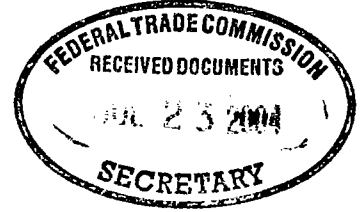


**IN THE UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**



**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**

**ANSWER OF RESPONDENTS DYNAMIC HEALTH OF FLORIDA, LLC; CHHABRA  
GROUP, LLC; AND VINCENT K. CHHABRA TO THE COMPLAINT OF THE  
FEDERAL TRADE COMMISSION**

Respondents Dynamic Health of Florida, LLC ("Dynamic Health"); Chhabra Group, LLC ("Chhabra Group"); and Vincent K. Chhabra, in both his personal capacity and his capacity as an officer of Dynamic Health and Chhabra Group, ("Respondent Chhabra"),<sup>1</sup> answer the Complaint of the Federal Trade Commission ("FTC") in this case as follows:

1. Respondents admit the allegations in ¶1 of the Complaint.
2. Respondents admit the allegations in ¶2 of the Complaint.
3. Respondents is without sufficient information or belief to admit or deny the allegations in ¶3 of the Complaint, and thereby deny ¶ 3.

<sup>1</sup> Unless a Respondent is individually identified and designated in this Answer, "Respondents" for the purpose of this Answer refers collectively and only to Dynamic Health of Florida, LLC, Chhabra Group, LLC and Vincent Chhabra.

4. Respondents admit in part and deny in part the allegations in ¶4 of the Complaint. Respondents admit that Respondent Chhabra is an officer of Dynamic Health of South Florida, LLC and Chhabra Group and that he has had involvement with both entities. However, to the extent that the statement "other acts and practices of Dynamic Health and Chhabra Group, including the acts and practices alleged in this complaint" refers to any allegations of unlawful, improper or otherwise wrongful conduct on the part of Respondents, the allegations are denied.

5. Respondents are without sufficient information or belief to admit or deny the allegations in ¶ 5 of the Complaint, and thereby deny ¶ 5. To the extent that the statements "in concert with others" and "the acts or practices of DBS Laboratories LLC, including the acts or practices challenged in the complaint" refer to any allegations of unlawful, improper or otherwise wrongful conduct on the part of Respondents, the allegations are denied. In addition, while Respondents generally believe that the assertions in ¶5 of the Complaint dealing with the relationship between Jonathan Barash and DBS Laboratories are true, Respondents reserve the right to deny any related assertions of a more detailed nature which might be subsequently asserted by the government.

6. Respondents admit in part and deny in part the allegations in ¶ 6 of the Complaint. Respondents admit that they have been engaged in the business of selling Pedia Loss and Fabulously Feminine, and that this business has involved advertising, labeling and distribution. Respondents deny that Pedia Loss is appropriately characterized as a "weight loss" supplement. Respondents further admit that both products are no longer being advertised, labeled, offered for sale, sold, and distributed to the public. Respondents also admit that there were only minimal sales of these products totaling approximately \$19,000.

Respondents deny that either Pedia Loss or Fabulously Feminine qualifies as a drug under 15 U.S.C. § 55 on the grounds that Congress obviously intended for the Federal Trade Commission Act to be coextensive with the Food, Drug & Cosmetic Act with regard to the definition of "drug," and that neither product constitutes a drug under the FDCA. Respondents admit that Pedia Loss and Fabulously Feminine qualify as foods under the FTCA, but qualify this admission by asserting that the definition of "food" under the FTCA is coextensive with that under the FDCA.

7. Respondents admit in part and deny in part the allegations in ¶7 of the Complaint. Respondents admit that the business of selling Pedia Loss and Fabulously Feminine falls within the definition of commerce under 15 U.S.C. § 44. To the extent that the statement "acts and practices alleged in this complaint" refers to any allegations of unlawful, improper or otherwise wrongful conduct on the part of Respondents, the allegations are denied.

8. Respondents admit in part and deny in part the allegations contained in ¶8. Respondents admit that they have engaged in the business of advertising the Pedia Loss product. Respondents admit that the ingredients cited in ¶8 are listed on the Pedia Loss label and are contained in Pedia Loss. Respondents admit that Pedia Loss advertising has contained the statements quoted in ¶8. However, Respondents deny that the selective quotations provided to this Tribunal in ¶ 8 by the FTC constitute a fair and accurate representation of the Pedia Loss advertisements.

9. Respondents deny the allegations in ¶ 9 on the ground that the conclusions drawn by the FTC are not supported by the language of the advertising in question.

10. Respondents admit in part and deny in part the allegations contained in ¶10. Respondents admit that they had a reasonable basis upon which to conclude that their advertising was substantiated, and Respondents admit that they have represented that they did, in fact, possess

the aforementioned reasonable basis. Respondents also admit that they relied, in part, on the representations of DBS Labs, Jonathan Barash and Brian Yusem concerning this product and by additional research and studies. Respondents also admit that they relied on the advice of counsel. However, to the extent that the allegations in ¶10 are predicated upon the previously-denied assertions made by the FTC in ¶ 9, the allegations in ¶10 are denied.

11. With regard to ¶11, Respondents had a reasonable basis to conclude that their advertising was substantiated as set forth in ¶ 10 and in Respondents response to ¶ 10; the assertions to the contrary in ¶11 are therefore denied. Respondents truthfully represented that their advertising was substantiated; to the extent that the FTC asserts in ¶11 that the representations in question were false or misleading, the allegations in ¶11 are denied. To the extent that the FTC asserts in ¶11 that the advertising in question supports the assertions made by the FTC in ¶ 9, the allegations are denied.

