

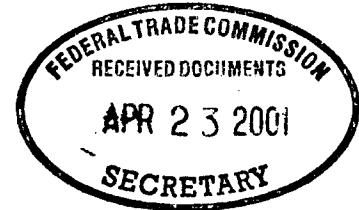
**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

In the Matter of

**NATURAL ORGANICS, INC.
a corporation, and**

**GERALD A. KESSLER
individually and as an officer
of the corporation**

Docket No. 9294



**TO: The Honorable James P. Timony
Chief Administrative Law Judge**

**RESPONDENTS' MOTION TO QUASH SUBPOENAS
SERVED ON NATURAL ORGANICS, INC., NATURAL ORGANICS
LABORATORIES, INC., VANGUARD SCIENTIFIC, INC., AND
AMERICAN ANALYTICAL CHEMISTRY LABORATORIES, CORP.**

INTRODUCTION

On March 9, 2001, Complaint Counsel served a subpoena duces tecum on Respondent Natural Organics, Inc. (Exhibit A) demanding documents related to independent laboratory testing of Natural Organics products. Prior to that, on March 1, 2001, Complaint Counsel served similar subpoenas duces tecum on Natural Organics Laboratories, Inc. ("NOL") (Exhibit B), another corporation owned by Respondent Gerald Kessler, as well as Vanguard Scientific, Inc. ("Vanguard") (Exhibit C) and American Analytical Chemistry Laboratories, Corp. ("AACL")¹ (Exhibit D) – two

¹ Respondents' Counsel were retained to represent NOL and both of the independent laboratories in connection with this proceeding.

independent laboratories (i.e., not owned or controlled by either Respondent) used by Natural Organics to test products.² Pursuant to the Federal Trade Commission's ("FTC") Rules of Practice ("Rules of Practice") §§ 3.22, 3.31(c)(1), and 3.34(c), Respondents move to quash these subpoenas.³ As demonstrated below, this relief is necessary to prevent Complaint Counsel from seeking discovery that is not "reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of any respondent," Rule § 3.31(c)(1), to prevent this proceeding from becoming improperly and unmanageably complicated, and necessitating the potential postponement of the Hearing.

As we will discuss below, Complaint Counsel seek, through these subpoenas, to dramatically expand the scope of this proceeding, and delay its timely completion, by improperly interjecting heretofore unpled theories of liability into the case. Specifically, Complaint Counsel state in the cover letter to the subpoena to Natural Organics that "[w]e have reason to suspect that respondents . . . do not possess independent laboratory tests confirming the chemical composition of many of their products." Letter from Matthew Gold to John Fleder (March 9, 2001) (Exhibit E). Complaint Counsel also intend to call an expert witness – Eric Murphy – to testify that in his opinion,

² Complaint Counsel have also sought to depose personnel from Vanguard, AACL, and NOL, but have agreed to postpone these depositions pending Your Honor's decision on this Motion.

³ As set forth fully below, Respondents do not seek to quash Specifications 1 through 3 of the subpoena served on Respondent Natural Organics.

Respondents' product Pedi-Active A.D.D. does not contain the amount of some of the ingredients stated on the label.⁴

Neither of these theories is included in the Complaint, which means that neither has been scrutinized by the Commission before being raised in this adjudicative proceeding. Accordingly, the subpoenas are little more than an unwarranted and improper eleventh hour fishing expedition by Complaint Counsel to expand this proceeding in a manner that violates the Commission's own Rules of Practice. Complaint Counsel's actions are all the more baffling given that even if their theories had merit (which they do not), FTC Staff must present these suppositions to the Commission by seeking to amend the Complaint.

As Your Honor may recall, Complaint Counsel equivocated when Your Honor asked during the Status Conference of April 3, 2001, whether they intended to seek amendment of the complaint to incorporate their new theories of liability. Complaint Counsel told us on April 20, 2001, that they are contemplating seeking to amend the complaint – which if it occurs, Respondents will vigorously oppose.

I. The Subpoenas are not Expected to Yield Relevant Information

A. The Subpoenas Seek Irrelevant Information

Parties to an FTC adjudicative proceeding may seek discovery only “to the extent that it may be reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of any respondent.” Rule

⁴ Respondents vigorously dispute both of these contentions.

§ 3.31(c)(1). “[T]he standard for judging relevancy in an investigatory proceeding is more relaxed than in an adjudicatory one.” FTC v. Invention Submissions Corp., 965 F.2d 1086, 1089, 1090 (D.C. Cir. 1992), cert. denied, 507 U.S. 910 (1993). The relevance of a subpoena issued during the pre-complaint phase of a Commission investigation “may be measured only against the general purposes of [the agency’s] investigation.” FTC v. Texaco, 555 F.2d 862, 874 (D.C. Cir. 1977) (en banc).

Once the Commission has issued a complaint, however, the sufficiency of the agency’s subpoena must be judged more stringently, by “lay[ing] the [subpoena’s] specifications alongside the complaint.” Adams v. FTC, 296 F.2d 861, 867 (8th Cir. 1961), cert. denied, 369 U.S. 864 (1962). See FTC v. Anderson, 631 F.2d 741, 746 (D.C. Cir. 1979); Moore Business Forms, Inc. v. FTC, 307 F.2d 188, 189 (D.C. Cir. 1962). Conversely, the sufficiency of a subpoena requested by a respondent in an FTC adjudicative proceeding is measured by “laying the subpoena along side of the defenses raised by [the] respondent’s answer to the complaint.” In re Flowers Industries, Inc., 1982 FTC LEXIS 96, at *2 (1982) (Timony, ALJ) (citing FTC v. U.S. Pipe & Foundry Co., 304 F. Supp. 1254, 1260 (D.D.C. 1969)). See In re Kaiser Aluminum & Chemical Corp., 1976 FTC LEXIS 68, at *2 (1976) (Timony, ALJ).

Complaint Counsel in the instant case issued subpoenas to the Respondents on March 9, 2001, and to Vanguard, AACL, and NOL on March 1, 2001, seven months after the Commission served its Complaint upon the Respondents. Accordingly, the relevance of the subpoenas must be measured by laying each alongside the Complaint. Comparing each subpoena to the Complaint yields the unmistakable conclusion that the documents

and information that Complaint Counsel seeks from the Respondents and the laboratories bear no relevance to any issue in this proceeding. The subpoenas, therefore, must be quashed.

The Commission unambiguously alleges in its Complaint that Respondents violated Sections 5(a) and 12 of the Federal Trade Commission Act (“FTC Act”) by not possessing and relying upon adequate substantiation for five specific representations purportedly flowing from Respondents’ advertisements for a single product, i.e., their Pedi-Active A.D.D. dietary supplement. According to the Complaint, Respondents represented through their advertising that Pedi-Active A.D.D. will:

- A. improve the attention span of children who have difficulty focusing on school work;
- B. improve the scholastic performance of children who have difficulty focusing on schoolwork;
- C. improve the attention span of children who suffer from ADHD;
- D. improve the scholastic performance of children who suffer from ADHD; and
- E. treat or mitigate ADHD or its symptoms.

Complaint at 4 (Exhibit F). The Complaint further alleges that Respondents lacked adequate substantiation for these claims. Id.

Complaint Counsel, by their own words, however, admit that the documents and information they seek via the subpoenas to Vanguard, AACL, NOL, and Natural Organics are not even remotely related, let alone reasonably related, to the meaning of the challenged ads, or to the question of whether Respondents possessed adequate

substantiation for the specific representations contained in the Commission's Complaint.

Complaint Counsel state in a letter that accompanied the subpoena served on the

Respondents that:

[S]ome⁵ of the Specifications in the Subpoena . . . seek documents and information relating to respondents' effort to have the ingredients in Pedi-Active A.D.D. and other products tested by independent laboratories. Respondents have emphasized the fact that independent laboratories 'confirm' their product formulations in print advertisements and other marketing materials. . . . We have reason to suspect that respondents, contrary to these statements, do not possess independent laboratory tests confirming the chemical composition of many of their products.

Letter from Matthew Gold to John Fleder (March 9, 2001) (Exhibit E). Similarly, in their Status Report and Statement of the Case, Complaint Counsel described the subpoenas as "call[ing] for the production of documents relevant to the[] labs' testing of the chemical composition of Pedi-Active A.D.D." Complaint Counsel's Status Report and Statement of the Case at 4. Later in the document, Complaint Counsel also state that they "[are] evaluating respondents' statements in print advertisements and other marketing materials that independent laboratories confirm their product formulations" because "[they have]

⁵ Complaint Counsel's use of the word "some" is an understatement. Of this subpoena's eleven specifications, eight request documents and information exclusively related to the question of independent laboratory testing of Pedi-Active A.D.D. and other Natural Organics products. Subpoena to Natural Organics at 6. Respondents and Complaint Counsel have agreed to narrow the scope of Specification 1 to cover only the most recent edition of the Natural Vitamin Handbook, and Respondents will send this document to Complaint Counsel. In addition, Respondents have advised Complaint Counsel that they do not possess any additional documents that are responsive to Specifications 2 and 3. Respondents' Motion to Quash, then, applies to the remaining eight specifications, i.e., Specifications 4 through 11.

reason to suspect that respondents . . . do not possess independent laboratory tests confirming the chemical composition of many of their products.” Id. at 20.

By their own admission, Complaint Counsel seek to use the subpoenas to launch an investigation into a new matter that touches upon all of Respondents’ products and that is utterly unrelated to the question currently before Your Honor of whether Respondents possessed adequate substantiation for representations that might or might not have been made about Pedi-Active A.D.D. The extent to which the information demanded by the subpoenas is utterly irrelevant to this proceeding is borne out by the fact that none of the Respondents’ ads that triggered the instant action contain any representations about independent laboratory testing. See Complaint at Exhibits A-D. And none of the ads identified by Complaint Counsel in their subpoenas as allegedly containing representations about independent laboratory testing contain any of the five claims challenged in the Commission’s Complaint. See Attachments to Complaint Counsel’s Subpoena to Natural Organics (Exhibit F).

Complaint Counsel’s own characterization of their documents aside, it is patently clear from the face of the subpoenas that none of the information sought therein is even remotely relevant to the issues in this case. The subpoena to Natural Organics asks for the production of documents or research studies referring or relating to (1) an Independent Laboratory Assay Handbook published by the Respondents that contains Certificates of Analysis for all of Respondents’ products (Specifications 5, 10, and 11), (2) a number of specific Certificates of Analysis from different editions of the Handbook (Specifications 7, 8, and 9), and (3) other documents related to laboratory testing of the

chemical composition of Pedi-Active A.D.D. (Specifications 4 and 6). The subpoenas received by Vanguard, AACL, and NOL are identical, and ask for:

1. All documents referring or relating to communications with Natural Organics since January 1, 1996;
2. All documents referring or relating to any research study⁶ of Pedi-Active A.D.D.; and
3. Documents sufficient to show, in detail, the methodology used for any research study of Pedi-Active A.D.D.

Subpoenas Duces Tecum to Natural Organics Laboratories, Inc., Vanguard Scientific, Inc., and American Analytical Chemistry Laboratories Corp. at 4. The documents and information described by the four subpoenas lack any scintilla of a suggestion that the information requested might be even remotely relevant to the meaning of Respondents' advertising for Pedi-Active A.D.D., or to the question of whether the Respondents lacked substantiation as alleged in the Commission's Complaint.

Respondents also vigorously object to the fact that by issuing the subpoenas, Complaint Counsel have embarked on what can only be described as a rogue fishing expedition. Only the Commission can issue a complaint, and does so after reviewing the work and recommendations of the FTC Staff. Commission decisions to file complaints are based on considerably more than the Staff's mere suspicions. The Commission, however, has not reviewed the ads and alleged representations relating to independent

⁶ The term "research study" is defined as "any draft, preliminary, interim, or final test, measurement, evaluation, assessment, report, or analysis and any underlying data or protocol." Subpoenas to Natural Organics Laboratories, Inc., Vanguard Scientific, Inc., and American Analytical Chemistry Laboratories Corp. at 2.

laboratory testing that Complaint Counsel describe in their subpoenas. Nevertheless, now that we are seven months into the litigation and only two months away from the Hearing date, Complaint Counsel seek to bootstrap the issue of laboratory testing into the Complaint exclusively on the strength of their barely articulable suspicion.

If Complaint Counsel are allowed to proceed with their fishing expedition, Respondents will be greatly prejudiced because we will not have an adequate opportunity to obtain discovery of Complaint Counsel's two new theories of liability absent an extension of the Hearing date. Because the question of independent laboratory testing was not raised in the Commission's Complaint, Respondents have not hired an expert witness to address the issue, and will need additional time to do so if the subpoenas are not quashed. In addition, Your Honor will be placed unnecessarily in the difficult position of having to determine the relevant facts and the validity of Complaint Counsel's eleventh hour allegations without the benefit of the Commission's review of Complaint Counsel's actions, and without the benefit of adequate discovery.

B. Complaint Counsel's Justifications for the Subpoenas are Baseless

Complaint Counsel believe that they are entitled to the documents demanded by the subpoenas so that they can rebut certain testimony that Respondents might offer at the Hearing before Your Honor. Complaint Counsel have stated, for example, that:

[t]he extent to which respondents do or do not have an independent laboratory test of their products is certainly relevant to "Respondents' good faith conduct and fair dealing in business," and to "Respondents' commitment to quality, integrity and good faith business practices," both of which [Respondents] describe . . . as subjects about which respondents' fact witnesses will testify.

Letter from Matthew Gold to John Fleder (March 9, 2001).

Without even reaching the question of whether this justification is well grounded as a matter of law, it is important to note that the issue of Respondents' good faith is a very narrow matter, and does not justify the sweeping fishing expedition that Complaint Counsel have launched with their subpoenas. In the interest of judicial efficiency and of streamlining the Hearing in this matter, Respondents have withdrawn three "good faith" fact witnesses and, therefore, will not offer their testimony at the Hearing.⁷ Respondents' good faith testimony, therefore, will be limited to two narrow areas. First, absent stipulations, our witnesses will attest to the uncontroverted fact that Natural Organics has not been the subject of any other federal governmental proceeding alleging any violation of the law. Second, Mr. Kessler, along with James Gibbons, Natural Organics' Vice President of Research and Development, and Robert Ullman, Esq., former partner with the late Milton Bass, Esq., will attest to the fact that in his long-standing capacity as counsel to Respondents, Mr. Bass reviewed and approved the claims and advertisements for the products at issue in this litigation. It is only proper, then, that Complaint Counsel's discovery of issues relevant to Respondents' good faith be proportionally limited in scope. We are unaware of any cases in which the Commission has been allowed to raise new allegations after a complaint has been filed regarding ads and representations not subject to the complaint, or to otherwise probe indiscriminately into

⁷ Letter from John Fleder to Matthew Gold (April 20, 2001) (withdrawing Ray Bartone of Aceto Corp., Guy Woodman of Euromed and John Blanco of AnMar International Ltd. as fact witnesses) (Exhibit G).

all aspects of a respondent's activities, under the guise of obtaining discovery of a respondent's good faith. We did not object to discovery by Complaint Counsel on the good faith matters discussed above. Indeed, Complaint Counsel will be deposing Mr. Ullman. However, we cannot permit a roving fishing expedition under the guise that it could be relevant to Respondents' good faith.

Complaint Counsel presumably will argue that the information they hope to obtain through the subpoenas is reasonably relevant to proposed relief (i.e., to the scope of a cease and desist order's "fencing in" provision) that they might seek in the event Your Honor finds that the Respondents have violated Sections 5(a) and 12 of the FTC Act. Here, too, however, Complaint Counsel's justification for submitting the subpoenas falls fatally short of the applicable legal standard.

Determining the scope of a cease and desist order's fencing-in provision involves the evaluation of three factors: "(1) The deliberateness and seriousness of respondents' violation; (2) the ease with which the unlawful practices could be transferred to other products and practices; and (3) the respondents' past history of unlawful conduct." In re Metagenics, Inc., 1996 FTC LEXIS 459, at *168 (Oct. 11, 1996) (initial decision) (citing FTC v. Colgate-Palmolive Co., 380 U.S. 374, 395 (1965); Sears, Roebuck & Co. v. FTC, 676 F.2d 385, 390 (9th Cir. 1982); and Standard Oil Co. v. FTC, 577 F.2d 653, 662 (9th Cir. 1978)) (emphasis added). Of these factors, testimony of a respondent's good faith behavior arguably is relevant only insofar as it speaks to a past history of unlawful, or lawful, conduct. Logically, only evidence of prior unlawful conduct should be considered. Consideration of anything short of fully adjudicated allegations of

misconduct which would entail little to no discovery, after all, would impermissibly prejudice the Respondents by allowing Complaint Counsel to conduct a fishing expedition into unrelated allegations that are irrelevant to the Complaint.

Yet this is precisely what will happen if Complaint Counsel's laboratory testing subpoenas are not quashed. Complaint Counsels' subpoenas raise unsubstantiated and unadjudicated allegations at the eleventh hour that are based on mere suspicion. The issue of whether independent laboratories test Respondents' products has not been adjudicated before the Commission, or in any other forum. Accordingly, documents responsive to the laboratory testing subpoenas are not probative of "respondents' past history of unlawful conduct" and, therefore, are not reasonably relevant to the question of relief.

Although Complaint Counsel have not stated so directly in the subpoenas or in related documents, they have suggested in conversations that the information requested by the subpoenas is relevant to the allegations of the Complaint because the Complaint as written includes the claim that Pedi-Active A.D.D. does not contain the amount of ingredients listed on the label. The Commission is quite capable of drafting complaints that expressly contain "inadequate quantity" or other such allegations when it chooses to do so. See In re Kraft, Inc., 114 FTC LEXIS 40 (1987) (alleging that advertisements claiming that Kraft Singles contained the same amount of calcium as five ounces of milk were misleading because "Kraft Singles do not contain the same amount of calcium as five ounces of milk"); In re Thompson Medical Co., 104 F.T.C. 648, 1984 FTC LEXIS 6, at *5 (1984) (alleging that advertisements represented that Aspercreme contains aspirin

when “Aspercreme does not contain aspirin”); In re Abbott Labs., 1996 FTC LEXIS 707, at *5-7 (1996) (alleging that advertisements represented that Ensure product contained same amount of vitamins as multivitamin supplement, when Ensure did not provide same amount of RDIs for most of the vitamins in product); In re ITT Continental Baking Co., 83 F.T.C. 865 (1973), order modified at 90 F.T.C. 181 (1977) (alleging that advertisements for Wonder Bread represented that Wonder Bread was an outstanding source of nutrients, when, in fact, it was a standardized enriched bread, and did not contain more nutrients than was required by law for all enriched breads).

The Commission has also shown itself capable of drafting complaints making the contrary allegation that a product contains an ingredient even though advertising claims represent the absence of that ingredient. See In re Dura Lube Corp., 1999 FTC LEXIS 48 at *12-18 (alleging that advertising and labeling containing representation that product contained no chlorinated compounds was untruthful because “Dura Lube contains chlorinated paraffin, a chlorinated compound”); In re Phan, 1992 FTC LEXIS 295, at *4 (1992) (alleging that non-tobacco “cigarette” contained tar even though advertisements claimed that the product had no tar). Because the Commission is clearly capable of drafting such complaints in clear, concise language, Complaint Counsel should not be permitted to redraft the Complaint in such a tortuous way so as to frustrate the clear intent of the Commission in approving all complaints.

II. Complaint Counsel Seek to Improperly Expand the Proceeding

As shown above, Complaint Counsel’s subpoenas, if enforced, would have the impermissible effect of expanding the scope of the Commission’s Complaint to

encompass unalleged theories of liability and acts. The appropriate procedure for seeking the adjudication of claims that are not included in the Complaint is for Complaint Counsel to move to amend the Complaint. The Administrative Law Judge (“ALJ”) may grant such a Motion “only if the amendment is reasonably within the original complaint or notice.” Motions for other amendments of complaints or notices shall be certified to the Commission.” Rule § 3.15(a)(1) (emphasis added). This is because the Commission acts in a “dual role as prosecutor and judge” and must exercise control over the claims that are litigated. In re Beatrice Foods Co., 101 F.T.C. 733, 1983 FTC LEXIS 76, at *210 (1983). “To allow new theories to be added, provided only that the respondent has adequate notice and an opportunity to litigate the issues, would defeat the very purpose of this safeguard in our rules, and undermine the Commission’s control over its prosecutorial discretion.” Id.

This requirement is epitomized by the opinions in In re Kellogg Co., 99 F.T.C. 8, 1982 FTC LEXIS 65, at *29 (1982). In Kellogg, the original ALJ allowed an antitrust case to be tried on both a conspiracy theory as well as a shared monopoly theory, notwithstanding that the conspiracy theory had not been pleaded, nor had Complaint Counsel moved to amend the Complaint. A subsequent ALJ wrote that:

To the extent that [the original ALJ] may be deemed to have amended the complaint to include the charge of conspiracy, such amendment would violate Section 3.15(a)(1) of the Commission’s Rules. That section requires the filing of a motion for amendment and limits the authority of the ALJ to allow only such amendments that are reasonably within the scope of the original complaint. Neither requirement has been met here. Further, [the original ALJ] has issued no order of amendment.

Id. at *30. Two Commissioners also noted that the original ALJ's inclusion of the conspiracy issue was seriously flawed due to the lack of compliance with Rule § 3.15(a)(1). See id. at *273 (Concurring statement of Commissioner Clanton), *307-308 (Dissenting statement of Commissioner Bailey).

In sum, the ALJ's ability to grant motions to amend complaints is extremely limited. The Commission has stated that:

Where the effect of the amendment is an alteration of the underlying theory behind the complaint, or where it alleges substantially different acts or practices on the part of the respondent, or where it requires different determinations with respect to the belief that a violation has occurred and that the public interest is jeopardized, the hearing examiner [now ALJ] is without power to authorize it.

In re Standard Camera Corp., 63 F.T.C. 1238, 1266 (1963). Such amendments have been found to exceed the scope of the Complaint when they have sought to: delete certain charges against one respondent, In re Synchronal Corp., 1993 FTC LEXIS 70 (1993) (Timony, ALJ); add the term "safety hazards" to a complaint alleging defects of furnaces, In re Champion Home Builders Co., 99 F.T.C. 397 (1982); change the theory of the complaint from a knowledge of the falsity of the statement to a "lack of reasonable basis" allegation, In re Century 21 Commodore Plaza, Inc., 89 F.T.C. 238 (1977); or add the theory of potential competition in an antitrust case when only actual competition had been pleaded, Beatrice Foods, supra.

In the present matter, Complaint Counsel seek (albeit without following the proper procedures) to add two theories of liability to the Complaint: (1) that Respondents represented in advertisements that their products were tested by an independent laboratory; and (2) that Pedi-Active A.D.D. did not contain the quantities of ingredients

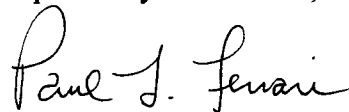
represented on the labels of the product. Both of these putative claims are well outside the scope of the Complaint which alleges five claims allegedly made by Respondents regarding Pedi-Active A.D.D. All five allegations relate to claims regarding the effects of Pedi-Active A.D.D. The two additional claims that Complaint Counsel have sought to improperly introduce thereby alter the underlying theory behind the complaint, and allege substantially different acts or practices on the part of the Respondents. Even if Complaint Counsel seek to amend the Complaint by following the proper procedures, it is not a given that the Commission will grant the motion to amend. Given this uncertainty, Complaint Counsel's eleventh hour, backdoor attempt to expand the scope of Complaint by adding two new theories via subpoena must be blocked.

CONCLUSION

For the foregoing reasons, Respondents' Motion to Quash Subpoenas served on Respondent Natural Organics, Inc., Natural Organics Laboratories, Inc., Vanguard Scientific, Inc., and American Analytical Chemistry Laboratories, Corp. should be granted.

Dated: April 23, 2001

Respectfully Submitted,



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Attorneys for Respondent Natural Organics, Inc.,
Respondent Gerald A. Kessler,
Natural Organics Laboratories, Inc.,
Vanguard Scientific, Inc., and
American Analytical Chemistry Laboratories, Corp.



SUBPOENA DUCES TECUM

Issued Pursuant to Rule 3.34(b), 16 C.F.R. § 3.34(b)(1997)

1. TO Natural Organics, Inc., and
Gerald A. Kessler
c/o John R. Fleder, Esq., Hyman, Phelps
& McNamara, P.C., 700 Thirteenth Street,
N.W. Washington, D.C. 20005-5929

2. FROM

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things - or to permit inspection of premises - at the date and time specified in Item 5, at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

3. PLACE OF PRODUCTION OR INSPECTION

Federal Trade Commission
Western Region
901 Market Street, Suite 570
San Francisco, CA 94103

4. MATERIAL WILL BE PRODUCED TO

Matthew D. Gold

5. DATE AND TIME OF PRODUCTION OR INSPECTION

March 30, 2001 5:00 p.m.

6. SUBJECT OF PROCEEDING

In the Matter of Natural Organics, Inc., and Gerald A. Kessler
Docket No. 9294

7. MATERIAL TO BE PRODUCED

See attached Document Specifications

8. ADMINISTRATIVE LAW JUDGE

James P. Timony

Federal Trade Commission
Washington, D.C. 20580

9. COUNSEL REQUESTING SUBPOENA

Matthew D. Gold
Complaint Counsel
Federal Trade Commission
901 Market Street, Suite 570
San Francisco, CA 94103

DATE ISSUED

MAY 1 1997

SECRETARY'S SIGNATURE

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed with the Secretary of the Federal Trade Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 9, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to counsel listed in Item 9 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from counsel listed in Item 9.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

DEFINITIONS

- A. Unless otherwise noted, “Natural Organics” means Natural Organics, Inc., its predecessor or successor corporations, its wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under assumed names, and affiliates, and all past and present owners, directors, officers, employees, agents, consultants, and other persons working for or on behalf of the foregoing, including Gerald A. Kessler, Marci Dunnder, and James Gibbons.
- B. “You” or “yours” shall mean Natural Organics or Natural Organics’.
- C. “Document” means the complete original and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any written, typed, printed, transcribed, taped, recorded, filmed, punched, computer-stored, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated or made, including but not limited to any advertisement, book, pamphlet, periodical, contract, correspondence, file, invoice, memorandum, note, telegram, report, record, handwritten note, working paper, routing slip, chart, graph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, agenda, minute, code book, and computer material (print-outs, cards, magnetic or electronic tapes, discs and such codes or instructions as will transform such computer materials into easily understandable form).
- D. “All documents” means each document, as defined above, which can be located, discovered or obtained by reasonable, diligent efforts, including without limitation all documents possessed by: (1) you or your counsel; or (2) any other person or entity from whom you can obtain such documents by request or which you have a legal right to bring within your possession by demand.
- E. “Referring or relating to” means discussing, describing, reflecting, containing, analyzing, studying, reporting, commenting, evidencing, constituting, setting forth, considering, recommending, concerning, or pertaining to, in whole or in part.
- F. “Communication(s)” includes, but is not limited to, any and all conversations, meetings, discussions and any other occasion for verbal exchange, whether in person or by telephone, as well as all letters, memoranda, E-mails, telegrams, cables, and other writings or documents.
- G. “Pedi-Active A.D.D.” means the dietary supplements known as Pedi-Active A.D.D., Pedi-Active Spray, Pedi-Active Bar, and their individual ingredients, including DMAE (2-dimethylaminoethanol bitartrate) and LECI-PS®.

- H. "LECI-PS®" means the dietary supplement known as LECI-PS® and its individual ingredients, including phosphatidylserine, phosphatidylcholine, linoleic acid, and linolenic acid.
- I. "ADHD" means Attention Deficit/Hyperactivity Disorder as defined in the American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders, (4th ed. 1994), and each of its symptoms. ADHD also means ADD, Attention Deficit Disorder, Minimal Brain Dysfunction, and any other name by which ADHD has been known.
- J. "Including" or "includes" shall mean "including but not limited to" or "includes but is not limited to."
- K. "Or" includes "and," and "and" includes "or."
- L. "Each" includes "all" and "any."
- M. The singular includes the plural, and the plural includes the singular.
- N. "Person" or "persons" means all natural persons, corporations, partnerships or other business associations, and all other legal entities, including all members, officers, predecessors, assigns, divisions, affiliates and subsidiaries.
- O. "Advertisement" means any written or verbal statement, illustration or depiction that is designed to effect a sale or create interest in the purchasing of goods or services, whether the same appears in a brochure, newspaper, magazine, pamphlet, leaflet, circular, mailer, book insert, free standing insert, letter, catalogue, poster, chart, billboard, public transit card, point of purchase display, package insert, package label, film, slide, radio or television broadcast, audio program transmitted over a telephone system, World Wide Web site or any other media.
- P. "Disseminated advertisement" shall mean any completed Natural Organics advertisement approved by Natural Organics or its advertising agency that has been or will be placed, published, aired, run, or otherwise viewed by the public in any media vehicle, including any print, radio, or television broadcast, audio program transmitted over a telephone system, World Wide Web site or any other media. "Disseminated advertisement" shall also mean any Natural Organics ad mailed or otherwise delivered to the public (i.e., direct mail advertising).
- Q. "Non-disseminated advertisement" shall mean any Natural Organics advertisement that has not been disseminated and is not planned to be disseminated in the future, including any advertisement that Natural Organics or its advertising agency rejected, failed to approve, or subsequently modified before dissemination, including any comp, draft,

preliminary version, proposed advertising text or art, thumbnail sketch, layout, tissue overlay, or conceptual rendering.

- R. "Research study" shall mean any draft, preliminary, interim, or final test, measurement, evaluation, assessment, report, or analysis and any underlying data or protocol.

INSTRUCTIONS

- A. Scope of Search: Documents covered by this subpoena are those in the possession of, or under the actual or constructive custody or control of, Natural Organics, including such documents that were received from or disseminated to Natural Organics's attorneys, accountants, directors, officers, employees, or any other person or entity.
- B. Relevant Time Period: Unless otherwise specified, the time period applicable to the Specifications shall not be limited and all documents responsive to each Specification, regardless of dates or time periods involved, should be provided. If the response to any Specification is different for different periods within the relevant time period, provide a complete response for each separate time period.
- C. Written Response: All documents submitted shall be clearly and precisely identified as to the Specification(s) to which it is responsive. Each document shall be submitted in its entirety even if only a portion of the document is responsive to a Specification.
- D. Document Identification: Documents that may be responsive to more than one Specification of this subpoena need not be submitted more than once; however, your response should indicate, for each document submitted, each Specification to which the document is responsive. In addition, number by page all documents in your submission and indicate the total number of documents in your submission. If you have previously supplied to the Commission any documents responsive to this subpoena, you may, in lieu of re-submitting those documents, identify the documents, including the document page number previously given, and the date of prior submission. In this regard, if a document has been specifically excluded from the Initial Disclosure requirement by agreement of the parties as reflected in the letters from Matthew D. Gold to John M. Desiderio dated September 11, 2000 and September 20, 2000, you need not produce it in response to this subpoena.
- E. Completeness of Document Submission: Documents shall not be edited, cut, or expunged and shall include all covering letters and memoranda, transmittal slips, appendices, tables or other attachments and all other documents referred to in the document or attachments. All manuals, instructions, or other written materials necessary to understand any document produced in response to these Specifications must also be submitted.

- F. Identification of Mechanically-Recorded Information: If any of the information requested in this Subpoena Duces Tecum is available in machine-readable form (such as floppy or hard disks, drums, core storage, magnetic tapes, or punch cards), state the form in which it is available and describe the type of computer or the machinery required to read the record(s) involved. If the information requested is stored in a computer or a file or record generated by a computer, indicate whether you have an existing program that will print out the record in readable form and state the name, title, business address, and telephone number of each person who is familiar with the program.
- G. Identification of Persons: When instructed to submit documents sufficient to identify a person, submit documents sufficient to show the following information:
1. full name;
 2. current business address and telephone number (or current residence if the business address is unavailable);
 3. current title, job description, and employment status; and
 4. any other title and job description during the relevant time period.
- H. Narrative Answers Instead of Documents: When a Specification in this subpoena calls for documents sufficient to provide certain information, you may provide, in lieu of documents, a narrative answer containing the information requested.
- I. Production of TV and Radio Broadcast Advertisements: Produce each radio advertisement demanded on a cassette tape recording with the corresponding script. Produce each television advertisement on a VHS videotape cassette with a corresponding as-produced script and photoboard or video storyboard. Unless the Specification is limited to disseminated advertisements, also produce all unedited copies of cassette tapes and videotapes, including any outtakes or attempts not in the broadcast version of the advertisement.
- J. Production of World Wide Web Advertisements: Produce a hard copy and an electronic copy of each version of each responsive advertisement that appeared on any Web site, as well as any drafts of such advertisements.
- K. Production of Copies: Unless otherwise stated, legible, true, correct, and complete photocopies may be submitted in lieu of original documents, provided that the originals are retained in their current state and shall be produced to Commission staff upon request. Submission of a copy, however, shall constitute a waiver of any claim as to the

authenticity of the copy should it be necessary to introduce such copy into evidence in any Commission proceeding or court of law.

- L. Objections: All objections to these Specifications, or to any individual Specification, must be raised by the return date or are waived.

- M. Documents Withheld Under Claims of Privilege or Otherwise: If any document called for by this subpoena is withheld based on a claim of privilege or any other claim, the claim must be asserted no later than the return date. In addition, submit, together with such claim, a schedule of the items withheld stating individually as to each such item (a) the Specification to which each item responds; (b) the type, title, specific subject matter, and date of the item; (c) the names, addresses, positions, and organizations of all authors and recipients of the item; and (d) the specific grounds for claiming that the item is privileged or otherwise protected from disclosure. If only some portion of any responsive document is privileged or otherwise protected from disclosure, all non-privileged or non-protected portions of the document must be submitted.

- N. Document Retention: The Commission may require the submission of additional documents at a later time. Accordingly, you should suspend any routine procedures for document destruction and take other measures to prevent the destruction of documents that are in any way relevant to this case during its pendency, irrespective of whether you believe that such documents are protected from discovery by privilege or otherwise.

- O. Continuing Character of this Subpoena: Each of the following Specifications is continuing. If, at any later date, you obtain or discover any additional document responsive to any Specification, you shall submit such document promptly.

SPECIFICATIONS

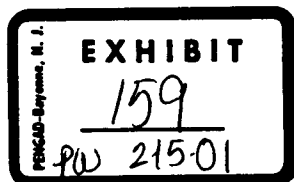
1. A copy of each Natural Organics "Natural Vitamin Handbook" or other product catalog that has included an entry for Pedi-Active A.D.D.
2. A copy of each telephone script that Natural Organics employs for the purpose of responding to a consumer inquiry regarding any product.
3. All documents (including, but not limited to, those listed on any privilege log you have previously provided) referring or relating to communications, occurring on or before May 21, 1997, with Milton A. Bass, Steven Shapiro, or any other attorney regarding Pedi-Active A.D.D.
4. All documents or research studies that formed the basis for the contents of the attached FTC Exhibit 159.
5. Since January 1, 1996, a copy of each "Independent Assay Handbook," as that term is described by James Gibbons on pages 206-207 of his deposition, and each Nature's Plus Independent Laboratory Assay Handbook.
6. All documents referring or relating to any communications with any person who has tested the chemical composition of Pedi-Active A.D.D. for any purpose, including, but not limited to, Vanguard Scientific, Inc., American Analytical Chemistry Laboratories Corp., and Natural Organics Laboratories, Inc.
7. All documents or research studies that formed the basis for any of the quantities reported under "Result" on the attached "Certificate of Analysis" (FTC Exhibit 173).
8. All documents or research studies that formed the basis for any of the quantities reported under "Result" on the attached "Certificate of Analysis" (FTC Exhibit 171).
9. All documents or research studies that formed the basis for the 50 mg. of LECI-PS reported under "Result" on the attached "Certificate of Analysis" (FTC Exhibit 172).
10. All advertisements that Natural Organics has disseminated since January 1, 1996 that refer to the Nature's Plus Independent Laboratory Assay Handbook, such as the two attached advertisements (Bates 005287 & 005284-85).
11. For each advertisement responsive to Specification 10, all Insertion Orders or other documents that reflect the dates and times of dissemination, number of disseminations, media used, job numbers or descriptions, and the name and address of any advertising agency retained.

Two Chewable Tablets Contain (single dose):

DMAE (2-dimethylaminoethanol bitartrate)	100 mg.
Phosphatidylserine (PS).....	20 mg.
Phosphatidylcholine (PC)	20 mg.
Cephalin (phosphatidylethanolamine)	12 mg.
Phosphoinositides	6 mg.
Palmitic acid (fatty acid).....	9 mg.
Stearic acid (fatty acid).....	3 mg.
Oleic acid (fatty acid).....	5 mg.
Linoleic acid (fatty acid).....	27 mg.
Linolenic acid (fatty acid)	6 mg.

Eight Chewable Tablets Contain (daily dose):

DMAE (2-dimethylaminoethanol bitartrate)	400 mg.
Phosphatidylserine (PS).....	80 mg.
Phosphatidylcholine (PC)	80 mg.
Cephalin (phosphatidylethanolamine)	48 mg.
Phosphoinositides	24 mg.
Palmitic acid (fatty acid).....	36 mg.
Stearic acid (fatty acid).....	12 mg.
Oleic acid (fatty acid).....	20 mg.
Linoleic acid (fatty acid).....	108 mg.
Linolenic acid (fatty acid)	24 mg.



003827
NaturalO

NO Production 1/12/01
00173

Pedi-Active A.D.D. is a precisely calibrated formula designed for the active child. Each incredibly delicious, chewable tablet supplies a profile of the most advanced neuro-nutrients available. With a diversified, highly specialized combination of phosphatidylserine, DMAE and activated soy phospholipids, including phosphatidylcholine, each Pedi-Active A.D.D. tablet is a state-of-the-art nutritional supplement that naturally complements an active child's delicate system.

DIRECTIONS: As a dietary supplement, two chewable tablets three to four times daily or as recommended by your health care professional.

KEEP TIGHTLY CLOSED IN A COOL, DRY PLACE. KEEP OUT OF REACH OF CHILDREN.

*This statement has not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure or prevent any disease.

PRODUCT NO. 3000



Nature's Plus

ADVANCED DIETARY DELIVERY SYSTEM

PEDI-ACTIVE A.D.D.

Phosphatidylserine/DMAE Supplement for Active Children

Delicious Mixed Berry Flavor
60 Chewable Tablets

Supplement Facts

Serving Size 2 Chewable Tablets	
Servings Per Container 30	
	%DV
Amount Per Serving	
Calories 5	
Total Carbohydrate 2 g	<1**
Sugars 2 g	†
LECI-PS® (phosphatidylserine-rich purified lecithin concentrate) (supplying activated phospholipids, phosphatidylserine (PS) [20 mg], phosphatidylcholine (PC) [20 mg], cephalin (phosphatidylethanolamine) [12 mg] and phosphoinositides [6 mg])	100 mg†
DMAE (2-dimethylaminoethanol bitartrate)	100 mg†
**Percent Daily Values are based on a 2,000 calorie diet.	
†Daily Value (DV) not established.	

Other ingredients: Fructose, silica, stearic acid, microcrystalline cellulose and natural berry flavor. Free from artificial colors and preservatives.

LECI-PS is a registered trademark of Lucas Meyer Inc. Manufactured with LOVE by Natural Organics Laboratories, Inc., makers of Nature's Plus Amnylied, New York 11701. ©NATURAL ORGANICS, Inc.™

CONFIDENTIAL



American Analytical Chemistry Laboratories Corp.
Value & Quality-Oriented Analytical Testing Services

Illinois Technology Center • 101 Tomaras Avenue • Savoy, Illinois 61874

CERTIFICATE OF ANALYSIS

SAMPLE SUBMITTED: Nature's Plus Pedi-Active, Prod. #3000 **DATE:** 01/18/99
DESCRIPTION: Round, Pink chewable tablets **CONTROL#:** 1098/8870-15
ANALYTICAL METHOD: TLC
RESULTS PER: 1 Tablet
DISINTEGRATION: Meets or exceeds accepted USP standards for disintegration.

INGREDIENT	CLAIM	RESULT	% OF CLAIM
LECI-PS* (phosphatidylserine-rich purified lecithin concentrate) Supplying Activated phospholipids:	50 mg	50 mg+	100
Phosphatidylserine (PS)	10 mg	10 mg+	100
Phosphatidylcholine (PC)	10 mg	10 mg+	100
Cephalin (phosphatidylethanolamine)	6 mg	6 mg+	100
Phosphoinositides	3 mg	3 mg+	100
DMAE (2-dimethylaminoethanol bitartrate)	50 mg	50 mg+	100

*LECI-PS is a registered trademark of Lucas Meyer Inc.

PERCAD-Bayonne, N. J.
EXHIBIT
 173
 PW 2-16-01

003831
NaturalO

*TYPICAL ASSAY: An assay determination based on two or more lot numbers.
 **ACTUAL ASSAY: An assay determination based on one lot number.
 -IDENTIFICATION ESTABLISHED: Ingredient is identified by analytical method and quantity is verified by Nature's Plus from production records.
 +-BASED ON INPUT: Where no standard method can be performed, or in a combination product where there may be interference, quantities are verified by Nature's Plus from production records.
 Please see introduction of the Nature's Plus Independent Laboratory Assay Handbook for information on shelf life.

Z. Charlie Li
 Laboratory Director

NO Production 1/12/01
00176



vanguard scientific, inc

Where Science and Responsibility Meet™

CERTIFICATE OF ANALYSIS

CONFIDENTIAL

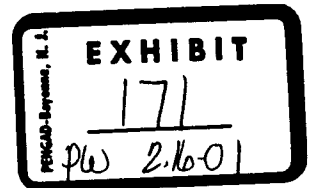
SAMPLE SUBMITTED: Nature's Plus Pedi-Active A.D.D., Product #3000
DESCRIPTION: Round, pink chewable tablets
ANALYTICAL METHOD: HPLC

DATE: 06/25/97
CONTROL#: 9703/8476

RESULTS PER: 1 Tablet

INGREDIENT	CLAIM	RESULT	% OF CLAIM
LECI-PS* (phosphatidylserine-rich purified lecithin concentrate)	50 mg.	50 mg. ++	100
Supplying Activated Phosphatides:			
Phosphatidylserine (PS)	10 mg.	10 mg. ++	100
Phosphatidylcholine (PC)	10 mg.	10 mg. ++	100
Cephalin (phosphatidylethanolamine)	6 mg.	6 mg. ++	100
Phosphoinositides	3 mg.	3 mg. ++	100
DMAE (2-dimethylaminoethanol bitartrate)	50 mg.	52.6 mg. *	105

*LECI-PS is a registered trademark of Lucas Meyer Inc.



003832
NaturalO

* TYPICAL ASSAY: An assay determination based on two or more lot numbers
 ** ACTUAL ASSAY: An assay determination based on one lot number.
 + IDENTIFICATION ESTABLISHED: Ingredient is identified by analytical method and quantity is verified by Nature's Plus from production records.
 ++ BASED ON INPUT: Where no standard method can be performed, or in a combination product where there may be interference, quantities are verified by Nature's Plus from production records.
 Please see introduction of the Nature's Plus *Independent Laboratory Assay Handbook* for information on shelf life.

Ben J. Siciliano
Laboratory Director

NO Production 1/12/01
00177



vanguard scientific, inc

Where Science and Responsibility Meet™

CERTIFICATE OF ANALYSIS

CONFIDENTIAL

SAMPLE SUBMITTED: Nature's Plus Pedi-Active Spray, Prod. #3002
DESCRIPTION: Liquid in metered spray bottle
ANALYTICAL METHOD: HPLC

DATE: 08/07/97
CONTROL#: 9707/8779

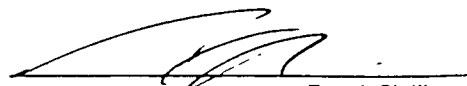
RESULTS PER: 1 spray

INGREDIENT	CLAIM	RESULT	% OF CLAIM
DMAE	50 mg.	51.7 mg.**	103
LECI-PS (supplying phosphatidylserine [10 mg], phosphatidylcholine [10 mg], phosphatidylethanolamine [6 mg], and phosphoinositides [3 mg])	50 mg.	50 mg.**	100

EXHIBIT
172
PW 2-16-01

003833
NaturalO

* TYPICAL ASSAY: An assay determination based on two or more lot numbers
 ** ACTUAL ASSAY: An assay determination based on one lot number.
 + IDENTIFICATION ESTABLISHED: Ingredient is identified by analytical method and quantity is verified by Nature's Plus from production records.
 ++ BASED ON INPUT: Where no standard method can be performed, or in a combination product where there may be interference, quantities are verified by Nature's Plus from production records.
 Please see introduction of the Nature's Plus *Independent Laboratory Assay Handbook* for information on shelf life.


Ben J. Siciliano
 Laboratory Director

NO Production 1/12/01
00178

Started in 1972 with a single product

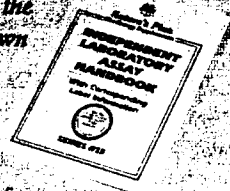


Nature's Plus
The Energy Supplements

When we opened our doors in 1972, we weren't just starting a company. We were setting out on a mission. A mission in bringing renewed energy and an enhanced quality of life to everyone.

This crusade has made it possible for Nature's Plus to keep you a step ahead in nutrition for 25 straight years.

You've been able to take supplements of the highest potency, purity and activity because we were one of the first to do our own manufacturing.



You've been assured of unbiased, objective proof of quality because we're the *only* company to use an independent laboratory to confirm our formulations.

And because of our drive to incorporate the latest research, you were able to experience the power-packed energy of Mega Potency Products first with Nature's Plus.

You were able to enjoy the ongoing benefits of Sustained Release Products first with Nature's Plus.

You were able to access the



the quality of our products because that's what we've always done.

...in cutting-edge nutritional supplements.

For more information and \$75 in discount coupons, return the coupon below. Or call us at 1-800-937-0500, ext. 4908 <http://www.natplus.com>



SAVE \$75! Mail this coupon in for \$75 in discount coupons towards your favorite Nature's Plus products. Mail to: Nature's Plus, P.O. Box 317, Kelong Beach, CA 94024

Name _____

Address _____

City _____ State _____ Zip _____

Signature _____

Offer expires 7/31/97



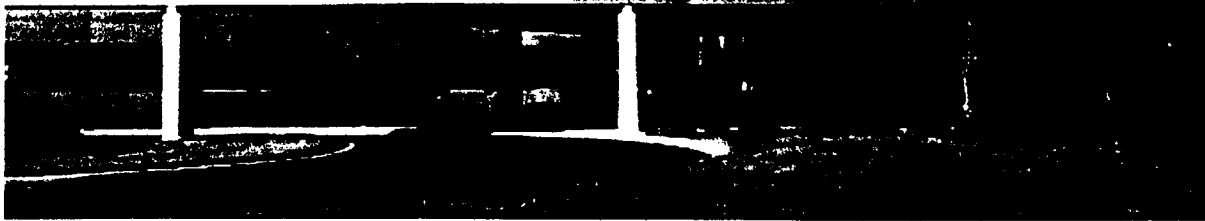
Nature's Plus
The Energy Supplements.

© NATURAL ORGANICS, INC. 1997 All Rights Reserved

005287
NaturalO

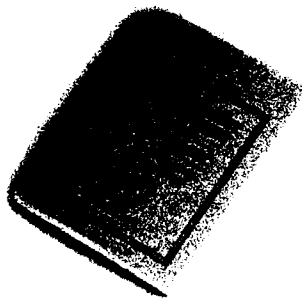
Nature's Plus The Energy Supplements

NATURAL ORGANICS, INC.



Energy to Go.

After the extensive manufacturing process, Nature's Plus products are received at our distribution and packaging centers where, once again, they are quarantined. A sample is checked against our Quality Assurance Inspection Guide by trained personnel and sent to an independent laboratory to confirm the results obtained by our in-house laboratory.



Every year, as objective proof of quality and potency, Nature's Plus publishes the results of this unbiased analysis by an independent testing lab and distributes the Nature's Plus Independent Laboratory Assay Handbook. This informative book demonstrates that every Nature's Plus product contains over 100% label claim and offers consumers the best value for their money. No other company offers this guarantee of potency and quality.

As work orders are received, bulk product enters into our sterile, temperature- and humidity-controlled packaging facility, where it begins an automated transformation into a finished product. Filled to exact count and weight, each bottle is labeled, sealed and transported to our distribution centers. With production complete, our computerized inventory control and shipping systems ensure that each bottle shipped contains the freshest product possible.



Nature's Plus ships every order complete, without back orders or short shipments, within 24 hours—guaranteed. This is made possible by a state-of-the-art computerized order processing system that enhances the speed and efficiency of our entire operation.

Automatic Call Distribution (ACD) directs each incoming call to the next available Customer Service Representative. The order is entered, credit is

checked, inventory is reduced and a picking slip is generated. Each order is then hand-picked from a sophisticated flow rack system, checked for accuracy with laser scanners, carefully packed and shipped directly to the health food store.

Working
Together

Tested.
And Tried

The Art and
Science of Quality

Energy
to Go

Knowledge
Is Power

Dedication to
Excellence

<input type="checkbox"/> <i>Product Information</i>	<input type="checkbox"/> <i>Your Health Library</i>	<input type="checkbox"/> <i>Where To Buy</i>
<input type="checkbox"/> <i>Work With Us</i>	<input type="checkbox"/> <i>More Info</i>	<input type="checkbox"/> <i>Return To Home</i>
<input type="checkbox"/> <i>What's New</i>	<input checked="" type="checkbox"/> <i>Unwavering Commitment</i>	<input type="checkbox"/> <i>Contact Us</i>



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WESTERN REGION

901 Market Street, Suite 570
San Francisco, CA 94103-1768
Voice: (415) 356-5266
Fax: (415) 356-5242

Matthew D. Gold
Attorney

Direct Dial
(415) 356-5276

March 1, 2001

VIA OVERNIGHT COURIER
AND CERTIFIED MAIL

John R. Fleder, Esq.
Hyman, Phelps & McNamara, P.C.
700 Thirteen Street, N.W.
Suite 1200
Washington, D.C. 20005-5929

Re: Natural Organics, Inc., *et al.*
FTC Docket No. 9294

Dear Mr. Fleder:

I am writing to you in your capacity as attorney for Gerald Kessler. It is my understanding that Natural Organics Laboratories, Inc., is owned by Mr. Kessler. It is my further understanding that Natural Organics Laboratories, Inc., is incorporated separately from Natural Organics, Inc. Please let me know if any of the above is not true.

I have enclosed a Subpoena Duces Tecum requiring Natural Organics Laboratories, Inc. to provide certain documents relevant to the above matter. Please feel free to contact me if you have any questions.

