

UNITED STATES OF AMERICA
BEFORE 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 DERMALOGIC LABORATORIES, L.L.C.,
BAN, L.L.C., d/b/a BASIC RESEARCH, L.L.C.,
OLD BASIC RESEARCH, L.L.C.,
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

DOCKET NO, 9318

**AGREEMENT CONTAINING
CONSENT ORDER**

This agreement, by and between Basic Research, L.L.C., A.G. Waterhouse, L.L.C., Klein-Becker USA, L.L.C., Nutrasport, L.L.C., Sovage Dermalogic Laboratories, L.L.C., BAN, L.L.C., d/b/a Basic Research, L.L.C., Old Basic Research, L.L.C., 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”), having been represented or advised by counsel, and Counsel Supporting the Complaint, is entered into in accordance with the Commission's Rule governing consent order procedures.

IT IS HEREBY AGREED by and between respondents and Counsel Supporting the Complaint that:

1. Respondents have been served with a copy of the complaint issued by the Federal Trade Commission charging them with violations of Sections 5(a) and 12 of the Federal Trade Commission Act, and have filed answers to the complaint, denying the allegations set forth therein.
2. Respondents admit all the jurisdictional facts set forth in the complaint.
3. Respondents waive:
 - a. Any further procedural steps;
 - b. The requirement that the Commission’s decision contain a statement of findings of fact and conclusions of law, which the parties agree will not be entered;
 - c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; provided that this waiver does not affect respondents’ rights to assert any defenses in any Commission action not enforcing this order;
 - d. Respondents further waive and release any claim respondents may have against the Federal Trade Commission and the employees, agents, or representatives of the FTC arising from this enforcement action; and

- e. Respondents shall cause a dismissal of the litigation entitled *Carter-Reed Company, LLC v. Federal Trade Commission*, pending in the United States District Court for the District of Utah, Civil No. 2:04cv001142DB, and agree that it will not be re-filed to challenge or contest the validity of this Order, or any FTC agency action that has been taken against respondents prior to this agreement.
4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it will be placed on the public record for a period of thirty (30) days and information about it publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify respondents, in which event it will take such action as it may consider appropriate, or issue and serve its decision in disposition of the proceeding.
5. This agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in the complaint, or that the facts as alleged in the complaint, other than the jurisdictional facts, are true.
6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Rule 3.25(f) of the Commission's Rules, the Commission may, without further notice to respondents, (1) issue its decision containing the following order in disposition of the proceeding, and (2) make information about it public. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery of the decision and order to each respondent's address as stated in this agreement by any means specified in Rule 4.4(a) of the Commission's Rules shall constitute service. Respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order. No agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
2. "Competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.
3. "Endorser" and "endorsement" shall mean as defined in 16 C.F.R. 2.55.0(b).
4. "Food" and "drug" shall mean as defined in Section 15 of the Federal Trade Commission Act, 15 U.S.C. § 55.
5. Unless otherwise specified, "respondents" shall mean Basic Research, L.L.C., A.G. Waterhouse, L.L.C., Klein-Becker USA, L.L.C., Nutrasport, L.L.C., Sovage Dermalogic Laboratories, L.L.C., BAN, L.L.C., d/b/a Basic Research, L.L.C., Old Basic Research, L.L.C., Basic Research, A.G. Waterhouse, Klein-Becker USA, Nutra Sport, and Sovage

Dermalogic Laboratories, Dennis Gay, Daniel B. Mowrey, and Mitchell K. Friedlander, and each of the above's successors and assigns, and their officers, agents, representatives, and employees.

6. "Substantially similar product" shall mean any product that is substantially similar in ingredients, composition, and properties.

IT IS ORDERED

I.

provided that all respondents are primarily liable, jointly and severally, for the payment amount, including any default payment amount if the payment is in default, unless and until payment is made in full.

B. In the event of any default in payment, which default continues for ten (10) days beyond the due date of payment, the amount due, together with interest, as computed pursuant to 28 U.S.C. § 1961 from the date of default to the date of payment, shall immediately become due and payable.

C. The funds paid, together with any accrued interest, shall, in the discretion of the Commission, be used by the Commission to provide direct redress to purchasers of any of the

with consumers or with governmental or consumer protection organizations.

X.

IT IS FURTHER ORDERED that respondents shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondents shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

XI.

IT IS FURTHER ORDERED that respondents shall notify the Commission at least thirty (30) days prior to any change in the respondent corporation(s) that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

XII.

IT IS FURTHER ORDERED that respondents shall, within ninety (90) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

XIII.

This order will terminate twenty (20) years from the date of its issuance, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had

never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Signed this _____ day of _____, 2006.

By RESPONDENTS

Dennis Gay
Individually and as Manager of
Corporate Respondents A.G. Waterhouse,
LLC, BAN, LLC, Basic Research, LLC,
Klein- Becker USA, LLC, Nutrasport, LLC,
and Sovage Dermalogic Laboratories, LLC

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