

3. Complaint Counsel object to Respondent's requests for admissions to the extent they seek

~~information prepared in anticipation of litigation which each disclaims of the relevance~~

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

10. Complaint Counsel object to Respondent's requests for admissions to the extent they fail to distinguish between the "Federal Trade Commission" and Complaint Counsel and thereby seek information in the possession of the Commissioners, the General Counsel, or the Secretary in his capacity as custodian or recorder of any information in contravention of RULE 3.35(a)(1) because such documents are not in the possession, custody or control of Complaint Counsel.

11. Complaint Counsel object to Respondent's requests for admissions to the extent that

Respondent has employed requests to establish facts that are obviously in dispute or to answer questions of law. See *In re Basic Research LLC*, Docket No. 9318 (Nov. 30, 2004) (citing *Kosta v. Connolly*, 709 F. Supp. 592, 594 (E.D. Pa. 1989)).

12. Complaint Counsel object to Respondent's requests for admissions to the extent that

Respondent has improperly used multiple requests for admissions within a single

enumerated request without the use of discrete subparts thereby understating the total

number of requests for admission actually made

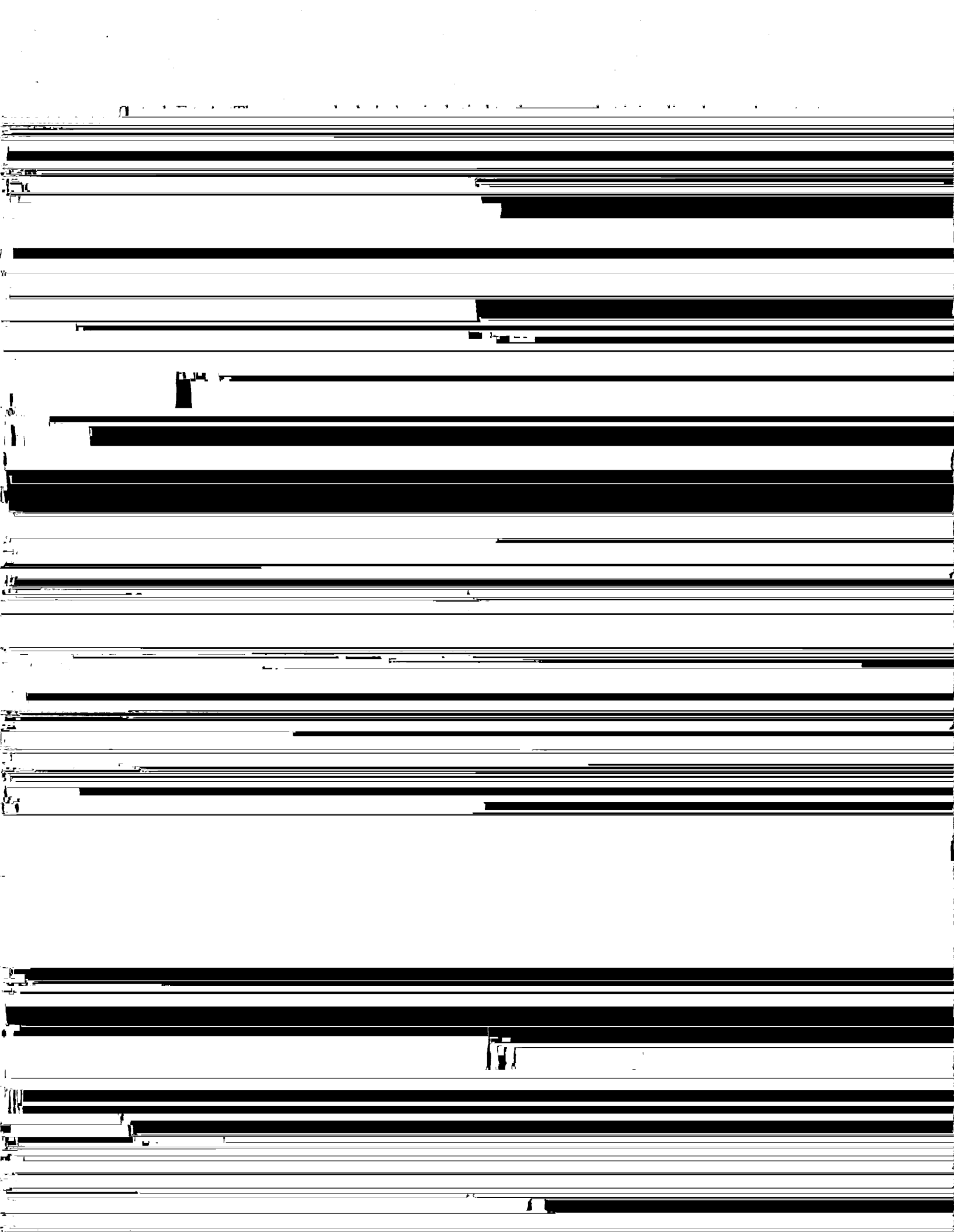
RESPONSES TO REQUESTS FOR ADMISSION

1 [] Admit that the advertisements for Dermalize A.Dc. Cutting Gel and Tummy

Flattening Gel referenced in the Complaint contain caveats (the "Caveats") representing that

exercise . . . is essential in order to achieve any reduction in fat.

Response: Complaint Counsel object to Respondent's requests for admissions to the extent that Respondent has improperly posed multiple requests for admissions within a single



Response as to Tummy Flattening Gel

Subject to and without prejudice the above objections, Complaint Counsel submits that

[REDACTED]

[REDACTED]

Advertisement for Tummy Flattening Gel attached to the Complaint contains the following

with specificity.

Response as to Dermalin-APg

Subject to and without waiving the above objections, Complaint Counsel admit that on

about ten days). Then move on, one target area at a time, until you get that cut, rock-hard, attention-grabbing look you want and deserve!

Compl. Ex. D. The requested admission is denied to the extent that it implies that such

also denied to the extent that it implies that promotional materials for the challenged product do not represent that the product is still effective without reduced caloric intake.

Complaint Counsel further admit that the above-quoted statement may be interpreted as a

to the extent that it implies that consumers understand the confusing usage of the terms set forth in the above-quoted statement.

Response as to Cutting Gel

Subject to and without waiving the above objection, Complaint Counsel admit that an advertisement for Cutting Gel attached to the *Complaint* contains the following statements:

[REDACTED]

General Ex. E. The requested admission is denied to the extent that it implies that such

is