Very truly yours,

Matthew D. Gold

Enclosure



SUBPOENA DUCES TECUM

Issued Pursuant to Rule 3.34(b), 16 C.F.R. § 3.34(b)(1997)

1. TO

Natural Organics Laboratories, Inc.
c/o John R. Fleder, Esq., Hyman, Phelps
& McNamara, P.C., 700 Thirteenth Street,
N.W. Washington, D.C. 20005-5929

2. FROM

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things - or to permit inspection of premises - at the date and time specified in Item 5, at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

3. PLACE OF PRODUCTION OR INSPECTION

Federal Trade Commission
Western Region
901 Market Street, Suite 570
San Francisco, CA 94103

4. MATERIAL WILL BE PRODUCED TO

Matthew D. Gold

5. DATE AND TIME OF PRODUCTION OR INSPECTION

March 23, 2001 11:00 a.m.

6. SUBJECT OF PROCEEDING

In the Matter of Natural Organics, Inc., and Gerald A. Kessler
Docket No. 9294

7. MATERIAL TO BE PRODUCED

See attached Document Specifications

8. ADMINISTRATIVE LAW JUDGE

James P. Timony

Federal Trade Commission
Washington, D.C. 20580

9. COUNSEL REQUESTING SUBPOENA

Matthew D. Gold
Complaint Counsel
Federal Trade Commission
901 Market Street, Suite 570
San Francisco, CA 94103

DATE ISSUED

SEP 13 2000

SECRETARY'S SIGNATURE

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed with the Secretary of the Federal Trade Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 9, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to counsel listed in Item 9 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from counsel listed in Item 9.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

DEFINITIONS

- A. Unless otherwise noted, “Natural Organics Laboratories” means Natural Organics Laboratories Inc., its predecessor or successor corporations (including, but not limited to, National Nutritional Laboratories, Inc.), its wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under assumed names, and affiliates, and all past and present owners, directors, officers, employees, agents, consultants, and other persons working for or on behalf of the foregoing.
- B. Unless otherwise noted, “Natural Organics” means Natural Organics, Inc., a corporation with its principal office or place of business located at 548 Broadhollow Road, Melville, NY, 11748, its predecessor or successor corporations, its wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under assumed names (including “Nature’s Plus”), and affiliates, and all past and present owners, directors, officers, employees, agents, consultants, and other persons working for or on behalf of the foregoing, including Gerald A. Kessler, Marci Dunnder, and James Gibbons.
- C. “You” or “yours” shall mean Natural Organics Laboratories or Natural Organics Laboratories.’
- D. “Document” means the complete original and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any written, typed, printed, transcribed, taped, recorded, filmed, punched, computer-stored, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated or made, including but not limited to any advertisement, book, pamphlet, periodical, contract, correspondence, file, invoice, memorandum, note, telegram, report, record, handwritten note, working paper, routing slip, chart, graph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, agenda, minute, code book, and computer material (print-outs, cards, magnetic or electronic tapes, discs and such codes or instructions as will transform such computer materials into easily understandable form).
- E. “All documents” means each document, as defined above, which can be located, discovered or obtained by reasonable, diligent efforts, including without limitation all documents possessed by: (1) you or your counsel; or (2) any other person or entity from whom you can obtain such documents by request or which you have a legal right to bring within your possession by demand.
- F. “Referring or relating to” means discussing, describing, reflecting, containing, analyzing, studying, reporting, commenting, evidencing, constituting, setting forth, considering, recommending, concerning, or pertaining to, in whole or in part.

- G. "Communication(s)" includes, but is not limited to, any and all conversations, meetings, discussions and any other occasion for verbal exchange, whether in person or by telephone, as well as all letters, memoranda, E-mails, telegrams, cables, and other writings or documents.
- H. "Pedi-Active A.D.D." means the Natural Organics dietary supplement known as Pedi-Active A.D.D., which at times has been identified as Nature's Plus product # 3000.
- I. "Including" or "includes" shall mean "including but not limited to" or "includes but is not limited to."
- J. "Or" includes "and," and "and" includes "or."
- K. "Each" includes "all" and "any."
- L. The singular includes the plural, and the plural includes the singular.
- M. "Person" or "persons" means all natural persons, corporations, partnerships or other business associations, and all other legal entities, including all members, officers, predecessors, assigns, divisions, affiliates and subsidiaries.
- N. "Research study" shall mean any draft, preliminary, interim, or final test, measurement, evaluation, assessment, report, or analysis and any underlying data or protocol.

INSTRUCTIONS

- A. Scope of Search: Documents covered by this subpoena are those in the possession of, or under the actual or constructive custody or control of, Natural Organics Laboratories, including such documents that were received from or disseminated to that corporation's attorneys, accountants, directors, officers, employees, or any other person or entity.
- B. Relevant Time Period: Unless otherwise specified, the time period applicable to the Specifications shall not be limited and all documents responsive to each Specification, regardless of dates or time periods involved, should be provided. If the response to any Specification is different for different periods within the relevant time period, provide a complete response for each separate time period.
- C. Written Response: All documents submitted shall be clearly and precisely identified as to the Specification(s) to which it is responsive. Each document shall be submitted in its entirety even if only a portion of the document is responsive to a Specification.

- D. Document Identification: Documents that may be responsive to more than one Specification of this subpoena need not be submitted more than once; however, your response should indicate, for each document submitted, each Specification to which the document is responsive. In addition, number by page all documents in your submission and indicate the total number of documents in your submission.
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- F. Identification of Mechanically-Recorded Information: If any of the information requested in this Subpoena Duces Tecum is available in machine-readable form (such as floppy or hard disks, drums, core storage, magnetic tapes, or punch cards), state the form in which it is available and describe the type of computer or the machinery required to read the record(s) involved. If the information requested is stored in a computer or a file or record generated by a computer, indicate whether you have an existing program that will print out the record in readable form and state the name, title, business address, and telephone number of each person who is familiar with the program.
- G. Production of Copies: Unless otherwise stated, legible, true, correct, and complete photocopies may be submitted in lieu of original documents, provided that the originals are retained in their current state and shall be produced to Commission staff upon request. Submission of a copy, however, shall constitute a waiver of any claim as to the authenticity of the copy should it be necessary to introduce such copy into evidence in any Commission proceeding or court of law.
- H. Documents Withheld Under Claims of Privilege or Otherwise: If any document called for by this subpoena is withheld based on a claim of privilege, such claim must be asserted no later than the return date. In addition, submit, together with such claim, a schedule of the items withheld stating individually as to each such item (a) the Specification to which each item responds; (b) the type, title, specific subject matter, and date of the item; (c) the names, addresses, positions, and organizations of all authors and recipients of the item; and (d) the specific grounds for claiming that the item is privileged or otherwise protected from disclosure. If only some portion of any responsive document is privileged or otherwise protected from disclosure, all non-privileged or non-protected portions of the document must be submitted.
- I. Document Retention: The Commission may require the submission of additional documents at a later time. Accordingly, you should suspend any routine procedures for document destruction and take other measures to prevent the destruction of documents

that are in any way relevant to this case during its pendency, irrespective of whether you believe that such documents are protected from discovery by privilege or otherwise.

- J. Continuing Character of this Subpoena: Each of the following Specifications is continuing. If, at any later date, you obtain or discover any additional document responsive to any Specification, you shall submit such document promptly.

SPECIFICATIONS

1. All documents referring or relating to communications with Natural Organics since January 1, 1996.
2. All documents referring or relating to any research study of Pedi-Active A.D.D.
3. Documents sufficient to show, in detail, the methodology used for any research study of Pedi-Active A.D.D.



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WESTERN REGION

901 Market Street, Suite 570
San Francisco, CA 94103-1768
Voice: (415) 356-5266
Fax: (415) 356-5242

Matthew D. Gold
Attorney

Direct Dial
(415) 356-5276

March 1, 2001

VIA OVERNIGHT COURIER
AND CERTIFIED MAIL

Benedeto Siciliano
CEO
Vanguard Scientific, Inc.
2935 Byberry Road
Hatboro, PA 19040

Re: Natural Organics, Inc., *et al.*
FTC Docket No. 9294

Dear Mr. Siciliano:

I have enclosed a Subpoena Duces Tecum requiring you to provide certain documents relevant to the above matter. Please feel free to contact me if you have any questions.

Very truly yours,

Matthew D. Gold

Enclosure



SUBPOENA DUCES TECUM

Issued Pursuant to Rule 3.34(b), 16 C.F.R. § 3.34(b)(1997)

1. TO

Benedeto Siciliano, CEO
Vanguard Scientific, Inc.
2935 Byberry Road
Hatboro, PA 19040

2. FROM

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things - or to permit inspection of premises - at the date and time specified in Item 5, at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

3. PLACE OF PRODUCTION OR INSPECTION

Federal Trade Commission
Western Region
901 Market Street, Suite 570
San Francisco, CA 94103

4. MATERIAL WILL BE PRODUCED TO

Matthew D. Gold

5. DATE AND TIME OF PRODUCTION OR INSPECTION

March 23, 2001 11:00 a.m.

6. SUBJECT OF PROCEEDING

In the Matter of Natural Organics, Inc., and Gerald A. Kessler
Docket No. 9294

7. MATERIAL TO BE PRODUCED

See attached Document Specifications

8. ADMINISTRATIVE LAW JUDGE

James P. Timony

Federal Trade Commission
Washington, D.C. 20580

9. COUNSEL REQUESTING SUBPOENA

Matthew D. Gold
Complaint Counsel
Federal Trade Commission
901 Market Street, Suite 570
San Francisco, CA 94103

DATE ISSUED

SEP 13 2000

SECRETARY'S SIGNATURE

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed with the Secretary of the Federal Trade Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 9, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to counsel listed in Item 9 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from counsel listed in Item 9.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1990

DEFINITIONS

- A. Unless otherwise noted, "Vanguard Scientific" means Vanguard Scientific, Inc., its predecessor or successor corporations, its wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under assumed names, and affiliates, and all past and present owners, directors, officers, employees, agents, consultants, and other persons working for or on behalf of the foregoing.
- B. Unless otherwise noted, "Natural Organics" means Natural Organics, Inc., a corporation with its principal office or place of business located at 548 Broadhollow Road, Melville, NY, 11748, its predecessor or successor corporations, its wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under assumed names (including "Nature's Plus"), and affiliates, and all past and present owners, directors, officers, employees, agents, consultants, and other persons working for or on behalf of the foregoing, including Gerald A. Kessler, Marci Dunnder, and James Gibbons.
- C. "You" or "yours" shall mean Vanguard Scientific or Vanguard Scientific's.
- D. "Document" means the complete original and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any written, typed, printed, transcribed, taped, recorded, filmed, punched, computer-stored, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated or made, including but not limited to any advertisement, book, pamphlet, periodical, contract, correspondence, file, invoice, memorandum, note, telegram, report, record, handwritten note, working paper, routing slip, chart, graph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, agenda, minute, code book, and computer material (print-outs, cards, magnetic or electronic tapes, discs and such codes or instructions as will transform such computer materials into easily understandable form).
- E. "All documents" means each document, as defined above, which can be located, discovered or obtained by reasonable, diligent efforts, including without limitation all documents possessed by: (1) you or your counsel; or (2) any other person or entity from whom you can obtain such documents by request or which you have a legal right to bring within your possession by demand.
- F. "Referring or relating to" means discussing, describing, reflecting, containing, analyzing, studying, reporting, commenting, evidencing, constituting, setting forth, considering, recommending, concerning, or pertaining to, in whole or in part.
- G. "Communication(s)" includes, but is not limited to, any and all conversations, meetings, discussions and any other occasion for verbal exchange, whether in person or by

telephone, as well as all letters, memoranda, E-mails, telegrams, cables, and other writings or documents.

- H. "Pedi-Active A.D.D." means the Natural Organics dietary supplement known as Pedi-Active A.D.D., which at times has been identified as Nature's Plus product # 3000.
- I. "Including" or "includes" shall mean "including but not limited to" or "includes but is not limited to."
- J. "Or" includes "and," and "and" includes "or."
- K. "Each" includes "all" and "any."
- L. The singular includes the plural, and the plural includes the singular.
- M. "Person" or "persons" means all natural persons, corporations, partnerships or other business associations, and all other legal entities, including all members, officers, predecessors, assigns, divisions, affiliates and subsidiaries.
- N. "Research study" shall mean any draft, preliminary, interim, or final test, measurement, evaluation, assessment, report, or analysis and any underlying data or protocol.

INSTRUCTIONS

- A. Scope of Search: Documents covered by this subpoena are those in the possession of, or under the actual or constructive custody or control of, Vanguard Scientific, including such documents that were received from or disseminated to that corporation's attorneys, accountants, directors, officers, employees, or any other person or entity.
- B. Relevant Time Period: Unless otherwise specified, the time period applicable to the Specifications shall not be limited and all documents responsive to each Specification, regardless of dates or time periods involved, should be provided. If the response to any Specification is different for different periods within the relevant time period, provide a complete response for each separate time period.
- C. Written Response: All documents submitted shall be clearly and precisely identified as to the Specification(s) to which it is responsive. Each document shall be submitted in its entirety even if only a portion of the document is responsive to a Specification.
- D. Document Identification: Documents that may be responsive to more than one Specification of this subpoena need not be submitted more than once; however, your response should indicate, for each document submitted, each Specification to which the

- J. Continuing Character of this Subpoena: Each of the following Specifications is continuing. If, at any later date, you obtain or discover any additional document responsive to any Specification, you shall submit such document promptly.

