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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92057613
Party	Plaintiff Natural Organics, Inc.
Correspondence Address	MARIE ANNE MASTROVITO ABELMAN FRAYNE & SCHWAB 666 THIRD AVENUE NEW YORK, NY 10017 UNITED STATES mamastrovito@lawabel.com
Submission	Motion to Compel Discovery
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Natural Organics, Inc.

*Petitioner,*

v.

Naturally Plus Direct Marketing Pte, Ltd.

*Respondent*

Cancellation No. 92057613

**PETITIONER'S MOTION TO COMPEL**

Pursuant to Trademark Rules 2.120(e), Petitioner hereby moves the Board to issue an Order compelling Respondent to produce documents responsive to Petitioner's First Request to Respondent for Production of Documents, Request Nos. 2, 4, 6, 7, 8, and 9 or, in the alternative, that Respondent amend its responses to Petitioner's Interrogatories to state that there has not been use of the Respondent's Marks in U.S. commerce. To allow the parties sufficient time to conclude discovery following the Board's ruling, Petitioner further requests suspension of the proceeding during the pendency of this Motion.

**I. BACKGROUND AND EFFORTS TO MEET AND CONFER**

On October 22, 2013, Petitioner served on Respondent its First Request to Respondent for Production of Documents (attached as Exhibit 1) and Petitioner's First Set of Interrogatories to Respondent (Exhibit 2). On December 10, 2013, Respondent provided its responses to the Interrogatories (Exhibit 3) and Document Requests (Exhibit 4). Based on Respondent's responses to Interrogatory Nos. 1, 3, 4, 5, 7 and, in particular, Interrogatory No. 8 (in which the Respondent

affirmatively states "Responding Party has not sold any product in the U.S.") and Respondent's responses to Document Request Nos. 2, 4, 6, 7, 8, and 9, indicating that there are no documents relating to date of first use, use in commerce, advertising, or sales, Petitioner filed for leave to amend the Petition to Cancel to add a claim for cancellation based on fraud and the non-use/abandonment of Respondent's Marks. The Amended Petition to Cancel was accepted into the record. On September 29, 2014, Respondent, provided Petitioner with amended Interrogatory responses (Exhibit 5). In the amended Interrogatory responses, Respondent now claims that language difficulties created a misunderstanding regarding several of the Interrogatories posed. In the amended Interrogatory responses Respondent has withdrawn its statements that the mark is not in use and instead asserts use of the mark in U.S. commerce since January 16, 2012. In addition, Respondent has provided general sales data and information relating to advertising expenditures. As Respondent did not similarly amend its responses to Petitioner's Document Requests by providing documents relating to these issues, Petitioner's attorney contacted Respondent for an explanation of the discrepancy. The efforts to meet and confer are as follows:

1. On November 26, 2014, Petitioner's Attorney, Marie Anne Mastrovito, sent an email to Respondent's Attorney, Christopher Denny, stating in relevant part that "On the subject of discovery, we note that although you amended the interrogatory responses, you did not amend your response to our document requests. Thus, you have indicated that there are no documents showing use in the United States." Later that same day, Ms. Mastrovito stated "... you must produce the requested documents."  
."
2. In response to the request for documents, Mr. Denny replied on November 26, "I will review your doc demand and get back to you."

3. On December 5, Ms. Mastrovito followed with a further email to Mr. Denny, specifying "We request that you provide us with documents responsive to our first set of document requests served October 22, 2013. Your current responses indicate that there are no documents relating to first use, samples of use, advertisements, or sales data. If there are no documents responsive to Request for Production Nos. 2, 3, 4, 5, 6, 7, 8, 9 and 12, please confirm that this is the case. If there are responsive documents, please provide them no later than December 15, 2014. As you have indicated that your client is using the mark in the U.S. it seems implausible that there are no documents evidencing this usage."
4. Mr. Denny replied to Ms. Mastrovito's email on December 5 stating "Thanks [sic] you. I will take a look."
5. On December 16, 2014, Ms. Mastrovito sent an email to Mr. Denny stating "I am following up on my email of December 5, 2014. Do you have any supplements to your responses to our first set of document requests?"
6. On the same day, Mr. Denny replied "I sent the other email to my client and will follow up."

Copies of these email exchanges are attached as Exhibit 6. To date, Ms. Mastrovito has received no further correspondence from Mr. Denny relating these discovery issues.

## **II. RESPONSES TO DISCOVERY SOUGHT**

Petitioner submits Respondent's revised responses to Petitioner's First Set of Interrogatories are inconsistent with Respondent's response to Petitioner's First Request for Production of Documents Nos. 2, 4, 6, 7, 8 and 9 which state that Respondent has no documents relevant to first use, continued use in

commerce, sales or advertising. It is not believable that Respondent has used the marks in commerce, and has sales and advertising figures related to such use, yet has no documents to support the use of the marks or the sales and advertising data provided. In particular, the Respondent notes the inconsistencies shown in the discovery responses recited below.

SUBJECT	INTERROGATORY AND RESPONSE	DOCUMENT REQUEST AND RESPONSE
<p>Goods and services sold or distributed in the U.S.</p>	<p><b>Interrogatory No. 1:</b> Separately for each of Respondent's Marks (defined above), please provide a list of the common commercial name of every product or service manufactured, distributed or sold by Respondent in connection with the mark in U.S. commerce.</p> <p><b>Amended Response to Interrogatory No. 1:</b> . . . The common commercial names for product sold in the U.S. are Super Lutein and Paramylon ARX."</p>	<p><b>Document Request No. 6:</b> Produce a representative sample of every form, style, format, and type-face in which the Respondent has used each of Respondent's Marks in U.S. commerce in connection with each product or service identified in response to Interrogatory No. 1 of Petitioner's Interrogatories, both in advertising and promoting the product or service and in connection with the product or service itself.</p> <p><b>Response to Document Request No. 6:</b> Responding Party objects to this demand on the grounds that it is compound and conjunctive. Without waiving the foregoing objections, Responding Party responds as follows: None.</p>
<p>First Use</p>	<p><b>Interrogatory No. 3:</b> State separately for each of Respondent's Marks, the date the mark was first used in U.S. commerce in connection with each product or service identified in Interrogatory No. 1</p> <p><b>Amended Response to Interrogatory No. 3:</b> ". . . The marks were first used in commerce in the U.S. on January 16, 2012."</p>	<p><b>Document Request No. 2:</b> For each product or service listed in Respondent's Responses to Interrogatory No. 1 of Petitioner's Interrogatories produce documents sufficient to support the date of first use stated in response to Interrogatory No. 3 of Petitioner's Interrogatories.</p> <p><b>Response to Document Request No. 2:</b> Responding party objects to this demand as misquoting special interrogatory No. 1 and for being vague and ambiguous. Without waiving the foregoing objection, Responding party responds as follows: None.</p>

SUBJECT	INTERROGATORY AND RESPONSE	DOCUMENT REQUEST AND RESPONSE
Continued Use	<p><b>Interrogatory No. 4:</b> Separately for each of Respondent's Marks, state the period or periods (specifying dates) during which each product or service identified in response to Interrogatory No. 1 was sold, manufactured or distributed under the mark in U.S. commerce</p> <p><b>Amended Response to Interrogatory No. 4:</b> . . .Sales in the U.S. have taken place from January of 2012 through the present for both products</p>	<p><b>Document Request No. 4:</b> For each product or service listed in response to Interrogatory No. 1 of Petitioner's Interrogatories produce representative samples showing how each of Respondent's Marks are and/or have been used in connection with the product or service. If Respondent's Marks have been used in connection with the product or service for more than one year, produce at least one representative sample of the use of Respondent's Marks in connection with each product or service for each year of use.</p> <p><b>Response to Doc. Request No. 4:</b></p> <p>Responding Party objects to this demand on the grounds that it is compound, conjunctive and disjunctive. Without waiving the foregoing objections, Responding Party responds as follows: None.</p>
Sales in \$	<p><b>Interrogatory No. 5:</b> Separately for each of Respondent's Marks, state Respondent's annual sales revenues in dollars for each product or service sold under the mark in U.S. commerce, from the date of first use to present</p> <p><b>Amended Response to Interrogatory No. 5:</b> Total sales revenue in the U.S. since January 2012 for Super Lutein is approximately \$517,820. Total sales revenue in the U.S. since January 2012 for Paramylon ARX is approximately \$46,200.</p>	<p><b>Document Request No. 8:</b> For each product or services listed in Respondent's response to Interrogatory No. 1 of Petitioner's Interrogatories produce documents sufficient to show the annual dollar volume of sales of each product or service from the date of first use of Respondent's Mark or Marks on the product to present.</p> <p><b>Response to Document Request No. 8:</b></p> <p>Responding Party objects to this demand in that it seeks information that is confidential, proprietary, trade secret, and subject to privacy. Without waiving the foregoing objections, Responding Party responds as follows: None.</p>
Sales in units	<p><b>Interrogatory No. 6:</b> Separately for each of Respondent's Marks, state Respondent's annual sales in units of each product or service sold under the mark in U.S. commerce, from the date of first use to present</p>	<p><b>Document Request No. 9:</b> For each product or services listed in Respondent's response to Interrogatory No. 1 of Petitioner's Interrogatories produce documents sufficient to show the number of units sold or distributed under Respondent's Marks on an annual basis from the date of first use to present.</p>