12. Respondents admit in part and deny in part the allegations contained in ¶12. Respondents admit that they have engaged in the business of advertising the Fabulously Feminine product. Respondents admit that the ingredients cited in ¶12 are listed on the Fabulously Feminine label and are contained in Fabulously Feminine. Respondents admit that Fabulously Feminine advertising has contained the statements quoted in ¶12. However, Respondents deny that the selective quotations provided to this Tribunal by the FTC constitute a fair and accurate representation of the Fabulously Feminine advertisements.

13. Respondents admit in part and deny in part the allegations contained in ¶13. Respondents admit that they have represented that several of the ingredients contained in the Fabulously Feminine product can enhance a woman's satisfaction with her sex life and sexual desire. Respondents admit that they have represented that several of the ingredients contained in

Fabulously Feminine have been the subject of clinical testing, and that this testing supports the conclusion that the ingredients in question can support female sexual function. Respondents deny that they have represented that the Fabulously Feminine product itself, as opposed to its ingredients, has been the subject of clinical testing. To the extent that the FTC alleges that Respondents have represented Fabulously Feminine to be anything other than a food or dietary supplement which can support female sexual function, the allegations are denied.

14. Respondents admit in part and deny in part the allegations contained in ¶14. Respondents admit that no clinical testing has been performed on the Fabulously Feminine product itself, but deny the allegation that there is no clinical testing demonstrating the usefulness of the ingredients of Fabulously Feminine in supporting female sexual function. To the extent that the allegations made by the FTC in ¶14 rely upon the previously-denied allegations contained in ¶12-13 of the Complaint, all allegations in ¶14 are denied.

15. Respondents admit in part and deny in part the allegations contained in ¶15 of the complaint. Respondents admit that they have represented that the ingredients contained in Fabulously Feminine can support female sexual function by stimulating blood flow and increasing sensitivity. To the extent that the FTC alleges in ¶15 that Respondents have done anything other than represent Fabulously Feminine as a food or supplement which contains ingredients which can support female sexual function, the allegations are denied.

16. Respondents admit in part and deny in part the allegations contained in ¶16. Respondents admit that they had a reasonable basis upon which to conclude that their advertising of Fabulously Feminine was substantiated, and Respondents admit that they have represented that they did, in fact, possess the aforementioned reasonable basis. Respondents also admit that they relied, in part, on the representations of DBS Labs, Jonathan Barash and Brian Yusem

concerning this product and by additional research and studies. Respondents also admit that they relied on the advice of counsel. However, to the extent that the allegations in ¶16 are predicated upon the previously-denied assertions made by the FTC in ¶13 through 15, the allegations in ¶16 are denied.

17. With regard to ¶17, Respondents had a reasonable basis to conclude that their advertising was substantiated; the assertions to the contrary in ¶17 are therefore denied. Respondents truthfully represented that their advertising was substantiated; to the extent that the FTC asserts in ¶17 that the representations in question were false or misleading, the allegations in ¶17 are denied. To the extent that the FTC asserts in ¶17 that the advertising in question supports the previously-denied assertions made by the FTC in ¶13 through 15, the allegations are denied.

18. Respondents deny the allegation made in ¶18.

## **DEFENSES**

### **First Defense**

The Complaint must be rejected because the representations relating to Pedia Loss and Fabulously Feminine cited by the FTC qualify as protected commercial speech under the First Amendment to the Federal Constitution.

### **Second Defense**

The Complaint must be rejected because the application of the Federal Trade Commission Act advocated by the FTC in this case places greater restrictions than necessary on commercial speech, and as a result the theory of liability relied upon by the FTC is barred pursuant to the decision of the Supreme Court of the United States in *Thompson v. Western States Medical Center*, 535 U.S. 357 (2002).

### **Third Defense**

The Complaint must be rejected because Congress clearly did not intend for the FTC to have authority to penalize advertising statements when the statements in question would qualify as entirely permissible structure/function label claims under the Dietary Supplement Health and Education Act.

### **Fourth Defense**

The Complaint must be rejected because official statements regarding the relationship between dietary supplement structure/function claims and the substantiation requirements of the Federal Trade Commission made by the Food & Drug Administration in the Federal Register on January 6, 2000, 65 FR 1000 at 1012, clearly require that the defense of entrapment by estoppel be applied against the Federal Trade Commission in this case.

### **Fifth Defense**

The Complaint must be rejected because it fails on the merits.

### **Sixth Defense**

Respondents reserve the right to assert other defenses as discovery proceeds, including reliance on the advice of counsel and others.

Respectfully submitted,

*Max Kravitz* / *by Thomas Lundy per telephone*  
Max Kravitz (0023765) *authenticated on 7/23/04.*  
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CERTIFICATE OF SERVICE

This is to certify that on July 23, 2004, I caused a copy of the attached Respondent's Answer to Complaint to be served upon the following persons by facsimile or U.S. First Class Mail:

Donald S. Clark, Secretary  
Federal Trade Commission, Room 159  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

The Honorable Stephen J. McGuire  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

Mary Engle  
Associate Director for Division of Advertising Practices  
Federal Trade Commission  
601 New Jersey Avenue, N.W.  
Washington, D.C. 20580

and

Janet Evans  
Federal Trade Commission

Dated: Columbus, Ohio  
July 23, 2004

Max Kravitz / by Edward Ceadly per telephone  
authentication on 7/23/04