SPECIFICATIONS

1. All documents referring or relating to communications with Natural Organics since January 1, 1996.
2. All documents referring or relating to any research study of Pedi-Active A.D.D.
3. Documents sufficient to show, in detail, the methodology used for any research study of Pedi-Active A.D.D.



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WESTERN REGION

901 Market Street, Suite 670
San Francisco, CA 94103-1788
Voice: (415) 356-6266
Fax: (415) 356-6242

Matthew D. Gold
Attorney

Direct Dial
(415) 356-6278

March 1, 2001

VIA OVERNIGHT COURIER
AND CERTIFIED MAIL

Z. Charlie Li
President
American Analytical Chemistry Laboratories Corp.
101 Tomaras Avenue
Savoy, IL 61874

Re: Natural Organics, Inc., *et al.*
FTC Docket No. 9294

Dear Mr. Li:

I have enclosed a Subpoena Duces Tecum requiring you to provide certain documents relevant to the above matter. Please feel free to contact me if you have any questions.

Very truly yours,

Matthew D. Gold

Enclosure



SUBPOENA DUCES TECUM

Issued Pursuant to Rule 3.34(b), 16 C.F.R. § 3.34(b)(1997)

1. TO Z. Charlie Li, President American Analytical Chemistry Laboratories Corp. 101 Tomaras Avenue Savoy, IL 61874	2. FROM UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION
--	---

This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things - or to permit inspection of premises - at the date and time specified in Item 5, at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

3. PLACE OF PRODUCTION OR INSPECTION Federal Trade Commission Western Region 901 Market Street, Suite 570 San Francisco, CA 94103	4. MATERIAL WILL BE PRODUCED TO Matthew D. Gold 5. DATE AND TIME OF PRODUCTION OR INSPECTION March 23, 2001 11:00 a.m.
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6. SUBJECT OF PROCEEDING

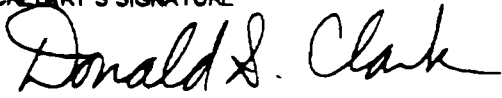
In the Matter of Natural Organics, Inc., and Gerald A. Kessler
 Docket No. 9294

7. MATERIAL TO BE PRODUCED

See attached Document Specifications

8. ADMINISTRATIVE LAW JUDGE James P. Timony Federal Trade Commission Washington, D.C. 20580	9. COUNSEL REQUESTING SUBPOENA Matthew D. Gold Complaint Counsel Federal Trade Commission 901 Market Street, Suite 570 San Francisco, CA 94103
--	---

DATE ISSUED
 SEP 18 2000

SECRETARY'S SIGNATURE


GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed with the Secretary of the Federal Trade Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 9, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to counsel listed in Item 9 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from counsel listed in Item 9.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

DEFINITIONS

- A. Unless otherwise noted, "American Analytical Chemistry Laboratories Corp." means that corporation, its predecessor or successor corporations, its wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under assumed names, and affiliates, and all past and present owners, directors, officers, employees, agents, consultants, and other persons working for or on behalf of the foregoing.
- B. Unless otherwise noted, "Natural Organics" means Natural Organics, Inc., a corporation with its principal office or place of business located at 548 Broadhollow Road, Melville, NY, 11748, its predecessor or successor corporations, its wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under assumed names (including "Nature's Plus"), and affiliates, and all past and present owners, directors, officers, employees, agents, consultants, and other persons working for or on behalf of the foregoing, including Gerald A. Kessler, Marci Dunnder, and James Gibbons.
- C. "You" or "yours" shall mean American Analytical Chemistry Laboratories Corp. or American Analytical Chemistry Laboratories Corp.'s.
- D. "Document" means the complete original and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any written, typed, printed, transcribed, taped, recorded, filmed, punched, computer-stored, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated or made, including but not limited to any advertisement, book, pamphlet, periodical, contract, correspondence, file, invoice, memorandum, note, telegram, report, record, handwritten note, working paper, routing slip, chart, graph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, agenda, minute, code book, and computer material (print-outs, cards, magnetic or electronic tapes, discs and such codes or instructions as will transform such computer materials into easily understandable form).
- E. "All documents" means each document, as defined above, which can be located, discovered or obtained by reasonable, diligent efforts, including without limitation all documents possessed by: (1) you or your counsel; or (2) any other person or entity from whom you can obtain such documents by request or which you have a legal right to bring within your possession by demand.
- F. "Referring or relating to" means discussing, describing, reflecting, containing, analyzing, studying, reporting, commenting, evidencing, constituting, setting forth, considering, recommending, concerning, or pertaining to, in whole or in part.

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- K "Each" includes "all" and "any."
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- N "Research study" shall mean any draft, preliminary, interim, or final test, measurement, evaluation, assessment, report, or analysis and any underlying data or protocol.

INSTRUCTIONS

- A **Scope of Search:** Documents covered by this subpoena are those in the possession of, or under the actual or constructive custody or control of, American Analytical Chemistry Laboratories Corp., including such documents that were received from or disseminated to that corporation's attorneys, accountants, directors, officers, employees, or any other person or entity.
- B **Relevant Time Period:** Unless otherwise specified, the time period applicable to the Specifications shall not be limited and all documents responsive to each Specification, regardless of dates or time periods involved, should be provided. If the response to any Specification is different for different periods within the relevant time period, provide a complete response for each separate time period.
- C **Written Response:** All documents submitted shall be clearly and precisely identified as to the Specification(s) to which it is responsive. Each document shall be submitted in its entirety even if only a portion of the document is responsive to a Specification.

- D. **Document Identification:** Documents that may be responsive to more than one Specification of this subpoena need not be submitted more than once; however, your response should indicate, for each document submitted, each Specification to which the document is responsive. In addition, number by page all documents in your submission and indicate the total number of documents in your submission.
- E. **Completeness of Document Submission:** Documents shall not be edited, cut, or expunged and shall include all covering letters and memoranda, transmittal slips, appendices, tables or other attachments and all other documents referred to in the document or attachments. All manuals, instructions, or other written materials necessary to understand any document produced in response to these Specifications must also be submitted.
- F. **Identification of Mechanically-Recorded Information:** If any of the information requested in this Subpoena Duces Tecum is available in machine-readable form (such as floppy or hard disks, drums, core storage, magnetic tapes, or punch cards), state the form in which it is available and describe the type of computer or the machinery required to read the record(s) involved. If the information requested is stored in a computer or a file or record generated by a computer, indicate whether you have an existing program that will print out the record in readable form and state the name, title, business address, and telephone number of each person who is familiar with the program.
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2. All documents referring or relating to any research study of Pedi-Active A.D.D.
3. Documents sufficient to show, in detail, the methodology used for any research study of Pedi-Active A.D.D.



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WESTERN REGION

901 Market Street, Suite 570
San Francisco, CA 94103-1768
Voice: (415) 356-5276
Fax: (415) 356-5242

Matthew D. Gold
Attorney

March 9, 2001

VIA FACSIMILE, CERTIFIED MAIL,
AND FEDERAL EXPRESS

John R. Fleder, Esq.
Hyman, Phelps & McNamara, P.C.
700 Thirteen Street, N.W.
Suite 1200
Washington, D.C. 20005-5929

Re: Natural Organics, Inc., *et al.*
Docket No. 9294

Dear Mr. Fleder:

Please find enclosed Complaint Counsel's Second Set of Interrogatories to Natural Organics, Inc., and Gerald A. Kessler ("respondents"), and a Subpoena Duces Tecum requiring respondents to provide additional documents.

You will notice that some of the Specifications in the Subpoena and all of the interrogatories seek documents and information relating to respondents' efforts to have the ingredients in Pedi-Active A.D.D. and other products tested by independent laboratories. Respondents have emphasized the fact that independent laboratories "confirm" their product formulations in print advertisements and other marketing materials. See FTC Document Nos. 5287 and 5284, which are attached to the Subpoena.

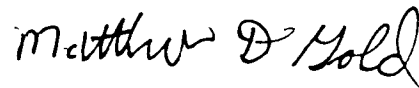
We have reason to suspect that respondents, contrary to these statements, do not possess independent laboratory tests confirming the chemical composition of many of their products. The extent to which respondents do or do not have an independent laboratory test of their products is certainly relevant to "Respondents' good faith conduct and fair dealing in business," and to "Respondents' commitment to quality, integrity and good faith business practices," both

John R. Fleder, Esq.
March 9, 2001
Page 2

of which you describe in your January 19, 2001, letter as subjects about which respondents' fact witnesses will testify.

If you have any questions relating to these discovery requests, please give us a call.

Very truly yours,

A handwritten signature in cursive script that reads "Matthew D. Gold". The signature is written in black ink and is positioned above the typed name.

Matthew D. Gold

Enclosures

UNITED STATES OF AMERICA

BEFORE

FEDERAL TRADE COMMISSION

DOCKET NO.

D-9294

IN THE MATTER OF:

NATURAL ORGANICS, INC., ET AL

COMPLAINT

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of)	
)	
NATURAL ORGANICS, INC.,)	
a corporation, and)	DOCKET NO. 9294
)	
GERALD A. KESSLER,)	
individually and as an officer)	
of the corporation.)	
)	

COMPLAINT

The Federal Trade Commission, having reason to believe that Natural Organics, Inc., a corporation, and Gerald A. Kessler, individually and as an officer of the corporation (“respondents”), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Natural Organics, Inc. is a New York corporation with its principal office or place of business at 548 Broadhollow Road, Melville, New York 11747-3708. Natural Organics, Inc., does business as “Nature's Plus.”

2. Respondent Gerald A. Kessler is an officer of the corporate respondent. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the corporation, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of Natural Organics, Inc.

3. Respondents have manufactured, advertised, labeled, offered for sale, sold, and distributed products to the public, including “Pedi-Active A.D.D.” Pedi-Active A.D.D. is a “food” and/or “drug” within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

4. Pedi-Active A.D.D. is targeted to parents of children with Attention Deficit/Hyperactivity Disorder (“ADHD”). As defined in the American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders, (4th ed. 1994), ADHD is a widely-recognized developmental disorder of childhood characterized by a persistent pattern of inattention and/or hyperactivity-impulsiveness that is more frequent and severe than is typically observed in individuals at a comparable level of development. A prior edition of the American Psychiatric Association’s Manual referred to this disorder as Attention Deficit Disorder, or “ADD.” For this

reason, the terms ADHD and ADD are often used interchangeably.

5. The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

6. Respondents have disseminated or have caused to be disseminated advertisements for Pedi-Active A.D.D., including but not necessarily limited to the attached Exhibits A through D. These advertisements contain the following statements and depictions:

A. Print Advertisement for Pedi-Active A.D.D. (Exhibit A):

"If yelling, begging and pleading doesn't get your child to do their homework, maybe this will.

[picture of child who is holding a pen and apparently focusing on his work is shown next to a bottle of Pedi-Active A.D.D.]

REPORT CARD. Not working up to capabilities. Has difficulty paying attention. Does not follow instructions. Does not work well with others.

In many cases children will score very high on I.Q. tests. Still, they do not perform as well in school as their parents and teachers know they can. The problem is often not their intelligence, but the child's inability to remain focused. A skill which is essential for success in the classroom and beyond.

Nature's Plus has approached the problems of the active child from a nutritional perspective. Pedi-Active A.D.D.TM, a formula which combines phosphatidylserine, DMAE and activated soy phosphatides in a state-of-the-art nutritional supplement. Each incredibly delicious, mixed berry flavor, chewable tablet supplies a complete profile of the most advanced neuronutrients available.

Isn't your child worth the best nutritional support science has to offer?

...."

B. Brochure for Pedi-Active A.D.D. (Exhibit B):

"NUTRITIONAL SUPPORT FOR THE ACTIVE CHILD

[picture of very young child holding teddy bear is shown]

ADVANCED DIETARY DELIVERY SYSTEM

PEDI-ACTIVE A.D.D.

Phosphatidylserine DMAE Complex

[report card depicted showing poor to satisfactory performance]

Not working up to capabilities.

Has difficulty paying attention.

Does not follow instructions.

Does not work well with others.

In many cases children will score very high on I.Q. tests. Still, they do not perform as well in school as their parents and teachers know they can. The problem is often not their intelligence, but the child's inability to remain focused. A skill which is essential for success in the classroom and beyond.

Nature's Plus has approached the problems of the active child from a nutritional perspective. Introducing **Pedi-Active A.D.D.**, a precisely calibrated formula designed for the active child. Each incredibly delicious, chewable tablet supplies a complete profile of the most advanced neuronutrients available, including a diversified combination of phosphatidylserine, DMAE and activated soy phosphatides, such as phosphatidylcholine. **Pedi-Active A.D.D.** is a state-of-the-art nutritional supplement that naturally complements an active child's delicate system.

Isn't your child worth the best nutritional support science has to offer?

