

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

In the Matter of

**DYNAMIC HEALTH OF FLORIDA, LLC,
CHHABRA GROUP, LLC,
DBS LABORATORIES, LLC,
Limited liability companies,**

**VINCENT K. CHHABRA,
Individually and as an officer of
Dynamic Health of Florida, LLC,
And Chhabra Group, LLC, and**

**JONATHAN BARASH,
Individually and as an officer of
DBS Laboratories, LLC.**

DOCKET NO. 9317

RESPONDENTS' MOTION TO COMPEL COMPLIANCE WITH 16 C.F.R. § 3.35

COMES NOW, Respondents Dynamic Health of Florida LLC, Chhabra Group, LLC, and Vineet Chhabra, and respectfully request that this Honorable Court enter an order compelling the Federal Trade Commission to comply with 16 C.F.R. § 3.35 concerning its First Set of Interrogatories to Respondents and its First Request to Respondents for Production of Documentary Materials and Tangible Things, Exhibits A and B respectively. A memorandum in support is attached.

Respectfully Submitted,
/s/ Max Kravitz

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MEMORANDUM

I. The Federal Trade Commission's Interrogatories and Document Requests Should be Limited to Fifty (50) as set forth in the August 2, 2004 Scheduling Order.

The Federal Trade Commission rule relating to interrogatories is found in 16 C.F.R. § 3.35. Like its counterpart in the Federal Rules of Civil Procedure (Rule 33), § 3.35 allows a party to serve interrogatories upon an opposing party, "not exceeding twenty five in number, including all discrete subparts." 16 C.F.R. § 3.35; FRCP 33(a). In this case, the Scheduling Order provided that each party could serve fifty interrogatories and fifty document requests. As explained in *Duncan v. Paragon Publishing*, 204 F.R.D. 127 (S.D. Ind. 2001):

Federal Rule of Civil Procedure 33 (a) expressly forbids a party from serving more than twenty-five interrogatories upon another party "[w]ithout leave of court or written stipulation." *Walker v. Lakewood Condominium Owners Association*, 186 F.R.D. 584, 585 (C.D. Ca. 1999), quoting Rule 33(a). Responding to interrogatories is "inherently expensive and burdensome." *Herdlein Technologies, Inc. v. Century Contractors, Inc.*, 147 F.R.D. 103, 105 (W.D.N.C. 1993). The rule was amended in 1993 to reduce the frequency and efficiency of interrogatory practice since the device can be costly and may be used as a means of harassment. Advisory Committee's Note to the 1993 Amendment to Rule 33. See also *Safeco of America v. Rawstron*, 181 F.R.D. 441, 443 (C.D. Cal. 1998); *Capacchione v. Charlotte-Mecklenburg Schools*, 182 F.R.D. 486, 492 (W.D.N.C. 1998).

204 F.R.D. at 128.

In this case, the FTC cannot evade the fifty question limitation on interrogatories and document requests set forth in the August 2, 2004 by compounding multiple interrogatories or document requests into a single request. *Collaboration Properties v. Polycom*, 224 F.R.D. 473, 474-75 (N.D. Cal. 2004). For example, the actual number of interrogatories contained in a discovery request is determined by the number of distinct subjects for which individual responses are sought. *Id.* at 475, quoting MOORE'S FEDERAL PRACTICE § 33.30.

In *Polycom, supra*, the Court was presented with several interrogatories, each of which requested an individual response for twenty-six different products. *Id.* at 474-75. The serving

party claimed that each of the requests constituted a single interrogatory since only one question was asked. *Id.* The receiving party argued that, since each interrogatory actually requested twenty-six separate responses, each question qualified as twenty-six separate interrogatories for the purposes of discovery. *Id.* The Court concluded that under the rules of discovery, each of the questions constituted twenty-six separate interrogatories. *Id.*

The interrogatories submitted by the FTC in this case are materially indistinguishable from those utilized in *Polycom*, and as a result the government should be required to bring its discovery requests into compliance with § 3.35 and the August 2, 2004 Scheduling Order. One need only look at the second interrogatory submitted by the government to see that the FTC has grossly and purposely exceeded the limits on discovery:

1. Interrogatory Two identifies fourteen individuals and firms.¹ FTC's First Set of Interrogatories ("FTC Int.") at 1.
2. Section (a) of Interrogatory Two then requests that Respondents specifically identify the manner in which each individual participated in ten separate aspects of Respondents' business practices.² FTC Int. at 2. As a result, Interrogatory 2(a) contains 140 distinct subparts.³
3. Section (b) of Interrogatory Two then requests that Respondents specifically identify the manner in which each of the fourteen individuals and entities were compensated, adding another fourteen separate inquiries, bringing the total to 154 distinct subparts. FTC Int. at 2.
4. Section (b) of Interrogatory Two then requests that Respondents specifically identify the individuals who were authorized to make the payments in question to the fourteen individuals and entities. FTC Int. at 2. This adds an additional fourteen inquiries, bringing the grand total of distinct subparts in Interrogatory Two to 168.

¹ 1. Hill, Knowlton & Samcor 2. Transmedia Group 3. Nutrition Formulators 4. Highland Laboratories 5. Pharmachem Laboratories 6. Health Tek Laboratories 7. Executive Label, Inc. 8. Vineet K. Chhabra 9. Dr. Alberto Guzman 10. Guy Regalado 11. Randi Swatt 12. Gil Herrera 13. Arent Fox 14. Jonathan Barash.

