

UNITED STATE OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of

DYNAMIC HEALTH OF FLORIDA, LLC,
CHHABRA GROUP, LLC,
DBS LABORATORIES, LLC,
Limited liability companies,

VINCENT K. CHHABRA,
Individually and as an officer of
Dynamic Health of Florida, LLC,
And Chhabra Group, LLC, and

JONATHAN BARASH,
Individually and as an officer of
DBS Laboratories, LLC.

DOCKET NO. 9317

**RESPONDENTS RESPONSE TO COMPLAINT COUNSEL'S MOTION
TO COMPEL ADEQUATE RESPONSE TO COMPLAINT COUNSEL'S REQUESTS
FOR ADMISSIONS**

1. Complaint Counsel grossly misrepresents Fifth Amendment jurisprudence.
Respondent Mr. Chhabra has not waived his Fifth Amendment rights.

Respondent Chhabra incorporates by reference the law set forth in Respondents Vincent Chhabra, Dynamic Health of South Florida, LLC, and Chhabra Group, LLC's Second Joint Motion for Protective Order Pursuant to Civ. R. 26(C) and for Stay of Proceedings, pages 6-8, as if specifically set forth in this pleading anew.

Mr. Chhabra has a Fifth Amendment privilege that extends to his testimony, the production of documents and answers to admissions regardless of whether Complaint Counsel believes Chhabra may hypothetically be in violation of his plea agreement. The law is quite clear on this point. *Ohio v. Reiner*, 532 U.S. 17, 21 2001; *Grunewald v. United States*, 353 U.S.

391, 421 (1957); *Mitchell v. United States*, 526 U.S. 314 (1999). The privilege "...can be asserted in any proceeding, civil or criminal, administrative or judicial, investigatory or adjudicatory; and protects against any disclosures that the witness reasonably believes could be used in a criminal prosecution or could lead to other evidence that might be so used." *Kastigar v. United States*, 406 U.S. 441, 444 (1972). The privilege is available in civil prosecutions brought by the executive agencies of the United States, and may be raised in response to government discovery requests, including requests for admissions pursuant to FRCP 36. *See SEC v. Zimmerman*, 854 F.Supp. 896, 898 (N.D. Ga. 1993).

Respondent Chhabra is entitled to assert his Fifth Amendment privilege because the discovery sought by Complaint Counsel could potentially be utilized in future prosecutions by one or more state governments; under such circumstances the government may not compel incriminatory testimony. *See United States v. Gaitan-Acevedo*, 148 F.3d 577, 588 (6th Cir. 1998); *United States v. Velasquez*, 141 F.3d 1280, 1282 (8th Cir. 1997); *accord United States v. Balsys*, 524 U.S. 666 (1998); *compare also Heath v. Alabama*, 474 U.S. 82 (1985)(no double jeopardy protection for prosecutions in different sovereigns for same conduct).

With regard to the federal proceedings in Virginia, the government's motion to vacate his plea agreement only increases Mr. Chhabra's apprehension concerning Complaint Counsel's potential ulterior motives in pursuing this case. *See*, Respondents' Second Joint Motion for Protective Order and Stay and Exhibit A attached. Respondent Chhabra's plea agreement does not provide for immunity or a waiver of Fifth Amendment rights. Any implied waiver of Fifth Amendment rights would apply only to the conduct set forth in the superseding indictment since that conduct is the sole basis for the agreement not to prosecute. In any event, neither Complaint Counsel nor this Court have jurisdiction to determine whether there has been a breach of Mr.

Chhabra's plea agreement filed in the Eastern District of Virginia. It should be noted, however, that the district court in Virginia summarily dismissed the government's Motion to Vacate Plea. See, Exhibit A attached to Respondents Vincent Chhabra, Dynamic Health of South Florida, LLC, and Chhabra Group, LLC's Second Joint Motion for Protective Order Pursuant to Civ. R. 26(C) and for Stay of Proceedings, Docket Nos. 507 and 510.

