

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

**COMMISSIONERS:**      **Edith Ramirez, Chairwoman  
Maureen K. Ohlhausen  
Terrell McSweeney**

**In the Matter of**

**California Naturel, Inc.,  
a corporation,**

**DOCKET NO. 9370**

**OPINION OF THE COMMISSION**

By Chairwoman Edith Ramirez, for the Commission.

We have before us a motion by Complaint Counsel seeking summary decision against Respondent California Naturel, Inc., a seller and marketer of personal care products. California Naturel markets its sunscreen product as “all natural,” describing the product on its website as containing “only the purest, most luxurious and effective ingredients found in nature.” The company, however, admits that eight percent of its sunscreen formula is dimethicone, a synthetic ingredient. On these simple and undisputed facts, Complaint Counsel seeks a summary finding that California Naturel is falsely advertising its sunscreen. As discussed below, we grant summary decision and issue an order prohibiting California Naturel from misrepresenting the ingredients or composition of its products.

**I. Background**

On April 11, 2016, the Commission issued an administrative complaint alleging that California Naturel falsely advertises its Sunscreen SPF 30 product as an “all natural” sunscreen when in fact it contains the synthetic ingredient dimethicone, in violation of Sections 5 and 12 of the Federal Trade Commission Act.

On May 6, 2016, California Naturel’s president, John Bernard Duler, submitted an answer to the complaint on the company’s behalf as permitted by Rule 4.1(a)(2)(i) of the Commission’s Rules of Practice, 16 C.F.R. § 4.1(a)(2)(i).<sup>1</sup> In its answer, California Naturel does

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<sup>1</sup> California Naturel’s answer does not comply with all of the requirements of Rule 4.2, 16 C.F.R. § 4.2. However, in substance, it responds to the allegations in the complaint, and we therefore accept it as an answer. *Cf. Yakima Fruit & Cold Storage Co.*, 59 F.T.C. 693, 705 (1961) (holding that Commission has discretion to accept review of

not dispute that the Commission has jurisdiction over it and over the conduct challenged in the complaint. It does deny that its “all natural” advertising is false or misleading. Among other things, California Naturel asserts in its answer that, as a result of the FTC’s investigation, it now includes a disclaimer on its website that the ingredient dimethicone in its sunscreen is synthetic.

Complaint Counsel filed their motion for summary decision on September 14, 2016. They contend that California Naturel has admitted that its Sunscreen SPF 30 contains eight percent dimethicone, a synthetic substance, and thus effectively admitted that its advertising claims are false. California Naturel disputes that its advertising is false or misleading. It argues that, as of early 2016, it has sufficiently disclosed the ingredients in Sunscreen SPF 30. In particular, it cites what it contends is a readily visible disclosure statement on its website specifying that eight percent of its “all natural” sunscreen formula is dimethicone, a synthetic ingredient.

We review Complaint Counsel’s motion for summary decision pursuant to Rule of Practice 3.24, 16 C.F.R. § 3.24, which parallels Federal Rule of Civil Procedure 56 governing summary judgment in the federal courts. Consistent with Rule 56, a party moving for summary decision must show that “there is no genuine issue as to any material fact.” *Id.* We may therefore rely on authority applying the federal summary judgment standard. *See, e.g., Fanning v. FTC*, 821 F.3d 164, 170 (1st Cir. 2016) (under FTC rules, summary decision is reviewed “under the same standard as summary judgment before a district court”), *petition for cert. docketed*, (Sept. 27, 2016) (No. 16-397).

As the moving party, Complaint Counsel bears the initial burden of identifying evidence that demonstrates the absence of any genuine issue of material fact. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). When a motion for summary decision is made and supported, the “party opposing the motion may not rest upon the mere allegations or denials of his or her pleading; the response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue of material fact for trial.” 16 C.F.R. § 3.24(a)(3); *see also Celotex*, 477 U.S. at 323. We are required to resolve all factual ambiguities and draw all justifiable inferences in the light most favorable to California Naturel, the party opposing the motion. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986). We now turn to an analysis of Complaint Counsel’s motion.

