

Complaint

IN THE MATTER OF

JONATHAN BARASH

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-4115; File No. 0423002

Complaint, August 13, 2004--Decision, August 13, 2004

This consent order, among other things, requires Respondent Jonathan Barash – who collaborated with others in the marketing of a purported children’s weight loss product called “Pedia Loss,” and a purported female libido enhancer called “Fabulously Feminine” -- to possess and rely on competent and reliable scientific evidence to support claims that Pedia Loss or any other covered product or service causes weight loss, suppresses appetite, increases fat burning, or slows carbohydrate absorption; causes weight loss in overweight or obese children ages 6 and over; or causes weight loss by suppressing appetite, increasing fat burning, or slowing carbohydrate absorption, when taken by overweight or obese children ages 6 and over, and to support claims that Fabulously Feminine or any other covered product or service will increase a woman’s libido, sexual desire, or sexual satisfaction. The order also requires the respondent to possess and rely on competent and reliable scientific evidence to support benefits, performance, or efficacy claims for any dietary supplement, food, drug, or device, and for any health-related service or program promoting weight loss or sexual enhancement. In addition, the order prohibits the respondent from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test or studies.

Participants

For the Commission: *Janet M. Evans, Sydney Knight, Richard Cleland, Mary Engle, Susan Braman, and Jesse Leary.*

For the Respondent: *Debra Bass and Antonio C. Martinez, Martinez Bass & Associates.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Jonathan Barash (hereinafter "Respondent") has violated the provisions of the Federal Trade Commission Act, and it appearing

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to the Commission that this proceeding is in the public interest, alleges:

1. Dynamic Health of Florida, LLC (“Dynamic Health”), a respondent in Docket No. 9317 (hereinafter “Docket 9317 Respondent”), is a Florida limited liability company with offices located at 1455 North Park Dr., Weston, Florida.
2. Chhabra Group, LLC (“Chhabra Group”), a respondent in Docket No. 9317 (hereinafter “Docket 9317 Respondent”), is a Florida limited liability company located at 1455 North Park Dr., Weston, Florida.
3. DBS Laboratories, LLC (“DBS Laboratories”), a respondent in Docket No. 9317 (hereinafter “Docket 9317 Respondent”), is a Florida limited liability company with offices located at 1485 North Park Dr., Weston, Florida.
4. Vineet K. Chhabra a/k/a Vincent K. Chhabra, a Respondent in Docket No. 9317 (hereinafter “Docket 9317 Respondent”), is an officer of Dynamic Health and Chhabra Group. Individually, or in concert with others, he has formulated, directed, participated in, or controlled the acts or practices of Dynamic Health and Chhabra Group, including the acts and practices alleged in this complaint. His principal office or place of business is 1455 North Park Dr., Weston, Florida.
5. Respondent Jonathan Barash (hereinafter “Respondent”) is an owner and officer of DBS Laboratories, LLC and has participated in its day to day operations. Individually, or in concert with others, he has formulated, directed, participated in, or controlled the acts or practices of DBS Laboratories LLC, including the acts or practices challenged in the complaint. His principal office or place of business is 6599 NW 97th Drive, Parkland, Florida 33076.
6. The Docket 9317 Respondents and Respondent have advertised, labeled, offered for sale, sold, and distributed products

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to the public, including Pedia Loss, a weight loss supplement, and Fabulously Feminine, a female sexual enhancement supplement. Pedia Loss and Fabulously Feminine are either a “food” or a “drug” within the meaning of Sections 12 and 15 of the Federal Trade Commission Act, 15 U.S.C. §§ 52 and 55.

7. The acts and practices of the Docket 9317 Respondents and Respondent alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.

PEDIA LOSS

8. The Docket 9317 Respondents and Respondent have disseminated or caused to be disseminated advertisements for Pedia Loss through various Internet websites, including www.pedialoss.com, www.dynamichealthproducts.com, and www.dbslabs.com, as well as print advertising in Cosmopolitan magazine. According to the product labels, Pedia Loss contains, among other ingredients, fructose, inulin, glutamine, lecithin, citric acid, and hydroxycitric acid (HCA). Advertisements for Pedia Loss products include, but are not necessarily limited to, the attached Exhibits A through C. The advertisements contain the following statements, among others:

a. **Pedia Loss**

* * *

Child obesity is a growing problem in North America. Pedia Loss is an appetite suppressant for children 6 years and older. Allow children to enjoy their favorite foods without gaining weight. This revolutionary new formula slows the absorption of carbohydrates, allowing more to be burned for energy and less to be stored as fat. This highly effective and natural dietary supplement comes in berry-flavored chewable tablets

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for easy consumption. In conjunction with a proper diet and exercise program, Pedia Loss can keep your child from becoming a statistic.

Please consult your healthcare provider before giving Pedia Loss to your child.

* * *

This synergistic formula was designed to aide in a child's glucose metabolism. Since many of their favorite foods are rich in carbohydrates but very low in dietary fiber, their digestive tracts and insulin never function properly. Now with Pedia Loss children can still enjoy their favorite food but with the help of Inulin their bodies with [sic] slow down the absorption of carbohydrate, allowing more to be burned for energy and less to be stored as fat, and give a great source of soluble fiber. In addition to this highly advanced ingredient, we have included supplemental amounts of both glutamine and FOS, which have both been proven to drastically improve intestinal health. Finally this product contains a highly effective compound called HCA. This compound has been shown to safely burn fat without any form of stimulants.

(Exhibit A: web page from www.dynamichealthproducts.com)

- b. Pedia Loss is highly effective for children 6 years of age and older. Children can still enjoy their favorite food in moderation while slowing the absorption of carbohydrates, allowing more to be burned for energy and less to be stored as fat. For best results use in conjunction with an exercise program and a low fat low calorie diet. Please consult your healthcare provider before giving this product for your child.

(Exhibit B: product label)

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c. Child Obesity

an american [sic] reality

According to the Centers for Disease Control and Prevention, childhood obesity is a growing problem in the U.S., with one in ten pre-schoolers considered clinically obese. Pedia Loss addresses this growing health care issue in children 6 years of age and older. Children can still enjoy their favorite foods in moderation, while slowing the absorption of carbohydrates. The use of Pedia Loss enables more carbs to be burned for energy and less to be stored as fat. This highly effective and natural dietary supplement comes in berry-flavored chewable tablets that will appeal to children. Best of all is the feeling of strength and confidence they'll experience by overcoming childhood weight problems. . . .

(Exhibit C: ad in Cosmopolitan Magazine)

9. Through the means described in Paragraph 8, the Docket 9317 Respondents and Respondent have represented, expressly or by implication, that:

- a. Pedia Loss causes weight loss in overweight or obese children ages 6 and over, and
- b. When taken by overweight or obese children ages 6 and over, Pedia Loss causes weight loss by suppressing appetite, increasing fat burning, and slowing carbohydrate absorption.

10. Through the means described in Paragraph 8, the Docket 9317 Respondents and Respondent have represented, expressly or by implication, that they possessed and relied upon a reasonable

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basis that substantiated the representations set forth in Paragraph 9, at the time the representations were made.

11. In truth and in fact, the Docket 9317 Respondents and Respondent did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraph 9, at the time the representations were made. Therefore, the representation set forth in Paragraph 10 was, and is, false or misleading.

FABULOUSLY FEMININE

12. The Docket 9317 Respondents and Respondent have disseminated or caused to be disseminated advertisements for Fabulously Feminine through various Internet websites, including www.usaprescription.com, www.dbslabs.com, and www.medprescribe.com, as well as print ads in various newspaper publications. According to the product labels, Fabulously Feminine contains L-arginine, ginseng, damiana leaf, ginkgo biloba leaf, and horny goat weed, among other ingredients. Advertisements for Fabulously Feminine products include, but are not necessarily limited to, the attached Exhibits D through F. The advertisements contain the following statements, among others:

a. **Fabulously Feminine**

Do you crave more from sexual intimacy? Rev up your sex drive with FABULOUSLY FEMININE. All-natural FABULOUSLY FEMININE can help you build the stamina you need to make your sexual experiences more intense and lasting. . . It's all a matter of stimulating blood flow and increasing sensitivity, and FABULOUSLY FEMININE'S herbal and amino acid formula accomplishes this naturally, yet powerfully. . . .

* * *

PRODUCT INFORMATION

Complaint

Fabulously Feminine is a safe, natural way to enhance sexual desire, satisfaction and enjoyment. The ingredients in Fabulously Feminine, when taken daily with a multivitamin, have been shown in a double-blind, placebo-controlled Stanford University study to enhance satisfaction with sex life, the level of sexual desire and frequency of sexual encounters.

It is estimated that 43% of women experience a loss of sexual vitality at some time in their lives. External factors such as stress and fatigue may contribute to the decline in sexual interest. . . .

(Exhibit D : web page from www.usaprescription.com)

- b. It is not unusual for men and women, young or old, to lose desire, arousal and overall satisfaction in the bedroom. Let **DBS Laboratories** give you the fuel you need to re-kindle the fire inside you.

LIBIDO ENHANCER

**FABULOUSLY
FEMININE**

Dietary Supplement

Millions of women are dealing with the same issues you are. Put your confidence and your relationship in the hands of **Fabulously Feminine** – The safe, natural way to enhance sexual desire, satisfaction and enjoyment. A special libido enhancing formula designed specifically for women, **Fabulously Feminine** contains a proprietary blend of traditional libido enhancing herbs. Not being in the mood for sex is often times the result of poor stimulation; lack of energy, and hormonal imbalance. This product was specially formulated to address these issues. These all-natural ingredients are known to stimulate blood

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flow and increase sensitivity, making this product one of the most potent available on the market.

(Exhibit E: National Examiner newspaper ad)

c. LIBIDO ENHANCER

FABULOUSLY™

FEMININE

Dietary Supplement

* * *

A scientific formula designed especially for women, **Fabulously Feminine** contains a proprietary blend of clinically proven ingredients for libido health. Not being in the mood for sex is oftentimes the result of poor stimulation, lack of energy, and hormonal imbalance. This product has been formulated to address these issues. . . .

(Exhibit F: National Enquirer newspaper ad)

13. Through the means described in Paragraph 12, the Docket 9317 Respondents and Respondent have represented, expressly or by implication, that clinical testing proves that Fabulously Feminine enhances a woman's satisfaction with her sex life and level of sexual desire.

14. In truth and in fact, clinical testing does not prove that Fabulously Feminine enhances a woman's satisfaction with her sex life and level of sexual desire. Therefore, the representation set forth in Paragraph 13 was, and is, false or misleading.

15. Through the means described in Paragraph 12, the Docket 9317 Respondents and Respondent have represented, expressly or by implication, that Fabulously Feminine will increase a woman's libido, sexual desire, and sexual satisfaction by stimulating blood flow and increasing sensitivity.

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16. Through the means described in Paragraph 12, the Docket 9317 Respondents and Respondent have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representation set forth in Paragraph 15, at the time the representation was made.

17. In truth and in fact, the Docket 9317 Respondents and Respondent did not possess and rely upon a reasonable basis that substantiated the representation set forth in Paragraph 15, at the time the representation was made. Therefore, the representation set forth in Paragraph 16 was, and is, false or misleading.

18. The acts and practices of the Docket 9317 Respondents and Respondent as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this thirteenth day of August, 2004, has issued this complaint against Respondent.

DynamicHealthProducts.com

Apimin-AM
Apimin-PM
Carb-Crusher
Fat-Fighter
Pedia Loss
Thermo-Loss

Ulcer-Aid
Ulcer-Aid Plus

Ovulite

Ulcer-Aid Plus

Reflux Balance

Ulcer-Aid Plus

Arginine-Plus
Fabulously Feminine
Masculine Male

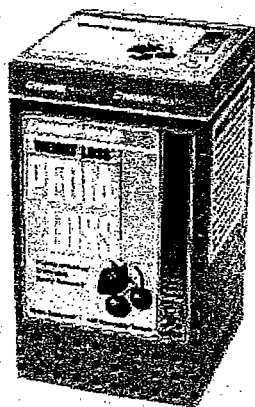
Ulcer-Aid Plus

Health Boost 60
Health Boost 120

Ulcer-Aid Plus

Sleep-PM

Pedia Loss



[View Supplement Facts](#)

