

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Joseph J. Simons, Chairman
Noah Joshua Phillips
Rohit Chopra
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

RESPONDENTS' ANSWER

Respondents Health Research Laboratories, LLC (“HRL”), Whole Body Supplements, LLC (“WBS”) and Kramer Duhon (collectively, “Respondents”) file this Answer to the Complaint filed by the Federal Trade Commission (“FTC”). Pursuant to 16 C.F.R. § 3.12, except to the extent specifically admitted herein, Respondents deny each and every allegation contained in the Complaint.

GENERAL RESPONSE TO THE COMMISSION'S ALLEGATIONS

FTC’s Administrative Complaint against Respondents is a waste of government resources. Respondents settled all issues with the FTC through a Consent Judgment signed on January 16, 2018 by United States District Judge Jon Levy. Not long after the settlement, the FTC started asserting that Respondents were in violation of the Consent Judgment. With the help of legal counsel and scientific advisors, Respondents tried to convince the FTC otherwise. When the efforts at resolution seemed destined to fail, Respondents ceased all marketing by October 2019. Despite the complete termination of all marketing, the FTC filed a Motion for Show Cause (“motion for contempt”) on December 17, 2020, seeking \$2,737,468 in monetary sanctions. The FTC also sought to amend the Consent

Judgment to include prohibitions similar to the ones now sought thorough this administrative proceeding. Before the FTC filed its motion for contempt, Respondents again tried to convince the FTC that its allegations were wrong, but the FTC refused to listen.

After several rounds of briefing and a hearing, United States District Judge Jon Levy denied the FTC's motion for contempt. Pursuant to the FTC's request, Judge Levy gave the FTC until October 31, 2020, to file an amended motion for contempt. The FTC did not seek to amend its contempt action, but, instead, filed this action.

In its most recent press release, the FTC never mentioned that it lost the contempt motion, but instead stated that "the FTC staff discontinued its contempt action and filed an administrative complaint against the defendants." The FTC did not "discontinue" its contempt action. It lost. Then, the FTC filed this Administrative Complaint over the *exact same* conduct that was the subject of the failed contempt motion.

Respondents have done nothing wrong and have tried in vain to work with the FTC. Because Respondents ceased all marketing more than a year ago, Respondents have even offered to agree to the relief requested in the Administrative Complaint if the FTC would not seek any further relief and these proceedings could be finally resolved. The FTC, however, has not responded to this proposal.

Pursuant to 16 C.F.R. § 3.12, except to the extent specifically admitted herein, Respondents deny each and every allegation contained in the Complaint. Respondents specifically deny that they have engaged in conduct that violates Sections 5 or 12 of the Federal Trade Commission Act, and deny that this proceeding is in the public interest.

SPECIFIC ANSWERS

1. Respondents admit the allegations in paragraph 1 of the Complaint.
2. Respondents admit the allegations in paragraph 2 of the Complaint.
3. Respondents admit the allegations in paragraph 3 of the Complaint.
4. Respondents admit the first three sentences of paragraph 4 of the Complaint, but deny the last sentence of paragraph 4 of the Complaint.
5. Respondents deny the allegations in paragraph 5 of the Complaint.
6. Respondents admit the first and third sentences of paragraph 6 of the Complaint, but deny the second sentence of paragraph 6 of the Complaint.
7. Respondents admit the allegations in paragraph 7 of the Complaint.
8. Respondents deny the first and third sentences in paragraph 8 of the Complaint, but admit the second and fourth sentences in paragraph 8 of the Complaint.

9. Respondents admit the allegations in paragraph 9 of the Complaint.
10. Respondents admit the allegations in paragraph 10 of the Complaint.
11. Respondents admit the allegations in paragraph 11 of the Complaint.
12. Respondents admit the allegations in paragraph 12 of the Complaint.
13. Respondents admit the allegations in paragraph 13 of the Complaint.
14. Respondents deny the allegations in paragraph 14 of the Complaint.
15. Respondents deny the allegations in paragraph 15 of the Complaint.
16. Respondents deny the allegations in paragraph 16 of the Complaint.
17. Respondents deny the allegations in paragraph 17 of the Complaint.
18. Respondents deny the allegations in paragraph 18 of the Complaint.
19. Respondents deny the allegations in paragraph 19 of the Complaint.
20. Respondents deny the allegations in paragraph 20 of the Complaint.
21. Respondents deny the allegations in paragraph 21 of the Complaint.
22. Respondents deny the allegations in paragraph 22 of the Complaint.

DEFENSES

23. **Requested Relief Exceeds Statutory Authorization:** Section 5 of the FTC Act only grants the Commission the legal authority to enter an “order requiring such person, partnership, or corporation to cease and desist from using such method of competition or such act or practice.” 15 U.S.C. § 45(b). The FTC’s Administrative Complaint does not make a proper request for relief consistent with the FTC Act. Instead, FTC requests relief that exceeds the authority granted to the FTC under the FTC Act. Respondents object to any Order that includes any findings, statements, or relief that exceeds the statutory authority granted by the FTC Act.

24. **Mootness and Lack of Statutory Authority:** The causes of action alleged in the Complaint are barred by mootness because all alleged conduct (i.e., marketing and advertising) referenced in the Complaint ceased more than year prior to the filing of the Complaint and will not reoccur in the future. The FTC has alleged no facts regarding a likelihood of reoccurrence. Further, the FTC Act does not grant the FTC the authority to seek a cease and desist order for conduct that ceased prior to the Administrative Complaint without evidence that the conduct will likely reoccur in the future.

25. **Not in the public interest:** Neither the filing of the administrative action nor the contemplated relief is in the public interest as required by 15 U.S.C. § 45.

26. **Violation of the United States Constitution:** The FTC's administrative process violates the Fifth Amendment to the United States Constitution because it seeks to deny Respondents of property and rights without due process of law. Further, the FTC receives its authority through Article II of the United States Constitution. The FTC's structure violates and is inconsistent with Article II of the United States Constitution because the Commissioners and the Administrative Law Judges ("ALJs") can only be removed by the President for "inefficiency, neglect of duty, or malfeasance in office," which means that the Commissioners and the ALJs are not subject to the supervision and authority of the President.

27. **De Novo Review of Factual Findings Violates of the United States Constitution:** Even though the Commissioners do not hear live testimony from witnesses, the Commissioners conduct a *de novo* review of the ALJ's factual findings. This *de novo* review of the ALJ's factual findings violates the United States Constitution and the Administrative Procedure Act.

28. **Res Judicata and Collateral Estoppel:** The actions alleged in the Administrative Complaint are barred under the doctrines of res judicata and/or collateral estoppel due to the January 16, 2018 Stipulated Final Judgment and Order for Permanent Injunction and Other Equitable Relief ("Final Judgment") and/or the August 12, 2020 Order in Case No. 2:17-cv-00467-JDL, styled *Federal Trade Commission, et al. v. Health Research Laboratories, LLC, et al.*, pending in the United States District Court for the District of Maine.

29. **Consent Judgment Settlement:** The actions alleged in the Administrative Complaint are barred due to the settlement as referenced in the Final Judgment.

30. **Fails as a matter of law:** The Complaint fails to state a claim upon which relief can be granted.

31. **No Vicarious Liability and No Direct Liability:** The Complaints' claims against Kramer Duhon are barred because Duhon is not responsible for the conduct of the other Respondents.

Respondents respectfully request that the Administrative Law Judge (a) deny the FTC's requested relief; (b) dismiss the Complaint in its entirety with prejudice; (c) award Respondents their costs of suit; and (d) award such other and further relief as the Administrative Law Judge may deem proper.

Dated: December 4, 2020

Respectfully submitted,

REESE MARKETOS LLP

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ATTORNEYS FOR RESPONDENTS

CERTIFICATE OF SERVICE

I hereby certify that on December 4, 2020, I filed the foregoing document electronically using the FTC's E-Filing system, which will send notification to:

April J. Tabor
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