SUBJECT	INTERROGATORY AND RESPONSE	DOCUMENT REQUEST AND RESPONSE
	<p><b>Amended Response to Interrogatory No. 6</b> . . . Total units sold in the U.S. since January 2012 for Super Lutein is approximately 4,850. Total units sold in the U.S. since January 2012 for Paramylon ARX is approximately 420.</p>	<p><b>Response to Document Request No. 8:</b> Responding Party objects to this demand in that it seeks information that is confidential, proprietary, trade secret, and subject to privacy. Without waiving the foregoing objections, Responding Party responds as follows: None.</p>
Advertising Methods	<p><b>Interrogatory No. 8:</b> For each product or service sold under Respondent's Marks in U.S. commerce identify and describe the method of advertising and the type of media which Respondent has used, or intends to use, to advertise or promote the goods and/or services</p> <p><b>Amended Response to Interrogatory No. 8:</b> . . . The internet and multi-level-marketing members are the advertng [sic] and media used by Respondent in the U.S.</p>	<p><b>Document Request No. 6:</b> Produce a representative sample of every form, style, format, and type-face in which the Respondent has used each of Respondent's Marks in U.S. commerce in connection with each product or service identified in response to Interrogatory No. 1 of Petitioner's Interrogatories, both in advertising and promoting the product or service and in connection with the product or service itself.</p> <p><b>Response to Document Request No. 6:</b> Responding Party objects to this demand on the grounds that it is compound and conjunctive. Without waiving the foregoing objections, Responding Party responds as follows: None.</p>
Advertising expenditures	<p><b>Interrogatory No. 9:</b> For each product or service sold under Respondent's Marks in U.S. commerce set forth the dollar amount of Respondent's annual advertising and promotional expenditures in support of the sales of the product or service.</p> <p><b>Amended Response to Interrogatory No. 9:</b> . . . to date Respondent has spent approximately \$70,000 on advertising its products in the U.S.</p>	<p><b>Document Request No. 7:</b> Produce documents sufficient to show Respondent's annual advertising and promotional expenditures for each product or service listed in response to Interrogatory No. 1 of Petitioner's Interrogatories from the date of first use to present.</p> <p><b>Response to Document Request No. 7:</b> Responding Party objects to this demand on the grounds that it is compound and conjunctive. Responding Party further objects to this demand in that it seeks information that is confidential, proprietary, trade secret, and subject to privacy. Without waiving the foregoing objections, Responding Party responds as follows: None.</p>

As the Interrogatory Responses and responses to the Requests for Production of Documents are inconsistent, Petitioner's requests that the Board compel the Petitioner to either provide documents supporting the claims made in its interrogatory responses and responding to Document Request Nos. 2, 4, 6, 7 8 and 9 or that the Petitioner be directed to revise the Interrogatory Responses to reflect that there is no evidence of sales, use or advertising. Further, should Petitioner continue to withhold documents, Respondent requests that the Petitioner be appropriately sanctioned and precluded from submitting any document into evidence at trial which it has not produced in discovery.

Pending the ruling on this Motion, Petitioner further requests the suspension of the Cancellation action.

Respectfully submitted,

**ABELMAN, FRAYNE & SCHWAB**

  
By: MARIE-ANNE MASTROVITO

**666 Third Avenue  
New York, New York 10017  
(212) 949-9022**

*Attorneys for Petitioner, Natural Organics, Inc.*



**Certificate of Service**

I hereby certify that a true copy of the foregoing **OPPOSER'S MOTION TO COMPEL** was served by first class mail, postage prepaid, this 15<sup>th</sup> day of January, 2015, upon counsel for the Respondent:

Christopher D. Denny, Esq.  
LAW OFFICES OF CHRISTOPHER D. DENNY  
605 Market Street, Suite 505  
San Francisco, California 94105

  
MARIE-ANNE MASTROVITO

# EXHIBIT 1

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

**In re Registration Nos. 4,238,184, 4,242,475 and 4,238,185**

NATURAL ORGANICS INC.

*Petitioner,*

v.

NATURALLY PLUS DIRECT MARKETING  
PTE. LTD.

*Respondent.*

Cancellation No. 92057613

**PETITIONER'S FIRST REQUEST TO RESPONDENT FOR  
PRODUCTION OF DOCUMENTS**

Pursuant to Fed. R. Civ. P. 34, Petitioner requests that Respondent produce for inspection and copying at the offices of Petitioner's attorneys, the below listed documents and things within the time provided by said rule, or in such other manner as may be mutually agreed upon between counsel for the parties.

**INSTRUCTIONS AND DEFINITIONS**

For purposes of these document requests, the definitions and instructions contained in "Petitioner's First Set of Interrogatories to Respondent's" served simultaneously with this First Set of Document Requests shall apply and are incorporated herein by reference. In addition, the following instructions apply:

1. All documents shall be segregated and identified by the request to which they are primarily responsive.
2. For each document requested herein which is sought to be withheld under a claim privilege, or other objection, provide the following information:

- (a) identify the nature of the privilege, which is being claimed;
  - (b) the place, approximate date, and manner of recordation or preparation of the document;
  - (c) the name and title of the sender, and the name and title of each recipient of the document;
  - (d) the name of each person or persons (other than stenographic or clerical assistants) who participated in the preparation of the document;
  - (e) the name and corporate position of each person to whom the contents of the document have heretofore been disclosed or communicated by copy, exhibition, reading or substantial summarization;
  - (f) a statement of the basis upon which the claim of privilege is asserted and whether or not the subject matter of the contents of the document is limited to legal advice or information provided for the purpose of securing legal advice;
  - (g) the number of the request herein to which the document is responsive;
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- (h) the identity and corporate position of the person or persons supplying the attorney with the information in subsections (b) through (f) above; and
  - (i) a brief description of the subject matter of the contents of the document.

3. Documents to be produced pursuant to this request include all documents prepared or used at any time to the present.

4. Each request for documents seek production of the document in its entirety, without abbreviation or expurgation, including all attachments or other matters affixed thereto.

5. If any document requested herein was formerly in Respondent's possession, custody, or control and has been lost or destroyed, or otherwise disposed of, Respondent is requested to submit in lieu of any such document a written statement: (i) describing in detail the nature of the

document and its contents; (ii) identifying the person(s) who prepared or authored the document and, if applicable, the person(s) to whom the document was sent and indicated or blind copies; (iii) specifying the date on which the document was prepared or transmitted; and (iv) specifying, if possible, the date on which the document was lost or destroyed and, if destroyed, the conditions of and reasons for such destruction and the persons requesting and performing the destruction.

If any document relates in any manner to a meeting or to any other conversation, all participants in the meeting or conversation are to be identified.

6. The following requests are continuing in character so that if at any time after Respondent makes production in response to these requests Respondent obtains possession, custody or control of documents or things within the scope of these requests, Respondent is requested to make supplemental production of these documents or things for inspection and copying within thirty (30) days thereafter, as though Petitioner had served upon Respondent new requests to supplement prior responses.

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## **DOCUMENTS REQUESTED**

### **REQUEST NO. 1**

All documents and things requested to be identified in Respondent's responses to "Petitioner's First Set of Interrogatories to Respondent" (hereinafter "Petitioner's Interrogatories") served concurrently herewith.

### **REQUEST NO. 2**

For each product or service listed in Respondent's Responses to Interrogatory No.1 of Petitioner's Interrogatories produce documents sufficient to support the date of first use stated in response to Interrogatory No. 3 of Petitioner's Interrogatories.

### **REQUEST NO. 3**

Produce all documents which describe, discuss, state, refer to or relate to any suspension or discontinuance of the use of Respondent's Marks on any product or service identified in response to Interrogatory No. 1 of Petitioner's Interrogatories, including, without limitation, any documentation of meetings or discussions held concerning the discontinuance or suspension, and any documents relating to the reasons therefor.

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### **REQUEST NO. 4**

For each product or service listed in response to Interrogatory No. 1 of Petitioner's Interrogatories produce representative samples showing how each of Respondent's Marks are and/or have been used in connection with the product or service. If Respondent's Marks have been used in connection with the product or service for more than one year, produce at least one representative sample of the use of each of Respondent's Marks in connection with each product or service for each year of use.

**REQUEST NO. 5**

Produce all Documents showing, concerning, evidencing or relating or referring to any instance where Respondent has received orders or inquiries for goods or services not offered by it, but offered by Petitioner, or any instance where a third party has ever inquired if there is a relationship between Petitioner and Respondent.

**REQUEST NO. 6**

Produce a representative sample of every form, style, format, and type-face in which the Respondent has used each of Respondent's Marks in U.S. commerce in connection with each product or service identified in response to Interrogatory No. 1 of Petitioner's Interrogatories, both in advertising and promoting the product or service and in connection with the product or service itself.

**REQUEST NO. 7**

Produce documents sufficient to show Respondent's annual advertising and promotional expenditures for each product or service listed in response to Interrogatory No. 1 of Petitioner's Interrogatories from the date of first use to present.

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**REQUEST NO. 8**

For each product or service listed in Respondent's response to Interrogatory No. 1 of Petitioner's Interrogatories produce documents sufficient to show the annual dollar volume of sales of each product or service from the date of first use of Respondent's Mark or Marks on the product to present.

**REQUEST NO. 9**

For each product or service listed in Respondent's Response to Interrogatory No. 1 of Petitioner's Interrogatories produce documents sufficient to show the number of units sold or distributed under Respondent's Marks on an annual basis from the date of first use to present.

**REQUEST NO. 10**

For each product or service listed in Respondent's Response to Interrogatory No. 1 of Petitioner's Interrogatories produce documents sufficient to show the channels of distribution and/or intended channels of distribution for the product or service.

**REQUEST NO. 11**

Produce copies of any searches, investigations or any other inquiries, whether formal or informal, conducted by Respondent, or on behalf of Respondent, relating to whether or not any of Respondent's Marks, or any colorable imitation thereof, have been, or were being used, applied for, or registered by others.

**REQUEST NO. 12**

Produce copies of all contracts, franchise, agreements, licenses, consents, and the like to which Respondent is a party which relate to the use of Respondent's Marks.

**REQUEST NO. 13**

Produce any annual reports of Respondent which contain any reference to the goods or services sold or offered for sale, or intended to be sold or offered for sale, under Respondent's Marks, or which refer or relate to the sales or advertising revenues or expenditures for the goods or services sold under Respondent's Marks.

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**REQUEST NO. 14**

Produce documents sufficient to show the parties and marks involved, court or tribunal, status of proceeding and disposition of any litigation, cancellation, opposition, or adversary proceeding between Respondent and any other party which included an allegation of infringement, unfair competition, likelihood of confusion, or dilution involving Respondent's Marks either asserted by or asserted against the Respondent.



**REQUEST NO. 15**

Produce a copy of the present marketing plan and each marketing plan Respondent has utilized during the past 3 years which include any reference to the Respondent's Marks.

**ABELMAN, FRAYNE & SCHWAB**

By:   
MARIE-ANNE MASTROVITO

666 Third Avenue  
New York, New York 10017  
(212) 949-9022

**Dated: October 22, 2013**

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing **PETITIONER'S FIRST REQUEST TO RESPONDENT FOR PRODUCTION OF DOCUMENTS** was served by first class mail, postage prepaid, this 22nd day of October , 2013, upon counsel for Respondent:

Christopher D. Denny, Esq.  
Law Offices of Christopher D. Denny  
605 Market Street, Suite 505  
San Francisco, California 94105

  
MARIE-ANNE MASTROVITO

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## EXHIBIT 2

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Registration Nos. 4,238,184, 4,242,475 and 4,238,185

NATURAL ORGANICS INC.

*Petitioner,*

v.

NATURALLY PLUS DIRECT MARKETING  
PTE. LTD.

*Respondent.*

Cancellation No. 92057613

**PETITIONER'S FIRST SET OF INTERROGATORIES TO RESPONDENT**

Pursuant to Rules 26 and 33, Fed.R. Civ. P., and Trademark Rules 2.120 and 1.7, Opposer, hereby requests that Respondent answer the following interrogatories in writing within thirty (30) days after service hereof in accordance with the Definitions and Instructions set forth below.

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**DEFINITIONS AND INSTRUCTIONS**

1. The construction and definitions set forth in Section 45 of the Trademark Act, 15 U.S.C. §1127, are hereby incorporated by reference.
2. "Respondent" means Naturally Plus Direct Marketing Pte. Ltd., and its parents, divisions, subsidiaries, affiliated companies, employees, agents, officers, directors, and attorneys and all other persons acting for or on its or their behalf.

3. "Respondent's Marks" means the mark NATURALLY PLUS as shown in



Registration No. 4238185, the mark

as shown in Registration No. 4242475 and the mark



as shown in Registration No. 4238184.

4. "Commerce" and "U.S. commerce" means "all commerce which may lawfully be regulated by Congress."

5. "Person" means any natural person, corporation, association, firm, partnership or other business or legal entity.

6. With respect to a person, the term "identify" means: (i) where the person identified is a natural person, to state the person's full name, employer and current and last known business address and telephone number or residence address and telephone number if not employed; (ii) where the person identified is a corporation, to identify the officers and directors of the corporation, the state of incorporation and principal place of business of the corporation; (iii) where the person identified is a partnership, to state whether the partnership is a general or limited partnership, to identify the limited and general partners of the partnership, and to state the principal place of business of the partnership; (iv) where the person identified is a joint venture, to identify each joint venturer and/or co-venturer of the joint venture, and to state the principal place of business of the joint venture; and (v) where the person identified is a trust, to identify each trustee and beneficiary of the trust.

7. The term "Document" or "Documents" means any and all documents and things as those terms are defined under and come within the scope of the Federal Rules of Civil Procedure.

8. With respect to a Document, the term "identify" means to name each author and recipient of the Document, state the date of the Document, name the present custodian of the original of the document (and/or any known custodian of any copy of the document if the original is known to no longer exist), name persons presently in possession of copies of the Document, and summarize the substance of the Document.

9. The words/phrases "identify," "circumstances," "instance," detail(s)," and "all information," whether used alone or in connection with any other words, shall include, without limitation, identifying all facts, persons, places, dates, events, documents, physical items of any kind, time periods, geographical locations, data, communications of any kind, or any other information in any way related to, pertaining to, connected with or otherwise responsive to the interrogatory or document request such that all information shall be brought within the scope of the interrogatory or document request which may otherwise may be deemed not to be so covered.

10. The following rules of construction apply to all discovery requests:

(a) All/Each. The terms "all" and "each" shall be construed as all and each.

(b) And/Or. The connectives "and" and "or" shall be construed either

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disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside its scope.

(c) Number. The use of the singular form of any word includes the plural and vice versa.

11. (a) No part of an interrogatory shall be left unanswered merely because an objection is interposed to another part of the interrogatory;

(b) Where an objection is made to any interrogatory or sub-part thereof, the objection shall state with specificity all grounds. Any ground not stated in an objection within the time provided by the Federal Rules of Civil Procedure, or any extensions thereof, shall be waived;

(c) Where a claim of privilege is asserted in objecting to any interrogatory or sub-part thereof, and an answer is not provided on the basis of such assertion:

(i) The attorney asserting the privilege shall in the objection to the interrogatory, or sub-part thereof, identify the nature of the privilege which is being claimed, and

(ii) The following information shall be provided in the objection, unless divulgence of such information would cause disclosure of the allegedly privileged information:

(A) For documents: (1) type of document, (2) general subject matter of the document; (3) date of document; (4) such information as is sufficient to identify the document for a subpoena *duces tecum*, including, where appropriate, the author of the document, the addressee of the document and, where not apparent, the relationship between the author and addressee;

(B) For oral communications: (1) the name of the person making the communication and the names of persons present when the communication was made and, where not apparent, the relationship between the person(s) present to the person making the communications; (2) date and place of

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communication; (3) general subject matter of communication.

12. The following Interrogatories are continuing and are to be supplemented pursuant to Rule 26(e), Fed. R. Civ. P.

### **INTERROGATORIES**

#### **INTERROGATORY NO. 1**

Separately for each of Respondent's Marks (defined above), please provide a list of the common commercial name of every product or service manufactured, distributed or sold by Respondent in connection with the mark in U.S. commerce.

**INTERROGATORY NO. 2**

Separately for each of Respondent's Marks, please provide a list by common commercial name of each product or service which Respondent intends to manufacture, distribute or sell in connection with the mark in U.S. commerce

**INTERROGATORY NO. 3**

State separately for each of Respondent's Marks, the date the mark was first used in U.S. commerce in connection with each product or service identified in response to Interrogatory No. 1

**INTERROGATORY NO. 4**

Separately for each of Respondent's Marks, state the period or periods (specifying dates) during which each product or service identified in response to Interrogatory No. 1 was sold, manufactured or distributed under the mark in U.S. commerce.

**INTERROGATORY NO. 5**

Separately for each of Respondent's Marks, state Respondent's annual sales revenues in dollars for each product or service sold under the mark in U.S. commerce, from the date of first use to present.

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**INTERROGATORY NO. 6**

Separately for each of Respondent's Marks, state Respondent's annual sales in units of each product or service sold under the mark in U.S. commerce, from the date of first use to present.

**INTERROGATORY NO. 7**

Identify the person(s) most knowledgeable about the first use and/or intended use of Respondent's Marks in U.S. commerce and the periods during which the marks were used or are intended to be used on each of the products or services identified in response to Interrogatory Nos. 1 and 2.



**INTERROGATORY NO. 8**

For each product or service sold under Respondent's Marks in U.S. commerce identify and describe the method of advertising and type of media which Respondent has used, or intends to use, to advertise or promote the goods and/or services.

**INTERROGATORY NO. 9**

For each product or service sold under Respondent's Marks in U.S. commerce set forth the dollar amount of Respondent's annual advertising and promotional expenditures in support of the sales of the product or service.

**INTERROGATORY NO. 10**

For each of product or service sold under Respondent's Marks identify the channels of trade and/or intended channels of trade for the product or service, including, a description of the types of commercial establishments in which such product or services are sold and/or are intended to be sold.

**INTERROGATORY NO. 11**

Identify each entity or person with whom Respondent has had contact, either orally or in writing, wherein Respondent has either asserted a claim of right or received a notice of another's claim of right relating to one or all of Respondent's Marks, and with respect to each such contact, fully explain all details including the name of the other party and the mark used by the other party, the current status or disposition of the claim, and identify all documents referring to or embodying the contracts.

**INTERROGATORY NO. 12**

Identify all disputes, including but not limited to lawsuits, oppositions, cancellation proceedings, written objections, or threatened litigations, in which Respondent has in any way been involved with respect to Respondent's Marks, and indicate how any such dispute was eventually resolved, including whether there were any decisions issued by any court or tribunal.

**INTERROGATORY NO. 13**

If Respondent or any person acting for or on its behalf obtained any statements or opinions regarding any of the issues in this Cancellation proceeding identify the person or persons who rendered each statement or opinion.

**INTERROGATORY NO. 14**

Identify all consumer and/or purchaser surveys and market research, including the purpose of conducting the same, that Respondent has conducted or has had others conduct on Respondent's behalf relating to Respondent's Marks.

**INTERROGATORY NO. 15**

Identify any and all settlement or coexistence agreements entered into by Respondent which refer or relate to Respondent's Marks.

**INTERROGATORY NO. 16**

Identify any and all licensees, franchisees or others permitted to use Respondent's Marks in U.S. commerce.

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**INTERROGATORY NO. 17**

Identify each person who participated in the preparation of Respondent's responses to the foregoing interrogatories and/or who furnished any information used for the preparation of Respondent's responses to the foregoing interrogatories, and for each person specify the interrogatory response in which they participated or furnished any information.

Respectfully submitted,

  
MARIE-ANNE MASTROVITO

**ABELMAN, FRAYNE & SCHWAB**  
666 Third Avenue  
New York, New York 10017  
(212) 949-9022

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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing **PETITIONER'S FIRST SET OF INTERROGATORIES TO RESPONDENT** was served by first class mail, postage prepaid, this 22nd day of October, 2013, upon counsel for Respondent:

Christopher D. Denny, Esq.  
Law Offices of Christopher D. Denny  
605 Market Street, Suite 505  
San Francisco, California 94105

  
MARIE-ANNE MASTROVITO

## EXHIBIT 3

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Natural Organics, Inc.,	)	Proceeding No. 92057613
	)	
Petitioner,	)	<b>RESPONSE TO SPECIAL</b>
	)	<b>INTERROGATORIES</b>
v.	)	
	)	
	)	
Naturally Plus Direct Marketing PTE.	)	
LTD.,	)	
	)	
Respondent.	)	
	)	
	)	
	)	
	)	

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PROPOUNDING PARTY: NATURAL ORGANICS, INC.,

RESPONDING PARTY: NATURALLY PLUS DIRECT MARKETING PTE. LTD.

SET NUMBER: ONE

Pursuant to Federal Rule of Civil Procedure 33, Respondent Naturally Plus Direct Marketing Pte. Ltd. ("Respondent" or "Responding Party") responds to special interrogatories propounded by Petitioner as follows:

**General Statements and Objections**

1. Respondent has not completed discovery, the investigation of facts, witnesses, or documents, the analysis of available information, or the preparation for arbitration or trial in this case. Respondent reserves the right to supplement or amend these responses in the event that any facts, documents, or other evidence may be subsequently discovered.

2. These responses are made without prejudice to Respondent's right to introduce facts, documents, witnesses, or other evidence that may be subsequently discovered.

3. These responses are made without prejudice to Respondent's right to supplement or amend these responses in the event that any information previously

available to Respondent may have been omitted by oversight, inadvertence, or good faith error or mistake.

4. Except for the facts explicitly stated herein, no incidental or implied admissions are intended.

5. Respondent expressly reserves and does not waive:

- a. Any issue or argument regarding the competency, relevance, materiality, probative value and admissibility of any information provided, documents produced or the contents of any thereof;
- b. Any issue or argument concerning the vagueness, ambiguity, unintelligibility and over-breadth of any questions posed or information provided, documents produced or the contents of any thereof.

6. Nothing herein shall be construed as an admission by Respondent regarding the admissibility or relevance of any fact or document or of the truth or accuracy of any characterization contained in Propounding Party's discovery requests.

7. These responses are signed by counsel only as to the objections set forth in the responses. Respondent in no way intends to waive the attorney-client privilege and/or the attorney-work product privilege with regard to any response set forth herein.

8. The fact that part or all of any discovery request has been answered should not be construed to be a waiver of any future objection to any such discovery request.

Respondent responds to each and every discovery request subject to the foregoing, and each of the foregoing statements is incorporated by reference into each of the following responses:

**RESPONSE TO INTERROGATORY NO. 1:**

Responding Party objects to this question on the grounds that it is compound and conjunctive. Without waiving the foregoing objections, Responding Party responds as follows:

None.

**RESPONSE TO INTERROGATORY NO. 2:**

Responding Party objects to this question on the grounds that it is compound and conjunctive. Responding Party further objects to this question in that it seeks information that is confidential, proprietary, trade secret, and subject to privacy.

