

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

In the Matter of)	
)	
DYNAMIC HEALTH OF FLORIDA, LLC,)	
CHHABRA GROUP, LLC,)	DOCKET NO. 9317
DBS LABORATORIES, LLC,)	
VINEET K. CHHABRA, a/k/a VINCENT K. CHHABRA, and)	PUBLIC DOCUMENT
JONATHAN BARASH,)	
Respondents.)	

To: The Honorable Stephen J. McGuire
Chief Administrative Law Judge

**COMPLAINT COUNSEL’S MOTION TO COMPEL PRODUCTION
OF DOCUMENTS AND ANSWERS TO INTERROGATORIES**

Pursuant to Rule 3.38(a) of the Commission’s Rule of Practice, 16 C.F.R. 3.38(a), Complaint Counsel respectfully move for an order compelling Respondents Dynamic Health of Florida, LLC, Chhabra Group, LLC, and Vincent Chhabra to produce documents and things as requested by Complaint Counsel’s document requests and interrogatories. The grounds for this motion are set forth below:

I. BACKGROUND

On October 25, 2004, Complaint Counsel propounded its First Request for Production of Documentary Materials and Tangible Things (“First Request for Documents”) and First Set of Interrogatories to Respondents. Exhibits A and B attached. On November 2, 2004, Complaint Counsel propounded its Second Request for Production of Documentary Materials and Tangible Things (“Second Request for Documents”). Exhibit C attached. On November 29, 2004,

Respondents served Complaint Counsel with Respondents' Response to Complaint Counsel's Production of Documentary Materials and Tangible Things ("Respondents' Response to Document Requests") and Respondents' Response to Complaint Counsel's First Set of Interrogatories to Respondents ("Respondents' Response to Interrogatories"). Exhibits D and E attached.

Respondents have failed to produce any documents in response to Complaint Counsel's document requests. They have provided grossly incomplete answers to Interrogatories 1 and 2 and no response to the remaining requests. Their failure to respond was based, in part, upon their objections to the form of the requests. These objections were addressed by the Court in its "Order Denying Respondents' Motion to Compel," dated December 9, 2004. In addition, they raise certain additional objections not addressed by that order. First, Vincent Chhabra provides no documents or responses to interrogatories, asserting that he has a continuing right to assert the Fifth Amendment. Second, all respondents assert that their ability to respond is hindered by the fact that the government seized all of the responsive documents during a December 2003 search. Third, they object generally to the discovery requests by arguing, among other things, that information sought by Complaint Counsel is irrelevant or outside the proper scope of discovery, or is privileged. Each of these arguments is addressed in turn.

On Thursday December 16, 2004, Complaint Counsel left phone, voice mail, and email messages with Respondents' counsel to determine the status of their response to our discovery requests. We advised Respondents' counsel that we wanted to know, on or before, December 20, whether they would be providing responses to the discovery requests. We further advised Respondents' counsel that if we did not hear from them by December 20, 2004, we would file a

motion to compel. At the time of this filing, Complaint Counsel has received no response from Respondents' counsel.

II. ARGUMENT

Commission Rule 3.31 (c) (1) provides for “discovery to the extent that it may be reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of any respondent. . . . Information may not be withheld from discovery on grounds that the information will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.” 16 C.F.R. 3.31 (c) (1). Respondents have presented no persuasive arguments for withholding the requested information and documents.

A. Vineet Chhabra has waived his Fifth Amendment privilege against self-incrimination.

Respondents refused to provide any responses by Vineet Chhabra to the documentary requests and the interrogatories based upon an assertion of Mr. Chhabra's Fifth Amendment privilege against self-incrimination. *See* Respondents' Response to Document Requests, Exhibit D, p.7; Respondents' Response to Interrogatories, Exhibit E, pp. 6-7. Respondents' assertion of Mr. Chhabra's Fifth Amendment privilege against self-incrimination is without merit. Mr. Chhabra is no longer entitled to plead the Fifth Amendment following his voluntary plea agreement in his criminal proceeding before the United States District Court for the Eastern District of Virginia. His plea agreement with the United States Government requires him, among other things, to “cooperate fully and truthfully with the United States, and provide all information known to the defendant regarding any criminal activity as requested by the government.” Plea

