

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES
WASHINGTON, D.C.



BASIC RESEARCH, LLC
C WATERHOUSE LLC

SECRETARY

PUBLIC

subpoena recipients were identified first in FTC's letter of July 25, 2005 (attached as Exhibit A).

The destruction of Corporate Respondents' unique and valuable trade

confidential financial information caused damages that must be weighed against a liability

determination, if any, by the hearing officer. That weighing is an

compound penalty against the Corporate Respondents resulting from a failure to compensate

financial records (Exhibits R and 15 and 42 to December 6 and January 31st filings, respectively) are not public and are treated as highly confidential financial information. See Respondents' Response to Order to Show Cause, Declaration of Carla Fobbs at 4-6.⁵ The product formulations (Exhibit 11 to January 31st filing) are closely guarded trade secrets of the Corporate Respondents and their disclosure allows competitors to easily market identical products, both in this country

On April 6, 2005, in response to three motions by Respondents' counsel concerning those disclosures, the Presiding Officer issued an order certifying those motions to the Commission and staying the proceedings. The Presiding Officer's order found, "[n]umerous statutes and rules prohibit and punish the unauthorized disclosure of confidential information obtained by the Commission." Id. at 4 (citing 18 U.S.C. § 1905; 15 U.S.C. § 46(f); 15 U.S.C. § 50). The order further acknowledged: "Courts routinely order companies to provide confidential information to the Commission, noting the protections of statutes and rules that prohibit and punish the unauthorized disclosure of confidential information obtained by the Commission." Id. at 4 (citing FTC v. MacArthur, 532 F.2d 1135, 1143 (7th Cir. 1976); FTC v. Owens-Corning Fiberglass Corp., 626 F.2d 966, 970 n.6 (D.C. Cir. 1980); In re FTC Line of Business Report

[D]isclosure of aggregate data would allow Respondents to contact the operators of the

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domains might assist in identifying the operators of the

Upon receipt of the subpoena forms, the subpoenas were prepared and served on October 21.

Motion to Quash.

II. PERTINENT RULES

Rule 3.34(b) states in pertinent part:

A subpoena *duces tecum* may be used by any party for purposes of discovery, for obtaining documents for use in evidence, or for both purposes, and shall specify with reasonable particularity the materials to be produced.

16 C.F.R. § 3.34(b).

Section (c) of Rule 3.34, permitting motions to quash, states, in pertinent part:

Any motion **by the subject of a subpoena** to limit or quash the subpoena shall be filed within the earlier of ten (10) days after service thereof or the time for compliance therewith. Such motions shall set forth all assertions of privilege or other factual and legal objections to the subpoena including all appropriate

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documents and is based entirely on hypothetical assumptions. Complaint Counsel lack the requisite first-hand knowledge to determine the nature and extent of record-keeping for the companies subject to the subpoena necessary to determine whether the requests are indeed

disseminated it, exacerbating the effects of the disclosure. The FTC's July 25, 2005 letter was the first time following the December 6th and January 31st filings that Corporate Respondents had notice of those parties that did in fact access the trade secret and confidential financial information. Complaint Counsel's recitation of the deadline for

The Commission's June 17th Order acknowledged that its decision was a "remedy

6. Indeed, for three of the documents the Presiding Officer stated that "disclosure of this information would result in a clearly defined, serious competitive injury to Respondents." April 6 Order at 9. There is no "would" in this equation. The disclosure has happened and the damages are accruing. The destruction of the trade secrets has resulted in a clearly defined, serious competitive injury to Corporate Respondents. The Presiding Officer acknowledged that

"numerous statutes and rules prohibit and punish the unauthorized disclosure of trade secrets."

critical” to ascertain whether those companies’ access of that information resulted in any republication, downloading, copying, printing or further dissemination of Corporate

Plaintiffs’ trade secrets and confidential financial information.

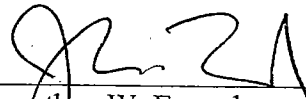
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Counsel's motion to quash should therefore be denied.

IV. CONCLUSION

For the reasons stated above, Corporate Respondents respectfully request that his Honor deny Complaint Counsel's Motion to Quash.

Respectfully Submitted,



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A.G. Waterhouse, LLC
Klein-Becker USA LLC

Sovage Dermalogic Laboratories, LLC,
BAN, LLC

Date submitted: November 7, 2005

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES
WASHINGTON, D.C.

