

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

<p>BASIC RESEARCH, LLC, et al. Plaintiffs, vs. FEDERAL TRADE COMMISSION, et al. Defendants,</p>	<p>ORDER GRANTING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT Case No. 2:09-cv-779</p>
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Oral argument on Plaintiffs' Motion for Partial Summary Judgment on their First Claim for Relief (Dkt No. 40) was heard on May 31, 2012. Plaintiffs were represented by Richard D. Burbidge of Burbidge, Mitchell & Gross. The Federal Trade Commission ("FTC") was represented by Drake Cutini of the Consumer Protection Branch of the United States Department of Justice. On the record the court stated its intended ruling and allowed counsel to further advise the court as to why the ruling should not be entered. Upon being fully advised, the court hereby GRANTS partial summary judgment on Plaintiffs First Claim for Relief, declaring as follows:

1. Whether characterized as a contract, "Agreement Containing Consent Order," or "Decision and Order," the FTC is bound by the Decision and Order, issued by the FTC on June 19, 2006, in the Matter of Basic Research, LLC, et al, Docket No. D09318 (herein after the "FTC Order") and the FTC Order may be enforced only according to its terms.

2. The “reasonable basis standard” set forth in the FTC Order is clear and unambiguous.
3. The FTC is bound by the “reasonable basis standard” as set forth in the FTC Order and may not add additional requirements.
4. Once Plaintiffs proffer a basis they contend meets the requirements of the FTC Order, the burden shifts to the FTC to prove otherwise. The court has not decided at this point whether an alleged violation must be proven by clear and convincing evidence or by a preponderance of evidence.
5. The requirement for “reasonable basis” set forth in the FTC Order is satisfied if each of the following elements is met:
 - a. At the time a representation is made, there is a causal connection between the evidence proffered as support and the representation;
 - b. The representation is supported by competent and reliable scientific evidence which means evidence, including without limitation tests, analysis, research and studies, that:
 - I. is based upon the expertise of professionals in the relevant area;
 - ii. conducted and evaluated in an objective manner;
 - iii. by a person qualified to do so; and
 - iv. uses procedures generally accepted in the profession to yield accurate and reliable results.
6. To prove that Plaintiffs did not have a reasonable basis to make the representation, the FTC must show that the proffered support fails to meet one or more of the requirements set forth

in paragraph 5 above. A study proffered by the FTC supporting a conclusion that disagrees with the supporting evidence proffered by Plaintiffs does not prove that Plaintiffs lacked a reasonable basis for the representation unless the study proves that one of the requirements set forth in paragraph 5 above has not been met.

DATED this 1st day of June, 2012

BY THE COURT:

A handwritten signature in blue ink, reading "Clark Waddoups", written over a horizontal line.

Clark Waddoups
United States District Court Judge