

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

COMMISSIONERS: **Rebecca Kelly Slaughter, Acting Chairwoman**
 Noah Joshua Phillips
 Rohit Chopra
 Christine S. Wilson

In the Matter of

HEALTH RESEARCH LABORATORIES, LLC,
 a limited liability company,

WHOLE BODY SUPPLEMENTS, LLC,
 a limited liability company, and

KRAMER DUHON,
 individually and as an officer of
 HEALTH RESEARCH LABORATORIES, LLC
 and WHOLE BODY SUPPLEMENTS, LLC.

DOCKET NO. 9397

**MOTION TO EXTEND DATE FOR COMPLAINT COUNSEL’S
REPLY TO RESPONDENTS’ RESPONSE TO
COMPLAINT COUNSEL’S STATEMENT OF ADDITIONAL
MATERIAL FACTS AND OPPOSITION TO RESPONDENTS’ MOTION TO STRIKE**

Pursuant to 16 C.F.R. § 4.3(b), Complaint Counsel respectfully requests an extension of the date to file their reply to Respondents’ Response to Complaint Counsel’s Statement of Additional Material Facts (June 1, 2021) (“Response”). For the reasons set forth below, Complaint Counsel also opposes Respondents’ motion to strike Complaint Counsel’s Statement of Additional Material Facts. *See* Response at 5.

As part of their continuing effort to avoid confronting the facts in this case, Respondents deliberately disregarded the requirements of the Commission’s Order dated May 14, 2021 (“Order”). First, although the Order requires Respondents to clarify which factual issues remain

in dispute, they refused to confirm or deny any of the additional facts set forth in Complaint Counsel's Statement of Additional Material Facts. Second, Respondents failed to clarify whether they will "accept and agree to the specific items of relief identified in the Notice of Contemplated Relief." Order at 3. Respondents do not clearly stipulate to any of the contemplated relief, but instead continue to vacillate between statements they "do not oppose" a blanket prohibition on advertising supplements with health and disease claims and legal arguments that relief must be limited to prohibitions of advertising for the four challenged products. *See* Response at 6-7. The Commission provided Respondents with an opportunity to contest Complaint Counsel's additional facts and to introduce facts of their own for consideration, but Respondents did neither.¹ Respondents strenuously argue they are not being provided with adequate notice and an opportunity to dispute the factual allegations against them (Response at 15-16) in this proceeding, yet are doing everything possible to avoid responding to the facts because they cannot dispute them.

Rather than squarely addressing the issues identified in the Order, Respondents advance a number of flawed legal arguments and urge the Commission to rule on two of them immediately. When setting the schedule for Complaint Counsel's reply, no briefing concerning legal questions was contemplated by the Order. Although Respondents' arguments are outside the scope of the filing requested by the Commission and should be addressed in the Commission's final decision rather than now, Complaint Counsel requests an extension until June 21, 2021 to submit a reply to thoroughly respond to Respondents' new legal arguments and suggest a path forward in this proceeding.

¹ Respondents' submission did clarify they will not introduce any additional material facts in this case. Response at 10.

Complaint Counsel also opposes Respondents' motion to strike Complaint Counsel's Statement of Additional Material Facts on the ground that it was untimely. Response at 5. This motion must be denied because Complaint Counsel's submission was filed on time in accordance with 16 C.F.R. § 4.3(a). Under that Rule, which addresses the computation of dates prescribed in Commission orders, the seven days for filing started to run the first business day after the Order was issued (*i.e.*, on Monday, May 17). The Rule further specifies that when the relevant period set forth in an order is seven days or less, as here, Saturdays and Sundays are excluded. *Id.* As a result, Complaint Counsel's filing was due on Tuesday, May 25.

Dated: June 7, 2021

Respectfully submitted,

s/ Elizabeth J. Averill

Elizabeth J. Averill

Jonathan Cohen

Federal Trade Commission

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Complaint Counsel

CERTIFICATE OF SERVICE

I certify that I served a copy of Complaint Counsel’s Motion to Extend Date for Complaint Counsel’s Reply to Respondents’ Response to Complaint Counsel’s Statement of Material Facts and Opposition to Respondents’ Motion to Strike on counsel for the Respondents on June 7, 2021 via electronic mail.

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I also served one electronic copy via the Administrative E-Filing System and one electronic courtesy copy to the **Office of the Secretary** via email to ElectronicFilings@ftc.gov.

I served one electronic courtesy copy via email to the **Office of the Administrative Law Judge**:

The Honorable D. Michael Chappell
Chief Administrative Law Judge
600 Pennsylvania Ave, NW, Room H-110
Washington, DC 20580

s/ Elizabeth J. Averill
Elizabeth J. Averill
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**[PROPOSED] ORDER GRANTING COMPLAINT
COUNSEL’S REQUEST FOR EXTENSION OF REPLY DATE
AND DENYING RESPONDENTS’ MOTION TO STRIKE
COMPLAINT COUNSEL’S STATEMENT OF ADDITIONAL MATERIAL FACTS**

On May 14, 2021, the Commission issued an Order requiring the parties to submit certain filings to clarify which factual issues continue to be disputed following the filing of Respondents’ Amended Answer (Mar. 30, 2021) and Respondents’ Stipulation as to “Fencing-In” Relief (Apr. 13, 2021) (“Stipulation”). We requested these filings to assist us in determining the appropriate scope and manner of future proceedings.

Respondents’ Response deviated from the issues set forth in the Order and advanced various legal arguments challenging the constitutionality of this proceeding, the Commission’s authority to consider facts outside of the Complaint under Rule 3.12(b)(2), and statutory

limitations on relief requiring Respondents to affirmatively engage in specific conduct in the future. *See* Respondents' Response to Complaint Counsel's Statement of Additional Material Facts (June 1, 2021) ("Response"). The Response did clarify Respondents will not: (1) accept or agree to the legality of any of the relief in the Notice of Contemplated Relief (Response at 8-10), or (2) introduce any additional facts in this matter outside of those alleged in the Complaint (*Id.* at 10).

Complaint Counsel has requested an extension of time to file their reply. *See* Motion to Extend Date for Complaint Counsel's Reply to Respondents' Response to Complaint Counsel's Statement of Additional Material Facts (June 7, 2021). Rule of Practice 4.3(b) provides the Commission may extend time limits prescribed in an order "for good cause shown." 16 C.F.R. § 4.3(b). We find Complaint Counsel has demonstrated good cause for extending the date for filing their reply to June 21, 2021 because the original briefing schedule did not anticipate that Respondents' Response would include numerous legal arguments requiring a more thorough submission than a brief reply.

Respondents have also moved to strike Complaint Counsel's Statement of Additional Material Facts on the ground that it was untimely. Response at 5. However, Complaint Counsel submitted their filing on time in accordance with 16 C.F.R. § 4.3(a). Accordingly,

IT IS HEREBY ORDERED that Complaint Counsel's Motion to Extend their Reply Date to June 21, 2021 is **GRANTED**. And

IT IS FURTHER ORDERED that Respondents' Motion to Strike Complaint Counsel's Statement of Additional Material Facts included in their Response to Complaint Counsel's Statement of Additional Material Facts is **DENIED**.

By the Commission.

April J. Tabor
Secretary

SEAL:

ISSUED: