of the Discovery Material contain privileged subject matter, the Producing Party shall substitute a redacted version of the Discovery Material at the time of making the request for the return of the requested Discovery Material.

(c) Should the Party contesting the request to return the Discovery Material pursuant to this paragraph decline to return the Discovery Material, the Producing Party seeking return of the Discovery Material may thereafter move for an order compelling the return of the Discovery Material. In any such motion, the Producing Party shall have the burden of showing that the Discovery Material is privileged and that the production was inadvertent.

17. Entry of the foregoing Protective Order is without prejudice to the right of the Parties or Third Parties to apply for further protective orders or for modification of any provisions of this Protective Order.

ORDERED:



Stephen J. McGuire
Chief Administrative Law Judge

August 2, 2004

Exhibit E

The following should be provided notified of the Commission's intent to disclose in a final decision any confidential information on the attached documents:

Mr. Jonathan Barash
6599 NW 97th Drive
Parkland, Florida 33076

DBS Laboratories, LLC
1485 North Park Drive,
Weston, FL 33326

instances that the address for DBS is 1485 North Park Road and in other instances that it is 1485 North Park Drive. Accordingly, the Court questioned whether DBS was properly served.

II. EVIDENCE REGARDING ADDRESS AND SERVICE

Complaint counsel have again reviewed the supporting documentation and conducted additional research to verify that the correct address for DBS is, in fact, 1485 North Park Drive, Weston, FL.¹ The original Declaration of Devenette Cox, submitted as Exhibit A to the First Motion for Default, correctly identified the sources of address information provided by DBS and Mr. Barash during the investigatory phase of this matter. As set forth in the documents that accompany the Second Declaration of Devenette Cox, submitted with this motion:

1. the DBS Operating Agreement states that the address of DBS is [;]”
2. the interrogatory responses state that the address of DBS is [“ ; and

¹ The Complaint issued by the Commission in D. 9317 identifies the address of DBS Laboratories LLC as 1485 North Park Drive, Weston, FL. The First Motion for Default, reiterating this public information, was designed simply to identify the sources of this information. The act of pointing to the sources, without provision of the underlying documents, did not appear to constitute a disclosure of confidential information, within the meaning of this Court’s Protective Order Governing Discovery Material (¶ 4), giving rise to the need for a public and non-public filings of the motion as set forth in Sections 3.45 (e) and 4.2(c)(2) of the Commission’s Rules. This Second Motion, however, includes submission of actual documents provided during the investigation and designated as Confidential by the Protective Order (¶ 3). Hence, Complaint Counsel has provided the notice required by the Protective Order (¶ ¶ 3, 9) and is filing this motion in both confidential and public versions as required by the Rules.

The bracketed information in this motion is designated as Confidential by the Protective Order (¶ 3), submitted herewith as Exhibit D. Exhibit E contains the information and pages required by Commission Rule 3.45 (e).

3. the financial statement states that the address is [“

See Second Declaration of Devenette Cox, Exhibit A hereto, at ¶ 3.

The statement in the DBS Operating Agreement that the DBS address is on [appears to reflect a typographic error. Complaint counsel apologizes for the fact that it compounded this error by not recognizing the conflict in the underlying documentation as well as by misstating that information in its own arguments. Additional research described in the Second Declaration establishes that there is, in fact, no such address as North Park Road in Weston, FL. The steps taken to verify this include communications with the office of the US Postal Service in Weston, FL, a Mapquest search, and a Lexis search. *Id.*, ¶¶ 4–6.

In addition, complaint counsel provides the following information in response to the questions posed in the Court’s Order:

A. Was DBS’ counsel contacted? Yes. DBS was represented by the law firm of Arent, Fox from approximately November 2003 to February 2004. DBS and Jonathan Barash, its 25% owner and manager, were represented by the law firm of Bass & Martinez from March 2004 until June 8, 2004, one week before issuance of the complaint in Docket 9317. Indeed, in the course of negotiations, Bass & Martinez reviewed the complaint in this matter, which states that the address of DBS was 1485 North Park Drive. Counsel for DBS and Barash suggested changes to the complaint, but raised no issue with the address for DBS.

B. Did DBS provide any additional addresses? DBS did not, but complaint counsel obtained additional information as a result of its own research. According to the Florida Department of State website, DBS filed electronic articles of incorporation on March 31, 2003,

indicating that the address for DBS was 20711 Avenel Run, Boca Raton, FL. There has been no filing with the State of Florida to change the address of the company. See Exhibit A, ¶ 7.

However, the financial disclosures provided by DBS a year after its incorporation, in March 2004, states that its address was [

] *Id.*, ¶ 3(c) and 8. It appears that DBS relocated from [as of the date of the DBS Operating Agreement.

C. Has there been prior contact with DBS at a particular address? No, all communications with DBS have been conducted through the counsel identified in response to Question A.