Add Item to my Shopping Bag

Child obesity is a growing problem in North America. Pedia Loss is an appetite suppressant for children 6 years and older. Allow children to enjoy their favorite foods without gaining weight. This revolutionary new formula slows the absorption of carbohydrates, allowing more to be burned for energy and less to be stored as fat. This highly effective and natural dietary supplement comes in berry-flavored chewable tablets for easy consumption. In conjunction with a proper diet and exercise program, Pedia Loss can keep your child from becoming a statistic.

Please consult your healthcare provider before giving Pedia Loss to your child.

To understand the difference between Dynamic Health weight loss products click here.

\$69.99

1

BUY NOW

Pedia Loss is safe and effective for children of all ages

This synergistic formula was designed to aide in a child's glucose metabolism. Since many of their favorite foods are rich in carbohydrates but very low in dietary fiber, their digestive tracts and insulin never function properly. Now with Pedia Loss children can still enjoy their favorite food but with the help of Inulin their bodies with slow down the absorption of carbohydrate, allowing more to be burned for energy and less to be stored as fat, and give a great source of soluble fiber. In addition to this highly advanced ingredient, we have included supplemental amounts of both glutamine and FOS, which have both been proven to drastically improve intestinal health. Finally this product contains a highly effective compound called HCA. This compound has been shown to safely burn fat without any form of stimulants.

Inulin is a polysaccharide derived from the Jerusalem artichoke and Dahlia tuber. It is formed by linking 30 fructose monomer units together in a long chain. A natural fiber, it helps to moderate blood sugar levels in the body. Not only can inulin analog help avoid "sugar rushes and crashes" commonly experienced, but it may also help reduce sugar craving, a frequent source of calories. Inulin analog is not absorbed by the digestive tract and therefore contributes no extra calories while improving energy levels.

DIRECTIONS

Suggested Use:

Children ages 6-10: Two (2) tablets twice a day, 15 minutes before lunch & dinner.

Children ages 11-16: Three (3) tablets twice a day, 15 minutes before lunch & dinner. Consume with 6-8 ounces of water, juice or other liquid.

As with all dietary supplements if you are pregnant or nursing or taking medication consult your health care professional before taking this product.

Storage: Store in a cool dry place. Keep out of reach of children. Do not use if seal is broken.

FACTS

Subscribe to o

API
Ephedra

HEAL
BOOS

FABIO
FEAR

GM

Exhibit A

Customer Care Specialist: 800-268-9554
Available 24 hours a day, 7 days a week.



PEDIA LOSS

[HOME](#)[ABOUT PEDIA LOSS](#)[ORDER NOW](#)[SUPPLEMENT FACTS](#)[DIRECTIONS FOR USE](#)[FAQs](#)[CONTACT](#)

Pedia Loss

Pedia Loss is highly effective for children 6 years of age and older. Children can still enjoy their favorite food in moderation while slowing the absorption of carbohydrates, allowing more to be burned for energy and less to be stored as fat. For best results use in conjunction with an exercise program and a low fat low calorie diet. Please consult your healthcare provider before giving this product to your child.

\$69.99

Quantity

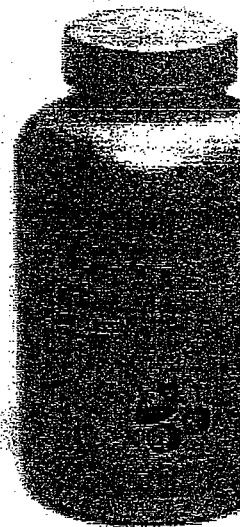
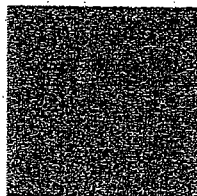


Exhibit B

what's NEW!



Child Obesity an american reality

According to the Centers for Disease Control and Prevention, childhood obesity is a growing problem in the U.S., with one in ten pre-schoolers considered clinically obese. Pedia Loss addresses this growing health care issue in children 6 years of age and older. Children can still enjoy their favorite foods in moderation, while slowing the absorption of carbohydrates. The use of Pedia Loss enables more carbs to be burned for energy and less to be stored as fat. This highly effective and natural dietary supplement comes in berry-flavored chewable tablets that will appeal to children. Best of all is the feeling of strength and confidence they'll experience by overcoming childhood weight problems. A health care provider should be consulted before using Pedia Loss.

For more info about PediaLoss
call: 1.800.304.6103 or visit: www.PediaLoss.com

The latest trends in natural products

SPICE IT UP! Add condiment to your sex life

Fabulously Feminine



Designed to build stamina and enhance the libido, Fabulously Feminine can help women feel more confident in their sexual encounters. Its

herbal and amino acid formula,

which is comprised of all-natural ingredients like Ginseng and Ginkgo, works to stimulate blood flow, increase sensitivity and prolong the sexual experience. According to The Journal of the American Medical Association, 40 percent of women experience sexual problems the most common being lack of desire. For women who are having difficulty with close encounters, this product can be taken prior to any intimate situation.

For more info about FABULOUSLY FEMININE and MASCULINE MALE
call: 1.800.305.0028 or visit: www.dynamichealthproducts.com

SAPRESCRIPTION.COM

International orders click here >>



Customer Care: 800.310.88
24 Hours a Day, 7 Days a Week

Your shopping bag: 0 items : \$0.00 [CHECKOUT](#)

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[WEIGHT LOSS](#) [WOMEN'S HEALTH](#) [MEN'S HEALTH](#) [SEXUAL HEALTH](#) [SKIN CARE](#) [WELLNESS AIDS](#) [ALLERGY & SINUS](#) [GASTROHEALTH](#)

SEARCH



Fabulously Feminine

[SIGN UP FOR SPECIALS](#)

Name

Email



**ORDERS OVER
\$79.00
WILL RECEIVE**

[ORDER STATUS](#)

[COMPANY INFO](#)

[About Us](#)

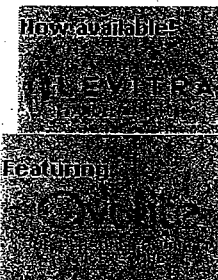
[FAQs](#)

[Contact Us](#)

[Privacy Policy](#)

[Safe Shopping Guarantee](#)

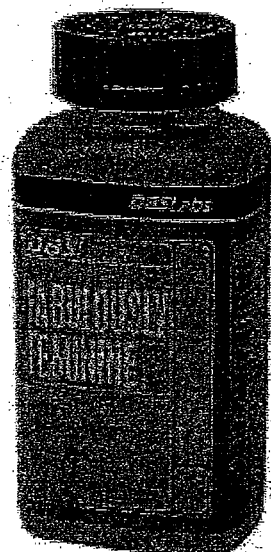
[Resources](#)



[Safe Shopping Guarantee](#)

PRESCRIPTION

- Weight Loss
- Allergies & Sinus
- Gastro Health
- Men's Health
- Muscle Relaxants
- Pain Relief
- Quit Smoking
- Sexual Health
- Skin & Hair Care
- Women's Health
- Alcohol
- Anti-Aging
- Anxiety
- Complexion
- Constipation
- Contraception
- Depression
- Diuretic
- Ear Infection
- Flu
- Fungal Infection
- Gout
- Hair & Scalp
- Hemorrhoids
- IBS
- Insomnia
- Motion Sickness
- Nails
- Parasites
- Perspiration
- Rashes | Sores
- Seizures
- Vomiting



ADD ITEM TO MY SHOPPING BAG

Do you crave more from sexual intimacy? Rev up your sex drive with FABULOUSLY FEMININE. All-natural FABULOUSLY FEMININE can help you build the stamina you need to make your sexual experiences more intense and lasting. Discover a passionate confidence that may have been forgotten or not yet explored and revel in fresh sensations that will take passion to a new level for you and your partner. It's all a matter of stimulating blood flow and increasing sensitivity, and FABULOUSLY FEMININE's herbal and amino acid formula accomplishes this naturally, yet powerfully. Boost your desire for intimacy and get the most out of your sexual experiences with FABULOUSLY FEMININE.

FABULOUSLY FEMININE ~~\$69.99~~ **\$39.95**
90 CAPSULES



FREE OVERNIGHT SHIPPING ON ORDERS OVER \$79.00 (THE CONTAINER DELIVERY ONLY)

Non-Prescription All-Natural Health Product From DBS Labs

[View Supplement Facts](#)



This product has been made at a Good Manufacturing Practices certified laboratory. To read more about it click here

PRODUCT INFORMATION

[A](#) [A](#) Change Size Font

Fabulously Feminine is a safe, natural way to enhance sexual desire, satisfaction and enjoyment. The ingredients in Fabulously Feminine, when taken daily with a multivitamin, have been shown in a double-blind, placebo-controlled Stanford University study to enhance satisfaction with sex life, the level of sexual desire and frequency of sexual encounters.

It is estimated that 43% of women experience a loss of sexual vitality at some time in their lives. External factors such as stress and fatigue may contribute to the decline in sexual interest. Also, as we age, physical and psychological changes may impact sexual desire, satisfaction and enjoyment. Nutritional supplementation with the ingredients in Fabulously Feminine and a multivitamin appears to have a positive effect on a woman's health, overall sexual fitness and satisfaction.

A special libido enhancing formula designed specifically for women. Fabulously Feminine contains a proprietary blend of traditional libido enhancing herbs. Not being in the mood for sex is often times the result of poor stimulation; lack of energy, and hormonal

Exhibit D

I just want better SEX...



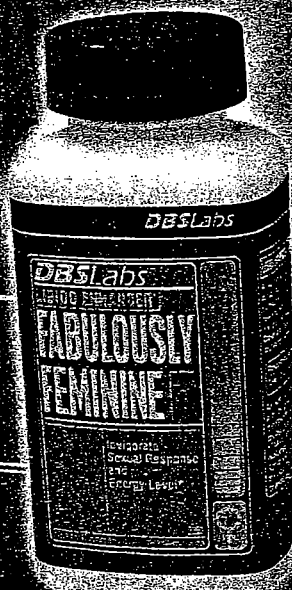
It is not unusual for men and women, young or old, to lose desire, arousal and overall satisfaction in the bedroom. Let **DBS Laboratories** give you the fuel you need to re-kindle the fire inside you.

LIBIDO ENHANCER **FABULOUSLY FEMININE**

Dietary Supplement

Millions of women are dealing with the same issues you are. Put your confidence and your relationship in the hands of Fabulously Feminine - The safe, natural way to enhance sexual desire, satisfaction and enjoyment - A special libido enhancing formula designed specifically for women. Fabulously Feminine contains a proprietary blend of traditional libido enhancing herbs. Not being in the mood for sex is often times the result of poor stimulation, lack of energy, and hormonal imbalance. This product was specially formulated to address these issues. These all-natural ingredients are known to stimulate blood flow and increase sensitivity, making this product one of the most potent available on the market.

Your Desire Unleashed!



It is not unusual for women, young or old, to lose desire, arousal and overall satisfaction in the bedroom. Let **DBS Laboratories** give you the fuel you need to re-kindle the fire inside you.

When low libido begins to interfere with your relationship, measures must be taken. In the past little focus had been directed towards female sexual issues. You have the tools – now let **Fabulously Feminine** help you use them better and longer.

LIBIDO ENHANCER
**FABULOUSLY™
FEMININE**

A scientific formula designed especially for a women, **Fabulously Feminine** contains a proprietary blend of clinically proven ingredients for libido health. Not being in the mood for sex is often times the result of poor stimulation; lack of energy, and hormonal imbalance. This product has been formulated to address these issues. **Fabulously Feminine's** natural ingredients stimulate blood flow and increase sensitivity, making this product extremely potent. Let **DBS Labs** show you the natural way to enhance sexual desire, satisfaction and enjoyment!

