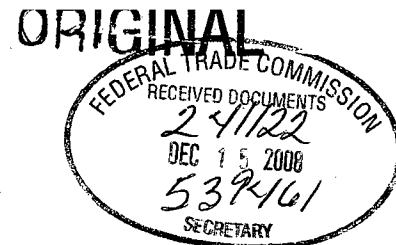


UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION



In the Matter of

NATIVE ESSENCE HERB COMPANY,
a corporation,

**MARK J. HERSHISER, individually, d/b/a Native
Essence Herb Company, and as an officer of the
corporation, and**

**MARIANNE HERSHISER, individually, d/b/a Native
Essence Herb Company, and as an officer of the
corporation.**

DOCKET NO. 9328

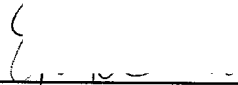
PUBLIC DOCUMENT

**COMPLAINT COUNSEL'S RESPONSE TO
RESPONDENTS' MOTION TO WITHDRAW MATTER FROM ADJUDICATION**

On December 5, 2008, Respondents filed a motion to withdraw this matter from adjudication for purposes of considering a proposed consent agreement that they tendered unilaterally. Complaint Counsel oppose Respondents' motion and do not support their proffered consent agreement. Although Respondents' proposed consent agreement conforms with the provisions of the Notice Order issued with the Complaint, it fails to include monetary relief for consumers, a remedy that the Notice Order states the Commission might seek pursuant to Section 19 of the FTC Act. Consequently, because Respondents' proposed consent agreement contains no findings of fact or admissions (other than jurisdictional admissions), it could preclude the Commission from bringing a separate Section 19 action at a later time. In the event that Respondents' proffered consent agreement is not certified to the Commission by this Court, Complaint Counsel will have the ability to develop a record at trial that might subsequently enable the Commission to obtain restitution for aggrieved consumers.

For these reasons, we respectfully oppose Respondents' motion to withdraw this matter from adjudication.

Respectfully submitted,



Erika Wodinsky (415) 848-5190
Matthew D. Gold (415) 848-5176
Complaint Counsel

Dated: December 12, 2008

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of December, 2008, I caused Complaint Counsel's Response to Respondents' Motion to Withdraw Matter from Adjudication to be served and filed as follows:

(1) the original, two (2) paper copies filed by overnight courier and one (1) electronic copy via email to:

Donald S. Clark, Secretary
Federal Trade Commission
600 Penn. Ave., N.W., Room H-159
Washington, D.C. 20580

(2) two (2) paper copies served by overnight courier and one (1) electronic copy via email to:

The Honorable D. Michael Chappell
Administrative Law Judge
600 Penn. Ave., N.W., Room H-104
Washington, D.C. 20580

(3) one (1) electronic copy via email and one (1) paper copy by first class mail to:

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Erika Wodinsky
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