statements appeared in all promotional materials for Tummy Flattening Gel. The requested

this request as ambiguous to the extent that it refers to "advertisements" referenced in the

Complaint" without clarifying whether this phrase is limited to advertisements attached as

Exhibits, or includes other types of advertisements disseminated by Respondents that were

generally described in the *Complaint*. Subject to and without waiving these objections, the request for admission is denied.

51. Admitted. De-Objection. E-3 ("no objections" in the relevant area) - Complaint

... using topical aminophylline compounds.

Response: Complaint Counsel object to Respondent's request for admissions to the extent that Respondent has improperly posed multiple requests for admissions within a single enumerated request, without the use of discrete subparts, thereby understating the total number of requests for admission actually made. Subject to and without waiving this objection, Complaint Counsel are without sufficient information to admit or deny the requested admission. Complaint

~~Respondent's~~ Complaint Counsel object to Respondent's request for admission to the

extent that Respondent has improperly posed multiple requests for admissions within a single

enumerated request without the use of discrete subparts thereby understating the total number of

requests for admission actually made. Subject to and without waiving this objection, Complaint Counsel are without sufficient information to admit or deny the requested admission. Complaint

studies exist and are published. The requested admission is further denied to the extent that it

implies that the identified studies constitute competent and reliable scientific evidence for the

1

[Redacted]

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[Redacted]

[Redacted]

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[Redacted]

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[Redacted]

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[Redacted]

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[Redacted]

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[Redacted]

Response: Complaint Counsel object to this request as vague and ambiguous. The requested admission does not permit a proper or reasonable response. Complaint Counsel further object to this request as speculative. Complaint Counsel object to this request to the extent that it fails to relate to facts that may be personally ascertained by Complaint Counsel. Subject to and without waiving these objections, the request for admission is denied to the extent that it implies that the Topical Fat Reduction Study assessed whether the reported average loss of girth in circumference “would be visible to the naked eye.” Further denied to the extent that the request admission implies that the “third clinical trial in the Topical Fat Reduction Study” actually took

place as part of the Topical Fat Reduction Study. This trial appears to be the very same trial

previously reported in the Regional Fat Loss Study. The Topical Fat Reduction Study apparently

19. [10] Admit that the fourth clinical trial in the Topical Fat Reduction Study was double blinded