² 1. Formulation 2. Manufacturing 3. Advertising 4. Promotion 5. Labeling 6. Offering for Sale 7. Sale 8. Distribution 9. Customer Service 10. Fulfillment.

³ Ten individual interrogatories, each separately directed to fourteen different individuals or entities.

Interrogatory Two, standing by itself, constitutes 168 separate interrogatories for the purposes of civil discovery. *See Polycom, supra*. Because the FTC is limited to a total of fifty interrogatories and document requests, Respondents find it unnecessary to conduct an precise analysis of the thirteen additional numbered interrogatory items or compile precisely Complaint Counsel's number of document requests. For present purposes, Document Request Two comprises, at a minimum, twenty-six (26) separate document requests; perhaps up to seventy-two (72).

II. The Federal Trade Commission is Required to Submit Interrogatory and Document Requests to Each Respondent Individually.

The FTC submitted its Interrogatories to "Respondents," although Vineet Chhabra, Dynamic Health of Florida, LLC, and Chhabra Group, LLC are separate Respondents in this action (although represented out of economic necessity by the same attorney at this point in time). On page 5 of the Interrogatories describing "Definitions, Complaint Counsel states:

14. **"Respondents"** means Dynamic Health of Florida, LLC, Chhabra Group, LLC, and Vineet K. Chhabra, individually and collectively, including all of their operations under assumed names.⁴

15. **"You"** or **"Your"** means the **Respondents** or **Respondents'**, both individually and collectively, unless otherwise noted.

In addition, the "Instructions" assert:

5. All information submitted in response to these Interrogatories shall be clearly and precisely identified as to the **Respondent(s)** who produced them.

Each Respondent is not vicariously responsible for the attestations of the other Respondents. The Interrogatories, Definitions and Instructions are unintelligible and vague. Respondents have no idea whether three separate and independent responses from each

⁴ Respondents have no idea what Complaint Counsel means by the words "including all of their operations under assumed names." Respondents intend to ignore this language since it is unintelligible. If there are additional business entities that Complaint Counsel believes should be parties, Complaint Counsel can move the Court to amend its Complaint accordingly.

Respondent are requested or required for these Interrogatories, or whether it is the intention of Complaint Counsel to hold the answer of any Respondent as the answer for all Respondents “individually and collectively.” If so, this would be improper. It should not be the task of Respondents’ counsel to attempt to rewrite Complaint Counsel’s interrogatory and document requests and then fashion answers and submissions to Respondents’ revisions. Instead, Complaint Counsel’s interrogatories and document requests should be presented to Respondent in an intelligible fashion that are limited in number to the fifty (50) as specified in the August 2, 2004 Scheduling Order.

A separate set of interrogatories should have been submitted for each Respondent.⁵ For example, Vineet Chhabra presently has criminal charges pending in the United States District Court for the Eastern District of Virginia, Alexandria Division, Brinkema, J., presiding. He has not been sentenced as of this time (although he anticipates a sentence of 33 months as set forth in the plea agreement). He retains his fifth amendment privilege against self-incrimination notwithstanding his guilty plea. *Mitchell v. United States*, 526 U.S. 314 (1999)(neither guilty plea nor plea colloquy waive a defendant’s privilege against self-incrimination). See also, Respondents Joint Motion for Protective Order Pursuant to Civ. R. 26(C) and For Stay of Proceedings, July 27, 2004, at 4-7 and cases cited in n.2.

Generally, corporate or business entities do not possess a fifth amendment privilege (although under the unique facts of this case, Chhabra Group, LLC may have a valid fifth amendment privilege). However the interrogatory requests do not distinguish between corporate/business and individual Respondents. It is counsel’s understanding that attorneys for

⁵ Rule 3.35 provides that “[a]ny party may serve upon any other party written interrogatories.” There are three party-Respondents to this action – Vineet Chhabra, Dynamic Health of Florida, LLC, and Chhabra Group, LLC. If Interrogatory Number 2 was meant for each Respondent individually, which by no means can be inferred from the pleading, then Interrogatory Number Two would comprise 504 separate request.

the Federal Trade Commission have been in contact with the Assistant United States Attorneys handling the Chhabra case in Virginia and have been encouraged, in some fashion, to pursue this litigation.

Respondents therefore respectfully request that this Honorable Court enter an order requiring the FTC to (1) serve interrogatories and document requests on each individual party, and (2) bring its requests for interrogatories and documents into compliance with § 3.35, FRCP 33 and the August 2, 2004 Scheduling Order before Respondents are required to answer.

WHEREFORE, Respondents respectfully request that this Honorable Court grant the aforementioned relief.⁶

Respectfully Submitted,

/s/ Max Kravitz

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⁶ The objections set forth in this pleading are in addition to objections set forth in Respondents' interrogatory and document responses sent under separate cover on November 29, 2004.