**RESPONSE TO INTERROGATORY NO. 3:**

Responding Party objects to this question on the grounds that it is compound and conjunctive. Without waiving the foregoing objections, Responding Party responds as follows:

Not applicable.

**RESPONSE TO INTERROGATORY NO. 4:**

Responding Party objects to this question on the grounds that it is compound and conjunctive. Without waiving the foregoing objections, Responding Party responds as follows:

Not applicable.

**RESPONSE TO INTERROGATORY NO. 5:**

Responding Party objects to this question on the grounds that it is compound and conjunctive. Without waiving the foregoing objections, Responding Party responds as follows:

Not applicable.



**RESPONSE TO INTERROGATORY NO. 6:**

Responding Party objects to this question on the grounds that it is compound and conjunctive. Without waiving the foregoing objections, Responding Party responds as follows:

Not applicable.

**RESPONSE TO INTERROGATORY NO. 7:**

Responding Party objects to this question on the grounds that it is compound and conjunctive. Responding Party further objects to any intent to use portion of the question as seeking information that is confidential, proprietary, trade secret, and subject to privacy. Without waiving the foregoing objections, Responding Party responds as follows:

Responding Party has not sold any product in the U.S. Please see persons listed in its initial disclosures. Manabu Haba, Shuji Inaba, and Jamie Karp.

**RESPONSE TO INTERROGATORY NO. 8:**

Responding Party objects to this question on the grounds that it is compound and conjunctive. Responding Party further objects to any intent to use portion of the question as seeking information that is confidential, proprietary, trade secret, and subject to privacy. Without waiving the foregoing objections, Responding Party responds as follows:

Responding Party has not sold any product in the U.S.

**RESPONSE TO INTERROGATORY NO. 9:**

Responding Party objects to this question on the grounds that it is compound and conjunctive. Responding Party further objects to the question as seeking information that is confidential, proprietary, trade secret, and subject to privacy. Without waiving the foregoing objections, Responding Party responds as follows:

Not applicable.

**RESPONSE TO INTERROGATORY NO. 10:**

Responding Party objects to this question on the grounds that it is compound and conjunctive. Responding Party further objects to the question as seeking information that is confidential, proprietary, trade secret, and subject to privacy. Without waiving the foregoing objections, Responding Party responds as follows:

Responding Party has not sold any product in the U.S. The mode of distribution of the two company's products is significantly different. Naturally Plus sales channel is mainly to registered multi-level-marketing members. Nature's Plus sales channel is retail stores.

**RESPONSE TO INTERROGATORY NO. 11:**

Responding Party objects to this question on the grounds that it is overbroad, compound, and conjunctive. Responding Party further objects to this question on the grounds that it seeks information that might be subject to the attorney-client privilege and/or the attorney work product doctrine. To the extent any requested information is available on the USPTO website or international website, then Responding Party objects to this question on the grounds that the requested information is equally available to petitioner. Without waiving the foregoing objections, Responding Party responds as follows:

Petitioner and Responding Party have been in contact with each other in connection with their respective marks internationally, in Taiwan and the Philippines. See documents produced herewith. The law firm for petitioner in this matter represented petitioner in both the Taiwan and the Philippines' proceedings and is therefore privy to the issues and documents in both proceedings. Petitioner's application to register the mark "Nature's Plus" in Taiwan was denied. The outcome in Philippines is still pending.

**RESPONSE TO INTERROGATORY NO. 12:**

Responding Party objects to this question on the grounds that it is overbroad, compound, and conjunctive. Responding Party further objects to this question on the

grounds that it seeks information that might be subject to the attorney-client privilege and/or the attorney work product doctrine. To the extent any requested information is available on the USPTO website or international website, then Responding Party objects to this question on the grounds that the requested information is equally available to petitioner. Without waiving the foregoing objections, Responding Party responds as follows:

Petitioner and Responding Party have been in contact with each other in connection with their respective marks internationally – use and registration in Taiwan and the Philippines. See documents produced herewith.

**RESPONSE TO INTERROGATORY NO. 13:**

Responding Party objects to this question on the grounds that it seeks information that might be subject to the attorney-client privilege and/or the attorney work product doctrine. Without waiving the foregoing objections, Responding Party responds as follows:

Christopher D. Denny.

**RESPONSE TO INTERROGATORY NO. 14:**

Responding Party objects to this question on the grounds that it is compound and conjunctive. Responding Party further objects to the question as seeking information that is confidential, proprietary, trade secret, and subject to privacy.

**RESPONSE TO INTERROGATORY NO. 15:**

Responding Party objects to this question on the grounds that it is compound and conjunctive. Responding Party further objects to the question as seeking information that is confidential, proprietary, trade secret, and subject to privacy.

Without waiving the foregoing objections, Responding Party responds as follows:

None.

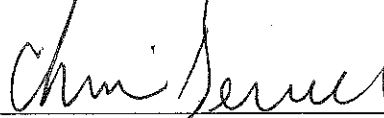
**RESPONSE TO INTERROGATORY NO. 16:**

Responding Party objects to this question on the grounds that it is compound and conjunctive. Responding party further objects to this question as vague and ambiguous. Responding Party further objects to the question as seeking information that is confidential, proprietary, trade secret, and subject to privacy. Without waiving the foregoing objections, Responding Party responds as follows:

None.

Dated: December 10, 2013

LAW OFFICES OF CHRISTOPHER D. DENNY



Christopher D. Denny, Attorneys for Respondent

605 Market Street, Suite 505

San Francisco, CA 94105

(Tel) 415-513-5427

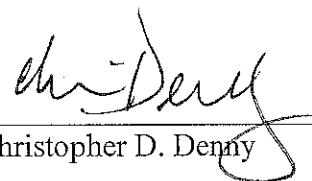
(Fax) 415-513-5498

[chris@cddennylaw.com](mailto:chris@cddennylaw.com)

### CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing responses to special interrogatories was served by first class mail, postage pre-paid, on December 10, 2013 upon the following:

Marie Anne Mastrovito  
ABELMAN, FRAYNE & SCHWAB  
666 Third Avenue  
New York, New York 10017



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Christopher D. Denny

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## EXHIBIT 4

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

<b>Natural Organics, Inc.,</b>	)	<b>Proceeding No. 92057613</b>
	)	
<b>Petitioner,</b>	)	<b>RESPONSE TO REQUEST FOR</b>
	)	<b>PRODUCTION OF DOCUMENTS</b>
<b>v.</b>	)	
	)	
<b>Naturally Plus Direct Marketing PTE.</b>	)	
<b>LTD.,</b>	)	
	)	
<b>Respondent.</b>	)	
	)	
	)	
	)	
	)	

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PROPOUNDING PARTY: NATURAL ORGANICS, INC.,

RESPONDING PARTY: NATURALLY PLUS DIRECT MARKETING PTE. LTD.

SET NUMBER: ONE

Responding Party hereby responds to Propounding Party's Request for Production of Documents ("Request") as follows:

**Preliminary Statement**

Responding Party has conducted a diligent search and reasonable inquiry in response to this Request for Production of Documents. However, Responding Party has not completed its investigation of the facts related to this case, has not completed discovery in this action, and has not completed its preparation for any trial that might be held herein. Responding Party's responses to the Request for Production of Documents are based on information currently known to Responding Party and are given without prejudice to Responding Party's right to supplement, add to, amend, or modify its responses to the Request. Responding Party reserves the right to make use of, or introduce at any hearing or at trial, documents or facts not known to exist at the time of this production, including but not limited to, documents obtained in the course of discovery in this action.



Subject to and without waiving the foregoing Preliminary Statement, Responding Party makes the following General statements concerning the Request, including each of Propounding Party's definitions, instructions and individual request contained therein:

**General Statements**

1. Responding Party has not completed discovery, the investigation of facts, witnesses, or documents, the analysis of available information, or the preparation for arbitration or trial in this case. Responding Party reserves the right to supplement or amend these responses in the event that any facts, documents, or other evidence may be subsequently discovered.

2. These responses are made without prejudice to Responding Party's right to introduce facts, documents, witnesses, or other evidence that may be subsequently discovered.