Response: Complaint Counsel object to Respondent's request for admission to the

Response: Admitted to the extent that, on average, the subjects who completed the fourth clinical trial (*i.e.*, the first new trial) in the Topical Fat Reduction Study reportedly lost

weight of 10.5 pounds compared to the 10.1 pounds lost with aminorex. (0.77 ± 0.66 lbs for the 10.5

Response: Complaint Counsel object to this request as vague and ambiguous. The

requested admission does not permit a proper or reasonable response. Complaint Counsel further

"study 6" reportedly "used the same methodology as Study 5." which was reportedly double-

blinded. The Topical Fat Reduction Study does not appear to state that study 6 was double-blinded. The request for admission is further denied to the extent that the request admission implies that the "sixth clinical trial in the "Topical Fat Reduction Study" actually was the sixth trial that took place during that Study. This trial was only the third trial conducted during the Topical Fat Reduction Study. The Topical Fat Reduction Study was conducted during the period of [redacted]

with a list of facts that may be reasonably expected to be obtained by a diligent search.

without waiving these objections, the request for admission is denied to the extent that it implies

41. [29] Admit that all the trials in the Regional Fat Loss Study were clinical trials.

Response: Admitted that all the trials in the Regional Fat Loss Study were reportedly

42. [30] Admit that in one of the trials in the Regional Fat Loss Study, aminophylline was

applied to human subjects.

Response: Admitted to the extent that the Regional Fat Loss Study consented that

a cream containing colforsin (forskolin), aminophylline, and yohimbine was applied to 5 human

described therein, including the study involving aminobutyls, demonstrate that local fat can be

49. [37] Admit that the First Fiber Study involved 20 obese subjects.

~~Response: Admitted that the trial actually involved 20 obese women. Denied that~~

extent that the requested admission suggests that any of the subjects were children. None of the
~~subjects were children according to the First Fiber Study.~~

dexfenfluramine versus ephedrine. Complaint Counsel further deny the requested admission to the extent that the requested admission fails to distinguish between persons who reportedly

completed the study and the 20% of subjects who reportedly dropped out. The requested

admission is also denied to the extent that it may imply that the subjects did not receive dietary

that Respondents have served. Additionally, Complaint Counsel object to this request to the extent that Respondent has failed to define the term "autonomous" particularly as we have

[REDACTED]

[REDACTED]

[REDACTED]

Commission's published and publicly available policies address the evidence that constitutes

competent and reliable scientific evidence on a case-specific basis, see, for example, *In re Schering Corp.*, 118 F.T.C. 1046 (1991); *Thompson Medical Co.*, 98 F.T.C. 136 (1981); *In re Bristol-Myers*, 102 F.T.C. 21 (1983), as well as to the extent that the FTC's publication, "Dietary

Supplements: An Advertising Guide for Industry" specifically addresses this issue.

60. [47] Admit that there exists no objective FTC standard to which a developer,

manufacturer, marketer or seller contemplating substantiation claims in the context of

nutraceutical weight loss products can look for guidance concerning the threshold level of

has exceeded the numeric limit on requests for admission established in the *Scheduling Order*.

Complaint Counsel further object to this request because it does not seek "an admission of the truth of any matters relevant to the pending proceeding." RULE 3.32. Complaint Counsel also object to Respondent's request to the extent that it demands discovery regarding other Commission actions. See *In re Sterling Drug, Inc.*, Docket No. 8919, 1976 FTC LEXIS 460

FTC Docket No. 8919, 1976 FTC LEXIS 460

reasonable grounds to believe that the Defendant is a member of the organization that

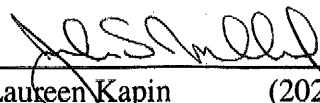
the subject of the Garvey case.

~~Reasons: Complaint Criminal subject to this report for admission as Defendant of C~~

actually made. Complaint Counsel also object to Respondent's request to the extent that it relates to other Commission actions. See *In re Sterling Drug, Inc.*, Docket No. 8919, 1976 FTC LEXIS 460 (Mar. 17, 1976); *In re Kroger*, Docket No. 9102, 1977 FTC LEXIS 55 (Oct. 27, 1977); *In re American Home Prods. Corp.*, Docket No. 8918, 1976 FTC LEXIS 544 (Feb. 11, 1976).

71. [53] Admit that a person's reliance on the . . . Ephedrine Study . . . as substantiation for

Dated: December 1, 2004


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Bureau of Consumer Protection
Federal Trade Commission
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CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of December, 2004, I caused *Complaint Counsel's Response to*

Respondent Dennis Gay's First Set of Requests for Admissions to be served and filed as follows: