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 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 PHYTOTHEWY RESEARCH LABORATORY, and MITCHELL K. FRIEDLANDER,
Respondents.

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Complaint Counsel filed a motion in limine seeking to preclude Respondents fiom introducing exhibits or testimony regarding customer satisfaction ("Motion7') on March 1,2005. Respondents filed their opposition ("Opposition") on March 14,2005.

Complaint Counsel seeks to prohbit Respondents fiom introducing proposed exhbits
and testimony regarding customer satisfaction. Motion at 1. Complaint Counsel argues that "[elven if Respondents' proposed exhibits were arguably relevant, their marginal probative value is substantially outweighed by the unnecessary delay and waste of time occasioned by the presentation of these exhibits and testimony" and later states that "Respondents should eliminate the above-referenced exhibits." Motion at 1, 5. Complaint Counsel does not attach copies of the exhibits, but rather provides the stmunary description of each proposed exhbit that was included by Respondents in their proposed exhibit list dated February 18,2005.

Respondents assert that Complaint Counsel's motion is premised upon the assumption
that the exhibits are offered for the purposes of bolstering Respondents' substantiation and establishing the efficacy of the challenged products. Opposition at 2. Respondents contend that the exhibits will be relevant to the case and request that the Court reserve ruling on the admissibility of the challenged exhibits until trial. Opposition at 2.

"Motion in limine" refers "to any motion, whether made before or during trial, to exclude anticipated prejudicial evidence before the evidence is actually offered." Luce v. United States, 469 U.S. 38,40 n.2 (1984); see also In re Motor Up Corp., Inc., Docket 9291, 1999 FTC LEXIS 207, at * 1 (August 5, 1999). Although the Federal Rules of Evidence do not explicitly authorize in limine rulings, the practice has developed pursuant to the court's inherent authority to manage the course of trials. Luce, 469 U.S. at 41 n.4. Motions in limine are generally used to ensure evenhanded and expeditious management of trials by eliminating evidence that is clearly inadmissible. Bouchard v. American Home Products Corp., 213 F. Supp. 2d 802,810 (N.D.
Ohio 2002); Intermatic Inc. v. Toeppen, 1998 WL 102702, at * 2 (N.D. Ill. 1998). Evidence should be excluded on a motion in limine only when the evidence is clearly inadmissible on all potential grounds. Hawthorne Partners v. AT&T Technologies, Inc., 83 1 F. Supp. 1398, 1400 (N.D. Ill. 1993); see also SEC v. US. Environmental, Inc., 2002 WL 3 1323832, at *2 (S.D.N.Y. 2002). Courts considering a motion in limine may reserve judgment until trial, so that the motion . is placed in the appropriate factual context. US. Environmental, 2002 WL 3 1323832,

be relevant. It is premature at this stage to prohibit the introduction of the proposed exhbits. However, Respondents should be prepared at trial to identify the relevancy of the exhibits to an issue other than the existence of satisfied customers. In addition, Respondents should be prepared to demonstrate that these exhibits, lke all exhibits, are otherwise admissible and are not hearsay.

Complaint Counsel has not presented an adequate basis for precluding Respondents fiom introducing evidence regarding customer satisfaction. Accordingly, Complaint Counsel's motion is DENIED. This ruling on the motion in limine does not imply a finding regarding the weight to be given to the evidence nor does it preclude appropriate objections during trial.

ORDERED:

*Chief ~dministrative Law Judge

Date: January 9,2006