CERTIFICATE OF SERVICE

This is to certify that on November 27, 2004, I caused a copy of the attached

RESPONDENTS' MOTION TO COMPEL COMPLIANCE WITH 16 C.F.R. § 3.35

to be served upon the following persons by facsimile, email or U.S. First Class Mail:

(1) the original and one (1) paper copy filed by Federal Express, and one electronic copy via email to:

Donald S. Clark, Secretary
Federal Trade Commission, Room 159
600 Pennsylvania Avenue, NW
Washington, DC 20580
E-mail: secretary@ftc.gov

(2) two (2) paper copies served by Federal Express and one electronic copy via email to:

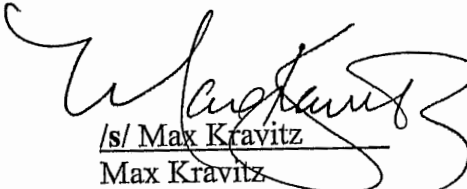
The Honorable Stephen J. McGuire
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
E-mail: dgross@ftc.gov

(3) one (1) electronic copy via email and one (1) paper copy via U.S. mail to:

Janet Evans
Syd Knight
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
E-mail: jevans@ftc.gov

I further certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original, and that a paper copy with an original signature is being filed with the Secretary of the Commission by being sent by U.S. mail.

Dated: Columbus, Ohio
November 27, 2004


/s/ Max Kravitz
Max Kravitz

information concerning an entity or an individual shall be considered and separate and independent interrogatory request.

(3) Each Respondent shall have fourteen days (14) after service of interrogatory requests and document requests to file objections to interrogatories and document requests submitted to Respondents on October 25, 2004.

Stephen J. McGuire
Chief Administrative Law Judge

Date: November ____, 2004.

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

In the Matter of

DYNAMIC HEALTH OF FLORIDA, LLC,
CHHABRA GROUP, LLC,
DBS LABORATORIES, LLC,
VINEET K. CHHABRA, a/k/a VINCENT K. CHHABRA, and
JONATHAN BARASH,
Respondents.

DOCKET NO. 9317

COMPLAINT COUNSEL'S FIRST SET OF INTERROGATORIES TO RESPONDENTS

Pursuant to Rule 3.35 of the Federal Trade Commission's Rules of Practice, Complaint Counsel hereby requests that Respondents Dynamic Health of Florida, LLC, Chhabra Group, LLC, and Vineet K. Chhabra respond to these Interrogatories within 20 days and furnish the requested information to Complaint Counsel at the Federal Trade Commission, 601 New Jersey Ave., N.W., Suite 3213, Washington, D.C. 20001, or at such time and place as may be agreed upon by all counsel.

I. INTERROGATORIES¹

1. **Identify** all companies owned, managed, or controlled in whole or in part by Respondent Vineet K. Chhabra at any time after January 1, 2001, that played a role in the formulation, manufacture, advertising, promotion, labeling, offering for sale, sale, distribution, customer service, or fulfillment, relating to any dietary supplement (**including** Dynamic Health of Florida, LLC, Chhabra Group, LLC, DBS Laboratories, LLC, DBS Labs LLC, Chhabra International Ltd., Dynamic Health International, Kreating, LLC, Chhabra Internet Support Center, LLC, Chhabra Internet Fulfillment Services, LLC, Chhabra Management, LLC, Metability of Florida, LLC, CG Fulfillment, USA Prescription); for each such company, set forth Mr. Chhabra's title(s) and ownership interest, and describe the services provided by the company with regard to dietary supplements.

2. For each of the following individuals or entities: Hill Knowlton & Samcor, TransMedia Group, Nutrition Formulators, Highland Laboratories, Pharmachem Laboratories, Health Tek Laboratories, Executive Label, Inc., Vineet K. Chhabra, Dr. Alberto Guzman, Guy Regalado, Randi Swatt, Gil Herrera, Arent Fox, and Jonathan Barash, state:

¹ Note: Read and comply with the Definitions and Instructions that follow.

- a. what services the individual or entity provided in connection with the formulation, manufacture, advertising, promotion, labeling, offering for sale, sale, distribution, customer service, or fulfillment, relating to any dietary supplement offered for sale with a label bearing the name "DBS Labs" or "Dynamic Health"; and
 - b. how each individual or entity was compensated for their services; if compensation was in the form of monetary payments, describe the account(s) from which the payment was made (by providing the name and address of the financial institution, the name of the account holder, and the account number) and **identify** the individual(s) with authority to authorize payments from the account(s) at the time compensation was provided.
3. To the extent not set forth in response to Interrogatories 1 and 2, above, **identify** and provide a detailed description of the roles and responsibilities of all **persons (including consultants)** who participated in the creation, development, evaluation, approval, modification, and dissemination of **promotional materials**, media placement or dissemination, telemarketing services, or product pricing strategy for the **challenged products**.
4. **Identify** and provide a detailed description of **communications** between you and all **persons** consulted by you in an effort to evaluate the substantiation for any draft or final **promotional materials** for the **challenged products**.
5. **Identify** and provide a detailed description of **communications** between you and any print, television, or radio media, or any website designer, developer, manager, hoster, or any online service, **referring or relating to** any claims or representations in any proposed or disseminated **promotional materials** for the **challenged products**.
6. **Disclose** the total amount, in dollars, that was spent to advertise, market, or otherwise promote each of the **challenged products**, broken down by each medium used (*i.e.*, television, print, Internet, radio, or other means). (This request **includes**, but is not limited to, all expenditures attributable to the creation, development, evaluation, approval, modification, and dissemination of **promotional materials**.)
7. If you contend that **promotional materials** for the **challenged products** do not make the claims identified in paragraphs 9, 13 and 15 of the Complaint, state the basis for your contention, **including the identification** of any extrinsic evidence, **including market research**, that supports your contention.
8. **Identify** with specificity all dates since January 1, 2003 on which Respondent Vineet K. Chhabra attended an industry trade show **referring or relating to** dietary supplements.
9. State all facts that support each affirmative defense asserted in your Answer to the administrative Complaint issued by the Federal Trade Commission in the above-captioned

matter.