ATIONAL ENQUIRER

DBS Labs invites you to explore our wide-range of cutting edge, natural supplements. product discovery. DBS Labs prides itself on a meticulous have come to

Exhibit F

Decision and Order

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of respondent Jonathan Barash (“respondent”) named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, his attorneys, and counsel for Federal Trade Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Jonathan Barash is a minority owner and officer of DBS Laboratories, LLC and has participated in its day to day operations. Individually, or in concert with others, he has formulated, directed, participated in, or controlled the acts or practices of DBS Laboratories LLC, including the acts or

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practices challenged in the complaint. His principal office or place of business is 6599 NW 97th Drive, Parkland, Florida 33076.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

DEFINITIONS

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

- A. Unless otherwise specified, “respondent” shall mean Jonathan Barash individually and as an officer of DBS Laboratories, LLC, and his agents, representatives, and employees.
- B. “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.
- C. “Pedia Loss” shall mean “Pedia Loss Dietary Supplement” and any other product containing one or more of the ingredients in the current product that is marketed for weight loss or control.
- D. “Fabulously Feminine” shall mean “Fabulously Feminine Dietary Supplement” and any other product containing one or more of the ingredients in the current product that is marketed for sexual enhancement.
- E. “Food,” “drug,” and “device” shall mean as “food,” “drug,” and “device” are defined in Section 15 of the Federal Trade

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Commission Act, 15 U.S.C. § 55.

F. “Covered product or service” shall mean any dietary supplement, food, drug, or device, and any health-related service or program promoting weight loss or sexual enhancement.

G. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

H. “Endorsement” shall mean as defined in 16 C.F.R. § 255.0(b).

I. The term “including” in this order shall mean “without limitation.”

J. The terms “and” and “or” in this order shall be construed conjunctively or disjunctively as necessary, to make the applicable phrase or sentence inclusive rather than exclusive.

I.

IT IS ORDERED that:

A. Respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Pedia Loss or any other covered product or service, shall not make any representation, in any manner, expressly or by implication, including through the use of endorsements or the product name, that:

1. Such product or service causes weight loss, suppresses appetite, increases fat burning, or slows carbohydrate absorption;
2. Such product or service causes weight loss in overweight or obese children ages 6 and over; or

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3. Such product or service, when taken by overweight or obese children ages 6 and over, suppresses appetite, increases fat burning, or slows carbohydrate absorption,

unless, at the time the representation is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation; and

B. Respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Fabulously Feminine or any other covered product or service, shall not make any representation, in any manner, expressly or by implication, including through the use of endorsements or the product name, that such product or service will increase a woman's libido, sexual desire, or sexual satisfaction, unless, at the time the representation is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

II.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any covered product or service, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, including through the use of endorsements or the product name, about the benefits, performance, or efficacy of such product or service, unless, at the time the representation is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

III.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in

Decision and Order

connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any covered product or service, in or affecting commerce, shall not misrepresent, in any manner, directly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test or study.

IV.**IT IS FURTHER ORDERED** that:

A. Nothing in this order shall prohibit respondent from making any representation for any drug that is permitted in labeling for such drug under any tentative final or final standard promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration; and

B. Nothing in this order shall prohibit respondent from making any representation for any product that is specifically permitted in labeling for such product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

V.

IT IS FURTHER ORDERED that respondent Jonathan Barash shall, for a period of three (3) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available for inspection and copying:

- A. All advertisements and promotional materials containing the representation;
- B. All materials that were relied upon in disseminating the representation; and

Decision and Order

- C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

VI.

IT IS FURTHER ORDERED that respondent Jonathan Barash 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 person a signed and dated statement acknowledging receipt of the order. Respondent 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.

VII.

IT IS FURTHER ORDERED that respondent Jonathan Barash, for a period of three (3) years after the date of issuance of this order, shall notify the Commission of the discontinuance of his current business or employment, or of his affiliation with any new business or employment. The notice shall include respondent's new business address and telephone number and a description of the nature of the business or employment and his duties and responsibilities. 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. Attention: In the Matter of Dynamic Health of Florida, LLC.

Decision and Order

VIII.

IT IS FURTHER ORDERED that respondent Jonathan Barash shall, within sixty (60) days after 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 he has complied with this order.

IX.

