

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.

**DECLARATION OF EDGAR R. NIELD FILED IN SUPPORT OF CLASS
CERTIFICATION MOTION**

1. I am an attorney licensed to practice in the states of California and Colorado and am admitted to practice before the Federal District Courts of Southern and Central California and the Tenth Circuit District Court in Colorado. I am co-counsel for Plaintiff Susan Davis, Class action representative in the above captioned matter. I know the following to be true based upon my own personal knowledge or belief and if called upon to do so I could and would competently testify to the following under oath in a court of law.

2. During the deposition of Natura's President and designated representative Mr. Peter Atkins, he testified that Natura's predominant form of advertising from the beginning of the class period in November of 2003 to the present was through its internet web site. He repeated this assertion in the declaration he submitted in support of Natura's opposition to the Plaintiffs' Class Certification motion (Atkins Decl. at ¶ 7).

3. In response to Natura's opposition to the Plaintiff's Class Certification Motion, I undertook a survey defendant Natura historical websites throughout the class

period from November 29, 2003 through February 6, 2008. These web sites were found on another internet site known as Archives.org, to which I was directed by counsel for defendant Natura, including Ms. Kristin Caverly during several oral conversations and Mr. Robert Mardian in an email. Mr. Mardian specifically indicated that this site should be reviewed to obtain historical versions of the Natura web site in his meet and confer email of December 24, 2008, relating to written discovery issues, a true and correct copy of which is attached to this declaration as Exhibit "A".

4. I subsequently utilized the Archive.org web site locate and review historical web sites of Natura. Archive.org is structured in such a way that it initially provides a list of all of the historical versions of the web sites one can access of a particular entity by date. It also denotes when changes to the site were made. The historical sites available on the site cover the period of time from October 11, 1997 to February 6, 2008. A true and correct copy of the listing of historical web site for Natura, found on the Archives.org web site, is attached to this declaration as Exhibit "B".

5. In reviewing these prior sites I noted that they were designed in a pyramid type fashion, first providing quality and nutritional information applicable to all of Natura's products universally and then discussing its product lines individually and then the specific products within each line and then finally the specific ingredients used in each of those products. At each step in this pyramid the deceptive representations about the fitness of its products for human consumption and the "human grade" quality of their products was repeated in a clearly calculated effort to convince the consumer that Natura's pet food products were made of the same things that humans eat and were good enough for human consumption. In reviewing Natura's historic web sites I was easily able to locate the deceptive statements in this regard as testified to by Mr. Atkins in his deposition and as set out in the Plaintiff's original moving papers at almost all levels of the pyramid as it progressed outward. These statements included: "We only use ingredients that you would eat yourself..."; "All of our human grade dog and cat foods

are carefully cooked and tested...”; “Because we use only the highest quality human-grade pet food ingredients in our dog and cat food...”; “Use only ingredients which [you] would feel comfortable eating yourself”; and “Natura’s products use only human grade ingredients”.

6. Unfortunately, while each site reviewed did provide access to at least portions of the historical web sites for the dates listed, many times I could not access all of the linked pages within the site. This was particularly true for the earlier versions of the site. However I was able to access at enough portions to locate references to the deceptive statement set out in the Plaintiffs’ original moving papers and in paragraph 5 above.

7. I reviewed all of the historical websites for Natura for the period of November 29, 2003 through February 6, 2008, except those for April 23, December 11 and December 12, 2007 which I could not access. However, because of their repetitive and voluminous nature, I printed for use as exhibits in this Reply, only a sampling of the historical web site pages identified on a quarterly basis up to April 6, 2007 and thereafter, web site pages for every date listed except for those I could not access, as noted above. This parameter was utilized in an effort to place some reasonable limit on the size of the exhibit. The date of the web site was placed in handwriting at the top of the pages printed to indentify under which date they were found. True and correct copies of the archived historical Natura web site pages printed for use as exhibits here are attached to this declaration as Exhibit “C”.