10. For each of the web sites identified in the **CID responses** dated December 12 2003, at Attachment 2, pp. 5-6, state the dates since January 1, 2002 when each web site was prepared, hosted, managed, or operated by any entity owned in whole or in part by Vineet K. Chhabra, directly or indirectly.

11. **Identify** any response in the **CID responses** that **Respondents** consider to be inaccurate or incomplete; for such response(s) provide an accurate or complete response(s).

12. With regard to each sale of dietary supplements identified in the **CID responses** dated February 3, 2004, Bates number DBS 1175, **identify** the entity to whom the purchaser made or was directed to make a payment, and any other entity to whom a payment was made as a result of that purchase.

13. Provide all addresses where any records of the entities request to be identified in response to Interrogatory #1 of Complaint Counsel's First Set of Interrogatories to Respondents are located; for each address, state on what date those records were searched in an effort to **identify** the existence or nonexistence of **documents** responsive to Complaint Counsel's First Request for Production of Documentary Materials and Tangible Things.

14. **Identify** the individual(s) or entity(s) who currently holds the legal right to market or sell any dietary supplement product that was previously marketed with a label bearing the name "DBS Labs" or "Dynamic Health," and state the terms under which those rights were transferred.

II. DEFINITIONS

1. "**And**" as well as "**or**" shall be construed both conjunctively and disjunctively, as necessary, in order to bring within the scope of any Specification in this First Set of Interrogatories all information that otherwise might be construed to be outside the scope of the request.

2. "**Arent Fox**" means the law firm of Arent Fox Kintner Plotkin & Kahn, PLLC, its wholly or partially owned subsidiaries, parent companies, unincorporated divisions, joint ventures, partnerships, operation under assumed names, predecessors, affiliates, and all directors, officers, partners, employees, agents, attorneys, consultants, franchisees, independent distributors, and any other **person** or entity, working for or on behalf of the foregoing at any time, **including** but not limited to Brian P. Waldman and James A. Kaminski.

3. "**Challenged products**" shall mean the products identified as Pedia Loss and Fabulously Feminine in the administrative Complaint issued by the Federal Trade Commission in

the above-captioned matter, both individually and collectively.

4. **"CID responses"** shall mean the responses to the CIDs filed with the Federal Trade Commission on December 12, 2003, December 17, 2003, and February 3, 2004 by **Arent Fox** on behalf of DBS Laboratories, LLC.

3. **"Communication(s)"** shall mean any transmission or receipt of facts, information, opinions, or thought, whether conveyed in writing, orally, electronically, or by any other means, **including** written memorializations of oral communications.

4. **"Describe"** or **"disclose"** means to offer a comprehensive, complete, accurate and detailed description, explanation or listing of the matter into which the Interrogatory inquires.

5. **"Document"** means the complete original and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any written, typed, printed, transcribed, taped, recorded, filmed, punched, computer-stored, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated or made, **including** but not limited to any advertisement, book, pamphlet, periodical, contract, file, invoice, memorandum, note, telegram, report, record, handwritten note, working paper, routing slip, package insert, sticker, web page, chart, graph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, agenda, minute, code book, data compilation, tests, reports, clinical studies, test reports, scientific literature, articles, expert opinions, handwritten notes, correspondence, **communications**, electronic mail, electronically stored data, computer (**including** handheld computer) material (**including** print-outs, cards, magnetic or electronic tapes, discs and such codes or instructions as will transform such computer materials into easily understandable form), and video and audio recordings.

6. **"Each"** and **"any"** include **"all,"** so as to have the broadest meaning whenever necessary to bring within the scope of any Specification all information and/or **documents** that might otherwise be construed to be outside its scope.

7. **"Identify"** or **"identification"** means:

(a) when **referring to** a natural **person**, state the full name, present business address and telephone number, or if a present business affiliation or business address is not known, by the last known business and home addresses and business and home telephone numbers;

(b) when **referring to** any other entity, such as a business or organization, state the legal name as well as any other names under which the entity has done business, address, telephone number and contact **person**, if applicable for that entity; and

(C) when referring to a **document** or **communication**, state the full name(s) of the author(s) or preparer(s), the full name of the recipient(s), addressee(s), and/or **person(s)** designated to receive copies, the title or subject line of the **document** or **communication**, a brief description of the subject matter of the **document** or **communication**, the date it was prepared, its present location, and its present custodian.

8. **"Includes"** or **"including"** means **"including but not limited to,"** so as to avoid excluding any information that might otherwise be construed to be within the scope of any Specification.

9. **"Market research"** means all information referring or relating to testing, measuring or assessing consumers' or individuals' interpretation of, understanding of or reaction to an advertisement, draft advertisement, proposed advertisement, proposed advertising text, copy or creative strategy or platform, any other advertising material, product category, product, entity or information conveyed in an advertisement, **including** consumer perception tests, comprehension tests, recall tests, marketing or consumer surveys or reports, penetration tests, audience reaction tests, focus groups and media research.

10. **"Or"** includes **"and,"** and **"and"** includes **"or,"** so as to have the broadest meaning whenever necessary to bring within the scope of any Specification all information or **documents** that might otherwise be construed to be outside its scope.

