

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

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ATTORNEYS FOR MARS, INC.

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MARS, INC.,)	
	Plaintiff,)	Civil Action No. 2:07-CV-1574(SRC)(MF)
)	
vs.)	
)	
NATRACEUTICAL, S.A., NATRA U.S., INC.)	
	Defendants.)	
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**DECLARATION OF MELISSA E. FLAX IN SUPPORT OF
PLAINTIFF'S APPLICATION FOR AN ORDER TO SHOW CAUSE**

Melissa E. Flax, of full age and upon her oath declares as follows:

- I am an attorney at law in the State of New Jersey and a member of Carella, Byrne, Bain, Gilfillan, Cecchi, Stewart & Olstein, attorneys for plaintiff Mars, Inc. ("Mars").

2. I submit this declaration in support of Mars' application for an Order to Show Cause.

3. True and accurate copies of the following documents are contained in Plaintiff's Compendium of Exhibits:

Exhibit No.	Exhibit Title
1	Decl. of Harold. H. Schmitz in Support of Plaintiff Mars' Application for an Order to Show Cause for Preliminary Injunction.
2	Natraceutical website, < http://www.natraceutical.com/e_natra7.asp >, April 9, 2007.
3	Excerpt from Grupo Natra Catalyst.
4	Food Technology Buyer's Guide, < http://buyersguide.ift.org/cms/?pid=3003&companyId=6000425 >, Mar. 29, 2007.
5	CocoaVia® brochure.
6	The CocoaVia Story, < http://www.cocoavia.com/story/ >, Mar. 29, 2007.
7	Cocoapro® Fact Sheet.
8	CocoaVia Product Fact Sheet.
9	Marlene M. Machut, <i>Research Finds Flavanols in Cocoa May Help Treat Diabetes, Strokes and Dementia</i> , July 25, 2005.
10	Lori Fromm, <i>Flavanols in Cocoa May Offer Benefits to the Brain</i> , Feb. 18, 2007.
11	<i>Mars Breaks New Ground in Heart Health with CocoaVia</i> , Sept. 14, 2005, < http://www.masterfoodsnews.com/prodprint.asp?prodid=265 >, March 22, 2007.
12	Elizabeth Schreiber, <i>Start a Heart-Healthy Diet During American Heart Month: It's Easy and Delicious to be Good to Your Heart</i> , Feb. 1, 2006.
13	Decl. of Brice S. Russell in Support of Plaintiff Mars' Application for an Order to Show Cause for Preliminary Injunction.
14	The CocoaVia Brand Difference, < http://www.cocoavia.com/products/ >, March 29, 2007.
15	U.S. Patent No. 6,312,753, entitled "Cocoa Components, Edible Products Having Enriched Polyphenol Content, Methods of Making Same and Medical Uses."
16	U.S. Patent No. 6,790,966, entitled "Cocoa Extracts Containing Solvent-Derived Cocoa Polyphenols from Defatted Cocoa Beans."
17	U.S. Patent No. 5,554,645, entitled "Antineoplastic Cocoa Extracts and Methods for Making and Using the Same."
18	Excerpts from MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY (10th ed. 1993).
19	Certificate of Analysis: CCX Reduced Fat 12% Polyphenols.
20	Decl. of John F. Hammerstone in Support of Plaintiff Mars' Application for an Order to Show Cause for Preliminary Injunction.
21	1/15/03 Preliminary Amendment to Application for the '966 patent.

22	10/1/03 Amendment to Application for the '966 patent.
23	Certificate of Analysis: CocoanOX Extract 45% Polyphenols.
24	<i>Christiana Indus., Inc. v. Empire Elecs. Inc.</i> , Case No. 06-12568, 2006 U.S. Dist. LEXIS 54210, at *5 (E.D. Mich. Aug. 4, 2006).
25	<i>Lawman Armor Corp. v. Winner Int'l, Inc.</i> , Case No. 01-1605, 2002 U.S. Dist. LEXIS 1431, at *50-51 (E.D. Pa. Jan. 23, 2002).
26	IFT 2007 Annual Meeting and Food Expo Exhibitor List, < http://www.am-fe.ift.org/cms/?pid=1000373 >, Feb. 27, 2007.
27	Natra U.S., Inc. company information page, IFT 2007 Annual Meeting and Food Expo website, < http://www.am-fe.ift.org/cms/?pid=1000025&companyId=6000425 >, Feb. 27, 2007.
28	IFT 2007 Annual Meeting and Food Expo Benefits, < http://www.am-fe.ift.org/cms/?pid=1000249 >, Feb. 27, 2007.
29	IFT 2007 Annual Meeting and Food Expo Marketing, < http://www.am-fe.ift.org/cms/?pid=1000252 >, Mar. 29, 2007.
30	<i>Allan Block Corp. v. E. Dillon & Co.</i> , Case No. 04-3511, 2005 U.S. Dist. LEXIS 13566, at *20 (D. Minn. July 1, 2005).
31	<i>What is Acticoa cocoa and chocolate?</i> , Acticoa website, < http://www.acticoa.com/en/2 >, Mar. 29, 2007.

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 12, 2007.



 MELISSA E. FLAX