Agreement of Vineet K. Chhabra, ¶ 12. *See* Exhibit F, attached. By entering such an agreement, Mr. Chhabra has waived his Fifth Amendment privilege. Recent case law has held that, “It is well settled that a defendant may waive his right. . . to claim his Fifth Amendment privilege against self-incrimination by negotiating a voluntary plea agreement with the government.” *United States v. Scruggs*, 356 F.3d 539, 546 (4th Cir. 2003) (quoting *United States v. Wiggins*, 907 F.2d 51, 52 (4th Cir. 1990)). In *Scruggs*, the court also noted that, “a number of courts have recognized that ‘a plea agreement that states in general terms the defendant’s obligation to cooperate with the government can constitute a waiver of the defendant’s Fifth Amendment privilege against self-incrimination.’” *Id.* (citing *United States v. Bad Wound*, 203 F.3d 1072, 1075 (8th Cir. 2000); *United States v. Lawrence*, 918 F.2d 68, 72 (8th Cir. 1990); *United States v. Resto*, 74 F.3d 22, 27 (2nd Cir. 1996); *United States v. Wise*, 603 F.2d 1101, 1104 (4th Cir. 1979)).

B. Respondents’ argument that the United States government seized responsive documents is factually incorrect.

Complaint Counsel’s documentary requests seek, *inter alia*, documents relating to ownership and control of the Chhabra-controlled entities, advertising, and substantiation. Complaint Counsel’s interrogatory requests seek, *inter alia*, narrative information relating to the ownership of entities involved in the challenged practices, a description of communications relating to advertising and promotion, and advertising expenditures. Respondents provide no new documents, and few interrogatory responses. They argue that they cannot provide the requested information because the records of the dietary supplement business were seized by the United States government in December 2003. *See* Respondents’ Response to Document Requests, Exhibit D at p. 3; Respondents’ Response to Interrogatories, Exhibit E at p. 3.

Respondents' representation regarding the unavailability of the documents is a gross exaggeration of the facts, and represents an attempt to hide Respondents' failure to conduct a search for the responsive information.

Complaint Counsel has learned that on or about December 3, 2003, agents of the United States did conduct a search of Vineet Chhabra's business premises. The warrants authorized seizure of documents related to the unlawful distribution and dispensing of prescription drugs sold over the internet or through toll-free telephone numbers. Exhibit G attached. Specifically, the agents were directed to seize evidence relating to the "unlawful distribution and dispensing of controlled substances and other prescription drugs sold over the internet or through toll-free telephone numbers, including financial records and electronic devices related to such unlawful activities." *See* Exhibit G, Attachment B To Affidavit of Probable Cause Items to be Seized.

Documents pertaining to the operations of the dietary supplement business operated by Vineet Chhabra, including the operations of Dynamic Health of Florida, LLC, were *not* the subject of the search warrants. A United States government agent who participated in the search confirms that the agents only seized documents relating to Vineet Chhabra's dietary supplement business to the extent they were interwoven with documents related to the warrant. *See* Declaration of Michael Widenhouse, Exhibit H attached. Indeed, Special Agent Widenhouse states that most of the records found at the locations during the search were left behind because they were deemed to be unrelated to the execution of the search warrant. *Id.* Further, he states that he has personally reviewed the seized documents and found only a small number of

documents relating to the dietary supplement business among the seized documents.¹

Respondents have provided no information regarding the disposition of the documents that were left behind after the execution of the search warrants. At the very least, Respondents must state affirmatively that they conducted a search for the documents and, if the documents are no longer in existence, Respondents must state why the documents are no longer available.

C. The general objections asserted by Respondents based upon a variety of grounds are without merit.

Respondents have raised a number of general objections to Complaint Counsel's discovery requests, and also have incorporated by reference those general objections as the grounds for their objection to each document request and interrogatory. The general objections asserted at the beginning of their responses include, for example, Respondents' assertion that information sought by Complaint Counsel is irrelevant or outside the proper scope of discovery. Also, Respondents generally object that the discovery requests are duplicative, vague, ambiguous, overbroad, unduly burdensome, and may be privileged.² Respondents' objections are without merit. Importantly, Respondents failed to state which general objection is applicable to each specific request. Rather, Respondents simply cited to all the general objections.