## II. Analysis

Section 5 of the FTC Act prohibits “unfair or deceptive acts or practices in or affecting commerce.” 15 U.S.C. § 45(a). Section 12 proscribes the dissemination of any “false advertisement,” for food, drugs, devices, services, or cosmetics. *Id.* § 52(a). The deception standard is the same under both provisions. *POM Wonderful LLC*, 2013 WL 268926, at \*18. n.5 (F.T.C. Jan. 16, 2013), *aff’d sub nom. POM Wonderful, LLC v. FTC*, 777 F.3d 478 (D.C. Cir. 2015); *see also Kraft, Inc. v. FTC*, 970 F.2d 311, 314 (7th Cir. 1992).

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an initial decision when request for review was in the form of a letter addressed to the Chairman rather than in the form of a brief as required by the Commission’s Rules of Practice).

“An advertisement is deceptive if it contains a representation or omission of fact that is likely to mislead a consumer acting reasonably under the circumstances, and that representation or omission is material to a consumer’s purchasing decision.” *POM Wonderful*, 2013 WL 268926, at \*18; *FTC Policy Statement on Deception*, 103 F.T.C. 174, 175 (1984) (“*Deception Statement*”), appended to *Cliffdale Assocs., Inc.*, 103 F.T.C. 110 (1984). Determining whether California Naturel has violated the FTC Act thus consists of a three-part inquiry. We must evaluate whether, as a matter of law, California Naturel’s advertising conveyed the claim alleged in the complaint, the claim was false or misleading, and the claim was material. *See POM Wonderful*, 2013 WL 268926, at \*18; *FTC v. Pantron I Corp.*, 33 F.3d 1088, 1095 (9th Cir. 1994); *FTC v. Direct Mktg. Concepts, Inc.*, 569 F. Supp. 2d 285, 297 (D. Mass. 2008), *aff’d*, 624 F.3d 1 (1st Cir. 2010).

We first consider what claims California Naturel has conveyed in marketing its Sunscreen SPF 30. A claim may be either express or implied; express claims are those that directly state the representation at issue. *Kraft, Inc. v. FTC*, 114 F.T.C. 40, 120 (1991). “In determining what claims may reasonably be attributed to an advertisement, the Commission examines the entire advertisement and assesses the overall ‘net impression’ it conveys.” *POM Wonderful*, 2013 WL 268926, at \*19 (citing *Deception Statement*, 103 F.T.C. at 178). Extrinsic evidence is unnecessary to establish the impression that consumers would take away from an ad if the claim is reasonably clear from the face of the advertisement. *Id.*, at \*20.

The net impression conveyed by California Naturel’s representations regarding its Sunscreen SPF 30 is clear from a facial analysis. It is undisputed that California Naturel expressly advertises Sunscreen SPF 30 as “all natural.” The sunscreen itself bears the description “All Natural.” *See* Attachment A.<sup>2</sup> On its website, California Naturel states with respect to Sunscreen SPF 30:

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 protect it from environmental damage.

In addition, the website describes the sunscreen’s ingredients as follows:

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, sulfates, and harsh synthetic chemicals.

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<sup>2</sup> California Naturel has urged the Commission to examine its current website, and we have done so. Pursuant to 16 C.F.R. § 3.43(f), we take official notice of the content of California Naturel’s website and attach relevant portions as Attachments A and B. *See Sunscreen SPF 30*, CALIFORNIA NATUREL, <http://www.californianaturel.com/sunscreen-spf-30> (last visited Oct. 21, 2016) (Attachment A); *Our Ingredients*, CALIFORNIA NATUREL, <http://www.californianaturel.com/ingredients#filter=.f-ss> (last visited Oct. 21, 2016) (Attachment B). The procedures set forth in 16 C.F.R. § 3.55 afford an opportunity to challenge the noticed facts and our inferences therefrom.

See Declaration of Brittani Garland in support of Motion for Summary Decision (May 31, 2016) (“Garland Decl.”), ¶ 3 and screenshots attached as Exhibits A and B to the Complaint.

California Naturel does not, nor can it, dispute that it has consistently advertised its sunscreen as an “all natural” product and represented that it uses “only the purest, most luxurious and effective ingredients found in nature.” Instead, it opposes summary decision by pointing to a disclaimer it added to the bottom of the sunscreen webpage in “early 2016” after the FTC began its investigation. Opposition to Motion for Summary Decision (“Opp.”) at 1. The disclaimer states, “The FTC requires us to add the following: ‘Dimethicone, a synthetic ingredient, is 8% of the sunscreen formula, the remaining 92% are natural products.’” *Id.*; see also Answer at 3. California Naturel argues that the disclaimer and other portions of its website adequately disclose that the sunscreen contains the synthetic ingredient dimethicone. Put differently, California Naturel contends that its marketing claims are not false or misleading. We disagree.

As an initial matter, there is no question that prior to early 2016, California Naturel expressly marketed its sunscreen as an “all natural” product and that it did not include the disclaimer on which it now relies. Other than adding the referenced disclaimer, California Naturel has not changed the representations challenged in the complaint. As noted above, in addition to the express and prominent claim on the product that Sunscreen SPF 30 is “all natural,” California Naturel describes the sunscreen on its website as a “soft, luxurious and non-oily *all natural* sunscreen” and states that it “uses *only* the purest, most luxurious and effective ingredients found in nature.” Garland Decl. ¶ 3, and screenshots attached as Exhibits A and B to the Complaint (emphasis added). This plainly conveys to reasonable consumers that every ingredient in the product is natural. The recent addition by California Naturel of a disclaimer on its website does not excuse deception that has already occurred. See, e.g., *Libbey-Owens-Ford Glass Co. v. FTC*, 352 F.2d 415, 418 (6th Cir. 1965).

Nor are we persuaded by California Naturel’s argument that the disclaimer it added renders its marketing claims “transparent.” The sunscreen itself continues to state it is “all natural.”<sup>3</sup> And California Naturel continues to prominently display the “all natural” language discussed above on its website. See Attachments A, B. Adding a disclaimer to the bottom of the webpage that is well removed from proximity to the “all natural” claims – and, in fact, not visible at all without scrolling down – does not change the net impression conveyed to consumers that the product is “all natural.” See *FTC v. Direct Mktg. Concepts, Inc.*, 624 F.3d 1, 12 (1st Cir. 2010) (inconspicuous disclaimer that infomercial was paid advertising and that statements were opinion was insufficient to correct “bold and straightforward” claims that supplements could cure or prevent disease); *FTC v. Cyberspace.Com LLC*, 453 F.3d 1196, 1201 (9th Cir. 2006) (finding fine print notices on the back of solicitations insufficient to overcome deceptive nature of front-side communications). Notably, the disclaimer is also well below the

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<sup>3</sup> In addition to citing to its new disclaimer, California Naturel represents that it has produced stickers containing the same disclaimer language and placed them on the product packaging. Opp. at 2; Answer at 6. Because no such stickers are visible on the product images depicted in California Naturel’s website, and there is no other evidence of how the stickers appear on the sunscreen packaging, we do not consider the stickers as part of our analysis. We note, however, that in light of the prominent and express “all natural” claims on California Naturel’s website and the absence of any indication that consumers would see the stickers before making an online purchase, we are skeptical that a sticker would suffice to address our concerns about the net impression conveyed.