[bottle of Pedi-Active A.D.D. is depicted]

....”

C. Letter Sent To Consumers Who Inquire About Pedi-Active A.D.D. (Exhibit C):

“....

Dear [consumer's name]:

Thank you for your interest in **Pedi-Active A.D.D.** from Nature's Plus. We know that sometimes yelling, pleading and begging your child to [sic] their homework just isn't enough. Research has shown that many of the problems [sic] a child who is hyperactive or suffering from Attention Deficit Disorder can be related to improper nutrition. What your child needs is a nutritional supplement that supplies a complete profile of the most advanced neuronutrients available to help

your child live up to their full potential. Each delicious mixed berry flavored chewable tablet combines phosphatidylserine, DMAE and activated soy phosphatides to provide the nutritional support your active child needs.

....

Sincerely,
[signature]
Gerald Kessler
Founder, Nature's Plus

[coupons for Pedi-Active A.D.D. and another product are attached to bottom of letter]”

- D. Natural Organics’ World Wide Web Advertisement for Pedi-Active A.D.D. (Exhibit D):

“Pedi-Active A.D.D. Chewables

....”

7. Through the means described in Paragraph 6, respondents have represented, expressly or by implication, that Pedi-Active A.D.D. will:

- A. improve the attention span of children who have difficulty focusing on school work;
- B. improve the scholastic performance of children who have difficulty focusing on school work;
- C. improve the attention span of children who suffer from ADHD;
- D. improve the scholastic performance of children who suffer from ADHD; and
- E. treat or mitigate ADHD or its symptoms.

8. Through the means described in Paragraph 6, respondents have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in Paragraph 7, at the time the representations were made.

9. In truth and in fact, respondents did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraph 7, at the time the representations were made. Therefore, the representation set forth in Paragraph 8 was, and is, false or misleading.

10. The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices, and the making of false advertisements, in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

NOTICE

Proceedings on the charges asserted against the respondents named in this complaint will be held before an Administrative Law Judge (ALJ) of the Federal Trade Commission, under Part 3 of the Commission's Rules of Practice, 16 C.F.R. Part 3. A copy of Part 3 of the Rules is enclosed with this complaint.

You are notified that the opportunity is afforded you to file with the Commission an answer to this complaint on or before the twentieth (20th) day after service of it upon you. An answer in which the allegations of the complaint are contested shall contain a concise statement of the facts constituting each ground of defense; and specific admission, denial, or explanation of each fact alleged in the complaint or, if you are without knowledge thereof, a statement to that effect. Allegations of the complaint not thus answered shall be deemed to have been admitted.

If you elect not to contest the allegations of fact set forth in the complaint, the answer shall consist of a statement that you admit all of the material allegations to be true. Such an answer shall constitute a waiver of hearings as to the facts alleged in the complaint, and together with the complaint will provide a record basis on which the ALJ shall file an initial decision containing appropriate findings and conclusions and an appropriate order disposing of the proceeding. In such answer you may, however, reserve the right to submit proposed findings and conclusions and the right to appeal the initial decision to the Commission under Section 3.52 of the Commission's Rules of Practice for Adjudicative Proceedings.

Failure to answer within the time above provided shall be deemed to constitute a waiver of your right to appear and contest the allegations of the complaint and shall authorize the ALJ, without further notice to you, to find the facts to be as alleged in the complaint and to enter an initial decision containing such findings, appropriate conclusions and order.

The ALJ will schedule an initial prehearing scheduling conference to be held not later than 7 days after the last answer is filed by any party named as a respondent in the complaint. Unless otherwise directed by the ALJ, the scheduling conference and further proceedings will take place at the Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Rule 3.21(a) requires a meeting of the parties' counsel as early as practicable before the prehearing scheduling conference, and Rule 3.31(b) obligates counsel for each party, within 5 days of receiving a respondent's answer, to make certain initial disclosures without awaiting a formal discovery request.

Notice is hereby given to each of the respondents named in this complaint that a hearing before the ALJ on the charges set forth in this complaint will begin on April 9, 2001, at 10:00 A.M., or such other date and time as determined by the ALJ, in Room 532, Federal Trade

Commission Building, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. At the hearing, you will have the right under the Federal Trade Commission Act to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in this complaint.

The following is the form of order which the Commission has reason to believe should issue if the facts are found to be as alleged in the complaint. If, however, the Commission should conclude from record facts developed in any adjudicative proceedings in this matter that the proposed order provisions might be inadequate to fully protect the consuming public, the Commission may order such other relief as it finds necessary or appropriate, including corrective advertising or other affirmative disclosure.

Moreover, the Commission has reason to believe that, if the facts are found as alleged in the complaint, it may be necessary and appropriate for the Commission to seek relief to redress injury to consumers, or other persons, partnerships or corporations, in the form of restitution and refunds for past, present, and future consumers and such other types of relief as are set forth in Section 19(b) of the Federal Trade Commission Act. The Commission will determine whether to apply to a court for such relief on the basis of the adjudicative proceedings in this matter and such other factors as are relevant to consider the necessity and appropriateness of such action.

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. “Competent and reliable scientific evidence” shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.
2. “Substantially similar product” shall mean any product that is substantially similar in ingredients, composition, and properties.
3. “ADHD” shall mean Attention Deficit/Hyperactivity Disorder, as defined in American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders, (4th ed. 1994).
4. Unless otherwise specified, “respondents” shall mean Natural Organics, Inc., a corporation, its successors and assigns and its officers; Gerald A. Kessler, individually and as an officer of the corporation; and each of the above’s agents, representatives, and employees.
5. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

I.

IT IS ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Pedi-Active A.D.D. or any other food, drug, or dietary supplement, as “food” and “drug” are defined in Section 15 of the Federal Trade Commission Act, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, that such product:

- A. will improve the attention span of children who have difficulty focusing on school work;
- B. will improve the scholastic performance of children who have difficulty focusing on school work;
- C. will improve the attention span of children who suffer from ADHD;
- D. will improve the scholastic performance of children who suffer from ADHD; or
- E. can treat or mitigate ADHD or its symptoms;

unless, at the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

II.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Pedi-Active A.D.D. or any substantially similar product in or affecting commerce, shall not use the name “A.D.D.” or any other name that represents expressly or by implication, that the product can treat or mitigate ADHD or its symptoms unless, at the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

III.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any food, drug or dietary supplement, as “food” and “drug” are defined in Section 15 of the Federal Trade Commission Act, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the health benefits, performance, or efficacy of such product, unless, at the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

IV.

Nothing in this order shall prohibit respondents from making any representation for any drug that is permitted in labeling for such drug under any tentative final or final standard promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration.

V.

Nothing in this order shall prohibit respondents from making any representation for any product that is specifically permitted in labeling for such product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

VI.

IT IS FURTHER ORDERED that respondent Natural Organics, Inc., and its successors and assigns, and respondent Gerald A. Kessler shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All advertisements and promotional materials containing the representation;
- B. All materials that were relied upon in disseminating the representation; and
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

VII.

IT IS FURTHER ORDERED that respondent Natural Organics, Inc., and its successors and assigns, and respondent Gerald A. Kessler shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondents shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities. Respondents shall maintain and upon request make available to the Federal Trade Commission for inspection and copying a copy of each signed statement acknowledging receipt of the order.

VIII.

IT IS FURTHER ORDERED that respondent Natural Organics, Inc. and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

IX.

IT IS FURTHER ORDERED that respondent Gerald A. Kessler, for a period of ten (10) years after the date of issuance of this order, shall notify the Commission of the discontinuance of his current business or employment, or of his affiliation with any new business or employment. The notice shall include respondent's new business address and telephone number and a description of the nature of the business or employment and his duties and responsibilities. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

X.

IT IS FURTHER ORDERED that respondent Natural Organics, Inc., and its successors and assigns, and respondent Gerald A. Kessler shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

XI.

This order will terminate twenty (20) years from the date of its issuance, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; Provided, however, that the filing of such a complaint will not affect the duration of:

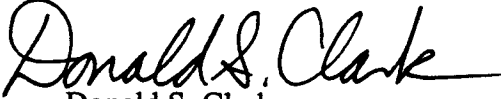
- A. Any Part in this order that terminates in less than twenty (20) years;

- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

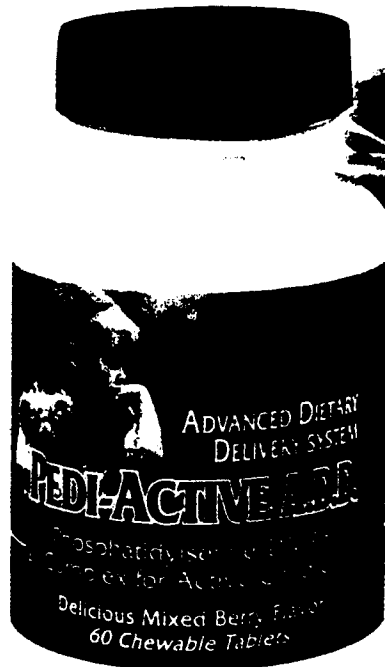
IN WITNESS WHEREOF, the Federal Trade Commission has caused this complaint to be signed by its Secretary and its official seal to be hereto affixed at Washington, D.C. this ninth day of August, 2000.

By the Commission.


Donald S. Clark
Secretary

SEAL:

If yelling, begging and pleading doesn't get your child to do their homework,



maybe this will.

REPORT CARD: Not working up to capabilities. Has difficulty paying attention. Does not follow instructions. Does not work well with others.

In many cases children will score very high on I.Q. tests. Still, they do not perform as well in school as their parents and teachers know they can. The problem is often not their intelligence, but the child's inability to remain focused. A skill which is essential for success in the classroom and beyond.

Nature's Plus has approached the problems of the active child from a nutritional perspective. Pedi-Active A.D.D.TM, a formula which combines phosphatidylserine, DMAE and activated soy phosphatides in a state-of-the-art nutritional supplement. Each incredibly delicious, mixed berry flavor, chewable tablet supplies a complete profile of the most advanced neuronutrients available.

Isn't your child worth the best nutritional support science has to offer? Help your child live up to their full potential with Nature's Plus Pedi-Active A.D.D., available at your local health food store. Fill out the coupon below for discount offers toward your first purchase. Or call:

1-800-937-0500, ext. 4710

Yes, send me discount coupons toward my child's nutritional well-being and my first purchase of Pedi-Active A.D.D. Please mail to:
Nature's Plus, P.O. Box 91719, Long Beach, CA 90809-1719

Name _____

Address _____

City _____ State _____ Zip _____

Signature _____ Date _____

Offer expires 8/31/97 4710

Nature's Plus.
The Energy Supplements.

<http://www.natplus.com>

EXHIBIT A

Nature's Plus.
The Energy Supplements.

**NUTRITIONAL SUPPORT
FOR THE ACTIVE CHILD**

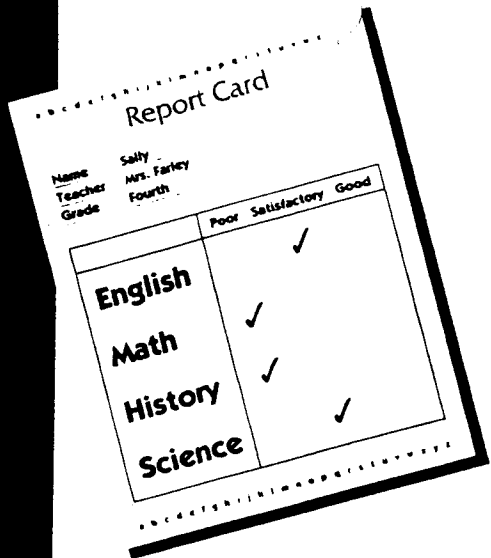


ADVANCED DIETARY
DELIVERY SYSTEM

PEDI-ACTIVE A.D.D.™

**Chewable Phosphatidylserine
DMAE Complex**

EXHIBIT B



Not working up to capabilities.

Has difficulty paying attention.

Does not follow instructions.

Does not work well with others.

In many cases children will score very high on I.Q. tests. Still, they do not perform as well in school as their parents and teachers know they can. The problem is often not their intelligence, but the child's inability to remain focused. A skill which is essential for success in the classroom and beyond.

Nature's Plus has approached the problems of the active child from a nutritional perspective. Introducing **Pedi-Active A.D.D.**, a precisely calibrated formula designed for the active child. Each incredibly delicious,

chewable tablet supplies a complete profile of the most advanced neuronutrients available, including a diversified combination of phosphatidylserine, DMAE and activated soy phosphatides, such as phosphatidylcholine. **Pedi-Active A.D.D.** is a state-of-the-art nutritional supplement that naturally complements an active child's delicate system.


Isn't your child worth the best nutritional support science has to offer?



