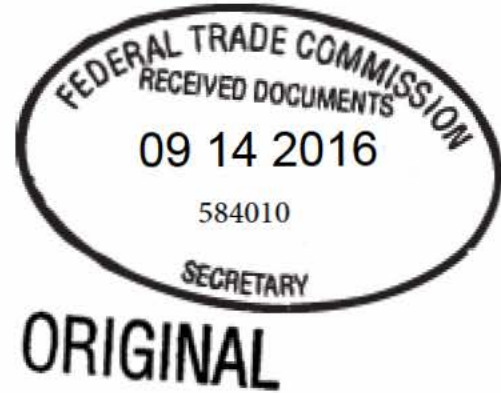


UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION



\_\_\_\_\_  
In the Matter of )  
 )  
California Naturel, Inc., )  
a corporation, )  
 )  
Respondent. )  
\_\_\_\_\_

Docket No. 9370

**COMPLAINT COUNSEL’S MOTION FOR SUMMARY DECISION**

Pursuant to Commission Rule 3.24(a), 16 C.F.R. § 3.24(a), Complaint Counsel moves for Summary Decision and the entry of an Order against Respondent California Naturel, Inc. (“California Naturel”). As detailed in the Complaint Counsel’s Statement of Material Facts Not in Dispute (“Material Facts”), screenshots of Respondent California Naturel, Inc.’s website establish that it expressly claimed that its Sunscreen SPF 30 was “all natural.” Wholly contradicting these claims, California Naturel admitted in a submission to the Commission on May 6, 2016, that its Sunscreen SPF 30 formula contains 8% Dimethicone, a synthetic ingredient. Material Facts, ¶¶ 11-12. Therefore, there are no material issues of fact to resolve at trial. Accordingly, Summary Decision is appropriate. We further request that the Commission issue the Notice Order against California Naturel.

**I. Summary Decision Standard**

Commission Rule 3.24(a)(2) provides that a Summary Decision “shall be rendered . . . if the pleadings . . . , admissions on file, and affidavits show that there is no genuine issue as to any material fact and that the moving party is entitled to such decision as a matter of law.” 16 C.F.R.

§ 3.24(a)(2).<sup>1</sup> Since these provisions are virtually identical to the provisions governing summary judgment under Rule 56 of the Federal Rules of Civil Procedure, the Commission applies its summary decision rule consistent with case law construing Fed. R. Civ. P. 56. *Kroger Co.*, 98 F.T.C. 639, 726 (1981); *Hearst Corp.*, 80 F.T.C. 1011, 1014 (1972).

The party moving for summary decision thus bears the initial burden of identifying evidence demonstrating the absence of any genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986); *LabMD, Inc.*, WL 2331027 at \*3 (FTC May 19, 2014); *Telebrands Corp.*, 2004 WL 1720011 at \*2 (FTC Apr. 13, 2004). Once the moving party meets this burden, the nonmoving party must establish specific facts showing a genuine issue for trial. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986); *N.C. State Bd. of Dental Examiners*, 151 F.T.C. 607, 611 (2011). The nonmoving party may not rest on mere allegations or denials of its pleading but must “come forward with ‘specific facts showing that there is a genuine issue for trial.’” *Matsushita*, 475 U.S. at 587; *Telebrands Corp.*, 2004 WL 1720011 at \*2 (FTC Apr. 4, 2004). *See also* 16 C.F.R. § 3.24(a)(3) (“a party opposing the motion may not rest upon the mere allegations or denials of his pleading; his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue of fact for trial.”).

## II. Argument

### A. *Deception Standard*

The Commission determines if the overall “net impression” of a respondent’s claims are deceptive by conducting a three-part inquiry: (1) what claims are conveyed in the advertisement;

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<sup>1</sup> Commission Rule of Practice 3.24(a)(1) permits Complaint Counsel to move for Summary Decision “at any time after 20 days following the issuance of the complaint.” 16 C.F.R. § 3.24(a)(1). Because the Complaint issued on April 12, 2016, Material Facts, ¶ 1, this motion is timely.

(2) are those claims false or misleading; and (3) are those claims material to prospective consumers. *POM Wonderful, LLC v. FTC*, 777 F.3d 478, 490 (D.C. Cir. 2015), *cert. denied* \_\_\_ U.S. \_\_\_, 136 S. Ct. 1839 (2016); *Kraft, Inc. v. FTC*, 970 F.2d 311, 314 (7th Cir. 1992); *FTC Policy Statement on Deception (“Deception Statement”)*, appended to *Cliffdale Assocs., Inc.*, 103 F.T.C. 110, 1984 WL 565319 at \*45 (FTC Mar. 23, 1984). This “net impression” is based on an evaluation of both express and implied claims. *Kraft*, 114 F.T.C. 40, 122 (1991).