website's "Add to Cart" button so that consumers are invited to purchase the product before they would even see the disclaimer. In guidance on online disclosures, we have urged that disclosures "be provided before the consumer makes the decision to buy, *e.g.*, before clicking on an 'order now' button or a link that says 'add to shopping cart.'" FEDERAL TRADE COMMISSION, .COM DISCLOSURES: HOW TO MAKE EFFECTIVE DISCLOSURES IN DIGITAL ADVERTISING 14 (March 2013).<sup>4</sup>

In her partial dissent, Commissioner Ohlhausen questions the propriety of determining as a matter of summary decision the impact of California Naturel's 2016 website disclaimer, arguing that such a determination is both unnecessary and improper.<sup>5</sup> While it may not be necessary to rule on the effect of California Naturel's disclaimer on the net impression conveyed to consumers, it is entirely appropriate for the Commission to do so. As noted above, California Naturel cites its new disclaimer as its principal defense against Complaint Counsel's allegations of deception and motion for summary decision, and asks us to examine its updated website to evaluate the effect of the disclaimer on its advertising claims. We have taken official notice of California Naturel's website and determined that there are no disputed facts regarding the placement or font size of the disclaimer.<sup>6</sup> Just as we engaged in a facial analysis to evaluate the net impression of California Naturel's advertising claims prior to the addition of the disclaimer, we can appropriately perform a facial analysis to determine the effect of the disclaimer. *See, e.g., Daniel Chapter One*, 2009 FTC LEXIS 259, at \*24 (F.T.C. Dec. 24, 2009) (conducting facial analysis of a disclaimer's print size, positioning, and scope); *Kraft, Inc.*, 114 F.T.C. 40, 122-28 (1991) (finding disclosures ineffective to dispel the net impression otherwise presented in view of the disclosures' brevity, placement, and complexity).

Courts have similarly not hesitated to find disclaimers ineffective to dispel deceptive claims when the Commission has moved for summary judgment. *See, e.g., Cyberspace.Com*, 453 F.3d at 1201 (finding that "no reasonable factfinder could conclude that the solicitation was not likely to deceive consumers" despite the presence of fine-print disclosures on the back of the marketing material); *Direct Mktg. Concepts*, 624 F.3d at 24 n.9 (concluding from a facial examination that the disclaimer would not cure deceptive infomercials). In fact, declining to address the disclaimer's sufficiency could create the misimpression that the disclaimer cures the deception. As a matter of transparency and efficiency, the Commission should make clear that California Naturel's disclaimer does not cure its deceptive "all natural" claims. In our view, sidestepping the issue now only to argue later in a potential contempt action that the Commission's order has been violated would not serve the interests of either the public or California Naturel.

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<sup>4</sup> The FTC disclosure guidelines are available at <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-staff-revises-online-advertising-disclosure-guidelines/130312dotcomdisclosures.pdf>.

<sup>5</sup> Commissioner Ohlhausen agrees that the "all natural" claims made prior to the addition of the disclaimer were false and misleading. In her view, however, there is a fact question as to whether California Naturel has since clarified its "all natural" claims through its recently-added disclaimer and new stickers to accompany product packaging. As explained in her partial dissent, she believes that granting summary decision on that point is inappropriate and thus does not join the portion of the opinion holding that the disclaimer is insufficient to qualify California Naturel's "all natural" claims, based on the current record.

<sup>6</sup> *See supra* note 2.

California Naturel also points to a list of ingredients that appears if one scrolls down on its Sunscreen SPF 30 webpage. This list, however, does nothing to dispel the net impression that the sunscreen is “all natural.” It first identifies one ingredient, zinc oxide, as the active ingredient, and then lists 31 other ingredients using scientific terminology. Buried in the middle of the list is dimethicone. All of the ingredients are in the same font and font size, and nothing on the face of the list identifies dimethicone as a synthetic ingredient. California Naturel nonetheless asserts that the website is “transparent” because a consumer can click on the word “dimethicone,” which takes the consumer to the general “ingredients” webpage. If the cursor is properly positioned, this webpage identifies dimethicone as a “silicone-based polymer.” Case law, however, establishes that it is reasonable for a consumer to rely on express claims, and thus that they should not be required to search for and dig out information that contradicts what an advertisement expressly and prominently conveys. Indeed, we expect consumers to rely on express statements such as the “all natural” representation at issue here, and to interpret such statements as meaning what they say. *See FTC v. Skybiz.com, Inc.*, 2001 WL 1673645, at \*9 (N.D. Okla. 2001) (reasonable to expect that consumers could rely on express claims); *FTC v. Five-Star Auto Club, Inc.*, 97 F. Supp. 2d 502, 528 (S.D.N.Y. 2000) (“Consumer reliance on express claims is [ ] presumptively reasonable.”) (internal quotation omitted).

As purported evidence of the supposed transparency of its disclaimer and ingredient list, California Naturel points to an article referencing this case by an investigative reporter for the *Wall Street Journal*. California Naturel notes that the article quotes California Naturel’s recently-added website disclaimer that “Dimethicone, a synthetic ingredient, is 8% of the sunscreen formula” and asserts that the reporter also saw the ingredient list. Opp. at 1; Answer at 3 (citing Serena Ng, *FTC Charges Five ‘Natural’ Products Firms Over Claims*, WALL ST. J., (Apr. 13, 2016), available at <http://www.wsj.com/articles/ftc-charges-five-natural-products-firms-over-claims-146050>). However, we look at claims from the viewpoint of the average consumer, and the fact that an investigative reporter researching a story about “all natural” claims located the disclaimer and saw dimethicone on the ingredient list does not alter our conclusion regarding the net impression of the website.<sup>7</sup> *See Thompson Med. Co., Inc.*, 104 F.T.C. 648, 810 (1984) (focusing the deception inquiry on “average or ordinary members of the adult population”), *aff’d*, 791 F.2d 189 (D.C. Cir. 1986); *Kraft*, 114 F.T.C. at 122.

We therefore find that California Naturel’s advertising conveys that its sunscreen is “all natural,” meaning it contains only ingredients found in nature. *See, e.g., Williams v. Gerber Prods. Co.*, 552 F.3d 934, 939-40 (9th Cir. 2008) (stating, in denying motion to dismiss, that “‘fruit juice and other all natural ingredients’ could easily be interpreted by consumers as a claim that all the ingredients in the product were natural” and rejecting the argument that a list of ingredients on the same box would dispel this impression); *Bohac v. Gen. Mills, Inc.*, 2014 WL 1266848, at \*6 (N.D. Cal. Mar. 26, 2014) (in rejecting motion to dismiss, concluding that “all natural” conveys “the affirmative and specific factual representation that the products are made *entirely* of natural ingredients”).

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<sup>7</sup> California Naturel’s unsupported claim that its customers “praise [its] disclosure and transparency,” Answer at 5, is inadmissible hearsay that lacks any indicia of reliability. *See* 16 C.F.R. § 3.43(b).

We consider next whether California Naturel’s “all natural” claims are false or misleading. The central question is whether the claim is likely to mislead; Complaint Counsel need not prove actual deception. *See, e.g., Jerk, LLC*, 2015 WL 1518891, at \*10 (F.T.C. Mar. 13, 2015). Moreover, “[t]he deception need not be made with intent to deceive; it is enough that the representations or practices were likely to mislead consumers acting reasonably.” *FTC v. Verity Int’l, Ltd.*, 443 F.3d 48, 63 (2d Cir. 2006) (citation omitted). Accordingly, “[a]n advertiser’s good faith does not immunize it from responsibility for its misrepresentations . . . .” *Chrysler Corp. v. FTC*, 561 F.2d 357, 363 n.5 (D.C. Cir. 1977).

In its answer and in opposition to Complaint Counsel’s motion, California Naturel admits that its sunscreen formula consists of eight percent dimethicone and that dimethicone is a synthetic material. These two admissions, Complaint Counsel argue, establish that California Naturel’s “all natural” claims are false or misleading. We agree.

It is undisputed that California Naturel’s sunscreen contains eight percent of a synthetic ingredient. California Naturel nonetheless asserts that its policy is to list all ingredients and thus to be “transparent.” However, Complaint Counsel need not demonstrate an intent to deceive. *See, e.g., FTC v. Freecom Commc’ns, Inc.*, 401 F.3d 1192, 1202 (10th Cir. 2005) (“[I]ntent to deceive . . . is not an element of a [Section] 5 violation.”). California Naturel also argues that there is no regulatory definition that specifies the percentage of natural ingredients required in order to describe a product as “natural.” While true, this argument misses the mark.<sup>8</sup> California Naturel does not merely claim that its product is “natural”; it expressly asserts that its sunscreen is “all natural” and that it “uses only the purest, most luxurious and effective ingredients found in nature.” By California Naturel’s own admission, that is not true.

Finally, we consider whether California Naturel’s false and misleading claim is material. A “material” misrepresentation is one that is likely to affect a consumer’s conduct with respect to the product or service. *Deception Statement*, 103 F.T.C. at 182. “[T]he Commission presumes that express claims are material.” *Id.* As noted in the Deception Statement, the Commission “may assume that the willingness of a business to promote its products reflects a belief that consumers are interested in the advertising.” *Id.* (internal quotations omitted). In turn, a respondent may rebut a presumption of materiality by providing evidence that the claim is not material. *Novartis Corp.*, 127 F.T.C. 580, 686 (1999).

Here, California Naturel’s “all natural” representation for Sunscreen SPF 30 is express and therefore presumptively material. California Naturel does not provide any evidence to rebut this presumption. Accordingly, we find that California Naturel’s “all natural” claim is false and misleading, and likely to affect a consumer’s purchasing decision in violation of Sections 5 and 12 of the FTC Act.

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<sup>8</sup> The Commission’s Green Guides do not provide guidance on the term “natural.” However, our guidance is clear that “marketers must identify all express and implied claims that the advertisement reasonably conveys” and “ensure that all reasonable interpretations of their claims are truthful . . . .” 77 Fed. Reg. 62125 (2012).

### III. Remedy

Having found liability, we now turn to the issue of the remedy. The FTC Act authorizes the Commission to issue an order requiring a respondent to cease and desist the deceptive acts or practices. 15 U.S.C. § 45(b). Importantly, “[t]he Commission is not limited to prohibiting the illegal practice in the precise form in which it is found to have existed in the past.” *FTC v. Colgate-Palmolive Co.*, 380 U.S. 374, 392, 395 (1965). The Commission may “frame its order broadly enough to prevent respondents from engaging in similarly illegal practices in [the] future.” *Id.* at 395. We have the authority to issue orders “encompassing all products or all products in a broad category, based on violations involving only a single product or group of products.” *ITT Continental Baking Co. v. FTC*, 532 F.2d 207, 223 (2d Cir. 1976); *see also Colgate-Palmolive*, 380 U.S. at 394-95.

We enter the accompanying Final Order to address California Naturel’s unlawful conduct. The core substantive provision of the Final Order, Part I, prohibits California Naturel from making the kinds of misrepresentations alleged in the complaint. In particular, California Naturel is prohibited from misrepresenting (a) whether a product is all natural or 100% natural; (b) the extent to which a product contains any natural or synthetic ingredient; (c) the ingredients or composition of a product; and (d) the product’s environmental or health benefits. To ensure that representations about ingredients are not misleading, California Naturel must have competent and reliable evidence supporting its claims about the content and ingredients of the product.

“Fencing-in provisions 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)). When determining whether an order is reasonably related to the unlawful practices so as to extend the order provisions beyond the specific products for which the challenged claims were made, the Commission considers “(1) the seriousness and deliberateness of the violation; (2) the ease with which the violative claim may be transferred to other products; and (3) whether the respondent has a history of prior violations.” *Stouffer Foods Corp.*, 118 F.T.C. 746, 811 (1994); *see also Telebrands Corp v. FTC.*, 457 F.3d 354, 358 (4th Cir. 2006); *Kraft*, 970 F.2d at 326. “The reasonable relationship analysis operates on a sliding scale – any one factor’s importance varies depending on the extent to which the others are found. . . . All three factors need not be present for a reasonable relationship to exist.” *Telebrands*, 457 F.3d at 358-59.

We first consider the seriousness and deliberateness of the violation. California Naturel’s express representations marketing its sunscreen as an “all natural” product despite containing eight percent dimethicone suggest deliberate action. *See Stouffer Foods*, 118 F.T.C. at 812. Even after the company learned of the FTC’s concerns and added language to its website in 2016 disclosing that dimethicone is a synthetic ingredient, California Naturel continued to claim that Sunscreen SPF 30 is “all natural.” *See ECM BioFilms*, 2015 WL 6384951, at \*65 (“awareness of concern” and a “calculated choice” of revised marketing that conveyed “essentially the same” claims suggests deliberateness of conduct); *see also Stouffer Foods*, 118 F.T.C. at 813-14 (awareness of inappropriateness of claim and that wording was ‘a delicate matter’ suggests deliberateness of conduct that supports fencing-in). Next, we examine the ease with which



California Naturel's claims may be transferred from its Sunscreen SPF 30 to other products. There is no question that California Naturel could readily assert similar "all natural" claims to advertise other products it markets. See *FTC v. Colgate-Palmolive*, 380 U.S. 374, 394-95 (1965); *Sears, Roebuck & Co. v. FTC*, 676 F.2d 385, 392, 394-95 (9th Cir. 1982); *POM Wonderful*, 2013 WL 268926, at \*64. Finally, although the limited record in this case does not show that California Naturel has a history of prior violations, the other two factors weigh in favor of restraining the company's conduct in the future. We therefore conclude that the prohibited misrepresentations described in Part I of the Final Order bear a reasonable relationship to California Naturel's violations of the FTC Act.

California Naturel argues that an order is unnecessary in light of the addition of the disclaimer on California Naturel's website and because California Naturel allegedly no longer sells Sunscreen SPF 30. For the reasons discussed above, we find California Naturel's disclaimer inadequate to render its "all natural" claim truthful and non-misleading. Moreover, California Naturel has not provided any evidence to support its assertion that it has stopped selling Sunscreen SPF 30. In any event, even if we accept that these sales have ceased, the Commission has authority to enter an order where "the challenged practices have been voluntarily abandoned or revised." *Am. Home Prods. Corp.*, 98 F.T.C. 136, 406 (1981); *Fedders Corp. v. FTC*, 529 F.2d 1398, 1403 (2d Cir. 1976) ("The fact that [the advertiser] may have discontinued the offending practice before the Commission issued the complaint . . . does not bar a cease-and-desist order, where the public interest otherwise requires it."), *aff'd*, 695 F.2d 681 (3d Cir. 1982); *Libbey-Owens-Ford Glass Co. v. FTC*, 352 F.2d 415, 418 (6th Cir. 1965). An order is appropriate when, as is the case here, a respondent could resume sales of the product in question in the future. See *United States v. Bldg. Inspector of Am., Inc.*, 894 F. Supp. 507, 521 (D. Mass. 1995) (finding injunction appropriate when company had ceased operation but "remains a going concern and could resume at any time").


Finally, Parts II-V of the Final Order impose certain record-keeping, notification, and reporting requirements, and properly serve to facilitate administration of the order. See *FTC v. Direct Mktg. Concepts, Inc.*, 648 F. Supp. 2d 202, 213 (D. Mass. 2009) ("Courts have also included monitoring provisions in final orders in FTC cases to ensure compliance with permanent injunctions."); *FTC v. Think Achievement Corp.*, 144 F. Supp. 2d 1013, 1018 (N.D. Ind. 2000) (ordering record retention, notification of changed employment or residence, access to premises, and monitoring); *FTC v. US Sales Corp.*, 785 F. Supp. 737, 753 (N.D. Ill 1992) ("The order should also require Defendants to report their addresses and places of employment or business, and any subsequent changes in this information to the F.T.C."). Part VI provides that the Final Order will terminate in twenty years. See *US Sales Corp.*, 785 F. Supp. at 754 (recognizing that "a sustained period of monitoring by the F.T.C." may be needed "to ensure adequate compliance").

#### **IV. Conclusion**

For the reasons explained above, we have concluded as a matter of law that California Naturel's "all natural" claims are false and misleading and violate Sections 5 and 12 of the FTC Act. Accordingly, we issue the accompanying Final Order.

Date of Decision: December 5, 2016

# Attachment A




OUR STORY   PRODUCTS   INGREDIENTS   BLOG   CONTACT

## Sunscreen SPF 30

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 protect it from environmental damage.

- Protects from UVA and UVB rays
- Increases skin-hydration
- Enriched with antioxidants



\$35 / 70 ml / 2.3 fl. oz.

Quantity

1	2	3	4+
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ADD TO CART

### Directions

Apply liberally 15 minutes before sun exposure. Reapply immediately after swimming, sweating or towel drying, and at least every 2 hours.

### What to Expect

- **Texture:** medium-weight cream
- **Scent:** subtle herbal scent
- **Sensation on skin:** non sticky, non oily, matte finish

### Ingredients

#### Active Ingredients:

Zinc Oxide 20% (Sunscreen)

#### Inactive Ingredients:

Butyrospermum parkii (shea) butter, caprylic/capric triglyceride, carrageenan, Carthamus tinctorius (safflower) seed oil, cetearyl alcohol, cetearyl glucoside, cetyl palmitate, coco-caprylate, dimethicone, glucose, glucose oxidase, Helianthus annuus (sunflower) seed oil, isostearic acid, lactoperoxidase, lecithin, lysolecithin, methylcellulose, polyglyceryl-3 polyricinoleate, polyhydroxystearic acid, Punica granatum (pomegranate) fruit extract, pululian, Rosmarinus officinalis (rosemary) leaf extract, sclerotium gum, Sea Silt extract (Glacial Oceanic Mineral Water), sorbitan olivate, sorbitan palmitate, stearyl alcohol, Tagetes erecta flower extract, xanthan gum

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

### You might also like...



### Lip Balm

\$7

Broad-spectrum protection UVA/UVB

# Attachment B



## Our Ingredients

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

FRUITS & VEGETABLES ESSENTIAL OILS & EXTRACTS HERBS & BOTANICALS MINERALS & CLAY



Cetearyl glucoside



Cetearyl alcohol



Punica granatum (pomegranate) full extract



Rosmarinus officinalis (rosemary) leaf extract



Isosorbate acid



Xanthan gum



Butyrospermum parkii (shea) butter



Sclerotium gum



Zinc Oxide



Sorbitol oleate



Caprylocapric triglyceride



Ginseng extract



Polyhydroxyacetic acid



Helianthus annuus (sunflower) seed oil



Calthamus inobolus (safflower) seed oil



Methylsiloxane



Sorbitol palmitate



Polyglyceryl-3 polyricinoleate



Decyl alcohol



Coco-caprylate



Dimethicone



Cetyl palmitate



Lecithin



Tagetes erecta flower extract



Sea Salt extract (Dead Sea Minerals Water)



Fulvic acid



Lactosaminolactone



Lysine



Glucose



Carrageenan