11. **"Person"** or **"Persons"** means all natural persons, corporations, partnerships or other business associations, and all other legal entities, **including** all members, officers, predecessors, assigns, divisions, affiliates and subsidiaries.

12. **"Promotional material"** shall mean any written or oral statement, advertisement, illustration, or depiction that is designed to effect a sale or create interest in the purchasing of goods or services, whether the same appears in a press release, video news release, brochure, newspaper, magazine, pamphlet, leaflet, circular, mailer, book insert, stickers, free standing insert, letter, catalogue, poster, chart, billboard, public transit card, point of purchase display, instructional or education materials, packaging, package insert, package label, film, slide, radio or television broadcast or transmission, Internet or World Wide Web site, streaming video, electronic mail, audio program transmitted over a telephone system, script used to make oral solicitations to consumers, or publication or broadcast in any other medium.

13. **"Referring to"** or **"relating to"** means discussing, describing, reflecting, containing, analyzing, studying, reporting, commenting, evidencing, constituting, setting forth, considering, recommending, concerning, or pertaining to, in whole or in part.

14. **"Respondents"** means Dynamic Health of Florida, LLC, Chhabra Group, LLC, and Vineet K. Chhabra, individually and collectively, **including** all of their operations under

assumed names.

15. "You" or "Your" means the **Respondents** or **Respondents'**, both individually and collectively, unless otherwise noted.
16. The use of the singular **includes** the plural, and the plural **includes** the singular.
17. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.
18. The spelling of a name shall be construed to include all similar variants thereof.

III. INSTRUCTIONS

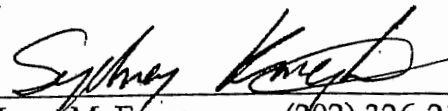
1. Unless otherwise specified, the time period covered by an Interrogatory shall not be limited and all information responsive to the Interrogatory, regardless of dates or time periods involved, shall be provided.
2. Each Interrogatory should be set forth in full preceding the answer to it and should be answered separately and fully in writing, under oath.
3. All answers shall be served within 20 days after service of these Interrogatories.
4. Information covered by these Interrogatories is that which is in your knowledge or possession, or under your actual or constructive custody or control, whether or not such information is located in the files of, or possessed by your individual officers, directors or employees, and whether or not such information is received from or disseminated to any other **person** or entity **including** attorneys, accountants, directors, officers or employees.
5. All information submitted in response to these Interrogatories shall be clearly and precisely identified as to the **Respondent(s)** who produced the information.
6. Where an Interrogatory requests an answer or portion of an answer that has already been supplied in response to another Interrogatory, the answer or portion of the answer need not be supplied a second time. It is sufficient to specify the responses that contain the answer, and supply any additional information necessary to answer the Interrogatory.
7. All objections to these Interrogatories, or to any individual Interrogatory, must be raised in the initial response or are otherwise waived.
8. If you object to any Interrogatory or a part of any Interrogatory, state the Interrogatory or part to which you object, state the exact nature of the objection, and **describe** in

detail the facts upon which you base your objection. If any Interrogatory cannot be answered in full, it shall be answered to the fullest extent possible and the reasons for the inability to answer fully shall be provided. If you object to any Interrogatory on the grounds of relevance or overbreadth, you shall provide all responsive information that is concededly relevant to the parties' claims or defenses or the requested relief. For each Interrogatory that cannot be answered in full, you shall **describe** the efforts made to locate information needed for such answer.

9. If any **documents** or **communications** are not identified in response to an Interrogatory on grounds of privilege, submit together with such claim a schedule of the items withheld which states individually for each item withheld: (a) the type, title, specific subject matter, and date of the item; (b) the names, addresses, positions, and organizations of all authors and recipients of the item; and (c) the specific grounds for claiming that the item is privileged. If only part of a responsive **document** or **communication** is privileged, all non-privileged portions of the item must be identified.

10. These Interrogatories are continuing in character so as to require you to produce additional information promptly upon obtaining or discovering different, new or further information before the close of discovery. Further instructions pertinent to a particular Interrogatory appear in parentheses within or following that Interrogatory.

Respectfully submitted,



Janet M. Evans (202) 326-2125

Sydney M. Knight (202) 326-2162

Division of Advertising Practices

FEDERAL TRADE COMMISSION

600 Pennsylvania Avenue, N.W.

Mail drop NJ-3212

Washington, D.C. 20580

jevans@ftc.gov

sknight@ftc.gov


Fax: (202) 326-3259

CERTIFICATE OF SERVICE

I hereby certify that I have this 25th day of October, 2004 filed and served the attached **COMPLAINT COUNSEL'S FIRST SET OF INTERROGATORIES TO RESPONDENTS** upon the following as set forth below:

- (1) one (1) electronic copy via email and one (1) copy via overnight delivery service to:

Max Kravitz, Esq.
Kravitz & Kravitz, LLC
145 East Rich Street
Columbus OH 43215
TEL: 614-464-2000
FAX: 614- 464-2002
mkravitz@kravitzlawnet.com



Sydney M. Knight

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

In the Matter of

DYNAMIC HEALTH OF FLORIDA, LLC,
CHHABRA GROUP, LLC,
DBS LABORATORIES, LLC,
VINEET K. CHHABRA, a/k/a VINCENT K. CHHABRA, and
JONATHAN BARASH,
Respondents.