D. Has there been any attempt to determine the correct current address of DBS? Given the information and communications discussed above, as well as the fact that the complaint, addressed to “DBS Laboratories LLC” at 1485 North Park Drive, was sent via certified mail and signed for at that address, we are confident that this was the correct address for service upon DBS. See Declaration of Bernita Lofty, resubmitted as Exhibit B hereto.

In sum, DBS was served at its principal place of business, 1485 North Park Drive, consistent with 16 C.F.R. § 4.4(a)(iii). Accordingly, complaint counsel requests that the Administrative Law Judge find that respondent DBS is in default and issue the Initial Decision and Order attached to the First Motion for Default. *E.g., Automotive Breakthrough Sciences, Inc.*, 1996 FTC LEXIS 470 at *7 (entering default and issuing initial decision consistent with complaint and proposed order following failure to answer the complaint or to respond to discovery requests), *American Tractor Trailer Training, Inc.*, 86 F.T.C. 654, 1975 FTC LEXIS

EXHIBIT A

SECOND DECLARATION OF DEVENETTE COX

PURSUANT TO 28 U.S.C. § 1746

1. My name is Devenette Cox. I am a citizen of the United States of America and over twenty-one years of age. I am employed by the Federal Trade Commission ("Commission") as an Investigator in the Division of Advertising Practices of the Bureau of Consumer Protection. I have been employed by the Commission for 29 years. My business address is c/o FTC, 600 Pennsylvania Avenue, N.W. Room 3212, Washington, D.C. 20580. I have personal knowledge of the facts stated herein. If called to testify, I could and would competently testify to the facts set forth below.

2. In my capacity as an Investigator in the Division of Advertising Practices, I assist in the performance of law enforcement investigations. I conduct research, using a variety of investigative tools, and review information submitted by companies and individuals in response to informal and formal requests.

3. I have again reviewed the information submitted by DBS Laboratories in the course of our inquiry. They contain the following information:

a. The DBS Operating Agreement states that the principal office of DBS Laboratories [

] A copy of the page of the Operating Agreement containing this statement is attached as Exhibit A, Att. 1.

b. The interrogatory responses submitted by DBS Laboratories state that the address of DBS Laboratories, LLC is [] A copy of the

page of the interrogatory responses containing this response is attached as Exhibit A, Att.

2.

c. The financial disclosures submitted by DBS identify the primary business address of DBS Laboratories as [

] The page of the financial disclosure containing the address information (but with confidential information redacted) is attached as Exhibit A, Att. 3.

4. On September 10, 2004, I called the US Postal Service in Weston, Florida. I spoke with Shiela Fischetti. Ms. Fischetti is an Aims Technician at the Weston Branch; she is responsible for overseeing address issues, including audits of mail forwarding and assigning addresses in new retail and residential developments. I asked Ms. Frischetti whether 1485 North Park Drive is an actual address. She said yes. I asked whether 1485 North Park Road is an actual address. She said no.

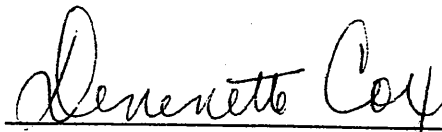
5. On September 10, 2004, I also engaged in two additional tasks to verify that North Park Road is not an actual address. First, I searched on the internet mapping service, www.mapquest.com, for information. Mapquest has a "find it" function that will provide a map for an address or intersection. I searched for "1485 North Park Drive, Weston, FL." It took me to a page that had the statement "*1485 N Park Dr Weston, FL 33325-3215" at the top and showed a map with a star next to a street labeled "N Park Dr." See Exhibit A, Att. 4. I also searched for "1485 North Park Road, Weston, Fl." In response, the program took me to a page that stated, "Mapquest found * 1485 N Park Dr Weston, FL 33325-3215." It provided no map for 1485 North Park Road. See Exhibit A, Att. 5.

6. Second, I went on LEXIS under the library ALLREC, in the subdirectory FLREC, a group file of Florida public records data. I entered each of the following search terms: 1485 North Park Road, 1485 N Park Road, 1485 North Park Rd, and 1485 N Park Rd. In each case, LEXIS responded with the statement, "your search request has found no records." See Exhibit A, Att. 6-9.

7. The Florida Department of State maintains a website, <http://www.sunbiz.org>. This site permits the public to search for information about corporations and limited liability companies organized under Florida law. I searched for "DBS Laboratories LLC." The site took me to a page with information about DBS Laboratories. This page linked to a copy of the electronic articles of incorporation filed for DBS on March 31, 2003, and stating that principal and mailing addresses of DBS was 20911 Avenel Run, Boca Raton, FL. The website contains no information identifying a different address for DBS. See Exhibit A, Att. 10-12.

