

September 26, 2016

From: California Naturel

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,

This is a request to dismiss the complaint counsel's motion for summary decision filed on September 14, 2016 by Robert Frisby.

I already provided detailed answers in May 2016 and the complaint counsel's motion for summary decision adds really nothing to this case. Quite the opposite, since references are made a 2015 website which is no longer live. At the request of the FTC the % of the Dimethicone was added early 2016.

Let's talk about facts:

Mr Frisby says that "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".

**Facts:** it took 3 minutes for the Wall Street Journal reporter to look at our website, find the list of ingredients, and locate Dimethicone at the top. When she called the FTC to get clarification, like "didn't the FTC look at the website?", she could get an answer.

The same Wall Street Journal reporter, Serena Ng, found even more detailed information on that webpage, like a disclaimer saying "*The FTC requires us to add the following: "Dimethicone, a synthetic ingredient, is 8% of the sunscreen formula, the remaining 92% are natural products."*

If that is not transparency, then what is? That line was added, after discussion with the FTC.

**While we are understandably reluctant to disclose the formula of our products, the FTC wanted to get a report from a lab showing the % of Dimethicone in the sunscreen. We just did that and provided the FTC with a copy of the lab report requested.**

**So, not only we disclosed the full list of ingredients, we added the % of Dimethicone at the request of the FTC, we added it to the website, and we produced stickers to put on the packaging.**

Reporters and consumers were quick to point that out after a 3' search on the website. We stopped selling this sunscreen because of the bad publicity produced by the false FTC allegations. To this day we challenge the foundation of this complaint and view that as a waste of valuable and scarce resources at the FTC.

This complaint counsel's motion for summary decision makes no sense, adds nothing to the documents filed in May 2016, and is still based on an outdated 2015 website, as previously pointed out multiple times.

The complaint counsel's motion for summary decision totally disregards our May 2016 answer and ignores basic fact checking such as looking at our website.

Our May 2016 answer is attached for reference.

We request that the Commission dismisses the complaint counsel's motion for summary decision in its entirety.

Best regards,

John Bernard Duler  
President

A handwritten signature in black ink, appearing to read "JB Duler", with a horizontal line underneath the name.

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

A handwritten signature in black ink, appearing to read "JB Duler", with a horizontal line underneath the name.

Courtesy copies (subject line: docket # 9370):

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

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