DOCKET NO. 9317

**COMPLAINT COUNSEL'S FIRST REQUEST TO RESPONDENTS FOR
PRODUCTION OF DOCUMENTARY MATERIALS AND TANGIBLE THINGS**

Pursuant to Rule 3.37(a) of the Federal Trade Commission's Rules of Practice, Complaint Counsel hereby requests that Respondents Dynamic Health of Florida, LLC, Chhabra Group, LLC, and Vineet K. Chhabra produce the documentary materials and tangible things identified below for inspection and copying within 20 days at the Federal Trade Commission, 601 New Jersey Ave., N.W., Suite 3213, Washington, D.C. 20001, or at such time and place as may be agreed upon by all counsel.

I. SPECIFICATIONS¹

Demand is hereby made for the following documentary materials and tangible things:

1. All documents referring or relating to the structure and management of any company that has played a role in the formulation, manufacture, labeling, advertising, marketing, promotion, offering for sale, sale, distribution, customer service, or fulfillment of any dietary supplement product, including but not limited to Dynamic Health of Florida, LLC, Chhabra Group, LLC, Chhabra International Ltd., Kreating, LLC, Chhabra Internet Support Center, LLC, Chhabra Internet Fulfillment Services, LLC, Chhabra Management, LLC, Metability of Florida, LLC, CG Fulfillment, and USA Prescription, Inc. (This request **includes** but is not limited to **documents** showing articles of incorporation, by-laws, minutes, the date and place of company formation, company form, parent, subsidiary and affiliate companies, and filings with State or Federal corporate regulatory authorities; **documents** showing the names and titles of directors,

¹ Note: Read and comply with the Definitions and Instructions that follow.

officers, supervisors, and managers, and organizational charts; **documents** showing the ownership interests of all owners; **documents** describing the authority, duties, and responsibilities of officers, managers, directors, and supervisors; and any **documents** delegating authority to engage in any act on behalf of Vineet K. Chhabra or act as agent for Vineet K. Chhabra.)

2. **All documents and communications referring or relating to** the duties, responsibilities, and services performed or anticipated to be performed by Dynamic Health of Florida, LLC, Chhabra Group, LLC, DBS Laboratories, LLC, DBS Labs, LLC, Chhabra International Ltd., Dynamic Health International, Kreating, LLC, Chhabra Internet Support Center, LLC, Chhabra Internet Fulfillment Services, LLC, Chhabra Management, LLC, Metability of Florida, LLC, CG Fulfillment, USA Prescription, Inc., Hill Knowlton & Samcor, TransMedia Group, Nutrition Formulators, Highland Laboratories, Pharmachem Laboratories, Health Tek Laboratories, Executive Label, Inc., Vineet K. Chhabra, Dr. Alberto Guzman, Guy Regalado, Randi Swatt, Gil Herrera, Arent Fox, and Jonathan Barash with respect to the formulation, manufacture, labeling, advertising, marketing, promotion, offering for sale, sale, distribution, customer service, or fulfillment of any dietary supplement product.

3. Two complete packages, including the product contained therein, of each of the **challenged products**. (If any product has been sold under more than one label or reformulated, provide two complete packages, including the product contained therein and all packaging inserts, of each version of the product that has been marketed and sold).

4. All labels and **promotional materials** for the **challenged products**, whether in draft or final form.

5. **All documents and communications referring or relating to** draft or final labels and **promotional materials** for the **challenged products**. (This request **includes** but is not limited to contracts, **documents**, and **communications** evidencing the creation, modification, approval, execution, evaluation, dissemination, clearance, or placement of labels and **promotional materials**, and **documents referring or relating to** the contents of draft or final labels and **promotional materials**, **including** but not limited to any claims, messages, or **communication** in any draft or final labels and **promotional material(s)**.)

6. **All documents and communications referring or relating to** the efficacy of the **any dietary supplement relating to female sexual health or children's weight** or any ingredient therein (including but not limited to tests, reports, studies, scientific literature, written opinions, and any other **documents referring or relating to** the amount, type, or quality of testing or substantiation), **including** all **documents and communications** that are relied upon as substantiation for, or that tend to refute, the claims alleged in the **Complaint** (§§ 9, 13, and 15) regardless of whether you contest that those claims were made.

7. **All documents and communications that refer or relate to** any advice or counsel

provided by the law firm of **Arent Fox** regarding the formulation, manufacture, labeling, advertising, marketing, **promotion**, offering for sale, sale, distribution, customer service, or fulfillment of any dietary supplement **relating to** female sexual health or children's body weight.

8. **All documents and communications that refer or relate to** the formulation, manufacture, labeling, advertising, marketing, promotion, offering for sale, sale, distribution, customer service, or fulfillment of any dietary supplement **relating to** female sexual health or children's body weight.

9. **All documents and communications referring or relating to** the marketing of each of the **challenged products**. (This request **includes** but is not limited to **market research**, marketing plans or strategies, and all other **document(s)** and **communications referring or relating to** copy tests, marketing or consumer surveys and reports, penetration tests, target audiences, recall tests, audience reaction tests, **communications tests**, consumer perception of any **promotional materials** for any of the **challenged products**.)

10. **All documents and communications referring or relating to** complaints or investigations of any of the **challenged products** or their labels or **promotional materials**. (This request **includes** but is not limited to **documents and communications** relating to lawsuits, demand letters, refund requests, warranty or guarantee claims, and complaints or inquiries by any local, state, or federal government legislature, agency or entity, or other **persons** (including but not limited to consumers, competitors, and entities such as the Better Business Bureau or the National Advertising Division).