3. These responses are made without prejudice to Responding Party's right to supplement or amend these responses in the event that any information previously available to Responding Party may have been omitted by oversight, inadvertence, or good faith error or mistake.

4. Except for the facts explicitly stated herein, no incidental or implied admissions are intended.

5. Responding Party expressly reserves and does not waive:

- a. Any issue or argument regarding the competency, relevance, materiality, probative value or admissibility of any information provided, documents produced or the contents of any thereof;
- b. Any issue or argument concerning the vagueness, ambiguity, unintelligibility and over-breadth of any information provided, documents produced or contents of any thereof;

6. Nothing herein shall be construed as an admission by Responding Party regarding the admissibility or relevance of any fact or document or of the truth or

accuracy of any characterization contained in Propounding Party's discovery requests.

7. These responses are signed by counsel only as to the objections set forth in the responses. Responding Party in no way intends to waive the attorney-client privilege and/or the attorney-work product privilege with regard to any response set forth herein.

8. The fact that part or all of any discovery request has been answered should not be construed to be a waiver of any future objection to any such discovery request.

Responding Party responds to each and every discovery request subject to the foregoing, and each of the foregoing statements is incorporated by reference into each of the following responses:

**RESPONSE TO REQUEST FOR PRODUCTION NO. 1:**

Responding Party objects to this demand on the grounds that it seeks documents that are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, confidential, trade secret, and subject to the right of privacy. Responding Party further objects to this request to the extent it seeks documents that are privileged or equally available to Propounding Party. Responding Party objects to this demand because no documents were asked to be identified in the special interrogatories served on Respondent.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 2:**

Responding Party objects to this demand as being vague and ambiguous. Without waiving the foregoing objection, Responding Party responds as follows:

None.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 3:**

Responding Party objects to this demand as misquoting special interrogatory No. 1. and for being vague and ambiguous. Without waiving the foregoing objection, Responding Party responds as follows:

None.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 4:**

Responding Party objects to this demand on the grounds that it is compound, conjunctive, and disjunctive. Without waiving the foregoing objections, Responding Party responds as follows:

None.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 5:**

Responding Party objects to this demand on the grounds that it is compound and disjunctive. Without waiving the foregoing objections, Responding Party responds as follows:

None.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 6:**

Responding Party objects to this demand on the grounds that it is compound and conjunctive. Without waiving the foregoing objections, Responding Party responds as follows:

None.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 7:**

Responding Party objects to this demand on the grounds that it is compound and conjunctive. Responding Party further objects to this demand in that it seeks information that is confidential, proprietary, trade secret, and subject to privacy. Without waiving the foregoing objections, Responding Party responds as follows:

None.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 8:**

Responding Party objects to this demand in that it seeks information that is confidential, proprietary, trade secret, and subject to privacy. Without waiving the foregoing objections, Responding Party responds as follows:

None.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 9:**

Responding Party objects to this demand in that it seeks information that is confidential, proprietary, trade secret, and subject to privacy. Without waiving the foregoing objections, Responding Party responds as follows:

None.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 10:**

Responding Party objects to this demand on the grounds that it is compound, conjunctive, and disjunctive. Responding Party further objects to the demand as seeking information that is confidential, proprietary, trade secret, and subject to privacy.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 11:**

Responding Party objects to this demand on the grounds that it is compound and disjunctive. Responding Party further objects to this demand as seeking information that is confidential, proprietary, trade secret, and subject to privacy. Responding Party objects to this demand on the grounds that it seeks information that is subject to the attorney-client privilege and/or the attorney work product doctrine.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 12:**

Responding Party objects to this demand on the grounds that it is compound, conjunctive, and overbroad. Responding Party further objects to this demand in that it seeks information that is confidential, proprietary, trade secret, and subject to privacy. Responding Party objects to this demand on the grounds that it seeks documents that are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving the foregoing objections, Responding Party responds as follows:

None.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 13:**

Responding Party objects to this demand on the grounds that it is compound, conjunctive, and overbroad. Responding Party further objects to this demand in that it

seeks information that is confidential, proprietary, trade secret, and subject to privacy. Responding Party objects to this demand on the grounds that it seeks documents that are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 14:**

Responding Party objects to this demand on the grounds that it is compound, conjunctive, and overbroad. Responding Party objects to this demand on the grounds that it seeks documents that are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Responding Party further objects to this demand on the grounds that it seeks information that is subject to the attorney-client privilege and/or the attorney work product doctrine. To the extent responsive documents to this demand are available on the USPTO or other website, and that the only party that has had any proceedings with Responding Party is Petitioner, then Responding Party objects on the basis that responsive documents are equally available to Propounding Party.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 15:**

Responding Party objects to this demand on the grounds that it is compound and conjunctive. Responding Party further objects to this demand in that it seeks information that is confidential, proprietary, trade secret, and subject to privacy. Responding Party objects to this demand on the grounds that it seeks documents that are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

Dated: December 10, 2013

LAW OFFICES OF CHRISTOPHER D. DENNY



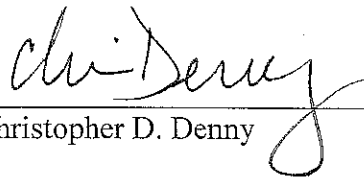
Christopher D. Denny, Attorneys for Respondent

605 Market Street, Suite 505  
San Francisco, CA 94105  
(Tel) 415-513-5427  
(Fax) 415-513-5498  
[chris@cddennylaw.com](mailto:chris@cddennylaw.com)

### CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing responses to request for production was served by first class mail, postage pre-paid, on December 10, 2013 upon the following:

Marie Anne Mastrovito  
ABELMAN, FRAYNE & SCHWAB  
666 Third Avenue  
New York, New York 10017

  
\_\_\_\_\_  
Christopher D. Denny

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## EXHIBIT 5



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Natural Organics, Inc.,	)	Proceeding No. 92057613
	)	
Petitioner,	)	AMENDED RESPONSE TO SPECIAL
	)	INTERROGATORIES
v.	)	
	)	
Naturally Plus Direct Marketing PTE.	)	
LTD.,	)	
	)	
Respondent.	)	
	)	
	)	
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PROPOUNDING PARTY: NATURAL ORGANICS, INC.,

RESPONDING PARTY: NATURALLY PLUS DIRECT MARKETING PTE. LTD.

SET NUMBER: ONE

Respondent Naturally Plus Direct Marketing Pte. Ltd. ("Respondent" or "Responding Party") hereby provides an amended response to special interrogatories propounded by Petitioner as follows:

**General Statements and Objections**

1. Respondent has not completed discovery, the investigation of facts, witnesses, or documents, the analysis of available information, or the preparation for arbitration or trial in this case. Respondent reserves the right to supplement or amend these responses in the event that any facts, documents, or other evidence may be subsequently discovered.

2. These responses are made without prejudice to Respondent's right to introduce facts, documents, witnesses, or other evidence that may be subsequently discovered.

3. These responses are made without prejudice to Respondent's right to supplement or amend these responses in the event that any information previously

available to Respondent may have been omitted by oversight, inadvertence, or good faith error or mistake.

4. Except for the facts explicitly stated herein, no incidental or implied admissions are intended.

5. Respondent expressly reserves and does not waive:

- a. Any issue or argument regarding the competency, relevance, materiality, probative value and admissibility of any information provided, documents produced or the contents of any thereof;
- b. Any issue or argument concerning the vagueness, ambiguity, unintelligibility and over-breadth of any questions posed or information provided, documents produced or the contents of any thereof.

6. Nothing herein shall be construed as an admission by Respondent regarding the admissibility or relevance of any fact or document or of the truth or accuracy of any characterization contained in Propounding Party's discovery requests.

7. These responses are signed by counsel only as to the objections set forth in the responses. Respondent in no way intends to waive the attorney-client privilege and/or the attorney-work product privilege with regard to any response set forth herein.

8. The fact that part or all of any discovery request has been answered should not be construed to be a waiver of any future objection to any such discovery request.