8. According to the Financial Disclosure submitted by DBS on []

9. I hereby declare under penalty of perjury that the foregoing is true and correct. Executed this 22 day of October, 2004,



DEVENETTE COX

6. Second, I went on LEXIS under the library ALLREC, in the subdirectory FLREC, a group file of Florida public records data. I entered each of the following search terms: 1485 North Park Road, 1485 N Park Road, 1485 North Park Rd, and 1485 N Park Rd. In each case, LEXIS responded with the statement, "your search request has found no records." See Exhibit A, Att. 6-9.

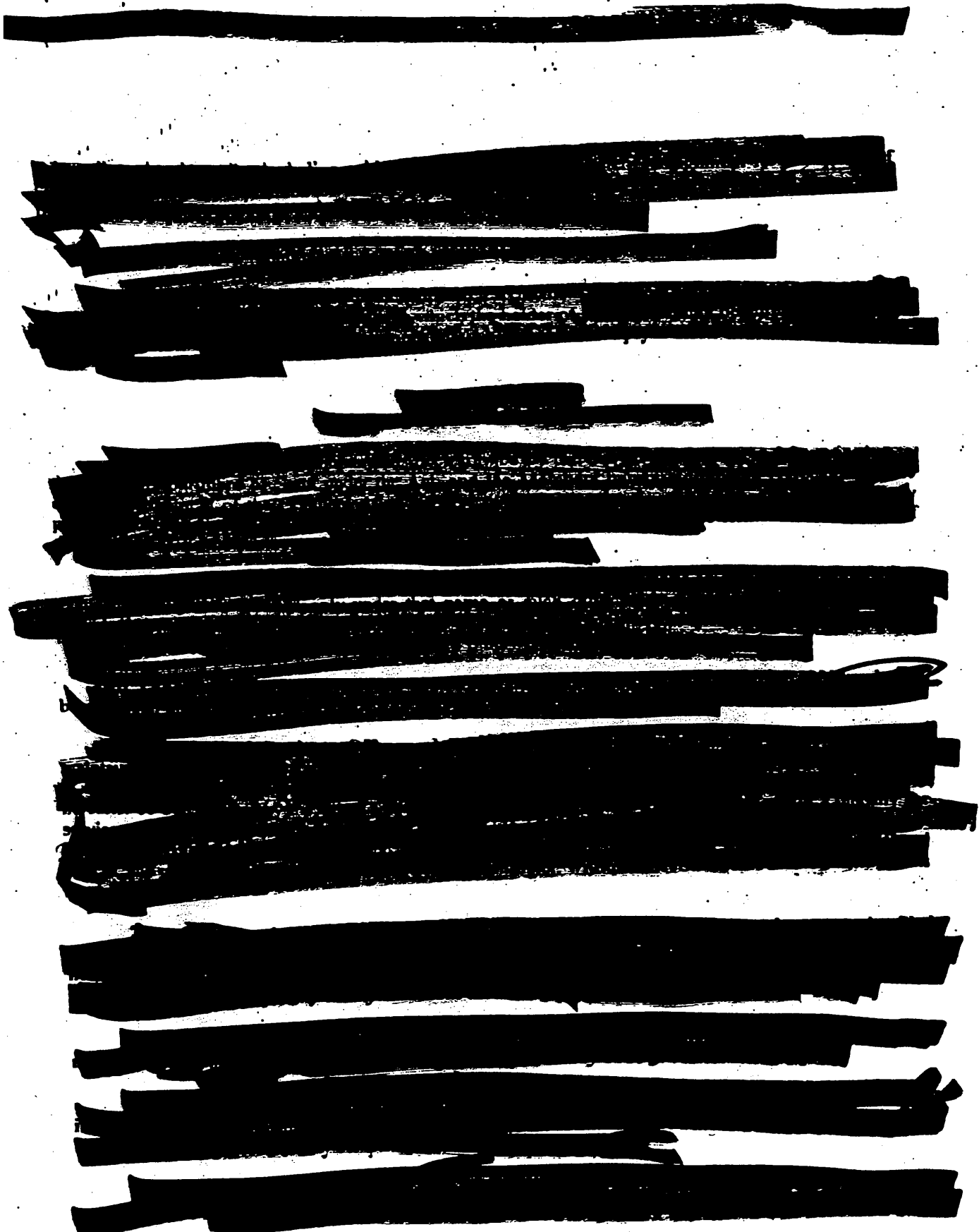
7. The Florida Department of State maintains a website, <http://www.sunbiz.org>. This site permits the public to search for information about corporations and limited liability companies organized under Florida law. I searched for "DBS Laboratories LLC." The site took me to a page with information about DBS Laboratories. This page linked to a copy of the electronic articles of incorporation filed for DBS on March 31, 2003, and stating that principal and mailing addresses of DBS was 20911 Avenel Run, Boca Raton, FL. The website contains no information identifying a different address for DBS. See Exhibit A, Att. 10-12.

