



UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of)
)
)
BASIC RESEARCH, L.L.C.,)
A.G. WATERHOUSE, L.L.C.,)
KLEIN-BECKER USA, L.L.C.,)
NUTRASPORT, L.L.C.,)
SOVAGE DERMAL OCS)

Docket No 9312

consequence to this matter . . . [and] not reasonably related to the allegations of the Complaint, to the proposed relief, or to the defenses of any respondent.” Order Denying Resp’ts’ Mot. for Leave to Add Expert Witness, Nov. 22, 2005, at 2. The Court recognized that “a party may not

introduce extrinsic evidence by contradiction on a collateral matter” and ruled

”

that “[e]xtrinsic evidence on this collateral issue will not be permitted.” *Id.* This Court denied Respondents’ *Motion for Leave to Add an Expert Witness*, and also concluded that Respondents had failed to demonstrate cause for excluding Complaint Counsel’s expert, sanctioning Complaint

inaccurate statement of fact, but Respondents advanced that contention in their own omnibus *Motion* and that contention was not material to the Court's decisions.

Respondent Friedlander's motions *in limine* and for reconsideration or certification are defective and unavailing for many additional reasons. First, his additional motions are untimely

2002 was not retreated. See Compt. Counsel's Opp'n to Pet. Oct. 20, 2005; Opp'n to Resn'ts'

and now complain that the Court erred in reciting their own previous contention.

identifying studies that he understood to have been withdrawn from publication.” *Id.* at 3. The Court’s finding effectively dismissed Respondents’ credibility arguments, without descending into the separate question of whether one expert or another would be found more credible or reliable after the hearing in this matter.

Respondents claim unjust prejudice, but adverse rulings alone do not constitute such

This Court has stated that the credibility of testifying experts in this matter will be assessed during or after trial. *See* Order on Resp'ts' Mots. to Strike Expert Reports, Dec. 7, 2005, at 2

and the Court Duly Considered and Denied His *Motion*

1. Mr. Friedlander's Previous *Motion* Was Without Merit

In his previous *Motion*, Respondent Friedlander belatedly joined Respondents' omnibus *Motion to Exclude a Witness*, advanced redundant and invalid sur-reply arguments, and did so improperly, without leave of Court, in the guise of a purported *Motion for Sanctions* submitted without conferring with Complaint Counsel.³ Respondent Friedlander's *Motion* failed to rebut the material facts. Instead, Mr. Friedlander offered schoolyard taunts. *See* Resp't Friedlander, Mot.

³ Mr. Friedlander's "Motion" was a "Motion for Sanctions" which he submitted after the court had already ruled on the motion to exclude a witness. He attempted to renege on his promise to submit a motion to exclude a witness.

condemning Dr. Heymsfield's extensive list of publications as a list of "some publications," *id.*

*27 ~~with~~ admitting that his own proposed witness, Defendant Marney, submitted a revised

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grounds. First, as a threshold issue, Respondent Friedlander is not entitled to raise this argument

~~in support of its motion for reconsideration. See *Microsoft Dev. Comm. v. Softbank Holdings, Inc.*, Civ. No. 00~~

**G. The Collateral Issue that Respondents Persist in Litigating
is Not Eligible for, and Does Not Warrant, an Interlocutory Appeal**

Given that Respondents' Motions are devoted to a litigating matter that this Court has

1 "1-1-11" and "1-1-11" are also included in the "1-1-11" category.

Defendant's Motion for Judgment as a Matter of Law is denied. The Court foreclosed any

reasonable argument that this topic could be determinative of this litigation, let alone "a wide spectrum of cases." No "controlling question" is present, and the reconsideration of the

Defendant's Motion for Judgment as a Matter of Law is denied. The Court foreclosed any

Respectfully submitted,

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Dated: December 16, 2005

Division of Enforcement
Federal Trade Commission
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Counsel Supporting the Complaint

ATTACHMENT A

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305 B.R. 762

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(Cite as: 305 B.R. 762)

<KeyCite Citations>

United States Bankruptcy Court,
D. South Carolina.

In re **Richardo J. MUNGO a/k/a Richardo Mungo**

[2] Bankruptcy k3030

51k3030

Application of local bankruptcy rule governing the

No. C/A 03-06648-W.

thus, requirements of the rule are not subject to waiver
by a debtor absent court approval.

US Bankr. Ct. Dist. D.S.C. Rule 0010-1(d)

Background: Rule to show cause was entered
requiring Chapter 7 debtor, his local counsel, and his

[3] Bankruptcy k3030

51k3030

Local bankruptcy rule governing the responsibilities

motion to withdraw as counsel or otherwise advised

have no legal guidance, and ghost-writing taxes the

~~efficiency and administration of the courts~~ Fed Rules

Civ Proc Rule 11 28 U.S.C.A. - ILS Bankr.Ct Rules

45k62

Ghost-writing occurs when a member of the bar

Rules of Prof.Conduct, Rules 3.3(a)(2), 8.4(d).

1113 Docket # 13162

interest shall remain the responsible attorney of record for all purposes including the representation of the client at all hearings and in all matters that arise in conjunction with the case. Upon motion which details the reasons for the request for withdrawal and which details the portion of any retainer which has been earned, and after notice to the debtor, all creditors and parties in interest and a hearing the court may permit an attorney to

resources to correct. Finally, when litigants are properly represented they are more likely to obtain the full benefits of the bankruptcy laws and follow necessary procedures.

[4][5][6] In this case, the facts clearly demonstrate that McMaster violated this Local Rule. McMaster serves as an attorney of record in Mungo's personal Chapter 7 bankruptcy case. As local counsel,

pleadings is prohibited and may result in sanctions and possibly suspension or disbarment from practice before this Court.

In light of the attendant circumstances involved in this case and the limited precedent within the District

virtually every attorney licensed to practice law would be eligible for contempt proceedings. Attorneys cross the line, however, when they gather and anonymously present legal arguments, with the actual and constructive knowledge that the work will be presented in some similar form in a motion

CERTIFICATION OF REVIEWING OFFICIAL

I certify that I have reviewed the attached public filing *Complaint Counsel's Consolidated*

Opposition to Respondents' Motions for Reconsideration, Clarification, or Certification of November 22nd Orders Denying Respondents' Motions to Exclude an Expert, Sanction Counsel, Add a Witness, and
Protect Discovery prior to its filing to ensure the proper use and redaction of materials subject to the

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of December, 2005, I caused *Complaint Counsel's Consolidated Opposition to Respondents' Motions for Reconsideration, Clarification, or Certification of*