11. **All documents referring or relating to**, or constituting a **dissemination schedule** for advertisements relating to the **challenged products**.

12. All tax returns for **Respondents** for 2000 to present, including but not limited to all supporting **documents** and attachments, requests for extension for filing any tax return, and any statement(s) of the reasons for which any extension(s) were requested. (This request **includes** all returns and related information pertaining to the payment of payroll and unemployment taxes, social security taxes, medicare, and Federal, State and local and sales, business, gross receipts, licensing, property, and income taxes.)

13. From the date of the first sale of each of the **challenged products** to date, all **documents** that show gross and net sales figures and profit figures for each of the **challenged products**.

14. One copy of any plea, stipulation, statement, admission, and agreement signed by any **Respondent** in connection with any State or Federal civil or criminal law enforcement matter.

15. **All documents referring or relating to** transfer or sale of any of the

Respondent's interest in, or rights to market or sell, any dietary supplement.

16. All documents and communications consulted or used in preparing your responses to Complaint Counsel's interrogatories.

II. DEFINITIONS

1. "All documents" means each document, as defined below, which can be located, discovered or obtained by reasonable, diligent efforts, including without limitation all documents possessed by: (a) you or your counsel; or (b) any other person or entity from whom you can obtain such documents by request or which you have a legal right to bring within your possession by demand.

2. "And" as well as "or" shall be construed both conjunctively and disjunctively, as necessary, in order to bring within the scope of any Document Specification in this First Set of Requests for Production of Documentary Materials and Tangible Things all information that otherwise might be construed to be outside the scope of the request.

3. "Any" shall be construed to include the word "all," and the word "all" shall be construed to include the word "any."

4. "Arent Fox" means the law firm of Arent Fox Kintner Plotkin & Kahn, PLLC, its wholly or partially owned subsidiaries, parent companies, unincorporated divisions, joint ventures, partnerships, operation under assumed names, predecessors, affiliates, and all directors, officers, partners, employees, agents, attorneys, consultants, franchisees, independent distributors, and any other person or entity, working for or on behalf of the foregoing at any time, including but not limited to Brian P. Waldman and James A. Kaminski.

5. "Challenged products" means the products identified as Pedia Loss and Fabulously Feminine in the administrative Complaint issued by the Federal Trade Commission in the above-captioned matter, both individually and collectively.

6. "Communication" means any transmission or receipt of facts, information, opinions, or thought, whether conveyed in writing, orally, electronically, or by any other means, including written memorializations of oral communication.

7. "Complaint" means the administrative Complaint issued by the Federal Trade Commission, and any amendments thereto, in the above-captioned matter.

8. "Dissemination schedule" includes, but is not limited to, the following: (a) for radio, audio, television, and video promotional materials, the date, time of day, location and station name; (b) for product packaging, the names of distributors and retailers to whom the

packaging or other **promotional material** was transmitted, the date of transmittal, and the number of pieces transmitted; (c) for printed **promotional materials**, the name and date of the publication or place in which the **promotional material** appeared; and (d) for Internet materials, the date that the **promotional material** was first placed on the Internet, the date (if any) that it was removed from the Internet, and the number of "hits" that the advertisement registered.

9. "**Document**" means the complete original and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any written, typed, printed, transcribed, taped, recorded, filmed, punched, computer-stored, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated or made, including but not limited to any advertisement, book, pamphlet, periodical, contract, file, invoice, memorandum, note, telegram, report, record, handwritten note, working paper, routing slip, package insert, sticker, web page, chart, graph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, agenda, minute, code book, data compilation, tests, reports, clinical studies, test reports, scientific literature, articles, expert opinions, handwritten notes, correspondence, communications, electronic mail, electronically stored data, computer (including handheld computer) material (including print-outs, cards, magnetic or electronic tapes, discs and such codes or instructions as will transform such computer materials into easily understandable form), and video and audio recordings.

10. "**Each**" and "**any**" include "**all**," so as to have the broadest meaning whenever necessary to bring within the scope of any Specification all information and/or **documents** that might otherwise be construed to be outside its scope.

11. "**Includes**" or "**including**" means "**including but not limited to**," so as to avoid excluding any information that might otherwise be construed to be within the scope of any Specification.

12. "**Interrogatories**" means any and all **Interrogatories** served on the Respondents in the above-captioned matter.

13. "**Market research**" means all information **referring or relating to** testing, measuring or assessing consumers' or individuals' interpretation of, understanding of or reaction to a draft, proposed, or final **promotional material**, proposed advertising text, copy or creative strategy or platform, product category, product, entity or information conveyed in an advertisement, including consumer perception tests, comprehension tests, recall tests, marketing or consumer surveys or reports, penetration tests, audience reaction tests, focus groups and media research.

14. "**Or**" includes "**and**," and "**and**" includes "**or**," so as to have the broadest meaning whenever necessary to bring within the scope of any Specification all information or **documents** that might otherwise be construed to be outside its scope.

15. **"Person"** or **"Persons"** means all natural persons, corporations, partnerships or other business associations, and all other legal entities, including all members, officers, predecessors, assigns, divisions, affiliates and subsidiaries.