¹ Complaint Counsel was not aware of the document seizure until very recently. Upon learning of the existence of the seized documents, we made arrangements to review them. To date, we have reviewed approximately one half of the documents seized pursuant to the search warrant. We copied documents that were potentially relevant to the issues in this matter, and on December 14, 2004 sent copies of those documents to Respondents' counsel via Federal Express. We will review the remaining files on December 22, 2004, and will provide Respondents' counsel with any additional potentially relevant documents that we find there.

² To the extent that Respondents seek to assert the attorney-client privilege or some other privilege in response to Complaint Counsel's discovery requests, they have, in fact, failed to provide a privilege log listing the alleged privileged documents as required by the Commission's Rules of Practice. *See* Commission Rule 3.38A.

Furthermore, Respondents have failed to specify how each specific discovery request would be objectionable on the various grounds asserted. Accordingly, Respondents' objections must fail as a matter of law. Courts have held that the "mere recitation of the familiar litany that an interrogatory or a document production request is 'overly broad, burdensome, oppressive and irrelevant' will not suffice." *Momath v. Albert Einstein Medical Center*, 164 F.R.D. 412, 417 (E.D. Pa. 1996) (quoting *Josephs v. Harris Corp.*, 677 F.2d 985, 991-992 (3rd Cir. 1992)). The courts have required that an objecting party "must state the specific reasons for their objections to the discovery requests." *PLX, Inc. v. Prosystems, Inc.*, 220 F.R.D. 291, 293 (N.D. W.Va. 2004).

Complaint Counsel's document requests and interrogatories are narrowly drafted to seek documents and information that are highly relevant to the allegations in the complaint, the proposed relief, or Respondents' defenses. As indicated above, Commission Rule 3.31 (c) (1) provides for "discovery to the extent that it may be reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of any respondent." Pre-trial discovery typically is "accorded a broad and liberal treatment. . . . This broad right of discovery is based on the general principle that litigants have a right to every man's evidence and that wide access to relevant facts serves the integrity and fairness of the judicial process by promoting the search for the truth." *Shoen v. Shoen*, 5 F.3d 1289, 1292 (9th Cir. 1993) (internal quotations and citations omitted).

Respondents' also include contend that Complaint Counsel's document requests concerning "any dietary supplement product" are objectionable because the discovery requests should be limited to the specific products that are being challenged in this case: Pedia Loss and Fabulously Feminine. Respondents' contention is without merit. Complaint Counsel's

discovery requests regarding “any dietary supplement product” is relevant to a number of issues, including the ownership and control of those companies that may have played a role in the challenged practices, as well as the transferability of the challenged claims to these companies.

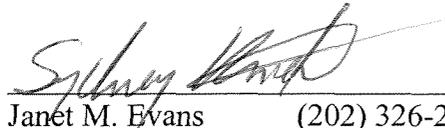
Respondents also contend that documents provided during the investigatory phase of this matter should be sufficient to satisfy Complaint Counsel’s discovery requests. The documents previously submitted are incomplete due, in part, to the fact that they were based upon responses provided by two parties that are no longer involved in this matter, and clearly were not intended to address many of the issues set forth in Complaint Counsel’s discovery requests. The fact that Complaint Counsel received some documents during the pre-complaint investigation does not relieve respondents from their obligation to comply with discovery.

III. CONCLUSION

For the reasons set forth above, Complaint Counsel respectfully requests that the Administrative Law Judge issue the attached order compelling the production of documents and things as requested in Complaint Counsel’s First and Second Request for Documents, and

compelling answers to Complaint Counsel's First Set of Interrogatories to Respondents.

Respectfully submitted,



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Dated: December 20, 2004

CERTIFICATE OF SERVICE

I hereby certify that I have this 20th day of December, 2004 filed and served the attached **COMPLAINT COUNSEL'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS AND ANSWERS TO INTERROGATORIES** and **[Proposed] ORDER GRANTING MOTION TO COMPEL** upon the following as set forth below:

(1) the original and one (1) paper copy filed by hand delivery and one electronic copy via email to:

Donald S. Clark, Secretary
Federal Trade Commission
600 Pennsylvania Ave., N.W., Room H-159
Washington, D.C. 20580
E-mail: secretary@ftc.gov

(2) two (2) paper copies served by hand delivery to:

The Honorable Stephen J. McGuire
Chief Administrative Law Judge
600 Pennsylvania Ave., N.W. Room H-112
Washington, D.C. 20580

(3) one (1) electronic copy via email and one (1) paper copy via overnight delivery to:

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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 on the same day by other means.



Sydney Knight