

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Lina M. Khan, Chair**
 Noah Joshua Phillips
 Rebecca Kelly Slaughter
 Christine S. Wilson

In the Matter of

**Health Research Laboratories, LLC,
a limited liability company,**

**Whole Body Supplements, LLC,
a limited liability company, and**

**Kramer Duhon,
individually and as an officer of
Health Research Laboratories, LLC,
and Whole Body Supplements, LLC.**

DOCKET NO. 9397

**ORDER DENYING FINAL DECISION UNDER RULE 3.12(b)(2) AND DENYING
SUMMARY DECISION**

The Complaint in this case alleges that Health Research Laboratories, LLC (“HRL”), Whole Body Supplements, LLC (“WBS”), and their owner Kramer Duhon (collectively, “Respondents”) violated the Federal Trade Commission Act by making unsubstantiated health claims concerning their Black Garlic Botanicals, BG18, The Ultimate Heart Formula (“UHF”), and Neupathic. Decision under Respondents) 0.76 (s) (t)-2 0.76 neaTd[(R)-3 ReT2-2 (g)1e(R)-ek (rn[(e) [(a)6 (d)2 (m)3

Therefore, this matter will be remanded to the Chief Administrative Law Judge for additional discovery, evidentiary hearing, and initial decision, consistent with our decision. Before remanding, however, we will provide opportunity for Complaint Counsel to amend the Complaint.

I. PROCEDURAL HISTORY

A. The Complaint

On November 13, 2020, the Commission issued an administrative Complaint charging HRL, WBS, and Kramer Duhon, individually and as an owner and officer of the aforementioned companies, with violating Sections 5(a) and 12 of the FTC Act. The Complaint alleges that HRL's and WBS's advertisements conveyed expressly or by implication, and without substantiation, claims that the Black Garlic Botanicals, BG18, and UHF products: (a) prevent or reduce the risk of and treat cardiovascular disease, including by lowering blood pressure, improving blood flow, reducing cholesterol, or decreasing arterial plaque; (b) prevent or reduce the risk of and treat atherosclerosis, including by reducing cholesterol or decreasing arterial plaque; and (c) cure, treat, or mitigate hypertension, including by decreasing arterial plaque or lowering blood pressure. Complaint ¶¶ 14-19. The Complaint also alleges that HRL's advertisements conveyed expressly or by implication, and without substantiation, claims that the Neupathic dietary supplement cures, treats, or mitigates diabetic neuropathy, including by improving blood circulation, or eliminating or alleviating diabetic nerve pain and discomfort. ¶¶ 20-21. To support these claims, the Complaint attaches and extensively quotes from promotional mailers sent by Respondents to consumer residences. ¶¶ 7, 9, 11, 13. The Complaint also includes a Notice of Contemplated Relief, which contains various prohibitions on representations, record-keeping and notice requirements, and other fencing-in provisions. at 14-15.

B. Proceedings before the ALJ

On December 4, 2020, Respondents filed an Answer denying the alleged violations and asserting a variety of defenses. On February 12, 2021, Respondents moved for leave to amend their Answer to admit all of the material allegations pursuant to Commission Rule 3.12(b)(2), which provides:

If the respondent elects not to contest the allegations of fact set forth in the complaint, the answer shall consist of a statement that the respondent admits all of the material allegations to be true. Such answer shall constitute a waiver of hearings as to the facts alleged in the complaint, and together with the complaint will provide a record basis on which the Commission shall issue a final decision containing appropriate findings and conclusions and a]TJ0

On March 30, 2021, Respondents filed an Amended Answer stating: “Pursuant to 16 CFR § 3.12(b)(2), Respondents elect not to contest the allegations of fact set forth in the complaint. Respondents admit all of the material allegations to be true.” Amended Answer at 1. Respondents also reserved the right to submit proposed findings of fact and conclusions of law. The sole remaining defense asserted that the FTC’s administrative process and structure violates the Constitution. 1-2.

The next day, on March 31, 2021, Respondents filed a motion asking the ALJ to either issue a new scheduling order setting out the deadlines for final briefing or transfer the case to the Commission for issuance of a final decision. Expedited
Motion to Enter New Scheduling Order or, i

their position on the items in the Notice of Contemplated Relief, as the Respondents' prior stipulation had been limited to fencing-in relief that would be ordered by the ALJ.