**B. *California Naturel Expressly Claimed that its Sunscreen was “All Natural”***

Screen captures of individual webpages from California Naturel’s website claim that its Sunscreen is a “soft, luxurious and non-oily *all natural* sunscreen.” Material Facts ¶ 8 (emphasis added). Additionally, Respondent prints the phrase “All Natural” on the tube of California Naturel’s Sunscreen SPF 30 pictured on this webpage. *Id.* at ¶ 9. Furthermore, Respondent’s “Our Ingredients” webpage expressly represents that “California Naturel uses *only* the purest, most luxurious and effective ingredients found *in nature*. (emphasis added)” *Id.* at ¶ 10.

**C. *California Naturel’s “All Natural” Claim was False***

On May 6, 2016, Respondent California Naturel’s president, John Bernard Duler, on behalf of the Respondent, lodged a response to the Complaint with the Commission’s Secretary (“May 6 Response”). Material Facts, ¶ 2. The May 6 Response admits that: (1) California Naturel’s Sunscreen SPF 30 formula contains 8 percent Dimethicone, and (2) Dimethicone is a synthetic material. Material Facts, ¶¶ 11-12. These two admissions establish that California Naturel’s express representations that its Sunscreen SPF 30 was “all natural” were false.

There is some ambiguity regarding whether California Naturel’s May 6 Response constitutes its Answer to the Commission’s Complaint or simply is a written statement submitted

to the Commission.<sup>2</sup> For the purposes of Summary Decision, however, this is a distinction without a difference. The May 6 Response included two critical admissions against California Naturel's interest concerning Sunscreen SPF 30's ingredients, and statements against the interest of a party are admissible. *Surprise Brassiere Co., Inc.*, 71 F.T.C. 868, 1967 WL 93954 at \* 53 (F.T.C. Jun. 15, 1967).

The Federal Rules of Evidence, in Rule F.R.E. 801(d)(2), create a five-part test to determine the admissibility of a party's admission against interest. First, there has to be a "statement" by the party which, per FRE 801(a), includes written assertions, FRE 801(d)(2). Second, the statement must be made by the party or by an individual representing the party. *Id.* at 801(d)(2)(A). Third, the party must manifest that it either is adopting the statement or believes it to be true. *Id.* at 801(d)(2)(B). Fourth, the statement must be made by a person authorized by the party to make a statement on the subject. *Id.* at 801(d)(2)(C). Fifth, the statement must have been made by the party's agent or employee on a matter within the scope of that relationship while that relationship existed. *Id.* at 801(d)(2)(D).

The May 6 Response easily meets this test. First, California Naturel's president signed and submitted the statement to the Commission. Material Facts, ¶ 2. Second, the Respondent's president, having entered an appearance in this proceeding, represented Respondent at the time he submitted the May 6 Response. Material Facts, ¶ 13. Third, the letter from the laboratory Ironwood Clay Co., attached as Exhibit B to the May 6 Response, describes the sunscreen as follows: "This is to state that Dimethicone, a synthetic ingredient, is 8% in this formula." This

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<sup>2</sup> The Secretary rejected California Naturel's May 6 Response as its Answer, finding the May 6 Response deficient because it lacked a caption, mischaracterized the Complaint as the Administrative Law Judge's Complaint, failed to assert any affirmative defenses, and failed to put forth any request for relief. Presumably because the May 6 Response was deemed deficient, the Administrative Law Judge has not issued a scheduling order in this proceeding.

statement, as well as other similar statements by Mr. Duler contained in the Response, plainly manifest that California Naturel adopted and believed to be true the statements that the formula for Sunscreen SPF 30 contains 8% percent Dimethicone and that Dimethicone is a synthetic ingredient. Material Facts, ¶¶ 11-12. Fourth, as Respondent's president and the individual who entered his appearance on behalf of Respondent, Mr. Duler had the authority to make the statement. Material Facts, ¶¶ 2 and 13. Finally, Mr. Duler made the statement while he was president and represented Respondent in this proceeding. *Id.* See *Metro-Goldwyn-Mayer Studios, Inc. v. Gorkster, Ltd.*, 454 F.Supp.2d 966, 973 (C.D. Cal. 2006) (documents prepared by corporate officers serving in their capacities at the time of the documents' drafting are admissible non-hearsay under Rule 801(d)(2)(D)).

**D. *California Naturel's False "All Natural" Claims were Express and Therefore Presumed to be Material***

Respondent's "all natural" claims were express. Express claims are presumed to be material to consumers and it is reasonable for consumers to rely on them. See, e.g., *FTC v. Pantron I Corp.*, 33 F.3d 1088, 1095-96 (9th Cir. 1994); *POM Wonderful*, 2013 WL 268926 at \*52 (FTC Jan. 16, 2013); *Novartis Corp.* 127 F.T.C. 580, 686 (1999); *Deception Statement*, 103 F.T.C. 110, 1984 WL 565319 at \*49. Therefore, the claims are deceptive in violation of Section 5(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 45(a). The advertising is also false in violation of Section 12 of the FTC Act, 15 U.S.C. § 52.

**III. The Relief Set Forth in the Complaint is Appropriate Here**

The Complaint set forth the relief that it determined would be appropriate if the allegations are true. Because the record establishes that the allegations are true, it is appropriate to issue an order providing the relief set forth in the complaint.

This relief is reasonably related to the Commission’s allegations because it addresses the claim at issue, as well as reasonably related claims that Respondent could make in the future. Specifically, because some consumers are likely to reasonably understand “all natural” or other composition claims to imply that a product is good for the environment or healthy, the Order also covers claims regarding a product’s composition, environmental, or health benefits. The order prohibits such claims unless they are substantiated by competent and reliable evidence, which when appropriate based on the expertise of professionals in the relevant area must be competent and reliable scientific evidence, and not misleading.

These provisions are appropriate because an order’s provisions may “serve to ‘close all roads to the prohibited goal, so that (the FTC’s) order may not be by-passed with impunity.’” *Litton Indus., Inc. v. FTC*, 676 F.2d 364, 370 (9th Cir. 1982) (quoting *FTC v. Ruberoid Co.*, 343 U.S. 470, 473 (1952)). Such “fencing-in” need only “bear a ‘reasonable relation to the unlawful practices found to exist.’” *Id.* (quoting *FTC v. Colgate-Palmolive Co.*, 380 U.S. 374, 394-95 (1965)). Moreover, the proposed relief is substantively identical to the relief set forth in four recent consent orders resolving similar allegations issued by the Commission earlier this year.<sup>3</sup> Issuing a similar order against Respondent would help to maintain a level playing field for all of the respondents that allegedly made deceptive “all natural” claims for personal care products.

#### **IV. Proposed Findings of Fact and Conclusions of Law, and Order**

##### **A. *Proposed Findings of Fact and Conclusions of Law***

1. Respondent California Naturel, Inc. is a Delaware corporation with its principal office or place of business at 480 Gate 5 Road – Suite 114, Sausalito, California 94965. Material Facts, ¶ 3.

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<sup>3</sup> *Trans-India Products, Inc.*, No. C-4582 (July 6, 2016); *Erickson Marketing Group Inc.*, No. C-4583 (July 6, 2016); *ABS Consumer Products, LLC*, No. C-4584 (July 6, 2016); and *Beyond Coastal*, No. C-4585 (July 6, 2016).



2. Respondent advertised, labeled, offered for sale, sold, and distributed products to consumers, including Sunscreen SPF 30. This sunscreen product is a “drug” within the meaning of Sections 12 and 15 of the Federal Trade Commission Act. Material Facts, ¶ 4.

3. The acts and practices of Respondent alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act. Material Facts, ¶ 5.

4. Respondent advertises Sunscreen SPF 30 on the Internet. This product retails for \$35. Material Facts, ¶ 6.

5. Respondent disseminated or has caused to be disseminated advertisements for Sunscreen SPF 30, including but not limited to Exhibits A-B attached to the Complaint. These materials contain the following statements:

A. California Naturel’s “Sunscreen SPF 30” webpage states:

This soft, luxurious and non-oily *all natural sunscreen* is formulated with Glacial Oceanic Minerals and Zinc Oxide to protect the skin from both UVA and UVB rays. It is enriched with antioxidants from botanical sources such as Shea Butter, Pomegranate Extract and Marigold Flower Extract to increase skin hydration and protection from environmental damage. (emphasis added)

In addition, the tube of Sunscreen depicted on the webpage is labeled “*All Natural.*” Material Facts, ¶ 9. (emphasis added)

Exhibit A, Internet webpage (August 2015).

B. The text under the heading “Our Ingredients” on California Naturel’s “Ingredients” webpage states:

*California Naturel uses only the purest, most luxurious and effective ingredients found in nature.* All of our formulas are naturally scented and free of parabens and harsh synthetic chemicals. Our ingredients have been thoughtfully selected for their highly interactive properties, subtle scents, pleasurable textures and effectiveness on skin.” (emphasis added)

Exhibit B, Internet webpage (August 2015).

Material Facts, ¶¶ 7-10.

6. In connection with the advertising, labeling, promotion, offering for sale, or sale of Sunscreen SPF 30, Respondent has represented, directly or indirectly, expressly or by implication, that the product is an “all natural” sunscreen. Material Facts, ¶¶ 8-10.

7. In fact, Sunscreen SPF 30 is not “all natural” because it contains or contained a synthetic ingredient Dimethicone, which is 8% of the product. Therefore, the “all natural” representations set forth in Paragraph 6 are false or misleading. Material Facts, ¶¶ 11-12.

8. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondent.

9. The acts and practices of Respondent as set forth above constitute unfair or deceptive acts or practices, and the making of false advertisements, in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

10. The following order is necessary and appropriate under applicable legal precedent and the facts of this case.

**B. *Proposed Order***

**DEFINITIONS**

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

1. Unless otherwise specified, “respondent” shall mean California Naturel, a corporation, its successors and assigns, and its officers, agents, representatives, and employees.
2. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

**I.**

IT IS 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 product must not make any representation, expressly or by implication, including through the use of a product name, trademark, or trade name, about:

- A. whether such product is all natural or 100% natural;
- B. the extent to which such product contains any natural or synthetic ingredient or component;
- C. the ingredients or composition of such product; or
- D. the environmental or health benefits of such product,

unless the representation is non-misleading, including that, at the time such representation is made, the respondent possesses and relies upon competent and reliable evidence, which when appropriate based on the expertise of professionals in the relevant area must be competent and



reliable scientific evidence, that is sufficient in quality and quantity based on standards generally accepted in the relevant fields when considered in light of the entire body of relevant and reliable evidence, to substantiate that the representation is true. For the purposes of this Provision:

1. “competent and reliable evidence” means tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by qualified persons, using procedures generally accepted in the profession to yield accurate and reliable results; and
2. “competent and reliable *scientific* evidence” means tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons, using procedures generally accepted in the profession to yield accurate and reliable results.

II.

IT IS FURTHER ORDERED that respondent California Naturel, and its successors and assigns, shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission 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
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in its 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.

III.

IT IS FURTHER ORDERED that respondent California Naturel, and its successors and assigns, 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 such 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. Respondent must maintain and upon request make available to the Federal Trade Commission for inspection and copying all acknowledgments of receipt of this order obtained pursuant to this Part.

IV.

IT IS FURTHER ORDERED that respondent California Naturel, and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. Unless otherwise directed by a representative of the Commission in writing, all notices required by this Part shall be emailed to [Debrief@ftc.gov](mailto:Debrief@ftc.gov) or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: In re California Naturel, Docket No. C-9370.

V.

IT IS FURTHER ORDERED that respondent California Naturel, and its successors and assigns, within sixty (60) days after the date of service of this order, shall file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of its own compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, it shall submit additional true and accurate written reports.

VI.

IT IS FURTHER ORDERED that the final and effective date of this Order is the 60th day after this Order is served. This Order will terminate 20 years from the date of its issuance (which is stated at the end of this Order, next to the Commission's seal), or 20 years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying settlement) in federal court alleging any violation of this Order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

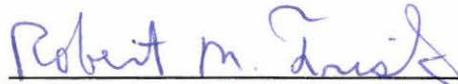
- A. Any Provision in this Order that terminates in less than 20 years;
- B. This Order if such complaint is filed after the Order has terminated pursuant to this Provision. If such complaint is dismissed or a federal court rules that the Respondent did not violate any provision of the Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Order will terminate according to this Provision 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.

V. Conclusion

For the reasons set forth above, Complaint Counsel respectfully requests that the Commission grant this Motion for Summary Decision and issue an Order against Respondent California Naturel, Inc.

Dated: September 14, 2016

Respectfully submitted,



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Robert M. Frisby (202) 326-2098  
John Andrew Singer (202) 326-3234  
Division of Enforcement  
Bureau of Consumer Protection  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Mailstop CC-9528  
Washington, DC 20580

**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION**

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<b>In the Matter of</b>	)	
	)	
<b>California Naturel, Inc.,</b>	)	<b>Docket No. 9370</b>
<b>    a corporation,</b>	)	
	)	
<b>    Respondent.</b>	)	
<hr/>	)	

**COMPLAINT COUNSEL’S STATEMENT  
OF MATERIAL FACTS NOT IN DISPUTE**

Pursuant to Commission Rule 3.24(a), Complaint Counsel, in support of their Motion for Summary Decision, submits this Statement of Material Facts Not in Dispute, and which, therefore, do not create any genuine issue for trial:

1. The Commission issued a Complaint against California Naturel on April 12, 2016.
2. California Naturel was served with the Complaint, and on May 6, 2016, John Bernard Duler, the president of California Naturel, Inc. submitted a response to the Commission’s Complaint (“May 6 Response” attached to Frisby Declaration, Attachment A).
3. California Naturel is a Delaware corporation with its principal office or place of business at 480 Gate 5 Road – Suite 114, Sausalito, California 94965. (Complaint ¶ 1; Admitted in ¶ 1 of May 6 Response).
4. California Naturel has advertised, labeled, offered for sale, sold, and distributed products to consumers, including Sunscreen SPF 30. This sunscreen product is a “drug” within the meaning of Sections 12 and 15 of the Federal Trade Commission Act. (Complaint ¶ 2; Admitted in ¶ 2 of May 6 Response).

PUBLIC DOCUMENT

5. The acts and practices of California Naturel have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act. (Complaint ¶ 3; Admitted in ¶ 3 of May 6 Response).

6. California Naturel advertises its product called “Sunscreen SPF 30” on the Internet. This product retails for \$35. (Complaint ¶ 4; Admitted in ¶ 4 of May 6 Response).

7. Attached to the Complaint are true and correct copies of screen captures from California Naturel’s Internet website. (Garland Declaration; Attachment B).

8. The first screen capture is a true and correct copy of California Naturel’s Sunscreen SPF 30 webpage, which states:

This soft, luxurious and non-oily *all natural sunscreen* is formulated with Glacial Oceanic Minerals and Zinc Oxide to protect the skin from both UVA and UVB rays. It is enriched with antioxidants from botanical sources such as Shea Butter, Pomegranate Extract and Marigold Flower Extract to increase skin hydration and protection from environmental damage.

(emphasis added).

9. The tube of Sunscreen depicted on the screen capture of California Naturel’s Sunscreen SPF 30 webpage is labeled “All Natural.”

10. The second screen capture is a true and correct copy of the California Naturel’s “Ingredients” webpage, which states under the heading, “Our Ingredients”:

*California Naturel uses only the purest, most luxurious and effective ingredients found in nature.* All of our formulas are naturally scented and free of parabens and harsh synthetic chemicals. Our ingredients have been thoughtfully selected for their highly interactive properties, subtle scents, pleasurable textures and effectiveness on skin.

(emphasis added).

11. Attached as Exhibit B to the May 6 Response is a letter dated November 17, 2015, addressed to John Bernard Duler from the Director of Research and Development for the

PUBLIC DOCUMENT

laboratory Ironwood Clay Company, Inc. The letter states that for “California Naturel – All Natural Sunscreen,” “Dimethicone, a synthetic ingredient, is 8% in this formula.”

12. Additionally, at a number of other places in its May 6 Response, California Naturel states that the formula for its Sunscreen contains 8% Dimethicone, a synthetic ingredient, but that the remaining 92% of the Sunscreen’s ingredients are natural products. *See* May 6 Response at pp. 3, 4, and 5.

13. Mr. Duler has the authority to act on behalf of Respondent California Naturel since, in addition to being its president, he entered his *pro se* appearance on its behalf in this proceeding.



**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION**

In the Matter of	)	
	)	
California Naturel, Inc.,	)	Docket No. 9370
a corporation,	)	
	)	
Respondent.	)	
	)	

**DECLARATION OF ROBERT M. FRISBY**

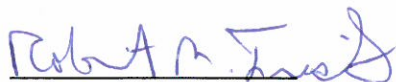
I, Robert M. Frisby, hereby state that I have personal knowledge of the facts set forth below. If called as a witness, I could and would competently testify as follows:

I am a United States citizen and am over eighteen years of age. I am employed by the Federal Trade Commission (“FTC”) as an attorney in the Bureau of Consumer Protection’s Division of Enforcement. My business address is 600 Pennsylvania Avenue, NW, Mail Drop CC-9528, Washington, DC 20580. I have entered an appearance as Complaint Counsel in this proceeding.

In my role as Complaint Counsel, on May 6, 2016, I received the attached document: John Duler’s May 6, 2016 response to the Commission’s Complaint filed electronically with the FTC.

I declare pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

EXECUTED on September 14, 2016.

  
Robert M. Frisby

May 06, 2017

From: California Naturel  
480 Gate Five Road, Suite #114  
Sausalito, CA 94965

To: Office of the Secretary  
Federal Trade Commission  
Office of the Secretary  
Constitution Center  
400 Seventh Street, S.W., Suite 5610  
Washington, D.C. 20024



Att.: Docket # 9370

To the attention of D. Michael Chappell, Chief Administrative Law Judge

Your Honor,

It is my pleasure to provide answers to your Complaint # 9370.

- Point 1: address is correct
- Point 2: correct, California Naturel sells a sunscreen SPF
- Point 3: correct, this is commerce
- Point 4: correct, we sell this product on the internet

Point 5 is inaccurate and misleading and this letter will provide some light for the FTC.

The exhibits provided in your complaint seem to omit several key facts.

California Naturel has a policy to disclose all ingredients. Your complaint only limits your findings to the first lines of the description. In fact we have been praised by consumers and the press for our transparency.

Here an example of one of the latest feedback on ingredients received on April 20, 2016

**From:** AVA <rosafiore@gmail.com>  
**Date:** April 20, 2016 at 15:34:38 PDT  
**To:** info@californianaturel.com  
**Subject:** LOVE ORGANIC BEAUTY - Online retailer of Beauty + Wellness

Hi there!

*We are launching a new online beauty and wellness retail store and interested in checking out your sunscreen products.*

**PS - I love your ingredient page**

*Thank you!*

*June Farahan  
Love Organic Beauty  
Los Angeles, CA*

Or another comment from the Wall Street Journal story of the FTC action against California Naturel

(<http://www.wsj.com/articles/ftc-charges-five-natural-products-firms-over-claims-1460500050>) :

*ESTELLE BRENNAN Apr 13, 2016*

*What I find surprising is that since the ingredients are listed on the label, aren't the consumers able to google the list and figure out that dimethicone is not a naturally occurring substance?*

As I said above, your complaint seems to portray California Naturel as providing misleading information, suggesting that we tried to hide an ingredient such as Dimethicone, when we have just done the opposite.

We have invested a lot of time to make our website as clear as possible for the consumer, listing every ingredient, and describing every ingredient.

To make easy for you, we have explained in **Exhibit A** the various screens and the explanations we provide. Instead of merely reading the content of the exhibit, it is best to look at our website and follow the paths described in the Exhibit A.

You land on the sunscreen SPF 30 page. Your complaint mentions that when you land on the sunscreen SPF 30 page, it says "*This soft, luxurious and non-oily all natural sunscreen is formulated with Glacial Oceanic Minerals and Zinc Oxide to protect the skin from both UVA and UVB rays, etc*".

But it fails to show the most important part, the ingredients, shown at the bottom of the page. We list "Zinc Oxyde" as the sole active ingredient. All other ingredients are listed, using the same font.

It is where you find Dimethicone, and if you click on that word, it will take you to the ingredients page describing what Dimethicone is "a silicone-based polymer and used as a skin protectant".

If the list of ingredients was not sufficient, we added the following at the bottom of the page:

**The FTC requires us to add the following: “Dimethicone, a synthetic ingredient, is 8% of the sunscreen formula, the remaining 92% are natural products.”**

The Wall Street Journal reporter picked that up right away when she landed on the page. Since she could not figure out what the issue was since Dimethicone was not only listed, but we had added a sentence showing the 8%, she called the FTC but nobody was able to provide her with an answer.

Prior to getting approval from the FDA, I had done considerable research on the word Natural and found that there is no federal definition for natural, while a clear definition exists for Organic (USDA regulations). Here are some extracts from the Federal Drug Administration (FDA) page:

*7. Can I label my cosmetics “natural” or “organic”?*

***FDA has not defined the term “natural” and has not established a regulatory definition for this term in cosmetic labeling.***

A word from the Federal Drug and Administration (extracted from the FDA’s website):

***12. Where can I learn more about labeling requirements?***

*.../...*

*Many people try to avoid harmful chemicals by buying grooming products labelled ‘natural’ or ‘organic’, assuming these goods contain plant extracts from nature and/or biological ingredients that have not been touched by synthetic chemicals, respectively. **But in America at least, it’s possible to use both the words ‘natural’ and ‘organic’ on a label without all the ingredients even being so.** However, one important exception to this rule includes products bearing the United States Department of Agriculture’s (USDA) National Organic Program (NOP) Organic Certification label. These products are required to contain 70-94% organic ingredients, but can also contain chemicals too, and will only say: “Made with organic [up to three organic ingredients]” on the label. If a product is 100% organic, it can bear the higher grade Certified USDA Organic seal.*

Multiple searches online from various sources point to the same confusion. For example, Adina Grigore, author of Skin Cleanse: The Simple, All-Natural Program for Clear, Calm, Happy Skin, was recently asked what the word Natural means:

**Natural:** “Legally, this means nothing—it’s a completely unregulated term and should be thought of as pure marketing, it will generally mean that at least some natural



ingredients have been used in the formula, but a product can be labeled as natural and contain up to 30 percent synthetic ingredients."

To summarize, neither the Federal Food, Drug, and Cosmetic Act (FDCA), nor FDA regulations, nor the Federal Trade Commission (FTC) define the term "natural." Last year, FDA issued a [notice](https://www.regulations.gov/#!documentDetail;D=FDA-2014-N-1207-0001) for comments regarding the definition of natural for foods. The FDA [extended](https://www.regulations.gov/#!documentDetail;D=FDA-2014-N-1207-1827) the comment period until May 10, 2016.)

The FTC's activity regarding natural claims has been even more limited. Decades ago, in the '70s the Commission proposed a definition. But, in 1983, it discontinued its plans for a definition and announced that it would scrutinize such claims on a case-by-case basis.

For example, a Google search "all natural sunscreen", most brands, including Honest (!) are listed:



To summarize:

1. Our website has been praised for its transparency, every ingredient in our products is listed and explained. See exhibit A.
2. The FTC asked us to obtain from a lab the exact % of dimethicone in our sunscreen. See Exhibit B.
3. The FTC asked us to show the % of Dimethicone on our website. It was added at the end of the sunscreen page (see website). We added "The FTC requires us to add the following: "Dimethicone, a synthetic ingredient, is 8% of the sunscreen formula, the remaining 92% are natural products." See Exhibit A

4. We have put a bright color sticker on our sunscreen packaging, showing **"The FTC requires us to add the following: "Dimethicone, a synthetic ingredient, is 8% of the sunscreen formula, the remaining 92% are natural products."** See Exhibit C

In conclusion, I am appaled to see the FTC investing valuable resources on such a small case. The number of people involved, the communication, the size of the lawsuit lead me to believe that a considerable amount of energy was wasted in this case. Let me give you some numbers:

We have sold 10 (**read TEN** tubes of sunscreen SPF 30) in the period January 01, 2016 - April 30, 2016 . Yes, you have read correctly that we generated \$350 in gross revenues for the sale of our SPF 30 sunscreen. Those 10 tubes of sunscreen have been sold to 7 happy customers. I don't think any of them were harmed in any way and all of them praise our ingredients disclosure and transparency.

Since the numbers are so small, it will very easy and very simple to directly ask those 7 customers.

Best regards,

John Bernard Duler  
President



Courtesy copies (subject line: docket # 9370):

[oalj@ftc.gov](mailto:oalj@ftc.gov)

[ElectronicFilings@ftc.gov](mailto:ElectronicFilings@ftc.gov)



Notice of Electronic Service

**I hereby certify that on May 06, 2016, I filed an electronic copy of the foregoing California Naturel FTC reply May 2016.pdf , with:**

D. Michael Chappell  
Chief Administrative Law Judge  
600 Pennsylvania Ave., NW  
Suite 110  
Washington, DC, 20580

Donald Clark  
600 Pennsylvania Ave., NW  
Suite 172  
Washington, DC, 20580

**I hereby certify that on May 06, 2016, I served via E-Service an electronic copy of the foregoing California Naturel FTC reply May 2016.pdf , upon:**

Robert Frisby  
Attorney  
Federal Trade Commission  
rfrisby@ftc.gov  
Complaint

John Singer  
Attorney  
Federal Trade Commission  
jsinger@ftc.gov  
Complaint

**I hereby certify that on May 06, 2016, I served via other means, as provided in 4.4(b) of the foregoing California Naturel FTC reply May 2016.pdf , upon:**

john bernard duler  
president  
california natural  
jbduler@californianaturel.com  
Respondent

jb duler  
Attorney

will find five tabs in the upper right corner.

The tab "ingredients" is highly visible and accessible

Click on Tab # 3 :ingredients



After you click on the tab "ingredients" you land on the page shown on the left. Every ingredient is listed.



If you click on a specific ingredient, you will the description and explanation

If you find the whole list overwhelming, you can narrow to a specific product. In your case you want to click on "sunscreen"



For the sunscreen ingredients, dimethicone is shown on the right (the position rotates every time). It says "Dimethicone is a silicone-based polymer and used as a skin protectant."



This is another case where Dimethicone is the first ingredient listed on the left



Let's look now at the products tab.

When you click on the "products" tab, or even if you mouse over, depending on your computer setup, click on "Sunscreen SPF 30)



You land on the sunscreen SPF 30 page. Your complaint mentions the top of the page *"This soft, luxurious and non-oily all natural sunscreen is formulated with Glacial Oceanic Minerals and Zinc Oxide to protect the skin from both UVA and UVB rays"*.

But it fails to show the most important, the ingredients, shown at the bottom of the page. We list "Zinc Oxyde" as the sole active ingredients. All other ingredients are listed, using the same font.

If the list of ingredients was not sufficient, we added the following at the bottom of the page:

The FTC requires us to add the following: "Dimethicone, a synthetic ingredient, is 8% of the sunscreen formula, the remaining 92% are natural products."

The Wall Street Journal reporter picked that up right away when she landed on the page. Since she could not figure out what the issue was since Dimethicone was not only listed, but we had added a sentence showing the 8%, she called the FTC but nobody was able to provide her with an answer.

It is where you find Dimethicone, and if you click on that word, it will take you to the ingredients page describing what Dimethicone is "a silicone-based polymer and used as a skin protectant".



John Bernard Duler  
Co-founder & CEO  
California Naturel, Inc.  
480 Gate 5 Road, Suite #114  
Sausalito, CA 94965  
USA

November 17, 2015

Dear Mr. Duler,

Re: California Naturel – All Natural Sunscreen

This is to state that Dimethicone, a synthetic ingredient, is 8% in this formula.

Sincerely,

A handwritten signature in black ink, appearing to read "Holly Xing". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Holly Xing  
Director of Research and Development





**DECLARATION OF BRITTANI  
GARLAND**  
PURSUANT TO 28 U.S.C. § 1746

I, Brittani Garland, hereby state that I have personal knowledge of the facts set forth below. If called as a witness, I could and would competently testify as follows:

1. I am a United States citizen and am over eighteen years of age. I am employed by the Federal Trade Commission ("FTC") as a Program Support Specialist in the Bureau of Consumer Protection's Division of Enforcement. My business address is 600 Pennsylvania Avenue, NW, Mail Drop CC-9528, Washington, DC, 20580. I have been assigned to work on the investigation of California Naturel, Inc. I executed the activities described in this declaration as a part of my job.
2. In my capacity as a Program Support Specialist, I have investigated the promotion of a product called Sunscreen SPF 30 by California Naturel, Inc. Among other things, I have located advertisements for this product on a public Internet website [www.californianaturel.com](http://www.californianaturel.com), and I have made accurate recordings of these advertisements.
3. In connection with the above-referenced matter, I retrieved and recorded the following two advertisements. I recorded them from the above website on the dates identified below:
  - a. California Naturel. Exhibit A (recorded from website [www.californianaturel.com](http://www.californianaturel.com) on July 29, 2015 and attached as Exhibit A to the FTC's complaint issued on April 11, 2016 in Docket No. 9370)
  - b. California Naturel – Our Ingredients. Exhibit B (recorded from website [www.californianaturel.com](http://www.californianaturel.com) on August 13, 2015 and attached as Exhibit B to the FTC's complaint issued on April 11, 2016 in Docket No. 9370)
4. I have compared the Commission complaint exhibits to the advertisements that I recorded, and I hereby verify that the documents marked as complaint Exhibits A and B are true and accurate copies of the advertisements that I recorded.
5. I declare pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.

EXECUTED ON May 31, 2016

  
\_\_\_\_\_  
Brittani Garland



Notice of Electronic Service

**I hereby certify that on September 14, 2016, I filed an electronic copy of the foregoing Complaint Counsel's Motion for Summary Decision, with:**

D. Michael Chappell  
Chief Administrative Law Judge  
600 Pennsylvania Ave., NW  
Suite 110  
Washington, DC, 20580

Donald Clark  
600 Pennsylvania Ave., NW  
Suite 172  
Washington, DC, 20580

**I hereby certify that on September 14, 2016, I served via E-Service an electronic copy of the foregoing Complaint Counsel's Motion for Summary Decision, upon:**

Robert Frisby  
Attorney  
Federal Trade Commission  
rfrisby@ftc.gov  
Complaint

John Singer  
Attorney  
Federal Trade Commission  
jsinger@ftc.gov  
Complaint

**I hereby certify that on September 14, 2016, I served via other means, as provided in 4.4(b) of the foregoing Complaint Counsel's Motion for Summary Decision, upon:**

john bernard duler  
president  
california natural  
jbduler@californianaturel.com  
Respondent

Robert Frisby  
Attorney