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

In the Matter of

BASIC RESEARCH, LLC
A.G. WATERHOUSE, LLC
KLEIN-BECKER USA, LLC
NUTRASPORT, LLC
SOVAGE DERMALOGIC LABORATORES, 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.

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ORDER DENYING RESPONDENTS' MOTION IN LIMINE TO PRECLUDE COMPLAINT COUNSEL FROM INTRODUCING EVIDENCE OF EXPRESS CLAIMS OR NEW IMPLIED CLAIMS FOR THE PURPOSES OF ESTABLISHING LIABILITY

Respondents filed a motion in limine seeking to preclude Complaint Counsel fiom introducing evidence of express claims or new implied claims for purposes of establishing liability ("Motion") on February 28,2005. Complaint Counsel filed its opposition ("Opposition") on March 9,2005.

Respondents seek to prohibit Complaint Counsel from introducing evidence of any
express claims made by Respondents in the challenged advertisements and fiom introducing any implied claims not previously identified in the Complaint or from advertisements not contained in the Complaint, for purposes of establishing liability under the Federal Trade Commission Act ("FTC Act"). Motion at 1-2,8-14, 18. Respondents also seek to limit Complaint Counsel fiom pursuing a falsity theory in connection with non-establishment claims or a reasonable basis

theory in connection with establishment claims and from amending their pleadings to add such allegations. Motion at 14-1 8.

Complaint Counsel asserts

disseminated advertisements and labeling for [the six products], including but not necessarily limited to the attached exhibits." Complaint, 77 13,27,36. This language in the Complaint does not limit consideration to only implied