8. According to the Financial Disclosure submitted by DBS on [

9. I hereby declare under penalty of perjury that the foregoing is true and correct. Executed this 22 day of October, 2004,



DEVENETTE COX



DBS LABORATORIES, LLC

Interrogatory 1. For USA Prescription, Inc., state its full legal name, principal address, telephone number, state and date of incorporation or licensing, and all other names under which the company has done business, and identify all of its officers, directors, principals, and shareholders with five percent or more ownership, stating each shareholder's percentage of ownership.

Response:

[REDACTED]

Interrogatory 2. For each advertisement requested in Specification 2 of the CID for Documents, describe fully the dates, times, and locations the ads were disseminated. For print ads, identify every publication, date, and community of dissemination; for television or radio ads, provide every network, system or station, date, and community of dissemination; for all other materials, provide sufficient information to permit a determination of how many items were disseminated, when, where, and to whom.

[REDACTED]

Interrogatory 3. Identify each of the persons or entities listed below and describe the role, if any, that that person or entity plays in the ownership, manufacturing, packaging, advertising, marketing (including telemarketing, web site design), sale, and distributing (including fulfillment) of the products identified in Specification 1 of the CID for Documents:

BACKGROUND INFORMATION

Item 1. General Information

Corporation's Full Name _____ From (Date) _____
Primary Business Address _____ Fax No. _____
Telephone No. _____ Internet Home Page _____
E-Mail Address _____

All other current addresses & previous addresses for past five years, including post office boxes and mail drops:

Address _____ From/Until _____
Address _____ From/Until _____
Address _____ From/Until _____

All predecessor companies for past five years:

Name & Address _____ From/Until _____
Name & Address _____ From/Until _____
Name & Address _____ From/Until _____

Item 2. Legal Information

Federal Taxpayer ID No. _____ State & Date of Incorporation _____
State Tax ID No. _____ State _____ Profit or Not For Profit _____
Corporation's Present Status: Active _____ Inactive _____ Dissolved _____
If Dissolved: Date dissolved _____ By Whom _____
Reasons _____
Fiscal Year-End (Mo./Day) _____ Corporation's Business Activities _____

Item 3. Registered Agent

Name of Registered Agent _____ Telephone No. _____
Address _____

CERTIFICATE OF SERVICE

I hereby certify that I have this 22nd day of October, 2004 filed and served the attached **SECOND MOTION FOR FINDING OF DEFAULT AND ENTRY OF INITIAL DECISION AND SUPPORTING MEMORANDUM** upon the following as set forth below:

(1) the original and one (1) paper copy filed by hand delivery and one electronic copy via email to:

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

(2) two (2) paper copies served by hand delivery to:

The Honorable Stephen J. McGuire
Chief Administrative Law Judge
600 Pennsylvania Ave., N.W. Room H-112
Washington, D.C. 20580

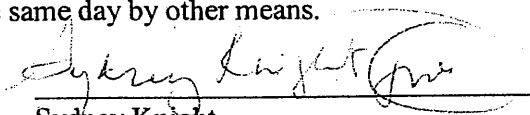
(3) one (1) electronic copy via email and one (1) paper copy via first class mail to:

Max Kravitz, Esq.
Kravitz & Kravitz LLC
145 East Rich Street
Columbus, OH 43215
mkravitz@kravitzlawnet.com
614-464-2000
fax: 614-464-2002

(4) one (1) paper copy via FedEx to:

DBS Laboratories LLC
1485 North Park Dr.,
Weston, FL 33326.

I further certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original, and that a paper copy with an original signature is being filed with the Secretary of the Commission on the same day by other means.



Sydney Knight

CERTIFICATE OF SERVICE

I hereby certify that I have this 12th day of Novemberr, 2004 filed and served the attached **SECOND MOTION FOR FINDING OF DEFAULT AND ENTRY OF INITIAL DECISION AND SUPPORTING MEMORANDUM (Public Document Version)** upon the following as set forth below:

(1) the original and one (1) paper copy filed by hand delivery and one electronic copy via email to:

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

(2) two (2) paper copies served by hand delivery to:

The Honorable Stephen J. McGuire
Chief Administrative Law Judge
600 Pennsylvania Ave., N.W. Room H-112
Washington, D.C. 20580

(3) one (1) electronic copy via email and one (1) paper copy via first class mail to:

Max Kravitz, Esq.
Kravitz & Kravitz LLC
145 East Rich Street
Columbus, OH 43215
mkravitz@kravitzlawnet.com
614-464-2000
fax: 614-464-2002

(4) one (1) paper copy via FedEx to:

DBS Laboratories LLC
1485 North Park Dr.,
Weston, FL 33326.

I further certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original, and that a paper copy with an original signature is being filed with the Secretary of the Commission on the same day by other means.



Janet M. Evans