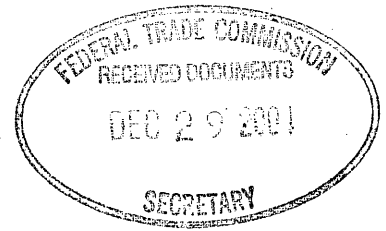


UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES



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In the Matter of )

BASIC RESEARCH, LLC )

A.G. WATERHOUSE, LLC )

KLEIN-BECKER USA, LLC )

NUTRASPORT, LLC )

SOVAGE DERMALOGIC LABORATORIES, LLC )

BAN, LLC d/b/a BASIC RESEARCH, LLC )

OLD BASIC RESEARCH, LLC, )

BASIC RESEARCH, A.G. WATERHOUSE, )

KLEIN-BECKER USA, NUTRA SPORT, and )

SOVAGE DERMALOGIC LABORATORIES )

DENNIS GAY )

DANIEL B. MOWREY d/b/a AMERICAN )

PHYTOTHERAPY RESEARCH LABORATORY, and )

MITCHELL K. FRIEDLANDER, )

Respondents. )

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Docket No. 9318

**ORDER ON COMPLAINT COUNSEL'S MOTION TO COMPEL PRODUCTION  
OF DOCUMENTS AND ANSWERS TO INTERROGATORIES**

**I.**

On December 6, 2004, Complaint Counsel filed a motion to compel production of documents and answers to interrogatories ("Motion"). On December 17, 2004, Respondents filed a corrected unopposed motion to extend time to file response to Complaint Counsel's Motion to Compel. On December 27, 2004, Basic Research, LLC; A.G. Waterhouse, LLC; Klein-Becker USA, LLC; Nutrasport, LLC; Sovage Dermalogic Laboratories, LLC; Ban, LLC; Dennis Gay; and Daniel B. Mowrey (collectively "Respondents") filed their opposition to the Motion ("Opposition"). The Motion was not directed at Mitchell Friedlander who, therefore, did not join in the Opposition. Motion at 1 n.1; Opposition at 1 n.1.

Respondents' corrected unopposed motion to extend time to file a response, requesting an extension until December 23, 2004, is **GRANTED**. However, in future, motions that are "corrected" need to indicate that fact in the title. Upon consideration of the briefs and attachments, and for the reasons set forth below, Complaint Counsel's motion to compel production of documents and answers to interrogatories is **GRANTED**.

## II.

Complaint Counsel seeks an order compelling Respondents to provide documents and answers to interrogatories. Motion at 1. Complaint Counsel argues that Respondents have unjustifiably failed to produce material, relevant evidence in response to Complaint Counsel's first request for production of documents and that Respondents have unjustifiably failed to fully answer Complaint Counsel's first set of interrogatories. Motion at 7-38.

Respondents argue that they have produced responsive documents as promptly as practicable and have produced all responsive documents at this juncture; Respondents search has exceeded the requirements of applicable law; Complaint Counsel's assertion regarding the resubmission of documents is misleading and ignores the reality of Respondents' efforts to produce over fifty thousand pages of documents; the motion is untimely; Complaint Counsel raised these issues over two months ago; and that Complaint Counsel's objections to interrogatory responses is untimely. Opposition at 4-15.

## III.

Complaint Counsel argues that Respondents have not complied with Complaint Counsel's first request for production of documents because Respondents have failed to produce all draft and final promotional materials (specification 2); all documents referring or relating to final and draft promotional materials for the challenged products (specification 3); all documents referring or relating to the marketing of the challenged products (specification 6); communications referring or relating to product endorsers and testimonialists (specification 7); and documents relating to Respondents' corporate organization (specification 11). Complaint Counsel further argues that Respondents have failed to fully answer Complaint Counsel's first set of interrogatories by failing to disclose who did what work regarding promotional materials for the challenged products (interrogatory 1); to disclose who did what work regarding the production of the challenged products (interrogatory 2); to disclose payments received in connection with the deceptive acts alleged in the Complaint (interrogatory 6); to disclose advertising expenditures related to the deceptive acts alleged in the Complaint (interrogatory 7); and to fully answer an interrogatory on Respondents' recent advertising practices for two of the challenged products (interrogatory 9).

Respondents' Opposition focuses on the timing of Complaint Counsel's motion, arguing that it should have been filed by October 13, 2004. Opposition at 7. Indeed, Respondents' only objection to the interrogatories is the timing of Complaint Counsel's motion to compel. Opposition at 14-15. Respondents contend that "the parties reached impasse over two months ago," that "Respondents' counsel's letter of October 8, 2004 memorialized all areas of agreement and those areas in which no agreement could be reached," and therefore "there is absolutely no ambiguity that an impasse as to the discovery issues existed as of the October 8th letter." Opposition at 2-3 (emphasis omitted). However, in reviewing the October 8, 2004 letter, attached as Respondents' exhibit C, there were numerous promises to provide additional


material, including, from page 2 only: "DVD's are being mailed to you today," "we would look for these documents and produce them if found," "[w]e still believe that [draft advertisements] may be in those [bin] containers. . . . we have located some draft packaging . . . and this information will be forwarded on to you." Opposition, Ex. C at 2. The October 8, 2004 letter further indicated that Respondents were hiring independent contractors to inspect bin containers for responsive documents. *Id.* In the October 8, 2004 letter, Respondents promised to provide additional documents but now Respondents argue that Complaint Counsel erred by waiting for the promised documents. The contents of the October 8, 2004 letter differ dramatically from its description in the Opposition brief, further undermining Respondents' arguments. Moreover, Respondents, themselves, indicate that they were providing documents on a "rolling basis." Opposition at 4. These issues were not ripe while the parties were negotiating a resolution of their discovery disputes and while Complaint Counsel was waiting for promised responsive documents that may have obviated the need to file a motion with the Court.

Respondents do not argue that the requested discovery is not relevant, unreasonably cumulative or duplicative, obtainable from some other source, that the burden and expense of the proposed discovery outweigh its likely benefit, or that the information is privileged. Indeed, the requested discovery is relevant and must be disclosed by Respondent, or listed on their privilege log, if necessary. Respondents claim that they "have produced all responsive documents at this juncture" and that "Respondents have conducted a comprehensive search and have searched every location where documents might be stored." Opposition at 4, 8. The phrase "at this juncture" is disturbing. The discovery requests were served on June 25, 2004. Motion at 3. The matter is set for trial on March 28, 2005. Scheduling Order at 3. At this juncture, Respondents should have completed their document production.

#### IV.

For the above-stated reasons, Complaint Counsel's motion to compel production of documents and answers to interrogatories is **GRANTED**. Respondents shall ensure that all documents have been produced, and interrogatories answered, within fifteen days of the date of this Order.

ORDERED:

  
Stephen J. McGuire  
Chief Administrative Law Judge

Date: December 29, 2004