

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

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| In the Matter of |) | |
| |) | |
| DYNAMIC HEALTH OF FLORIDA, LLC |) | PUBLIC |
| CHHABRA GROUP, LLC |) | |
| DBS LABORATORIES, LLC |) | Docket No. 9317 |
| VINEET K. CHHABRA aka VINCENT K. CHHABRA, and |) | |
| JONATHAN BARASH, |) | |
| Respondents. |) | |

To: Stephen J. McGuire
Chief Administrative Law Judge

**COMPLAINT COUNSEL’S OPPOSITION TO RESPONDENTS’ MOTIONS
FOR STAY AND OTHER RELIEF**

Complaint counsel hereby oppose the “Respondents Vincent Chhabra, Dynamic Health of South Florida, LLC and Chhabra Group LLC’s Joint Motion for Protective Order Pursuant to Civ. R. 26 ©) and for Stay of Proceedings” and the ““Respondents Vincent Chhabra, Dynamic Health of South Florida, LLC and Chhabra Group LLC’s Proposed Scheduling Order,” filed July 27, 2004. In support of its opposition, complaint counsel hereby states as follows:

Having already obtained a significant extension of time to file their answer, respondents now request that discovery in this matter be stayed until October 15, 2004.¹ They propose a revised procedural schedule providing for discovery to occur between October 15, 2004 and January 10, 2005 with trial to begin sometime after April 18, 2005, but also identify three

¹ Respondents’ Motion for Protective Order and Stay, p. 4.

periods of time when respondents' counsel will be out of the country and ask for consideration during these dates.²

Respondents' proposed schedule reduces discovery from 102 days (as provided for in the *Telebrands* order recommended by Your Honor and the order proposed by complaint counsel) to a 75 day period that includes 17 days when respondents counsel will be out of the country and three Federal Holidays. Working from its proposed final prehearing conference date of April 18, 2005, and allowing for the actual hearing, receipt and review of transcripts, submission of proposed findings and conclusions by complaint counsel and by respondents, it appears to delay the issuance of an Initial Decision until September 2005. This is not consistent with the June 16, 2005 deadline set by the Commission's Rules. 15 C.F.R. § 3.51 (a).

The Commission's Rules authorize a stay in only two instances. First, the one-year deadline is tolled during the pendency of a "collateral federal court proceeding." *Id.* The criminal action against Mr. Chhabra *et al.* is not collateral to this administrative action, however. In pertinent part, the criminal complaint alleges a conspiracy by Chhabra, Chhabra Group, and a large group of others not a party to this proceeding to violate the Controlled Substances Act, through online sales of controlled prescription substances.³ The criminal action does not relate to sales of dietary supplements, does not relate to the question whether Vincent Chhabra or

² Respondents' Proposed Scheduling Order, at 1.

³ *U.S. v. Vineet K. Chhabra, et al.*, Crim No. 03-530-A (E.D. Va.) (Compliant filed Oct. 30, 2003), attached hereto as Exhibit A.

Chhabra Group disseminated advertisements for Fabulously Feminine or Pedia Loss, and does not relate to whether ad claims for those products were unsubstantiated or false. Neither Dynamic Health of Florida, LLC nor DBS Laboratories is a party to the criminal proceeding. Further, as used in the Commission Rules, the term “collateral” action refers to one “brought by the Commission to challenge some or all of the same conduct at issue in the administrative proceeding.” *In re Rambus, Inc.*, Order Denying Motion to Stay (July 18, 2002) (Timony, J.), attached as Exhibit B; *see also*, Rules and Procedures, 61 Fed. Reg 50640, 50641 (Sept. 26, 1996) (describing collateral proceedings).

The Commission Rules also authorize the ALJ to extend the one-year deadline for a period of up to sixty (60) days “upon a finding of extraordinary circumstances.”⁴ 16 C.F.R. § 3.51 (a). No extraordinary circumstances have been presented to support delay of proceedings in this matter. The fact that Mr. Chhabra is simultaneously a party to two different proceedings is not extraordinary. “The civil and regulatory laws of the United States frequently overlap with the criminal laws, creating the possibility of parallel civil and criminal proceedings, either successive or simultaneous. In the absence of substantial prejudice to the rights of the parties involved, such parallel proceedings are unobjectionable under our jurisprudence.” *SEC v. Dresser Industries, Inc.*, 628 F.2d 1368, 1375, 1980 U.S. App. LEXIS15687 at 16 (D.C. Cir 1980) (en banc), *cert. denied*, 449 U.S. 993, 1980 U.S. LEXIS 3985 (1980). The Constitution

⁴ This standard was last invoked in the *Rambus* case, where despite an expeditious prehearing schedule and tight discovery controls, the trial was ongoing on the date that the Initial Decision was due.

does not generally require a stay of civil proceedings pending the outcome of a civil suit, even a parallel civil suit involving the same transactions. *Id.*; *see also, Standard Sanitary Manufacturing Co. v. U.S.*, 225 U.S. 20 (1912).

