

PUBLIC

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

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In the Matter of	)	
	)	
Health Research Laboratories, LLC,	)	
a limited liability company,	)	Docket No. 9397
	)	
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,	)	
	)	
Respondents.	)	

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**ORDER DENYING RESPONDENTS' MOTION FOR ACCEPTANCE OF  
CONTESTED STIPULATED CEASE AND DESIST ORDER**

**I.**

On January 13, 2021, Respondents Health Research Laboratories, LLC (“HRL”), Whole Body Supplements, LLC (“WBS”), and Kramer Duhon (collectively, “Respondents”) filed a Motion for Acceptance of Contested Stipulated Cease-and-Desist Order (“Motion”).<sup>1</sup> Federal Trade Commission (“FTC” or “Commission”) Complaint Counsel filed an Opposition to the Motion on January 25, 2021 (“Opposition”).<sup>2</sup> For the reasons set forth below, the Motion is DENIED.

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<sup>1</sup> By email correspondence, Respondents requested a hearing on their Motion. That request is denied.

<sup>2</sup> On January 27, 2021, Respondents filed a reply to the Opposition that failed to comply with the requirements of Commission Rule 3.22(d) and will not be considered. *See* 16 C.F.R. § 3.22(d) (providing in pertinent part that “[t]he moving party shall have no right to reply,” unless permitted by the ALJ, and such replies “shall be permitted only in circumstances where the parties wish to draw the [ALJ’s] attention to recent important developments or controlling authority that could not have been raised earlier in the party’s principal brief.”).

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## II.

The Complaint in this matter alleges that Respondents “disseminated or caused to be disseminated advertising and promotional materials” for four supplements that the FTC contends were “not substantiated at the time the representations were made,” and that such unsubstantiated representations constitute deceptive advertising in violation of sections 5 and 12 of the FTC Act. Complaint ¶¶ 7, 9, 11, 13, 15, 17, 19 and 21. Respondents assert that they ceased all advertising and promotion of these supplements more than one year ago and have no intention of disseminating any advertising or promotional materials for the supplements in the future. Motion at 1-2. Respondents state that they are willing to stipulate to the entry of a cease and desist order to this effect. Thus, Respondents request the entry of a cease and desist order directing that Respondents will (1) “cease and desist’ from disseminating or causing to be disseminated all advertising or promotional materials for all dietary supplement products referenced in the Complaint . . . , as well as any substantially similar products” and (2) “cease and desist from selling or causing to be sold all dietary supplement products referenced in the Complaint . . . , as well as any substantially similar products.” Motion at 2.

On its face, the proposed cease and desist order does not purport to be a proposed final settlement of the pending matter. Moreover, Respondents explicitly state that the requested cease and desist order “is not a settlement agreement and it is submitted without condition or concession from the FTC.” Motion at 2. As authority for entry of the proposed order by the Administrative Law Judge (“ALJ”), Respondents cite to Commission Rules 3.42(c)(6), (c)(8) and (c)(12). Although Respondents contend that entering the proposed cease and desist order is within the authority of the ALJ, Respondents request in the alternative that the ALJ refer the Motion to the Commission.<sup>3</sup> Motion at 3 n.4.

Complaint Counsel contends that Respondents’ requested relief is procedurally and substantively improper. Among other grounds, Complaint Counsel argues that the entry of cease and desist orders has been delegated to the Commission under the FTC Act and that the Commission has not further delegated this power to the ALJ. Opposition at 4-5. Furthermore, Complaint Counsel argues, Respondents’ proposed cease and desist order is substantively deficient for failure to include necessary findings of fact and/or conclusions of law. Opposition at 5-6. Complaint Counsel further argues that alleged deficiencies in Respondents’ proposed cease and desist order could make the order difficult to enforce under Section 19 of the FTC Act,

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<sup>3</sup> Respondents’ alternative request asks the ALJ to “refer” the Motion to the Commission in the event it is determined that the ALJ is not authorized to enter the proposed cease and desist order. This is interpreted as an alternative request to “certify” the Motion, which is the correct terminology under the FTC rules. *See* Rule 3.22(a) (“During the time a proceeding is before an Administrative Law Judge, all other motions shall be addressed to and decided by the Administrative Law Judge, if within his or her authority. . . . The Administrative Law Judge shall certify to the Commission forthwith any other motion upon which he or she has no authority to rule.”).

PUBLIC

15 U.S.C. § 57b, should Respondents violate the order in the future. Opposition at 7-8.<sup>4</sup>

### III.

Section 5(b) of the FTC Act provides that if, after a hearing, the Commission determines that a violation of the FTC Act has occurred, “it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition or such act or practice.” 15 U.S.C. § 45(b). By Commission Rule 0.14, the Commission has delegated to Administrative Law Judges “the initial performance of statutory fact-finding functions and initial rulings on conclusions of law . . . .” 16 C.F.R. § 0.14. The Administrative Law Judge’s initial decision responsibilities also include framing an appropriate cease and desist order. 16 C.F.R. § 3.51(c)(1) (providing that an initial decision shall include findings of facts, conclusions of law, “and an appropriate rule or order”).