Respondent responds to each and every discovery request subject to the foregoing, and each of the foregoing statements is incorporated by reference into each of the following responses:

**AMENDED RESPONSE TO INTERROGATORY NO. 1:**

Responding Party objects to this question on the grounds that it is compound and conjunctive. Without waiving the foregoing objections, Responding Party responds as follows:

Respondent is a Singapore corporation with Japanese management. Consequently, it had difficulty understanding and responding to certain questions posed to it by Petitioner due to a language barrier. The common commercial names for product sold in the U.S. are Super Lutein and Paramylon ARX.

**RESPONSE TO INTERROGATORY NO. 2:**

Responding Party objects to this question on the grounds that it is compound and conjunctive. Responding Party further objects to this question in that it seeks information that is confidential, proprietary, trade secret, and subject to privacy.

**AMENDED RESPONSE TO INTERROGATORY NO. 3:**

Responding Party objects to this question on the grounds that it is compound and conjunctive. Without waiving the foregoing objections, Responding Party responds as follows:

Respondent is a Singapore corporation with Japanese management. Consequently, it had difficulty understanding and responding to certain questions posed to it by Petitioner due to a language barrier. The marks were first used in commerce in the U.S. on January 16, 2012.

**AMENDED RESPONSE TO INTERROGATORY NO. 4:**

Responding Party objects to this question on the grounds that it is compound and conjunctive. Without waiving the foregoing objections, Responding Party responds as follows:

Respondent is a Singapore corporation with Japanese management. Consequently, it had difficulty understanding and responding to certain questions posed to it by

Petitioner due to a language barrier. Sales in the U.S. have taken place from January of 2012 through the present for both products.

**AMENDED RESPONSE TO INTERROGATORY NO. 5:**

Responding Party objects to this question on the grounds that it is compound and conjunctive. Responding Party further objects to this question in that it seeks information that is confidential, proprietary, trade secret, and subject to privacy.

Respondent is a Singapore corporation with Japanese management. Consequently, it had difficulty understanding and responding to certain questions posed to it by Petitioner due to a language barrier. Total sales revenue in the U.S. since January 2012 for Super Lutein is approximately \$517,820. Total sales revenue in the U.S. since January 2012 for Paramylon ARX is approximately \$46,200.

**AMENDED RESPONSE TO INTERROGATORY NO. 6:**

Responding Party objects to this question on the grounds that it is compound and conjunctive. Responding Party further objects to this question in that it seeks information that is confidential, proprietary, trade secret, and subject to privacy.

Respondent is a Singapore corporation with Japanese management. Consequently, it had difficulty understanding and responding to certain questions posed to it by Petitioner due to a language barrier. Total units sold in the U.S. since January 2012 for Super Lutein is approximately 4,850. Total units sold in the U.S. since January 2012 for Paramylon ARX is approximately 420.

**AMENDED RESPONSE TO INTERROGATORY NO. 7:**

Responding Party objects to this question on the grounds that it is compound and conjunctive. Responding Party further objects to any intent to use portion of the question as seeking information that is confidential, proprietary, trade secret, and subject to privacy. Without waiving the foregoing objections, Responding Party responds as follows:

Respondent is a Singapore corporation with Japanese management. Consequently, it had difficulty understanding and responding to certain questions posed to it by Petitioner due to a language barrier. Please see persons listed in Responding Party's initial disclosures previously served on Petitioner.

**AMENDED RESPONSE TO INTERROGATORY NO. 8:**

Responding Party objects to this question on the grounds that it is compound and conjunctive. Responding Party further objects to any intent to use portion of the question as seeking information that is confidential, proprietary, trade secret, and subject to privacy. Without waiving the foregoing objections, Responding Party responds as follows:

Respondent is a Singapore corporation with Japanese management. Consequently, it had difficulty understanding and responding to certain questions posed to it by Petitioner due to a language barrier. The internet and multi-level-marketing members are the advertising and media used by Respondent in the U.S.

**AMENDED RESPONSE TO INTERROGATORY NO. 9:**

Responding Party objects to this question on the grounds that it is compound and conjunctive. Responding Party further objects to the question as seeking information that is confidential, proprietary, trade secret, and subject to privacy.

Respondent is a Singapore corporation with Japanese management. Consequently, it had difficulty understanding and responding to certain questions posed to it by Petitioner due to a language barrier. To date, Respondent has spent approximately \$70,000 on advertising its products in the U.S.

**AMENDED RESPONSE TO INTERROGATORY NO. 10:**

Responding Party objects to this question on the grounds that it is compound and conjunctive. Responding Party further objects to the question as seeking information that

is confidential, proprietary, trade secret, and subject to privacy. Without waiving the foregoing objections, Responding Party responds as follows:

Respondent is a Singapore corporation with Japanese management. Consequently, it had difficulty understanding and responding to certain questions posed to it by Petitioner due to a language barrier. Respondent's sales channels in the U.S. are multi-level-marketing members and the internet.

**AMENDED RESPONSE TO INTERROGATORY NO. 11:**

Responding Party objects to this question on the grounds that it is overbroad, compound, and conjunctive. Responding Party further objects to this question on the grounds that it seeks information that might be subject to the attorney-client privilege and/or the attorney work product doctrine. To the extent any requested information is available on the USPTO website or international website, then Responding Party objects to this question on the grounds that the requested information is equally available to petitioner. Without waiving the foregoing objections, Responding Party responds as follows:

Respondent is a Singapore corporation with Japanese management. Consequently, it had difficulty understanding and responding to certain questions posed to it by Petitioner due to a language barrier. Petitioner and Responding Party have been in contact with each other in connection with their respective marks internationally, in Taiwan, the Philippines, and Indonesia. See documents previously produced. The law firm for petitioner in this matter represented petitioner in both the Taiwan and the Philippines' proceedings and is therefore privy to the issues and documents in both proceedings.

**AMENDED RESPONSE TO INTERROGATORY NO. 12:**

Responding Party objects to this question on the grounds that it is overbroad, compound, and conjunctive. Responding Party further objects to this question on the grounds that it seeks information that might be subject to the attorney-client privilege

and/or the attorney work product doctrine. To the extent any requested information is available on the USPTO website or international website, then Responding Party objects to this question on the grounds that the requested information is equally available to petitioner. Without waiving the foregoing objections, Responding Party responds as follows:

Respondent is a Singapore corporation with Japanese management. Consequently, it had difficulty understanding and responding to certain questions posed to it by Petitioner due to a language barrier. Petitioner and Responding Party have been in contact with each other in connection with their respective marks internationally – use and registration in Taiwan, the Philippines, Indonesia, and this proceeding in the U.S.

**RESPONSE TO INTERROGATORY NO. 13:**

Responding Party objects to this question on the grounds that it seeks information that might be subject to the attorney-client privilege and/or the attorney work product doctrine. Without waiving the foregoing objections, Responding Party responds as follows:

Christopher D. Denny.

**RESPONSE TO INTERROGATORY NO. 14:**

Responding Party objects to this question on the grounds that it is compound and conjunctive. Responding Party further objects to the question as seeking information that is confidential, proprietary, trade secret, and subject to privacy.

**RESPONSE TO INTERROGATORY NO. 15:**

Responding Party objects to this question on the grounds that it is compound and conjunctive. Responding Party further objects to the question as seeking information that is confidential, proprietary, trade secret, and subject to privacy.

Without waiving the foregoing objections, Responding Party responds as follows:

None.

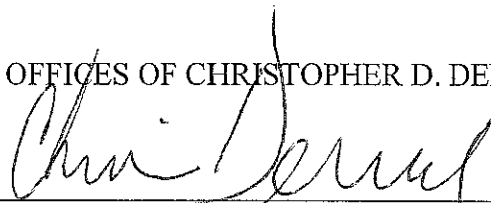
**RESPONSE TO INTERROGATORY NO. 16:**

Responding Party objects to this question on the grounds that it is compound and conjunctive. Responding party further objects to this question as vague and ambiguous. Responding Party further objects to the question as seeking information that is confidential, proprietary, trade secret, and subject to privacy. Without waiving the foregoing objections, Responding Party responds as follows:

None.

Dated: September 18, 2014

LAW OFFICES OF CHRISTOPHER D. DENNY

A handwritten signature in black ink, appearing to read "Chris Denny", is written over a horizontal line.

