



Office of the Secretary

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

July 30, 2008

VIA FACSIMILE AND EXPRESS MAIL

Nutraceuticals International, LLC
c/o Zoltan Klivinyi, Managing Director
11 Wallace Street
Elmwood Park, NJ 07407

Re: *Appeal of the Denial by Commissioner Harbour of the Petition by Nutraceuticals International, LLC to Quash or Limit Civil Investigative Demand*
File No. 082-3130

Dear Mr. Klivinyi:

This letter advises you of the Commission's disposition of Nutraceuticals International, L.L.C.'s ("NI") Appeal from the Letter Ruling denying the Petition to Quash or Limit Civil Investigative Demand¹ ("Appeal") issued in conjunction with an investigation of NI by the Federal Trade Commission (hereinafter "FTC" or "Commission"). As set forth below, the Appeal is dismissed as moot.²

NI's Petition claimed that the Civil Investigative Demand ("CID") seeks information that is "clearly beyond the scope of the investigation as defined by the Commission[.]" and also sought to quash the CID because Commission Staff had allegedly acted inappropriately toward an NI clerical employee on one occasion. Petition at 1.³ The Letter Ruling denied the Petition on the grounds that it failed to comply with the requirements of Commission Rules 2.7(d)(2) and 4.1(a)(2)(i), 16 C.F.R. §§ 2.7(d)(2) and 4.1(a)(2)(i), which respectively address the requirement that a Petitioner must have conferred with Commission staff regarding its objections in advance of filing a petition to quash or limit a CID and the qualification of an NI officer to represent it before the Commission on its Petition. Letter Ruling at 3. The Letter Ruling also denied the Petition on the grounds that NI had failed to satisfy its burden of showing that the information sought was either outside the scope of the investigation or tainted by the alleged misconduct of

¹ Letter Ruling Denying Petition of Nutraceuticals International, LLC to Quash or Limit Civil Investigative Demand, File No. 082-3130 (Jun. 25, 2008) ("Letter Ruling").

² Had we reached the merits of NI's appeal, we would have affirmed the denial of NI's Petition to Quash or Limit CID for substantially the same reasons set forth in the Letter Ruling.

³ Like the Letter Ruling, we find no evidence that any alleged misconduct on the part of Commission staff provided any grounds for quashing or limiting the CID.

Commission staff. Letter Ruling at 4-5. The Letter Ruling directed NI to comply with the CID by July 7, 2008. 16 C.F.R. § 2.7(f).

NI's appeal was timely filed on July 1, 2008. In its appeal, NI claims that the Letter Ruling erroneously found that NI's Petition was "procedurally deficient [and] without substantive merit." Appeal at 1. NI also requested a stay of the July 7 return date until after the Commission had ruled on the appeal as well as for an additional period sufficient for NI "to access the Federal District Court to protect the Company's legal rights and interests."⁴ *Id.* NI further advised the Commission that if its request for a stay was not granted prior to July 7, then NI intended to "submit its responses to the second CID directly to the Commissioners to hold in strict confidence and not release to Commission staff investigators" pending the Commission's decision and resolution of any actions initiated by NI in the federal courts.⁵ *Id.*

On July 8, 2008, the Secretary received NI's Response to the Second Civil Investigative Demand, dated July 3, 2008. The Commission has reason to believe that NI has substantially complied with the CID. Thus, the relief requested by the Petition that NI be excused from complying with the CID, or that the CID be substantially modified prior to such compliance was rendered moot by NI's substantial compliance with the commandments of the CID.

For the reasons set forth above, **IT IS ORDERED THAT** NI's Appeal should be, and it hereby is, **DISMISSED**.

By Direction of the Commission.

Donald S. Clark
Secretary

⁴ Contrary to Petitioner's apparent belief that such judicial review would be available to it immediately following the Commission's decision of this appeal, it is well established that FTC investigatory process is not self-executing; accordingly, this CID can only be enforced (or denied enforcement) by the district court in a CID enforcement action brought by the Commission pre-enforcement challenges to Commission CIDs brought by the party being subpoenaed are premature and not ripe for judicial review. *See, e.g., Atlantic Richfield Co. v. Fed. Trade Comm'n*, 546 F.2d 646, 648-50 (5th Cir. 1977) (affirming district court's dismissal of action for declaratory and injunctive relief challenging FTC subpoena); *Anheuser-Busch Inc. v. Fed. Trade Comm'n*, 359 F.2d 487, 490 (8th Cir 1966) (same).

⁵ NI cites no legal authority to support its request that its CID responses be withheld from the "Commission staff investigators" during the pendency of this appeal. The Commission's Rules have no provision for such relief, and the Commission is unaware of any other legal authority which would support that relief.