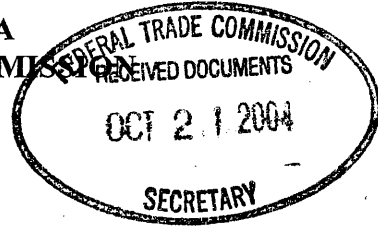


UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



In the Matter of)
)
)

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

Respondents.)
_____)

Docket No. 9318

PUBLIC DOCUMENT

**COMPLAINT COUNSEL'S OPPOSED MOTION TO STAY RESPONSE
TO PARTS OF RESPONDENT'S SECOND MOTION TO COMPEL
RELATED TO PENDING MOTION TO STRIKE DEFENSES, AND
OPPOSED MOTION FOR EXTENSION OF TIME TO RESPOND
TO THE REST OF THE SECOND MOTION TO COMPEL**

Complaint Counsel move to stay their response to Respondent Basic Research LLC's *Second Motion to Compel* with respect to their document requests nos. 6, 7, 27, and 29, and to extend the time for responding to the remaining requests identified in that Motion from October 25, 2004, to November 3, 2004, and in support thereof state as follows:

1. On October 13, 2004, Respondent Basic Research served its *Second Motion to Compel* ("Motion"). Complaint Counsel's response is currently due on October 25, 2004.
2. Pursuant to RULE OF PRACTICE 4.3, the Administrative Law Judge may extend any time limit prescribed or allowed by the Rules.
3. On October 19, 2004, Complaint Counsel, Robin M. Richardson, discussed the relief sought in this Request with counsel for Respondent, Jeffrey Feldman. On October 20,

2004, Mr. Feldman represented that he opposed Complaint Counsel's motion to stay and for an enlargement of time.

4. Good cause exists to justify the stay of Complaint Counsel's response to certain portions of Respondent's Motion. Document requests 6, 7, 27, and 29 relate to Respondents' alleged defenses and the pending *Motion to Strike*. Specifically, Respondent seeks to compel a response to request 6 which seeks "all expert reports" filed in administrative or Section 13(b) proceedings, and to request 7 which seeks "all depositions taken of Federal Trade Commission substantiation experts in any weight loss cases." Respondent also seeks to compel a response to request 27, which now seeks "all documents relating to requests by advertisers of dietary weight loss products seeking clarification on the substantiation standards applicable in this case," and request 29, which seeks "[a]ll documents related to requests made to the Federal Trade Commission by advertisers seeking approval of advertising prior to dissemination."

5. These four requests relate to the *Fifth Amendment*, *First Amendment*, and Administrative Procedures Act defenses that are the subject of Complaint Counsel's *Motion to Strike*. The Court has recently directed the parties to brief the issue of whether discovery should be limited if Respondents' defenses are not stricken. As a result, Complaint Counsel anticipates that the Court's rulings on the *Motion to Strike* and proper scope of discovery for this matter will control the proper scope of discovery, and it would be more efficient to respond (and perhaps resolve) these issues then with the benefit of the Court's guidance.

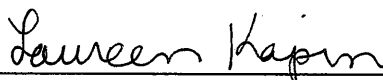
6. Good cause also exists to justify a brief enlargement of time until November 3, 2004 to respond to the remaining portions of Respondent's *Second Motion to Compel*. Complaint Counsel's time to prepare its response to Respondent Basic Research's *Motion* has fallen within the same time period in which Complaint Counsel have continued to prepare and

completed their privilege log, and traveled across the country to meet with experts in anticipation of providing expert witness reports. In addition Complaint Counsel are currently preparing responses to Respondents' numerous interrogatories and requests for admissions (approximately 58 in all) and engaging in their own affirmative discovery both with respect to Respondents and multiple third parties. Finally, Complaint Counsel is also preparing the additional briefing ordered by the Court that is due October 28, 2004.

7. A proposed order is attached hereto for the Court's convenience.

Date: October 21, 2004

Respectfully submitted by:



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Joshua S. Millard (202) 326-2454
Robin M. Richardson (202) 326-2798
Laura Schneider (202) 326-2604

Division of Enforcement
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

COUNSEL SUPPORTING THE COMPLAINT

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of October, 2004, I caused *Complaint Counsel's Opposed Motion to Stay Response to Parts of Respondent's Second Motion to Compel and Opposed Motion for Extension of Time to Respond to Rest of the Second Motion to Compel* to be served and filed as follows:

- (1) the original, two (2) paper copies filed by hand delivery and one (1) electronic copy via email to:

Donald S. Clark, Secretary
Federal Trade Commission
600 Penn. Ave., N.W., Room H-159
Washington, D.C. 20580

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

The Honorable Stephen J. McGuire
Administrative Law Judge
600 Penn. Ave., N.W., Room H-104
Washington, D.C. 20580

- (3) one (1) electronic copy via email and one (1) paper copy by first class mail to the following persons:

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USA, LLC, Nutrasport, LLC,
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mkf555@msn.com


COMPLAINT COUNSEL

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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Docket No. 9318

PUBLIC DOCUMENT

TO: The Honorable Stephen J. McGuire
Chief Administrative Law Judge

ORDER ON OPPOSED MOTION TO STAY AND FOR EXTENSION OF TIME

THIS CAUSE came before the Administrative Law Judge on Complaint Counsel's Opposed Motions for Stay and for Extension of Time to Respond to Basic Research's Second Motion to Compel. Having reviewed the Motion, it is ORDERED that Complaint Counsel's Motion is GRANTED. Complaint Counsel's response to Respondent's Motion to Compel discovery in response to Respondent's document requests 6, 7, 27, and 29 are stayed pending the Court's ruling on Complaint Counsel's Motion to Strike. Thereafter, Complaint Counsel's response shall be due within five calendar days of the Court's ruling. Complaint Counsel shall have respond to the rest of Respondent Basic Research's Second Motion to Compel no later than November 3, 2004.

DONE AND ORDERED this _____ day of October, 2004.

Stephen J. McGuire
Administrative Law Judge

Copies furnished to:
All counsel of record