The ALJ powers cited by Respondents as authority for entry of the proposed order are not on point. Commission Rule 3.42 falls under the subheading “Hearings” and relates to the powers and duties of the Administrative Law Judge “to conduct fair and impartial hearings, to take all necessary action to avoid delay in the disposition of proceedings, and to maintain order.” 16 C.F.R. § 3.42(c). “[T]o that end,” Administrative Law Judges shall have all powers necessary, including, as set forth in the sections relied upon by Respondents: (6) “To regulate the course of the hearings and the conduct of the parties and their counsel therein;” (8) “To consider and rule upon, as justice may require, all procedural and other motions appropriate in an adjudicative proceeding, including motions to open defaults;” and (12) “To take any action authorized by the rules in this part or in conformance with the provisions of the Administrative Procedure Act as restated and incorporated in title 5, U.S.C.” 16 C.F.R. § 3.42(c)(6), (8), (12).

Respondents’ request is a novel one. Respondents do not cite any case or other precedent for the entry of a “contested stipulated cease and desist order.” Respondents do not cite any FTC rule that authorizes a one-sided consent order for partial relief in an otherwise continuing and contested case.<sup>5</sup> Moreover, as submitted by Respondents, the proposed cease and desist order

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<sup>4</sup> Pursuant to 15 U.S.C. § 57b(a)(2): “If any person, partnership, or corporation engages in any unfair or deceptive act or practice (within the meaning of section 45(a)(1) [of 15 U.S.C.]) with respect to which the Commission has issued a final cease and desist order which is applicable to such person, partnership, or corporation, then the Commission may commence a civil action against such person, partnership, or corporation in a United States district court or in any court of competent jurisdiction of a State.” If the Commission establishes a violation, the court may order appropriate relief, which “may include, but shall not be limited to, rescission or reformation of contracts, the refund of money or return of property, the payment of damages, and public notification respecting the rule violation or the unfair or deceptive act or practice, as the case may be . . . .” 15 U.S.C. § 57b(b).

<sup>5</sup> The proposed cease and desist order does not, for example, require Respondents to notify customers who had purchased the supplements at issue in the past or contain any clear fencing-in relief that would prohibit Respondents from making unsubstantiated disease claims or health benefit claims for other products in the future. Compare Complaint, Notice of Contemplated Relief.

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contains no findings of fact, including as to jurisdiction,<sup>6</sup> and the material facts are disputed. *See, e.g.,* Answer ¶¶ 5, 14-22.

The Commission rule that most closely relates to Respondents' effort herein is Rule 3.25, which permits a respondent, without first acquiring the agreement of complaint counsel, to file a motion submitting a proposed consent order for consideration. 16 C.F.R. § 3.25(c).<sup>7</sup> Moreover, such proposed consent order need not resolve all claims. 16 C.F.R. § 3.25(b).<sup>8</sup> When the matter is pending before the Administrative Law Judge, the ALJ "shall certify the motion and proposal to the Commission" if the ALJ makes "a written determination that there is a reasonable possibility of settlement." 16 C.F.R. § 3.25(c). In the instant case, even if Respondents' motion were viewed as a motion under Rule 3.25, certification would be improper because the present record fails to support a finding of a reasonable possibility of settlement. Respondents explicitly disclaim that the proposed cease and desist order is in furtherance of any settlement of this action, in whole or in part. Motion at 2 ("This stipulation is not a settlement agreement . . ."). For its part, Complaint Counsel believes that, "settlement is not reasonably possible for many reasons[.]" Opposition at 5 n.16.

For all the foregoing reasons, the Motion is DENIED.

ORDERED:



D. Michael Chappell  
Chief Administrative Law Judge

Date: February 1, 2021

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<sup>6</sup> See 15 U.S.C. § 45(b) (providing that the Commission "shall state its findings as to the facts" with respect to any cease and desist order). *See also* 16 C.F.R. § 2.32 ("Every agreement in settlement of a Commission complaint shall contain, in addition to an appropriate proposed order, either an admission of the proposed findings of fact and conclusions of law submitted simultaneously by the Commission's staff or an admission of all jurisdictional facts and an express waiver of the requirement that the Commission's decision contain a statement of findings of fact and conclusions of law.").

<sup>7</sup> Rule 3.25(c) states in part: "If a consent proposal . . . has not been executed by complaint counsel, and the matter is pending before the Administrative Law Judge, he or she shall certify the motion and proposal to the Commission upon a written determination that there is a reasonable possibility of settlement."

<sup>8</sup> Rule 3.25(b) states in part: "If the consent proposal . . . resolves only some of the charges in adjudication, the motion required by this paragraph shall so state and shall specify the portions of the matter that the proposal would resolve."