8. While the Archives.org listing of the Natura historical websites indicated that there were apparently some changes to the Natura website from November 29, 2003 to April 5, 2007, I could not determine what they were based upon the web site pages that I was able to access. However, there was a significant change to the look and organization of the web site on April 6, 2007, when it appears that a major redesign of the site was undertaken.

9. My review of the Natura historical web sites revealed that from the November 29, 2003 up to the point of the major redesign on April 6, 2007, Natura made numerous deceptive statements concerning their products and ingredients being of “human grade” quality good enough for “you” the consumer or “they” to eat, as set out in the Plaintiff’s original moving papers and repeated in paragraph 5 above. On their “About Natura” page, their introductory page at the top of the pyramid which provides links to all the product line pages, they discuss “How Natura is Different” from other manufacturers and their claims as to the quality and nutritional aspects of their products. There Natura states that they “[U]se Only Ingredients I Would Feel Comfortable Eating Myself . . .” and “[W]e use only the ingredients you’d eat yourself . . .”. Under the tab/link for “Foods for Dogs” they state “Natura makes healthy dog foods with only the ingredients you would eat yourself”. Under the tab/link for “Treats for Dogs” they state “Natura’s complete line of dog treats is made from only the healthiest natural ingredients, like you would eat yourself”. In their Health Wise brand section they state that they use ingredients which are “. . . the exact same kind you would eat yourself”, and in their Mother Nature product section they state that their dog treats are baked using “only the finest human grade ingredients. . .”.

10. From the April 6, 2007 web site, the point of the significant redesign, to the last available historical Natura web site on the Archives.org site of February 6, 2008, also included as part of Exhibit “C”, the web site continued to include the deceptive statements highlighted in the Plaintiff’s original moving papers and repeated in paragraph 5 above. As a matter of fact, not only did they repeat the statements they had made earlier versions of the site about their food being food “you’d eat yourself” and “human grade” but they added to and embellished upon this statements. On their “About Us” page, again discussing “How Natura is Different” and “Our Pet Nutrition Philosophy” they continue to state that they “use only dog and cat food ingredients which I would feel comfortable eating myself”. In their discussion of “Pet Food Safety and Quality Control”

included in the “About Us” section, they state that they use “**only the highest human-grade pet food ingredients in our dog and cat foods** . . . (Emphasis provided by Natura)”. Under the Innova product section relating to Adult Dry Dog Food they state that their dry dog food “provides complete and balanced canine nutrition using human grade ingredients”. Under the Evo product section they state “Evo Grain-Free, Human Grade Pet Food”. Under the Mother Nature Healthy Dog Treats they say the treat is baked “using similar human grade pet food ingredients as those featured in Natura’s dog food and cat food products”. And under the Karma Organic Food for Dogs they state “Ninety-five percent of our human grade ingredients are USDA-Certified Organic . . .”.

11. At his deposition of November 5, 2008, Mr. Atkins testified that statements including “I only produce food I would eat myself” were likely included on the Natura’s web site the entire time the web site existed and certainly throughout the period from November 29, 2003 up to approximately September or October of 2008, a few weeks prior to his deposition. A true and correct copy of his deposition testimony relating to this issue, 215:23 to 216:5, is attached to this declaration as Exhibit “D”.

12. In the declaration he provided in support of Natura’s Opposition to this motion, Mr. Atkins stated that while he could not say with certainty when Natura began using the phrase “human grade” on its web-site, it was “mostly” in 2005 and 2006 (Atkins Decl. at ¶ 9). He also maintained that in 2007, prior to this lawsuit, Natura decided to stop its use of the phrase “human grade” (Atkins Decl. at ¶ 8). However the web-site pages included in Exhibit “C” clearly reveal that this assertion is false. The phrase “human grade” was used on Natura’s websites extensively throughout 2007. As a matter of fact, the phrase was still being used extensively on the last historical Natura web-site available on the Archives.org web-site of February 8, 2008, which is the first document in Exhibit “C”. To try to imply otherwise is another example of Natura’s deceptive practices.

I declare under the penalty of perjury under the laws of the State of California that

the forgoing is true and correct. Executed this 16th day of January 2009, in Carlsbad,
California.



Edgar R. Nield