Christopher D. Denny, Attorneys for Respondent

605 Market Street, Suite 505  
San Francisco, CA 94105  
(Tel) 415-513-5427  
(Fax) 415-513-5498  
[chris@eddennylaw.com](mailto:chris@eddennylaw.com)



VERIFICATION

The undersigned hereby declares that:

1. I have read the foregoing amended responses to special interrogatories, set one, and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein stated on information and belief, and as to those matters, I believe them to be true.

2. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

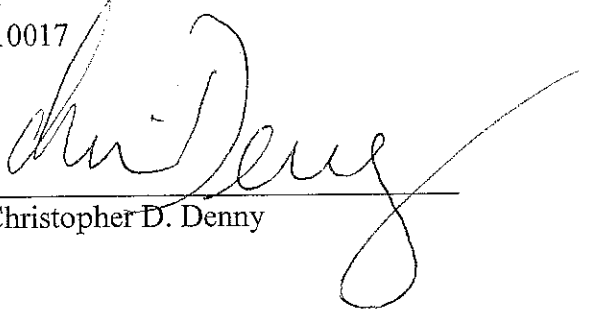
Dated: September 18, 2014

村上秀都  
Hideto Murakami

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing amended responses to special interrogatories was served by first class mail, postage pre-paid, on September 29, 2014 upon the following:

Marie Anne Mastrovito  
ABELMAN, FRAYNE & SCHWAB  
666 Third Avenue  
New York, New York 10017

  
\_\_\_\_\_  
Christopher D. Denny

## EXHIBIT 6

## **MASTROVITO, M.**

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**From:** Christopher D. Denny [chris@cddennylaw.com]  
**Sent:** Tuesday, December 16, 2014 7:06 PM  
**To:** MASTROVITO, M.  
**Subject:** RE: Natural Organics, Inc. v. Naturally Plus Direct Marketing (NATURE'S PLUS v. NATURALLY PLUS)

I sent the other email to my client and will follow up.

---

**From:** MASTROVITO, M. [mailto:MAMastrovito@lawabel.com]  
**Sent:** Tuesday, December 16, 2014 3:04 PM  
**To:** chris@cddennylaw.com  
**Subject:** RE: Natural Organics, Inc. v. Naturally Plus Direct Marketing (NATURE'S PLUS v. NATURALLY PLUS)

Dear Chris:

I am following up on my email of December 5, 2014. Do you have any supplements to your responses to our first set of document requests?

Sincerely,

MARIE-ANNE MASTROVITO

**ABELMAN FRAYNE & SCHWAB**  
666 Third Avenue  
New York, New York 10017-5612

Direct Telephone: (212) 885-9248  
Facsimile: (212) 949-9190

This is a PRIVATE and PRIVILEGED communication. If you are not the intended recipient, please do not read, copy or use it, and do not disclose it to others. Please notify the sender of the delivery error by replying to this message, and delete it from your system. Thank you.

---

**From:** chris@cddennylaw.com [mailto:chris@cddennylaw.com]  
**Sent:** Thursday, December 11, 2014 2:06 PM  
**To:** MASTROVITO, M.; Christopher D. Denny  
**Subject:** Re: Natural Organics, Inc. v. Naturally Plus Direct Marketing (NATURE'S PLUS v. NATURALLY PLUS)

Marie-Anne:

I am working from home today because a major storm hit San Francisco.

My client is mulling over a proposal for settlement.

In the meantime, we have some deadlines coming up. To give us some breathing room, we should stipulate to push out some dates like we did around labor day.

**MASTROVITO, M.**

---

**From:** Christopher D. Denny [chris@cddennylaw.com]  
**Sent:** Friday, December 05, 2014 6:32 PM  
**To:** MASTROVITO, M.  
**Subject:** RE: Natural Organics, Inc. v. Naturally Plus Direct Marketing (NATURE'S PLUS v. NATURALLY PLUS)

Thanks you. I will take a look.

---

**From:** MASTROVITO, M. [mailto:MAMastrovito@lawabel.com]  
**Sent:** Friday, December 05, 2014 10:24 AM  
**To:** Christopher D. Denny  
**Subject:** RE: Natural Organics, Inc. v. Naturally Plus Direct Marketing (NATURE'S PLUS v. NATURALLY PLUS)

Whoops. Here is the attachment. A hard copy will follow by mail.

Marie Anne

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**From:** MASTROVITO, M.  
**Sent:** Friday, December 05, 2014 1:22 PM  
**To:** 'Christopher D. Denny'  
**Subject:** RE: Natural Organics, Inc. v. Naturally Plus Direct Marketing (NATURE'S PLUS v. NATURALLY PLUS)

Dear Chris:

Attached is a revised copy of our Interrogatory responses. We have revised our responses to Interrogatory Nos. 12, 13 and 14 to address your objections.

We request that you provide us with documents responsive to our first set of document requests served October 22, 2013. Your current responses indicate that there are no documents relating to first use, samples of use, advertisements, or sales data. If there are no documents responsive to Request for Production Nos. 2, 3, 4, 5, 6, 7, 8, 9 and 12, please confirm that this is the case. If there are responsive documents, please provide them no later than December 15, 2014. As you have indicated that your client is using the mark in the U.S. it seems implausible that there are no documents evidencing this usage.

As you have expressed concern over the looming close of discovery, we propose that we extend the dates of the proceeding for 30 days to allow additional time to determine if settlement is possible. Please advise if you client will agree to the extension by early next week.

Sincerely,

MARIE-ANNE MASTROVITO

**ABELMAN FRAYNE & SCHWAB**  
666 Third Avenue  
New York, New York 10017-5612

Direct Telephone: (212) 885-9248  
Facsimile: (212) 949-9190

**MASTROVITO, M.**

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**From:** Christopher D. Denny [chris@cddennylaw.com]  
**Sent:** Wednesday, November 26, 2014 6:08 PM  
**To:** MASTROVITO, M.  
**Subject:** RE: Natural Organics, Inc. v. Naturally Plus Direct Marketing (NATURE'S PLUS v. NATURALLY PLUS)

Not done discussing settlement – but the discovery cutoff is looming.

I will review your doc demand and get back to you.

Best,

Chris

---

**From:** MASTROVITO, M. [mailto:MAMastrovito@lawabel.com]  
**Sent:** Wednesday, November 26, 2014 1:44 PM  
**To:** Christopher D. Denny  
**Subject:** RE: Natural Organics, Inc. v. Naturally Plus Direct Marketing (NATURE'S PLUS v. NATURALLY PLUS)

Dear Chris:

I will amend the responses but you must produce the requested documents. The interrogatory responses are not enough. We have no knowledge of your sales in the United States. I believe we know of no instances of actual confusion in the United States. I thought that was clear in our response, but we will remove the prefatory wording if that is what you are finding objectionable.

Are we done discussing settlement? I am a bit baffled by the sudden turn to discovery. If we are no longer working on a settlement, please let me know.

Sincerely,

Marie Anne

**MASTROVITO, M.**

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**From:** MASTROVITO, M.  
**Sent:** Wednesday, November 26, 2014 3:18 PM  
**To:** 'Christopher D. Denny'  
**Subject:** RE: Natural Organics, Inc. v. Naturally Plus Direct Marketing (NATURE'S PLUS v. NATURALLY PLUS)

Dear Chris:

We are not convinced of your client's use of the mark in the United States and therefore, we believe that it is not necessary to amend these interrogatory responses. On the subject of discovery, we note that although you amended the interrogatory responses, you did not amend your responses to our document requests. Thus, you have indicated that there are no documents showing use in the United States.

Further, it has generally been my experience that parties do not focus on discovery disputes while discussing settlement. Should I take your most recent email to mean that we are no longer discussing settlement but are instead moving forward with the proceeding? If we are still in settlement discussions, please let me know when you expect that you will be able to provide a substantive response to our most recent proposal. My file ends with my email to you of November 19, so I believe the ball is in your court.

Obviously, we can discuss all this next week as the Thanksgiving holiday is upon us. I hope you have a nice holiday. You should be happy you are not on the East Coast today. The weather is a nightmare.

Sincerely,

MARIE-ANNE MASTROVITO

**ABELMAN FRAYNE & SCHWAB**

666 Third Avenue  
New York, New York 10017-5612

Direct Telephone: (212) 885-9248  
Facsimile: (212) 949-9190

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