

EXHIBIT 5

1 UNITED STATES JUDICIAL PANEL

2 ON

3 MULTIDISTRICT LITIGATION

4 SAN FRANCISCO, CALIFORNIA; CEREMONIAL COURTROOM, NINETEENTH
5 FLOOR; JUDGE DAMRELL, JUDGE VRATIL, JUDGE HEYBURN, JUDGE
6 FURGESON, JUDGE JONES

7 IN RE: NUTELLA MARKETING) MDL NO. 2248

8 AND SALES PRACTICES LITIGATION) THURSDAY, JULY 28, 2011

9 _____) ORAL ARGUMENT

10 REPORTER'S TRANSCRIPT OF PROCEEDINGS

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1 logistics, which distributes the com -- the things. And
2 there will be media, which is actually filmed the TV
3 commercials that are alleged to be deceptive in all five of
4 the cases. So, to say there is some great convenience of
5 having the case in New Jersey is not correct. The New
6 Jersey cases, it's not the first case. It is not even the
7 second case. It is the third and fifth case.

8 And, finally, favoring San Diego is the fact that
9 we're -- we have a class certification hearing set for
10 October. We've just to review thousands of pages of
11 documents in support of that, we're going to have that on
12 file soon. And the judge there, Judge Huff, does not have a
13 single MDL right now in contrast to the forum that the later
14 filed New Jersey cases, they have Judge Wolfson has a -- a
15 27-case MDL against Byron pending. And not only is there
16 that MDL a consolidated action, there is also a large number
17 of cases against the drug manufacturer or involving the drug
18 Flexor that have been consolidated before Judge Wolfson, and
19 that was not by an MDL, but that is nonetheless a large
20 number of complex medical and drug cases for --

21 **JUDGE DAMRELL:** Does the defendant support
22 centralization in New Jersey?

23 **MR. WESTON:** Yes. The Defendant actually strongly
24 supports having the case in New Jersey. And I think part of
25 the reason is that the case is going slower there.

1 We filed our case and Judge Huff repeatedly denied
2 discovery stage and has put the case on a fast track, which
3 is why we're now prepared to file a class certification
4 motion and we have a stipulated briefing schedule and a date
5 set of October 12 for that.

6 **JUDGE FURGESON:** That brings a -- I congratulate
7 you and Judge Huff for moving so quickly. I -- your case
8 was filed in February and you're having a class action
9 hearing in -- in October?

10 **MR. WESTON:** That I'll --

11 **JUDGE FURGESON:** That is a really fast track.

12 **MR. WESTON:** That is entirely due to Judge Huff
13 and not due to me. Um, what happened is -- (Laughter).

14 **JUDGE FURGESON:** You want to give credit where
15 credit is due.

16 **MR. WESTON:** I -- we filed our opposition for
17 motion to transfer, and the Defendants filed a client
18 support. And about three days later, this long detailed
19 opinion that had obviously reviewed lots of exhibits that
20 were produced by both parties, and the same thing with
21 motion though dismiss. She decided she didn't need to have
22 a hearing and instead we got this long, very long thought
23 out word on denying, in almost every respect, the
24 Defendant's motion to dismiss.

25 **JUDGE FURGESON:** And so you and the Defendants

1 have put this case on an incredibly fast track, correct?
2 And you've done -- you're thinking you're going to finish
3 your discovery and you're going to be ready, both sides are
4 ready to have a class action certification hearing in
5 October?

6 **MR. WESTON:** Yes.

7 **JUDGE FURGESON:** And Judge Huff said you're going
8 to be ready, whether you want to or not.

9 **MR. WESTON:** She didn't set a deadline for class
10 certification. But we've been -- done all that discovery,
11 and the rules say when you're ready, then you should file
12 it.

13 **JUDGE FURGESON:** I understand that you said you
14 had a hearing set.

15 **MR. WESTON:** We do have a hearing set and
16 scheduled October 12 as well and we also have a stipulated
17 briefing schedule with the Defendant.

18 **JUDGE FURGESON:** And, I'm sorry, you said there is
19 a hearing scheduled?

20 **MR. WESTON:** Yes.

21 **JUDGE FURGESON:** October 12?

22 **MR. WESTON:** Yes.

23 **JUDGE FURGESON:** Thank you.

24 **MR. WESTON:** Thank you.

25 **JUDGE HEYBURN:** Thank you very much.