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
PHYTOTHERAPY RESEARCH
LABORATORY, and
MITCHELL K. FRIEDLANDER,
Respondents

Docket No. 9318

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of November, 2005 I caused the Respondents' Opposition to Complaint Counsel's Motion to Quash Corporate Respondents' Subpoenas to be filed and served as follows:

- 1) an original and one paper copy filed by hand delivery and one electronic copy in PDF format filed by electronic mail to

Donald S. Clark

U.S. Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Room H-159
Washington, D.C. 20580
Email: secretary@ftc.gov

2) two paper copies delivered by hand delivery to:

The Hon. Stephen J. McGuire
Chief Administrative Law Judge
U.S. Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Room H-112
Washington, D.C. 20580

3) one paper copy by first class U.S. Mail to:

James Kohm
Associate Director, Enforcement
U.S. Federal Trade Commission
601 New Jersey Avenue, N.W.
Washington, D.C. 20001

4) one paper copy by first class U.S. mail and one electronic copy in PDF format
by electronic mail to:

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EXHIBIT A



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the General Counsel

July 27, 2005

Samuel Lewis, Esq.
Feldman Gale

Miami, Florida 33131-4332

Re: Basic Research et al., D. 9318

Dear Mr. Lewis:

As directed by D. 9318, you are to

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EXHIBIT B

Service: Get by LEXIS®

Citation: 1977 U.S. Dist. LEXIS 16178

1977 U.S. Dist. LEXIS 16178 * 1977-1 Trade Cas. (CCH) P61,400

Federal Trade Commission (on relation of Kaiser Aluminum & Chemical Corp.) v. Dresser
Industries, Inc.

Misc. No. 77-44.

April 26, 1977, Filed

CASE SUMMARY

PROCEDURAL POSTURE: Defendant Federal Trade Commission (FTC) ...

enforcement proceeding must be narrow, because of the important governmental interest in the expeditious investigation of possible unlawful activity. In the usual case such matters will be summary in nature in order to facilitate the enforcement of

responsibilities. [More Like This Headnote](#)

[Administrative Law](#) > [Separation & Delegation of Power](#) > [Subpoenas](#) 

HN2 At least in this circuit, subpoena enforcement proceedings are considered to be summary in nature unless there appears some compelling reason for a fuller procedure. [More Like This Headnote](#)

[Administrative Law](#) > [Separation & Delegation of Power](#) > [Subpoenas](#) 

HN3 Fed. R. Civ. P. 81(a)(3) provides: These rules apply to proceedings to compel the giving of testimony or production of documents in accordance with a subpoena issued by an officer or agency of the United States under any statute of the United States except as otherwise provided by statute or by rules of the district court or by order of the court in the proceedings. [More Like This Headnote](#)

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subpoena: the question is whether the demand is unduly burdensome or unreasonably broad. Some burden on subpoenaed parties is to be expected and is necessary in furtherance of the agency's legitimate inquiry and the public interest. The burden of showing that the request is unreasonable is on the subpoenaed party. Further, that burden is not easily met where, as here, the agency inquiry is pursuant to a lawful purpose and the requested documents are relevant to that purpose. Broadness alone is not sufficient justification to refuse enforcement of a subpoena

threatens to unduly disrupt or seriously hinder normal operations of a business [More Like This Headnote](#)

matter on April 7, 1977, only Dresser remained in possession of the

At the April 7 hearing, two of the pending motions were decided from the bench. First, the court denied Dresser's motion to stay the proceedings or, in the alternative, to transfer them to the Northern District of Texas, where Dresser had earlier filed an action for declaratory relief from the subpoena. Second, the court granted Kaiser's motion to intervene pursuant to Rule 24(a) of the Federal Rules of Civil Procedure. Argument was then heard on the remaining matters: (1) the motion by Dresser for civil discovery and (2) Dresser's opposition to the petition for subpoena enforcement. With respect to its motion for civil discovery, Dresser contends that the circumstances presented here require the granting of such

no discovery as they involve purely legal issues, such as whether the Commission has in fact failed to follow its rules of procedure. Others appear not to be genuine issues at all. For example, counsel for Kaiser revealed at the hearing that Dresser had been offered essentially the same terms for compliance with the subpoena as the other companies, but that Dresser had refused these terms while the other companies had accepted them.

fact, which was not contradicted by Dresser, it is difficult to see how Dresser can allege that the other companies were the beneficiaries of a favorable or preferential settlement.

This case features none of the egregious circumstances found in a case like *United States v.*

Wright Motor Co., 536 F.2d 1090 (5th Cir. 1976). Nor does it appear that Dresser has been

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Federal Trade Commission v. Texaco, Inc., supra at 39-40.


Based on an uncontradicted affidavit, Dresser claims that the cost of compliance with the subpoena would be \$ 400,000. Even if the affidavit were totally convincing in the statistics which it presents, this would not necessarily satisfy Dresser's burden.

that compliance with the subpoena would "unduly disrupt or seriously threaten normal operations." This Dresser has not done. As the court [*14] of appeals observed in Federal Trade Commission v. Texaco, Inc., supra at 40, it is not insignificant that other companies were willing and able to comply with similar subpoenas without undue effort. Here all the other companies which were subpoenaed, including those with subpoenas virtually identical to that of Dresser, have agreed to comply, a fact which strains the credibility of Dresser's claim of unreasonable burden. It may very well be that Dresser's burden is greater than that of the other subpoenaed companies, but that is to be expected from the fact that Dresser is the dominant firm in the industry with by far the largest volume of sales. Indeed, it is Dresser's dominance in the industry which has led to the subpoena.

* Signal Legend:

 - Warning: Negative treatment is indicated

 - Positive treatment is indicated

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