This order will terminate on August 13, 2024, 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.

Analysis

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Jonathan Barash (“proposed respondent”). Proposed respondent collaborated with others in the marketing of a purported children’s weight loss product called “Pedia Loss,” and a purported female libido enhancer called “Fabulously Feminine.”

The proposed consent order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will review the agreement in light of any comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

The Commission's complaint charges that advertising for Pedia Loss made unsubstantiated claims that (1) Pedia Loss causes weight loss in overweight or obese children ages 6 and over, and (2) when taken by overweight or obese children ages 6 and over, Pedia Loss causes weight loss by suppressing appetite, increasing fat burning, and slowing carbohydrate absorption. The Commission’s complaint also charges that advertising for Fabulously Feminine falsely represented that clinical testing proves that Fabulously Feminine enhances a woman’s satisfaction with her sex life and level of sexual desire. In addition, the complaint challenges the unsubstantiated claim that Fabulously Feminine will increase a woman’s libido, sexual desire, and sexual satisfaction by stimulating blood flow and increasing sensitivity.

Part I A of the proposed order pertains to Pedia Loss. It requires that proposed respondent possess and rely on competent and reliable scientific evidence to support claims that Pedia Loss or any other covered product or service causes weight loss, suppresses appetite, increases fat burning, or slows carbohydrate

Analysis

absorption; causes weight loss in overweight or obese children ages 6 and over; or causes weight loss by suppressing appetite, increasing fat burning, or slowing carbohydrate absorption, when taken by overweight or obese children ages 6 and over. Part IB of the order pertains to Fabulously Feminine. It requires that proposed respondent possess and rely on competent and reliable scientific evidence to support claims that Fabulously Feminine or any other covered product or service will increase a woman's libido, sexual desire, or sexual satisfaction.

Part II of the proposed order requires that proposed respondent possess and rely on competent and reliable scientific evidence to support benefits, performance, or efficacy claims for covered products or services defined as any dietary supplement, food, drug, or device, and any health-related service or program promoting weight loss or sexual enhancement.

Part III of the proposed order prohibits proposed respondent from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test or studies. Part IV of the proposed order permits proposed respondents to make certain claims for drugs or dietary supplements that are permitted in labeling under laws and/or regulations administered by the U.S. Food and Drug Administration.

The remainder of the proposed order contains standard requirements that proposed respondent maintain advertising and any materials relied upon as substantiation for any representation covered by substantiation requirements under the order; distribute copies of the order to certain company officials and employees; and file one or more reports detailing their compliance with the order. Part IX of the proposed order is a provision whereby the order, absent certain circumstances, terminates twenty years from the date of issuance.

Analysis

The purpose of this analysis is to facilitate public comment on the proposed order, and is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Complaint

IN THE MATTER OF

NUTRAMAX LABORATORIES, INC.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 AND SEC. 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-4116; File No. 0323052**Complaint, August 27, 2004--Decision, August 27, 2004*

This consent order, among other things, requires Respondent Nutramax Laboratories, Inc., to possess competent and reliable scientific evidence substantiating any claims that Senior Moment -- a dietary supplement containing cerebral phospholipids and docosahexaenoic acid (DHA) -- or any substantially similar product prevents memory loss or restores lost memory function. The order also requires the respondent to possess competent and reliable scientific evidence substantiating any claims -- whether conveyed directly, or by implication through the use of the product name -- about the benefits, performance or efficacy of any food, drug, dietary supplement, device or service sold for human use or consumption for cognitive functions or processes, or the treatment, cure, mitigation, alleviation of the symptoms, prevention, or reduction in the risk of any related disease or disorder. In addition, the order prohibits the respondent from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test or study, in connection with the marketing or sale of any product or program for human cognitive function or processes.

Participants

For the Commission: *Shira D. Modell, Michael Ostheimer, Heather Hipsley, and Mary K. Engle.*

For the Respondent: *Michael Oliver, Bowie & Jensen, and Charles E. Buffon, Covington & Burling*

COMPLAINT

The Federal Trade Commission, having reason to believe that Nutramax Laboratories, Inc., a corporation, ("respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges: