

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

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	) ) ) ) ) ) ) Docket No. 9318 ) ) )
PHYTOTHERAPY RESEARCH LABORATORY, and MITCHELL K. FRIEDLANDER, Respondents.	) )

## ORDER ON RESPONDENTS' REQUEST FOR ORAL ARGUMENT OR, IN THE ALTERNATIVE, FOR PERMISSION TO FILE A SUR-REPLY AND ORDERING SUPPLEMENTAL BRIEFING

On September 29, 2004, Respondents filed a request for oral argument on Complaint Counsel's motion to strike additional defenses or, in the alternative, for permission to file a surreply to respond to Complaint Counsel's reply brief. On October 1, 2004, Complaint Counsel filed its opposition to Respondents' request for permission to file a sur-reply. Complaint Counsel offered no opinion regarding the request for oral argument.

Respondents' request for oral argument or permission to file a sur-reply is **DENIED**. Because certain issues have not been adequately addressed in the pleadings to date, additional briefing is required. In lieu of oral argument, the parties shall provide concurrent supplemental briefs which provide a summary of the controlling case law regarding: (1) whether the Administrative Law Judge has the authority to decide the issues presented and, if not, the consequence thereof, (2) whether a Fifth Amendment challenge to a regulatory approach by a federal agency is a valid defense to an administrative proceeding, (3) whether Respondents are

entitled to amend any stricken defenses, and (4) whether discovery should be limited if Respondents' defenses are not stricken. The supplemental briefs shall be submitted concurrently within ten days of the date of this Order. No replies or responses to the supplemental briefs will be permitted.

ORDERED:

Stephen J. McGuire

Chief Administrative Law Judge

Date: October 18, 2004