

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

*In the Matter of*

BASIC RESEARCH, LLC,  
a limited liability company;

A.G. WATERHOUSE, L.L.C.  
a limited liability corporation,

KLEIN-BECKER USA, LLC,  
a limited liability company;

NUTRASPORT, LLC,  
a limited liability company;

SÖVAGE DERMALOGIC LABORATORIES, LLC,  
a limited liability company;

**Docket No. 9318**

BAN, LLC,  
a limited liability corporation, also doing  
business as BASIC RESEARCH, L.L.C.,  
OLD BASIC RESEARCH, L.L.C.,  
BASIC RESEARCH, A.G. WATERHOUSE,  
KLEIN-BECKER USA, NUTRA SPORT, and  
SOVAGE DERMALOGIC LABORATORIES,

DENNIS GAY,  
individually and as an officer of the  
limited liability corporations,

Ph.D, (collectively “Respondents”), through undersigned counsel, and pursuant to 16 C.F.R §3.11(c), Move for a More Definite Statement (“Motion”), and in support state as follows.

## **I. INTRODUCTION**

The FTC alleges that Respondents are responsible for various acts or practices that are deceptive or unfair in connection with certain advertisements. The administrative complaint does not provide a clear and concise factual statement sufficient to inform each Respondent with reasonable definiteness about the type of specific acts or practices alleged to violate the FTC Act. As such, Respondents do not know with any degree of sufficiency the specific charges leveled against each of them. For example, Respondents cannot ascertain FTC’s intended meaning and usage of certain terms, such as: “reasonable basis,” “rapid,” “substantial,” “clinical testing,” “visibly obvious,” or “causes,” and it fails to assert which (if st,va.0002 TctF do96 Tw[ascr(b TJ1ents”)59d11



may move for a more definite statement of the charges against it before filing an answer.” 16 C.F.R. §3.11(c).

Here, due to the Commission’s failure to define key elements of its operative allegations, the Complaint fails to contain “a clear and concise factual statement sufficient to inform each respondent with reasonable definiteness of the type of acts or practices alleged to be in violation of the law.” 16 C.F.R. 3.11(c). Specifically, in its Complaint, the FTC has levied allegations against Respondents that accuse them of deceptive or unfair acts stemming from their marketing materials. Although the Complaint cites extensively from these marketing materials, the Complaint fails to clarify the following terms in a manner that allows Respondents to form an answer to the allegations.

A. *“Reasonable Basis”*

With respect to each of the products involved, the FTC has alleged that the Respondents lacked a “reasonable basis” for including various representations in their marketing material. Nowhere has the Commission defined the substance of that term. As such, Respondents are forced to guess at what standard the Commission staff seeks to enforce against them. Simply alleging that Respondents failed to possess a “reasonable basis” that substantiated their representations – without articulating what constitutes a reasonable basis – makes it impossible for Respondents to argue otherwise, much less argue that the nature, quantum or quality of the substantiation was, in fact, appropriate. Until the Commission defines “reasonable basis” as applied to each specific representation it has challenged, the Respondents are unable to evaluate, defend and prepare their case.

B. *“Rapid”*

With respect to the Topical Gels discussed in the administrative complaint, the Commission alleges that Respondents had no reasonable basis that substantiated their claims

D. “*Clinical Testing*”

The term “clinical testing: appears in Complaint paragraphs 24, 26, 32 & 41.

In paragraph 24 the Commission states that “...published, clinical testing does not prove that Cutting Gel causes rapid and visibly obvious fat loss in areas of the body to which it is applied.” With respect to the allegation, which clinical testing shows the claims are not supported? Respondents do not understand which “clinical tests” allegedly do not prove the advertised claims.

In paragraph 26 the Commission states, “...published, clinical testing does not prove that Tummy Flattening Gel causes rapid and visibly obvious fat loss in areas of the body to which it is applied.” With respect to the allegation, which clinical testing shows the claims are not supported? Respondents do not understand which “clinical tests” allegedly do *not* prove the advertised claims.

In paragraph 32 (A) the Commission states that “clinical testing does not prove that Leptoprin causes weight loss of more than 20 pounds, including as much as 50, 60, or 147 pounds, in significantly overweight users.” With respect to the allegation, which clinical testing shows the claims are not supported? Respondents do not understand which “clinical tests” allegedly do *not* prove the advertised claims.

In paragraph 32 (B) the Commission states that “clinical testing does not prove that Leptoprin causes loss of substantial, excess fat in significantly overweight users.” With respect to the allegation, which clinical testing shows the claims are not supported? Respondents do not understand which “clinical tests” allegedly do *not* prove the advertised claims.

In paragraph 41, the Commission states that “clinical testing does not prove that PediaLean causes substantial weight loss in overweight or obese children.” With respect to the

allegation, which clinical testing shows the claims are not supported? Respondents do not understand which “clinical tests” allegedly do *not* prov -ows the





**SUPPLEMENTAL CERTIFICATE OF SERVICE**

I certify that *timely*