

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

CASE NO. 07-21221 CIV ALTONAGA/Brown

RENEE BLASZKOWSKI, *et al.*,
individually and on behalf of
others similarly situated,

Plaintiffs/Class Representatives,

vs.

MARS INC., *et al.*

Defendants.

**PLAINTIFFS' AMENDED NOTICE OF SUPPLEMENTAL AUTHORITY
IN SUPPORT OF PLAINTIFFS' MOTION TO ADD AND/OR SUBSTITUTE
ARNA CORTAZZO AS A PLAINTIFF/CLASS REPRESENTATIVE**

Plaintiffs hereby file this Amended (to include Exhibit "A") Notice of Supplemental Authority in Support of Plaintiffs' Motion to Add and/or Substitute Arna Cortazzo as a Plaintiff/Class Representative and states:

On August 22, 2008, the Plaintiffs filed a Motion to Add and/or Substitute Arna Cortazzo as a Plaintiff/Class Representative. [DE 457]. On August 25, 2008, Defendant, Natura Pet Products, Inc. ("Natura"), filed an "interim" Response in opposition to this Motion. [DE 458]. On August 29, 2008, Natura filed its second Response in opposition to this Motion. [DE 463]. As part of its second Response, Natura has alleged that no claim under the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA") has ever existed because no Plaintiff purchased Natura's product in Florida. [DE 463 pp. 5-6]. The supplemental authority consists of five cases from this jurisdiction (although many more exist) explaining that a FDUTPA cause of action for FDUTPA exists even if there is no purchase. This is because the statute was deliberately amended to make damages available to not just consumers, but any person injured by a FDUTPA

violation. *See Niles Audio Corp. v. OEM Sys. Co.*, 174 F. Supp. 2d 1315, 1319-20 (S.D. Fla. 2001) (finding that plaintiff, despite never purchasing a product of the defendant, may bring a FDUTPA claim against defendant, a competitor of the plaintiff, because the defendant promoted and sold a product similar to the plaintiff's); *Gritzke v. M.R.A. Holding, LLC*, 2002 U.S. Dist. LEXIS 28085, **11-13 (N.D. Fla. Mar. 14, 2002) (finding that plaintiff, despite never purchasing a product of the defendant, may bring a FDUTPA claim based on defendant's unauthorized use of plaintiff's photograph); *James D. Hinson Elec. Contr. Co. v. Bellsouth Telcoms., Inc.*, 2008 U.S. Dist. LEXIS 9464, **8-9 (M.D. Fla. Feb. 8, 2008) (denying motion to dismiss because plaintiff, despite never purchasing a product of the defendant, may bring a FDUTPA cause of action based upon the defendant marking up a reimbursement bill); *Furmanite America, Inc. v. T.D. Williamson, Inc.*, 506 F. Supp. 2d 1134, 1145-46 (M.D. Fla. 2007) (denying motion for summary judgment as a FDUTPA claim may be based on misappropriation of trade secrets and confidential information, despite the plaintiff having never purchased a product of the defendants); *True Title, Inc. v. Blanchard*, 2006 U.S. Dist. LEXIS 95069, **7-12 (M.D. Fla. Feb. 5, 2006) (finding that plaintiff company, despite never purchasing a product of the defendant, could bring a FDUTPA claim against defendants who had taken plaintiff's information in order to start a new company to compete with the plaintiff) (collectively attached hereto as Exhibit "A"). *See also State v. Classic Pool & Patio*, 777 N.E.2d 1162 (Ind. Ct. App. 2002) (deceptive act that occurs during solicitation prior to a sale is an independent violation separate from a violation that occurs during a sale); *McDonald v. Bedford Datsun*, 59 Ohio App. 3d 38, 41 (Ohio Ct. App., Cuyahoga County 1989) ("It is not necessary that a sale actually take place."); *Brashears v. Sight N Sound Appliance Ctrs., Inc.*, 1999 OK

CIV APP 52, 14 (Okla. Civ. App. 1999) (no purchase requirement under Oklahoma Consumer Protection Act).

Dated: September 8, 2008
Miami, FL

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the foregoing was electronically filed with the Clerk of the Court via CM/ECF on September 8, 2008. We also certify that the foregoing was served on all counsel or parties of record on the attached Service List either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronic Notices of Filing.

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