16. **"Promotional material"** means any written or oral statement, advertisement, illustration, or depiction that is designed to effect a sale or create interest in the purchasing of goods or services, whether the same appears in a press release, video news release, brochure, newspaper, magazine, pamphlet, leaflet, circular, mailer, book insert, sticker, free standing insert, letter, catalogue, poster, chart, billboard, public transit card, point of purchase display, instructional or education materials, packaging, package insert, package label, film, slide, radio or television broadcast or transmission, Internet or World Wide Web site, streaming video, electronic mail, audio program transmitted over a telephone system, script used to make oral solicitations to consumers, or publication or broadcast in any other medium.

17. **"Referring to"** or **"relating to"** means discussing, describing, reflecting, containing, analyzing, studying, reporting, commenting, evidencing, constituting, setting forth, considering, recommending, concerning, or pertaining to, in whole or in part.

18. **"Respondent(s)"** means Dynamic Health of Florida, LLC, Chhabra Group, LLC, and Vineet K. Chhabra, individually and collectively, including all of their operations under assumed names.

19. **"You"** or **"Your"** means the **Respondents** or **Respondents'**, both individually and collectively, unless otherwise noted.

20. The use of the singular includes the plural, and the plural includes the singular.

21. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.

22. The spelling of a name shall be construed to include all similar variants thereof.

III. INSTRUCTIONS

1. Unless otherwise specified, the time period covered by a Document Specification shall not be limited and all **documents** responsive to the Specification, regardless of dates or time periods involved, should be provided.

2. A complete copy of each **document** should be submitted even if only a portion of the document is within the terms of the Specification. The document shall not be edited, cut, or expunged and shall **include** all covering letters and memoranda, transmittal slips, appendices, tables or other attachments.

3. All information submitted shall be clearly and precisely identified as to the Specification(s) or sub-Specification(s) to which it is responsive. Each page submitted should be marked with a unique "Bates" document tracking number.

4. **Documents** covered by these Specifications are those which are in your possession or under your actual or constructive custody or control, whether or not such **documents** were received from or disseminated to any other **person** or entity including attorneys, accountants, directors, officers and employees.

5. All information submitted shall be clearly and precisely identified as to the Respondent(s) who produced the information. You shall do so by: (a) marking each submitted item with a notation identifying the Respondent(s) who produced that item; or (b) providing a separate list of submitted items, in numeric "Bates" document tracking number order, that identifies the Respondent(s) who produced each item.

6. **Documents** that may be responsive to more than one Specification need not be submitted more than once; however, your response should indicate, for each **document** submitted, each Specification to which the **document** is responsive. If any **documents** responsive to a Specification have been previously supplied to the Commission, you may comply with the Specification by identifying the **document(s)** previously provided and the date of submission; identification shall be by Bates number if the **document(s)** were so numbered when submitted, or by author and subject matter if not so numbered.

7. If any of the documentary materials requested in these Specifications are available in machine-readable form (such as floppy or hard disks, drums, core storage, magnetic tapes or punch cards), state the form in which it is available and describe the type of computer or other machinery required to read the record(s) involved. If the information requested is stored in a computer or a file or record generated by a computer, indicate whether you have an existing program that will print out the record in readable form and state the name, title, business address and telephone number of each **person** who is familiar with the program.

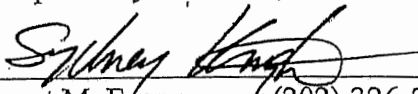
8. **Promotional materials** submitted in response to these Specifications shall be submitted in the following form(s) as follows: For **documents**, provide the original **promotional materials** if available, or, if not available, color copies thereof. For audio-only (or radio) materials, provide a tape cassette (or digitized recording, if in machine-readable form) and a script, as well as any audio out-takes. For video recordings, provide a DVD or VHS cassette and script or storyboard, as well as any video out-takes. For Internet or other online materials, provide a CD (if in machine-readable form) or a clear color printout of all screens displayed in the **promotional materials** and identify the site, forum, or address.

9. All objections to these Document Specifications, or to any individual Specification, must be raised in the initial response or are otherwise waived.

10. If any requested material is withheld based on a claim of privilege, submit together with such claim a schedule of the items withheld which states individually for each item withheld: (a) the type, title, specific subject matter, and date of the item; (b) the names, addresses, positions, and organizations of all authors and recipients of the item; and (c) the specific grounds for claiming that the item is privileged. If only part of a responsive **document** is privileged, all non-privileged portions of the **document** must be submitted.

11. This First Request to Respondents for Production of Documentary Materials and Tangible Things is continuing in character so as to require you to produce additional information promptly upon obtaining or discovering different, new or further information before the close of discovery. Further instructions pertinent to a particular Document Specification appear in parentheses within or following that Specification.

Respectfully submitted,



Janet M. Evans (202) 326-2125

Sydney M. Knight (202) 326-2162

Division of Advertising Practices

FEDERAL TRADE COMMISSION

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Washington, D.C. 20580

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CERTIFICATE OF SERVICE

I hereby certify that I have this 25th day of October, 2004 filed and served the attached **COMPLAINT COUNSEL'S FIRST REQUEST TO RESPONDENTS FOR PRODUCTION OF DOCUMENTARY MATERIALS AND TANGIBLE THINGS** upon the following as set forth below:

- (1) one (1) electronic copy via email and one (1) copy via overnight delivery service to:

Max Kravitz, Esq.
Kravitz & Kravitz, LLC
145 East Rich Street
Columbus OH 43215
TEL: 614-464-2000
FAX: 614-464-2002
mkravitz@kravitzlawnet.com



Sydney M. Knight