Respondent Chhabra is willing to provide a deposition to Complaint Counsel wherein Complaint Counsel can inquire into the subject matter of the requested admissions in order to facilitate and expedite these proceedings. However, in order to ensure that Respondent Chhabra's constitutional rights are adequately protected and that this FTC proceeding is not improperly used as an adjunct to the proceedings currently before the United States District Court for the Eastern District of Virginia, Alexandria Division, a deposition will only be provided if the FTC will agree to certain safeguards. First, deposition inquiries must be limited to the Pedialoss and Fabulously Feminine supplements. Second, any information disclosed in the deposition is provided solely to the FTC, and may not be disclosed by the FTC to any other public or private persons or entities, including attorneys for the Department of Justice. Third, Respondent Chhabra reserves his Fifth Amendment privilege against self-incrimination rights in full, reserves the right to consult with counsel as to any question asked during the deposition, and reserves the unqualified right to assert or re-assert his privilege against self-incrimination in response to any questions asked by the FTC. Any voluntary responses to deposition questions will not be deemed to have waived the privilege as to the same subject matter or to additional and future questions concerning the same subject matter. Any Fifth Amendment assertions by Mr. Chhabra will be deemed to be unreviewable by agreement. Only with the foregoing protections will Mr. Chhabra and his counsel be assured that this litigation is not used for

improper purposes. Without these protections, Mr. Chhabra will continue to assert his privilege against self-incrimination to all admission requests.

2. Complaint Counsel's representation concerning documents seized on December 3, 2003 is not accurate and undermined by the attached correspondence from Complaint Counsel.

The Affidavit of Michael Widenhouse is meaningless and irrelevant.¹ Although the number of documents and evidence seized on December 3, 2003 concerning the dietary supplement business were minor in comparison to the total number of documents and evidence seized on that date, the seizures concerning the dietary supplement business were nevertheless substantial and only Complaint Counsel has access to this information. See, e.g., Letter from Janet Evans and Sydney Knight to Max Kravitz, December 14, 2004, Exhibit A attached, noting that after examination of "approximately one-half" of the documents seized during the December 2003 searches, six hundred and twenty-one pages of potentially relevant documents concerning this case were discovered. On December 29, 2004, an additional package of materials from the December 3, 2003 searches and seizures were sent to Respondents' Counsel that were received on January 3, 2005. By the size of the packet, it appears there are more than 621 pages of documents (they are not bates stamped or indexed). See, Letter from Janet Evans and Sydney Knight to Max Kravitz, December 29, 2004. There is no indication that Complaint Counsel has finished its search of its records. Presumably more documents will be discovered when Complaint Counsel finishes its search of its own records.²

¹ There are approximately 900,000 documents in the Virginia criminal case. There is a warehouse of filing cabinets at the FDA headquarters in Maryland. There are also 75 CD's that were furnished by the government. Most were generated before the dietary supplement business was started.

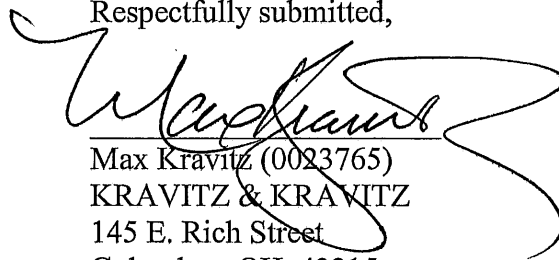
² Complaint Counsel's representation that it was not aware of the December 3, 2003 "document seizure until very recently," *see*, Complaint Counsel's Motion to Compel Production of Documents and Answers to Interrogatories, p.6 & n1, is dubious at best. Complaint Counsel has been in constant contact with the AUSAs in Virginia throughout 2004 and knew full well that searches took place during December 2003. Moreover, Respondents' Counsel has represented several times to Complaint Counsel, both in pleadings and otherwise, that there are documents relevant to the case that are under the control of the government as a result of the December 3, 2003 searches.

3. Respondents Chhabra Group, LLC and Dynamic Health of Florida, LLC are in the process of preparing additional and supplemental responses to Complaint Counsel's requests for admissions.

Pursuant to this Court's December 9, 2004 Order Denying Respondents' Motion to Compel, Respondents Chhabra Group, LLC and Dynamic Health of Florida, LLC are in the process of preparing additional, individual, non-collective responses to Complaint Counsel's First and Second Set of Interrogatories as well as additional responses to Complaint Counsel's request for admissions. Until the time when additional responses to admissions are furnished, Respondents stand by their responses and objections set forth in Respondents' Response to Complaint Counsel's Request for Admissions by Respondents.

Respondents' Counsel has reservations to travel to Florida on January 4, 2004 to facilitate discovery. It is not clear whether he will be able to travel on that date due to concerns that are unrelated to this lawsuit.