Complaint Counsel

The parties filed their initial submissions on August 20, 2021. Respondents' proposed findings of fact consisted of four short statements summarizing the Complaint and Respondents' admissions and concessions. Respondents' Findings of Fact and Conclusions of Law at 2-3. Complaint Counsel, on the other hand, submitted a statement of material facts citing the Complaint as well as sources outside the Complaint, with the effect of converting their filing into a motion for summary decision. Complaint Counsel's Proposed Findings of Fact, Statement of Material Facts as to Which There is No Genuine Issue, and Proposed Conclusions of Law ("Complaint Counsel's Proposed Findings and Statement of Material Facts").

On September 10, 2021, Respondents filed their opposition to Complaint Counsel's motion for summary decision. Respondents contested a number of Complaint Counsel's factual statements, including some key propositions that appeared as allegations in the Complaint. The disputed allegations included (1) that Respondents' advertisements represented that their products prevented, reduced the risk of, treated, or mitigated certain diseases or health concerns, and (2) that those representations were not substantiated at the time they were made. Respondents' Opposition to Summary Disposition and Reply Findings of Fact, Conclusions of Law, and Brief at 13-14 ("Opposition to Summary Disposition") (disputing proposed findings of fact ¶¶ 23, 33, 34, 42, 43, 50, 59, 67, which cited Complaint ¶¶ 14-21). Respondents claimed that their Amended Answer had not admitted these allegations because they were "in the legal counts, not the allegations of fact, of the Complaint."

Sybil (Case 1:21-cv-00001-PTJ) Filed 09/24/21 Page 45 of 45

*5. Misleading claims include those that are not substantiated at the time they are disseminated. *Amway Corp. v. FTC*, 160 F.T.C. 652, 709 (2015) (“Because an objective claim about a product’s performance or efficacy carries with it the express or implied representation that the advertiser had a reasonable basis to substantiate the claim, failure to have a reasonable basis is misleading.”), *FTC v. Amway Corp.*, 851 F.3d 599 (6th Cir. 2017); *FTC v. Colgate-Palmolive Co.*, 104 F.T.C. 648, 839 (1984) (advertisers must “have a reasonable basis for advertising claims before they are disseminated”).

Here, the Complaint alleges that Respondents’ advertisements conveyed that Black Garlic Botanicals, BG18, and UHF products prevent or reduce the risk of and treat cardiovascular disease, prevent or reduce the risk of and treat atherosclerosis, and cure, treat, or mitigate hypertension. Complaint ¶¶ 14, 16, and 18. The Complaint also alleges that HRL’s advertisements conveyed that Neupathic cures, treats, or mitigates diabetic neuropathy. ¶ 20. Further, the Complaint alleges that these claims were not substantiated at the time they were made. ¶¶ 15, 17, 19, 21 Respondents now challenge these core allegations of the Complaint, while urging that, pursuant to Commission Rule 3.12(b)(2), the Commission enter a cease and desist order limited to prohibiting the acts or practices alleged in the Complaint on the basis of the Complaint and the Amended Answer.² Complaint Counsel have requested a summary decision, pursuant to Commission Rule 3.24 and our order dated July 30, 2021, that Respondents have engaged in deceptive advertising.

Rule 3.12(b)(2) applies when a respondent “elects not to contest the allegations of fact set forth in the complaint.” 16 C.F.R. § 3.12(b)(2). Although Respondents’ Amended Answer states that they admit all of the material allegations in the Complaint, Respondents now assert that allegations regarding what claims were conveyed by the ads and the lack of substantiation have not been admitted and are in fact contested. Opposition to Summary Disposition at 13-14. The allegations that Respondents made health claims without substantiation are factual and essential; without them, the Complaint would not state a cause of action. If Respondents do not admit these allegations, then they do not admit the material allegations of fact in the Complaint, and the matter

Complaint Counsel urge us to disregard Respondents' late-claimed factual disputes and issue a final decision based on Respondents' admissions in the Amended Answer and concessions in other filings. While there may be some justification for Complaint Counsel's arguments, we find it more appropriate to accept Respondents' current, clear statements that they dispute the material allegations at issue, and we will allow them an opportunity to contest the disputed issues. Respondents are now asserting that they have not admitted a lack of substantiation, thereby depriving Complaint Counsel of their asserted proof that substantiation was absent³ and precluding summary decision on the central issue of substantiation. Although we might be able to ascertain the claims conveyed by Respondents' advertisements from materials in the summary decision record, we are concerned that, as a result of Respondents' perceived admissions, the issue has not yet been squarely joined. We find it preferable to make the determination of co3

IT IS FURTHER ORDERED that, within ten days after service of a motion filed pursuant to the preceding ordering paragraph, Respondents may file a response to the motion.

By the Commission.

April J. Tabor
Secretary

SEAL:

ISSUED: November 19, 2021