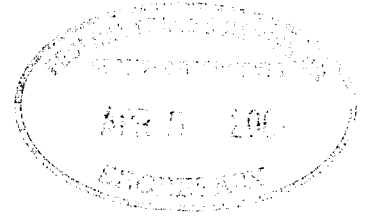


UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION



In the Matter of)
)
)
NATURAL ORGANICS, INC.,)
a corporation, and)
)
GERALD A. KESSLER,)
individually and as an officer)
of the corporation.)

DOCKET NO. 9294

**ORDER DENYING COMPLAINT COUNSEL'S
RENEWED MOTION TO LIMIT EXPERT WITNESSES**

On March 28, 2001, Complaint Counsel filed its renewed motion to limit the number of expert witnesses Respondents may be permitted to call at trial. Respondents filed their Answer on April 5, 2001. For the reasons set forth below, Complaint Counsel's motion is DENIED WITHOUT PREJUDICE.

Respondents have designated 14 experts as part of their case in chief, 12 of whom are designated as scientific experts. Complaint Counsel asserts that the Respondents should be limited to calling no more than five scientific expert witnesses in Respondents' case in chief. Complaint Counsel argues that to take the depositions of all designated experts would be unduly burdensome and that the testimony of all designated experts would be needlessly cumulative.

Respondents assert that the nature of the allegations of the Complaint, as well as the complexity of the issues presented, warrant the presentation of testimony from a diverse group of scientific experts. Respondents assert that their designated experts specialize in differing areas of science and offer particular expertise in addressing the appropriate characterization of Attention Deficit/Hyperactivity Disorder ("ADHD") and substantiation.

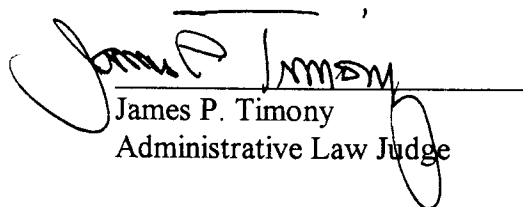
Commission Rule 3.43(b) sets forth that "[e]vidence, even if relevant, may be excluded if its probative value is substantially outweighed . . . by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." 16 C.F.R. § 3.43(b). The Commission, when it included this language in its Rules of Practice, explained: "[t]he amended rule is

intended to make clearer to litigants that the ALJ is empowered to exclude unduly repetitious, cumulative, and marginally relevant materials that merely burden the record and delay trial. This clarification is intended to enhance the ALJ's ability to assemble a concise and manageable record." 61 F.R. 50640, 50644 (Sept. 26, 1996).

The biological basis, etiology, and symptoms of ADHD may warrant testimony of experts from a wide array of scientific disciplines. Accordingly, based only upon review of the expert reports and the limited pleadings submitted to date, it appears that testimony from each of these experts may be relevant and of probative value. The burden on Complaint Counsel of having to take the depositions of all of Respondents' designated experts does not substantially outweigh the Respondents' right to develop expert testimony to defend themselves in this proceeding. Further, Complaint Counsel has not demonstrated that considerations of undue delay, waste of time, or needless presentation of cumulative evidence substantially outweigh evidence that may be of probative value.

After the parties have completed the depositions of Respondents' designated experts and have exchanged final proposed witness lists, if Complaint Counsel continues to maintain that testimony from all of Respondents' designated scientific experts would be a needless presentation of cumulative evidence that substantially outweighs the probative value of the proposed testimony, Complaint Counsel may renew its motion.

It is hereby ORDERED that Complaint Counsel's motion is DENIED WITHOUT PREJUDICE.


James P. Timony
Administrative Law Judge

Dated: April 5, 2001