

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,

vs.

MARS, INCORPORATED, *et al.*,
Defendants.

**EVIDENTIARY OBJECTIONS BY NATURA PET PRODUCTS, INC.
TO PLAINTIFFS' MOTION FOR CLASS CERTIFICATION,
SUPPORTING DECLARATIONS AND EXHIBITS ATTACHED THERETO**

**I. OBJECTIONS TO DEPOSITION OF PATRICIA DAVIS
[D.E. 548-2 AND D.E. 552-3 (EXHIBIT C TO DECLARATION OF PATRICK
KEEGAN, DATED NOVEMBER 14, 2008)]**

A. Entire Deposition is Hearsay As Offered by Plaintiff Herself - Natura Pet Products, Inc. ("Natura") hereby objects to plaintiff's use of the Deposition of Patricia Davis, dated September 24, 2008, in its entirety as hearsay. Under Federal Rule of Civil Procedure 32 ("Rule 32"), a party is only allowed to use an adverse party's deposition transcript. The only exceptions allowing use of one's own Deposition transcript are when the party is unavailable to testify or when it is used for impeachment purposes or other purposes expressly allowed by the Federal Rules of Evidence. Because Patricia Davis' Deposition is offered without falling under one of these allowable purposes, it is hearsay and should be stricken. See Fed. R. Evid. 802.

B. Excerpt-Specific Objections

1. Page 51:16-52:2

Q. Tell me everything that you can remember about the signs that you saw advertising Natura products.

A. Something about there's nothing in here you wouldn't want to eat yourself, it's like it's human quality food, something to that effect. Because I remember thinking if this is human food that's in this product, that means that they are getting – they're coming through a supplier just like humans do and it's being inspected by whoever inspects human food, like USDA, whoever does that, and, therefore, it's got to be good stuff and no wonder it's so expensive.

Natura objects to the above as (i) speculation and (ii) hearsay. *See* Fed. R. Evid. 602, 802.

2. Page 52:7-19

Q. Was it a pre-printed glossy type of manufacturing sign?

A. Yes.

Q. Tell me to the best you can remember everything about that sign.

A. Just that it made me want to buy the food, but I didn't want to pay that much money for it.

Q. Do you remember anything specifically that was written on the sign?

A. Something to do with human food.

Q. Do you remember whether the sign related to a particular brand of Natura's products?

A. No.

Natura objects to the above as (i) hearsay, (ii) lacking foundation, and (iii) best evidence rule.

See Fed. R. Evid. 802, 602, 1002.

3. Page 57:17-21

Q. Did you talk to anybody at Ocala Breeders & Supply about Natura products before you took the free samples home?

A. I must have because the one lady encouraged me to get them, but I don't remember the conversation.

Natura objects to the above as (i) hearsay (ii) lacking foundation. *See* Fed. R. Evid. 802, 602.

4. Page 89:14-19

A. I would like for them to be truthful and if they say that it's human grade ingredients in the package, it should be human grade. Human grade to me means it's inspected by the same people and bought from the same suppliers as you would feed it to yourself or your kids.

Natura objects to the above as (i) hearsay, (ii) lacking foundation, (iii) improper lay opinion, and because (iv) the probative value is outweighed by danger of potential prejudice, confusion, or misleading. *See* Fed. R. Evid. 802, 602, 701, 403.

**II. OBJECTIONS TO DEPOSITION OF PETER ATKINS
[DE 549-2 AND DE 552-3 (EXHIBIT B TO DECLARATION OF PATRICK
KEEGAN, DATED NOVEMBER 14, 2008)]**

Plaintiffs do not cite to the correct Deposition Transcript page numbers in their Class Certification Motion. Some of the citations to the Deposition of Peter Atkins cite to the Deposition Transcript page number, while the majority of the citations refer to the Docket Entry page number. This creates confusion in trying to determine what testimony is actually being cited and could mislead the Court. *See* Fed. R. Evid. 403. To aid the Court in ruling on objections made herein, the deposition transcript page number will be listed first and the page cited in the Class Certification Motion, if different, will be included in parentheses.

A. Excerpt-Specific Objections

1. Page 156:6-157:17 (D.E. 549-2 p. 149:6-150:17)

Q. I notice in Paragraph 2, starting about two-thirds of the way down of the first line, the statement is made that, "We use only ingredients you'd eat yourself." Correct?

A. Yes, sir.

Q. And it goes on to say "quality meats, whole grains, fresh fruits and vegetables, and complete vitamin and mineral supplements."

And I think I've seen representations by Natura in other advertising that – well, it's here too, excuse me. Under "Quality," "the highest quality human-grade pet food ingredients" are utilized in your products, correct?

A. That has been –

Ms. Caverly: I'll object as compound. I'm not sure which phrase or discussion you are asking him about.

Mr. Nield: Well, we can take them – we can take them individually then.

By Mr. Nield:

Q. Let's start with the one where you indicate that "We only use ingredients you'd eat yourself." Meaning that the pet owner, I'm assuming, would eat those ingredients themselves, correct?

A. The ingredients that we use, yes.

Q. And then going down to that section where it – titles "Quality," it says "because we only use the highest quality human-grade pet food ingredients in our dog and cat foods, we apply the highest quality manufacturing guidelines to our production process."

Do you see that?

A. Yes.

Q. Natura represents here and I think elsewhere that it uses human-grade ingredients in its pet food, correct?

A. Yes. Here it does, yeah.

Natura objects to the above on best evidence grounds. *See* Fed. R. Evid. 1002. The document being discussed should be provided.

2. Page 161:3-11 (D.E. 549-2 p. 154:3-11)

Q. ...Is chicken meal a rendered ingredient?

A. Yes.

Q. How is that processed?

A. Chicken meal is basically the meat and some bone and cartilage material taken from the chicken. It's generally off of backs and necks that come to the processing plant. The quality meat that's on those products are taken from the bone that didn't make it to the grocery store or to Colonel Sanders.

Natura objects to the above as incomplete and, therefore, its probative value is outweighed by danger of potential prejudice, confusion, or misleading. *See* Fed. R. Evid. 403. The immediately following testimony should be considered and reads:

A. ... It's processed, consolidated and sold to us, it could be sold to us for our pet food. Or if it wasn't sold to us, it could be sold to somebody who makes hot dogs or sandwich meats, that kind of an outlet.

III. OBJECTIONS TO DECLARATION OF JEFFREY B. MALTZMAN AND ATTACHED EXHIBIT [DE 551-2]

Natura hereby objects to the Declaration of Jeffrey B. Maltzman executed on November 16, 2008, and exhibit attached thereto.

A. Specific objections

1. Paragraph 9:

Defendant Natura Pet Products Inc.'s counsel Kristen Caverly acknowledged to me during an oral conversation in San Diego that her client sells approximately \$100 million in pet food and pet snacks per year. She has also admitted to me that her client sells their food in all 50 states, including in Florida through a network of distributors.

Natura objects to the above as (i) hearsay and (ii) privileged settlement discussion. *See* Fed. R. Evid. 802, 408.

2. Paragraph 10:

The printout from Brighton's website (the marketing agency for Defendant Natura) attached as Exhibit "A" to Plaintiff's Motion for Class Certification is a true and correct copy of Brighton's "Case study" of their work for Natura as it appears on their website as of November 17, 2008.

Natura objects to the above as (i) irrelevant (ii) hearsay (iii) lacking foundation. *See* Fed. R. Evid. 402, 802, 602.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 23, 2008, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the counsel so indicated on the attached Service List.

s/Michael M. Giel

Attorney

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