Respondents argue that a stay is warranted to avoid “undermining” Mr. Chhabra’s Fifth Amendment Privilege. Notably, although counsel argues that a stay is warranted until the completion of the Chhabra trial, he does *not* state that Mr. Chhabra will consent to discovery after that date. Yet, it is possible that Mr. Chhabra will continue to attempt to assert his right against self-incrimination through the sentencing and appeal phases of the criminal matter. *Cf.*, *U.S. v. Efrain De La Cruz*, 996 F.2d 1307, 1993 U.S. App. LEXIS 15149 (1st Cir. 1993) (ruling that a convicted but unsentenced defendant retains a legitimate Fifth Amendment interest as to matters that could affect his sentence); *Idaho v. Johnson*, 287 P.2d 425; 1955 Ida. LEXIS 362 (Idaho 1955), *cert. den.* 350 US 1007, 1956 U.S. LEXIS 1184 (ruling that Fifth Amendment right continues pending appeal). There is no reason to believe that Mr. Chhabra will be any more amenable to discovery after the conclusion of his trial, and thus the requested delay does not actually appear calculated to facilitate development of the record in any manner.

Mr. Chhabra further complains that his defense of this matter may be impaired by the possible assessment against him of adverse inferences. Nonetheless, the courts have held that when parallel criminal and civil/administrative proceedings are pending, the fact that a party has a “free choice to admit, deny or refuse to answer. . . is full vindication of the privilege against self-incrimination.” *FTC v. H. N. Singer*, 1982 U.S. Dist. LEXIS 15622 (N.D. Cal. 1982)

(denying motion for stay of action alleging violation of Section 5). In analogous situations, the courts have ruled that the fact that an individual may feel the need to assert the Fifth Amendment and risk the imposition of adverse inferences, as a result, does not warrant a stay of a Section 5 action. *E.g., Id.; FTC v. Parade of Toys, Inc.*, 1997 U.S. Dist LEXIS 17153 (D. Kansas) (denying request for a stay, noting that the public interest in enforcing the consumer protection laws outweighed the individual's interest in avoiding the dilemma of invoking his Fifth Amendment privilege)⁵; *FTC v. J. K. Publications, Inc.*, 99 F. Supp. 2d 1176; 2000 U.S. Dist. LEXIS 7279 (C. D. Cal.) (same).

For the foregoing reasons, complaint counsel requests that the respondents' motions for a stay, protective order, and adoption of a non-compliant procedural schedule be DENIED.

Respectfully submitted,

Janet M. Evans
Division of Advertising Practices
FEDERAL TRADE COMMISSION
601 New Jersey Avenue, N.W.
Mail drop NJ-3212
Washington, D.C. 20580
jevans@ftc.gov
(202) 326-2125
fax: (202) 326-3259

⁵ In *Parade of Toys*, the court granted a limited stay as to discovery of the defendants named in both the criminal and civil actions during the actual dates of the criminal trial, because the same counsel represented them in both actions. That case is distinguishable, because Mr. Kravitz does not, in fact, represent any of the parties in the criminal action.

CERTIFICATE OF SERVICE

I hereby certify that I have this 28th day of July, 2004 filed and served the attached **COMPLAINT COUNSEL'S OPPOSITION TO RESPONDENTS' MOTIONS FOR STAY AND OTHER RELIEF** and **[Proposed] ORDER REGARDING RESPONDENTS MOTION FOR STAY AND OTHER RELIEF** upon the following as set forth below:

Donald S. Clark
Secretary
FTC, Room 172
600 Pennsylvania Ave., NW
Washington, D.C. 20580
via electronic mail and hand-delivery

The Honorable Stephen J. McGuire
Chief Administrative Law Judge
FTC, Room 112
600 Pennsylvania Ave., NW
Washington, D.C. 20580
via electronic mail and facsimile

Max Kravitz, Esq.
Kravitz & Kravitz LLC
145 East Rich Street
Columbus, OH 43215
mkravitz@kravitzlaw.net
614-464-2000
fax: 614-464-2002
via electronic mail and facsimile

Janet M. Evans

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FEDERAL TRADE COMMISSION**

In the Matter of)

DYNAMIC HEALTH OF FLORIDA, LLC)

CHHABRA GROUP, LLC)

DBS LABORATORIES, LLC)

VINEET K. CHHABRA aka VINCENT K. CHHABRA, and)

JONATHAN BARASH,)

Respondents.)

Docket No. 9317

**[Proposed] ORDER REGARDING RESPONDENTS MOTION FOR STAY AND OTHER
RELIEF**

The Court has considered the “Respondents Vincent Chhabra, Dynamic Health of South Florida, LLC and Chhabra Group LLC’s Joint Motion for Protective Order Pursuant to Civ. R. 26 ©) and for Stay of Proceedings” and the ““Respondents Vincent Chhabra, Dynamic Health of South Florida, LLC and Chhabra Group LLC’s Proposed Scheduling Order,” filed July 27, 2004, and of “Complaint Counsel’s Opposition to Respondents’ Motions For Stay and Other Relief,” filed July 28, 2004. Respondents have failed to justify a stay of discovery or a delay in these proceedings. The public interest is best served by moving forward with this proceeding. *See, e.g., FTC v. Parade of Toys, Inc.*, 1997 U.S. Dist LEXIS 17153 (D. Kansas) (denying request for a stay, noting that the public interest in enforcing the consumer protection laws outweighed the individual’s interest in avoiding the dilemma of invoking his Fifth Amendment privilege); *FTC v. J. K. Publications, Inc.*, 99 F. Supp. 2d 1176; 2000 U.S. Dist. LEXIS 7279 (C. D. Cal.) (same)

Accordingly, it is hereby ruled that respondents' motions are DENIED.

Ordered:

Stephen J. McGuire
Chief Administrative Law Judge

Date: July __, 2004