Respectfully submitted,



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Fax: (614) 464-2002
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**UNITED STATE OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

_____)
In the Matter of)

)
DYNAMIC HEALTH OF FLORIDA, LLC,)
CHHABRA GROUP, LLC,)
DBS LABORATORIES, LLC,)
Limited liability companies,)

)
VINCENT K. CHHABRA,)
Individually and as an officer of)
Dynamic Health of Florida, LLC,)
And Chhabra Group, LLC, and)

)
JONATHAN BARASH,)
Individually and as an officer of)
DBS Laboratories, LLC.)
_____)

DOCKET NO. 9317

**[Proposed] ORDER DENYING COMPLAINT COUNSEL'S MOTION TO COMPEL
ADEQUATE RESPONSE TO COMPLAINT COUNSEL'S REQUESTS FOR
ADMISSIONS**

On _____, Complaint Counsel filed a motion to compel adequate responses to its requests for admissions. Respondents Dynamic Health of Florida, LLC, Chhabra Group, LLC, and Vincent Chhabra have responded to this motion. Based on Respondents' response:

IT IS HEREBY ORDERED that the motion to compel is DENIED. Vincent Chhabra has asserted his privilege against self-incrimination to admission requests. Mr. Chhabra cannot be compelled to answer admissions. Respondents Chhabra Group, LLC and Dynamic Health of Florida, LLC are directed to supplement their admission responses by January 31, 2005.

Stephen J. McGuire
Chief Administrative Law Judge

Dated:

CERTIFICATE OF SERVICE

This is to certify that on January 3, 2004, I caused a copy of the attached

RESPONDENTS RESPONSE TO COMPLAINT COUNSEL'S MOTION
TO COMPEL ADEQUATE RESPONSE TO COMPLAINT COUNSEL'S REQUESTS FOR
ADMISSIONS

to be served upon the following persons by facsimile, email or U.S. First Class Mail:

(1) the original and one (1) paper copy filed by Federal Express, and one electronic copy via email to:

Donald S. Clark, Secretary
Federal Trade Commission, Room 159
600 Pennsylvania Avenue, NW
Washington, DC 20580
E-mail: secretary@ftc.gov

(2) two (2) paper copies served by Federal Express and one electronic copy via email to:

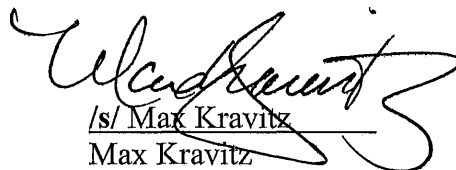
The Honorable Stephen J. McGuire
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
E-mail: dgross@ftc.gov

(3) one (1) electronic copy via email and one (1) paper copy via U.S. mail to:

Janet Evans
Syd Knight
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
E-mail: jevans@ftc.gov

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 by being sent by U.S. mail.

Dated: Columbus, Ohio
January 3, 2004


/s/ Max Kravitz
Max Kravitz



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

Bureau of Consumer Protection
Division of Advertising Practices

Janet M. Evans
Attorney

Direct Dial: (202) 326-2125
Facsimile: (202) 326-3259
E-mail: jevans@ftc.gov

December 14, 2004

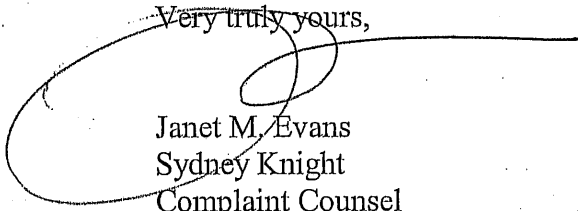
Via Fedex
Max Kravitz, Esq.
Kravitz & Kravitz LLC
145 East Rich Street
Columbus, OH 43215

Re: *In re Dynamic Health of Florida LLC,*
Docket No. 9317

Dear Mr. Kravitz:

We have reviewed approximately one-half of the documents seized during the government's December 2003 search. We obtained copies of documents that are potentially relevant to the above matter. Attached, bates stamped FDA 00001-621, are duplicates of those documents.

Very truly yours,


Janet M. Evans
Sydney Knight
Complaint Counsel

Encl.



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

Bureau of Consumer Protection
Division of Advertising Practices

Janet M. Evans
Attorney

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Facsimile: (202) 326-3259
E-mail: jevans@ftc.gov

December 29, 2004

Via Federal Express
Max Kravitz, Esq.
Kravitz & Kravitz LLC
145 East Rich Street
Columbus, OH 43215

Re: *In re Dynamic Health of Florida LLC,*
Docket No. 9317

Dear Mr. Kravitz:

Attached are additional documents of possible relevance that we obtained during our December 22, 2004 visit to FDA. They are from the documents seized during the criminal investigation as to Mr. Chhabra *et al.*

Very truly yours,

Janet M. Evans
Sydney Knight