**Bottles of 60
Product #3000**

Each Chewable Tablet Contains:

- LECI-PS.* (phosphatidylserine-rich purified lecithin concentrate) 50 mg.
- Supplying Activated Phosphatides:
 - Phosphatidylserine (PS) 10 mg.
 - Phosphatidylcholine (PC) 10 mg.
 - Cephalin (phosphatidylethanolamine) 6 mg.
 - Phosphoinositides 3 mg.
- DMAE (2-dimethylaminoethanol bitartrate) 50 mg.

 is a registered trademark of Lucas Meyer Inc.

REFERENCES

Gianotti C; Porta A; De Graan PN; Oestreicher AB; Nunzi MG. B-50/GAP 43 Phosphorylation in Hippocampal Slices From Aged Rats: Effects of Phosphatidylserine Administration. Neurobiol Aging (United States). Sep-Oct 1993, 14(5) p401-6.

Osvaldo RE. 2-Dimethylaminoethanol (Deanol): A Brief Review of its Clinical Efficacy and Postulated Mechanism of Action. Current Therapeutic Research. Vol. 16, No. 11, 1974.

Heiss WD; Kessler J; Slansky I; Mielke R; Szelies B; Herholz K. Activation PET as an Instrument to Determine Therapeutic Efficacy in Alzheimer's Disease. Ann NY Acad Sci (United States). Sep 24 1993. 695 p327-31.

THE NATURE'S PLUS COMMITMENT

Nature's Plus is committed to supplying the highest quality supplements that meet or exceed industry standards for potency, purity and disintegration. Look for Nature's Plus The Energy Supplements logo as your guarantee of quality.



Nature's Plus.
The Energy Supplements.

548 Broadhollow Rd., Melville, NY 11747-3708 (516) 293-0030
2500 Grand Ave., Long Beach, CA 90815-1764 (562) 494-2500
<http://www.natplus.com>

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9024/6362

Nature's Plus. The Energy Supplements.

MARKETING SERVICES • 2500 Grand Avenue • Long Beach, CA 90815-1764 • 1-800-937-0500
http://www.natplus.com



2 2 MAA

June 1997

Dear

Thank you for your interest in **Pedi-Active A.D.D.** from Nature's Plus. We know that sometimes yelling, pleading and begging your child to their homework just isn't enough. Research has shown that many of the problems a child who is hyperactive or suffering from Attention Deficit Disorder can be related to improper nutrition. What your child needs is a nutritional supplement that supplies a complete profile of the most advanced neuronutrients available to help your child live up to their full potential. Each delicious mixed berry flavored chewable tablet combines phosphatidylserine, DMAE and activated soy phosphatides to provide the nutritional support your active child needs.

And, if you're looking for a delicious multivitamin you child will eat up, try **Source of Life Animal Parade**. Each cherry and new orange flavored chewable animal supplies 16 vitamins and 8 minerals in a whole food base of fruit, vegetables and spirulina.

To introduce you to these two formulas, clip the coupons below and redeem them at your local health food store or any of the following.

SOUTH END NATURALS
517 COLUMBUS AVE
BOSTON, MA 02118
(617) 536-2119

BREAD & CIRCUS
15 WESTLAND AVENUE
BOSTON, MA 02115
(617) 375-1010

BREAD & CIRCUS
115 PROSPECT STREET
CAMBRIDGE, MA 02139
(617) 492-0071

Experience for yourself why Nature's Plus is known as **The Energy Supplements.**

Sincerely,

Gerald Kessler

Founder, Nature's Plus

27251331



Expires on: 10/04/97

287044448



\$1.00 OFF
60 Tablets
**Nature's Plus,
PEDI-ACTIVE A.D.D.™**

Chewable Phosphatidylserine
DMAE Complex.

NUTRITIONAL SUPPORT FOR THE ACTIVE CHILD.

Available Only at Your Local Health Food Store.
Manufacturer's Coupon

Expires on: 10/04/97

287044448

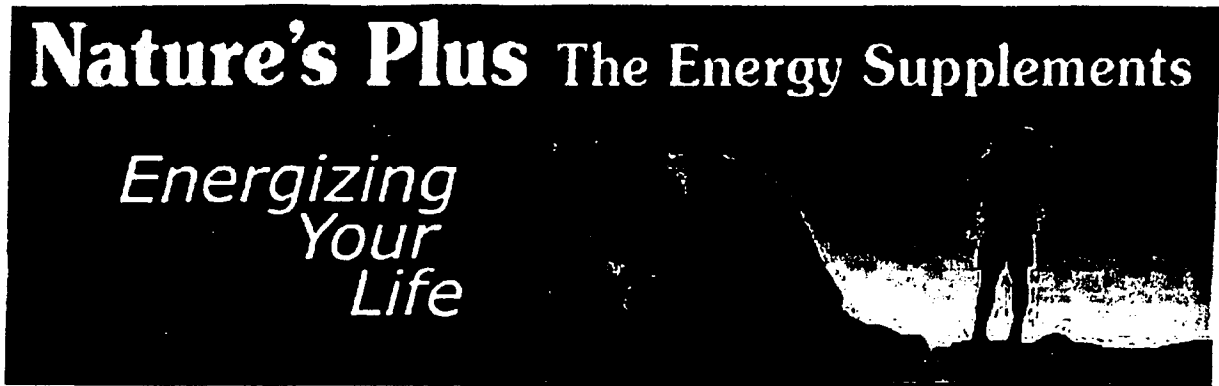
EXHIBIT C

\$1.00 OFF
90 Tablets
**Nature's Plus,
Source of Life
ANIMAL PARADE.**

Children's Chewable Multi-Vitamin & Mineral Formula
with Very Cherry and Burst of Orange Natural Flavors.

Available Only at Your Local Health Food Store.
Manufacturer's Coupon





Supplements Healthy Brain Function

Pedi-Active A.D.D. Chewables



Pedi-Active A.D.D. Chewables Product No. 3000

Pedi-Active A.D.D. is a precisely calibrated formula designed for the active child. Each naturally sweetened, delicious chewable tablet supplies a complete profile of the most advanced neuronutrients available, including a diversified combination of phosphatidylserine, DMAE and activated soy phosphatides. Pedi-Active A.D.D. is a state-of-the art nutritional supplement that naturally complements an active child's delicate system. Choose the Pedi-Active A.D.D. tablets or the convenient Pedi-Active Liposomal Spray, and supplement either with the naturally delicious Pedi-Active Bar.

These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure, or prevent any disease.

Sizes Available:
Bottles of 60 #3000 - 120
#3001

Two chewable tablets contain	
LECI-PS (phosphatidylserine-rich purified lecithin concentrate) (supplying activated phosphatides: phosphatidylserine [PS] [20 mg], phosphatidylcholine [PC] [20 mg], cephalin [phosphatidylethanolamine] [12 mg] and phosphoinositides [6 mg])	100 mg

Find Supplement by Keyword

Enter your search keyword(s) separated by commas, then click *Search*.

EXHIBIT D

<input checked="" type="checkbox"/> Product Information	<input type="checkbox"/> Your Health Library	<input type="checkbox"/> Where To Buy
<input type="checkbox"/> Work With Us	<input type="checkbox"/> More Info	<input type="checkbox"/> Return To Home
<input type="checkbox"/> What's New	<input type="checkbox"/> Unwavering Commitment	<input type="checkbox"/> Contact Us

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*NOT ADMITTED IN DC

DIRECT DIAL (202) 737-4580

April 20, 2001

BY FACSIMILE/CONFIRMATION COPY BY MAIL

Matthew D. Gold, Esq.
San Francisco Regional Office
Western Region
Federal Trade Commission
901 Market Street
Suite 570
San Francisco, California 94103

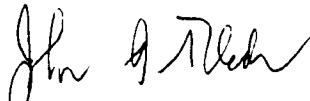
Re: Natural Organics, Inc., et al.
Docket No. 9294

Matthew

Dear ~~Mr. Gold~~:

I am writing to inform you that Respondents no longer intend to call the following fact witnesses to testify on Respondents' behalf at the Hearing in the above-captioned matter: John Blanco (AnMar International), Ray Bartone (Aceto Corporation), and Guy Woodman (Euromed).

Sincerely,


John R. Fleder

JRF/vam

2603 MAIN STREET
SUITE 650
IRVINE, CALIFORNIA 92614
(949) 553-7400
FAX: (949) 553-7433

4819 EMPEROR BOULEVARD
SUITE 400
DURHAM, NORTH CAROLINA 27703
(919) 313-4750
FAX: (919) 313-4751

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

In the Matter of)

NATURAL ORGANICS, INC.)
a corporation, and)

GERALD A. KESSLER)
individually and as an officer)
of the corporation)

Docket No. 9294

TO: The Honorable James P. Timony
Chief Administrative Law Judge

**STATEMENT OF PAUL L. FERRARI PURSUANT TO RULE 3.22(f)
OF THE FEDERAL TRADE COMMISSION'S RULES OF PRACTICE**

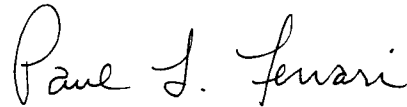
I am an attorney in the law firm of Hyman, Phelps, and McNamara P.C., counsel for Respondent Natural Organics, Inc., Respondent Gerald A. Kessler, Natural Organics Laboratories, Inc., Vanguard Scientific, Inc., and American Analytical Chemistry Laboratories, Corp., and submit this statement pursuant to Rule 3.22(f) of the Federal Trade Commission's Rules of Practice in connection with Respondents' Motion to Quash Subpoenas Served on Natural Organics, Inc., Natural Organics Laboratories, Inc., Vanguard Scientific, Inc., and American Analytical Chemistry Laboratories, Corp.

I spoke with Matthew D. Gold, Complaint Counsel, on several occasions between March 20, 2001 and April 10, 2001, in a good faith effort to resolve by agreement the issues raised by Complaint Counsel's subpoenas. The parties reached what they agreed

was an impasse, however, on April 10, 2001. Because we have been unable to resolve our differences, Respondents have filed the attached Motion to Quash the Subpoenas.

Dated: April 23, 2001

Respectfully Submitted,



Paul L. Ferrari
HYMAN, PHELPS & MCNAMARA, P.C.
700 13th Street, N.W.
Suite 1200
Washington, D.C. 20005
(202) 737-5600
(202) 737-9329 (FAX)

Attorneys for Respondent Natural Organics, Inc.,
Respondent Gerald A. Kessler,
Natural Organics Laboratories, Inc.,
Vanguard Scientific, Inc., and
American Analytical Chemistry Laboratories, Corp.

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of)
)
)

NATURAL ORGANICS, INC.,)
a corporation, and)
)

Docket No. 9294

GERALD A. KESSLER,)
individually and as an officer)
of the corporation.)
)

**ORDER GRANTING RESPONDENTS' MOTION TO
QUASH SUBPOENA SERVED ON NATURAL ORGANICS, INC., NATURAL
ORGANICS LABORATORIES, INC., VANGUARD SCIENTIFIC, INC., AND
AMERICAN ANALYTICAL CHEMISTRY LABORATORIES, CORP.**

On March 1, 2001, Complaint Counsel served subpoenas duces tecum on Natural Organics Laboratories, Inc., Vanguard Scientific, Inc. and American Analytical Chemistry Laboratories, Corp. On March 9, 2001 Complaint Counsel served a subpoena duces tecum on Respondent Natural Organics, Inc. On April 23, 2001, Respondents filed a Motion to Quash the subpoenas served on Natural Organics Laboratories, Inc., Vanguard Scientific, Inc., and American Analytical Chemistry Laboratories, Corp. in their entirety, and to quash Specifications 4 through 11 of the subpoena served on Natural Organics, Inc. Complaint Counsel filed an Answer to Respondents' Motion.

Upon consideration of Respondents' Motion to Quash Subpoenas Served on Natural Organics, Inc., Natural Organics Laboratories, Inc., Vanguard Scientific, Inc., and American Analytical Chemistry Laboratories, Corp., and Complaint Counsel's answer, I hereby GRANT the Respondents' Motion to Quash Subpoenas Served on Natural Organics, Inc. (Specifications 4 through 11), Natural Organics Laboratories, Inc., Vanguard Scientific, Inc., and American Analytical Chemistry Laboratories, Corp.

James P. Timony
Administrative Law Judge

Dated: , 2001

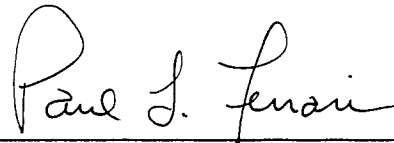
CERTIFICATE OF SERVICE

I hereby certify that on this twenty-third day of April 2001 copies of the foregoing Respondents' Motion to Quash Subpoenas Served on Natural Organics, Inc., Natural Organics Laboratories, Inc., Vanguard Scientific, Inc., and American Analytical Chemistry Laboratories, Corp. were served by facsimile transmittal and overnight delivery, on the following parties:

Matthew D. Gold, Esq.
Kerry O'Brien, Esq.
Dean Graybill, Esq.
Federal Trade Commission
901 Market Street, Suite 570
San Francisco, CA 94103,

and two copies were hand delivered to :

Judge James P. Timony
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580.



Paul L. Ferrari