

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

PROTECTIVE ORDER

WHEREAS, Complaint Counsel and Counsel for Respondents have reached an agreement as set forth below concerning the treatment of Respondents' or third parties' confidential information that has been, or will be, submitted to the Federal Trade Commission or to Complaint Counsel, it is hereby **ORDERED**:

1. Respondents may designate as confidential any portion of any document, deposition transcript, interrogatory response, admission, or other discovery material, information, or things produced by Respondents or by third parties that contain Respondents' proprietary business information or trade secrets, including but not limited to, business or marketing plans; marketing analyses, strategies and/or projections; analysis of and/or comparisons to competitors; customer lists, customer biographical information, customer surveys or related data; financial information; program and training materials; research; trade secrets; know-how; proprietary data; and any communications regarding any of the above. All materials described in this paragraph, including copies and/or summaries thereof, shall hereinafter be referred to as "Confidential Material."

2. Documents submitted to the Commission by Respondents during the pre-complaint investigation that were designated as confidential shall be deemed Confidential Material. Any other documents submitted to the Commission or to Complaint Counsel by Respondents shall be deemed Confidential Material if the documents are stamped “CONFIDENTIAL” at the time they are provided by Respondents, or, in the case of a deposition transcript, if Respondents provide written notice to Complaint Counsel of the portions of the transcript deemed to be Confidential Material within thirty (30) days of receiving the transcript, provided that the transcript shall be treated as Confidential Material until that time. With respect to documents submitted to and depositions taken by the Commission and/or Complaint Counsel prior to the entry of this Order, Respondents shall have thirty (30) days from the entry of this Order to provide written notice to Complaint Counsel of the portions of those documents and transcripts deemed to be Confidential (unless they have already done so before entry of this Protective Order), provided that such documents and deposition transcripts shall be treated as Confidential Material until that time. With respect to documents produced to the Commission or to Complaint Counsel by third parties, Respondents shall have thirty (30) days from the entry of this Order to designate any of them as Confidential Material of Respondents, provided that such documents shall be treated as Confidential Material until that time.

3. Complaint Counsel shall have the right to petition the Administrative Law Judge to challenge the confidential status of any Confidential Material. All such material shall be treated as confidential pursuant to this Protective Order until such time as the Administrative Law Judge orders that confidential treatment should not apply.

4. Unless otherwise ordered by the Administrative Law Judge, or Respondents provide their prior written consent to disclosure, Confidential Material shall not be disclosed to, disseminated to, or discussed with any individual or entity other than the Administrative Law Judge and his staff, employees of the Commission, consultants or experts retained by the Commission in connection with this proceeding, or officers or employees of appropriate Federal or State law enforcement agency pursuant to either Section 6(f) or 21(b) (6) of the Federal Trade Commission Act, 15 U.S.C. §§ 46(f) or 57b-2 (b) (6). Any Confidential Material produced to a Federal or State law enforcement agency under this paragraph shall be accompanied by a copy of this Protective Order. If filed with or submitted to the Administrative Law Judge in connection

with any motion or hearing, Confidential Material shall be presented under seal or in redacted form.

5. If Complaint Counsel seek to introduce any Confidential Material into evidence without submitting it under seal or in redacted form, Complaint Counsel shall notify Respondents' counsel at least ten (10) days prior to the proposed introduction of such evidence (or as much time as is practicable under the circumstances), in order to permit Respondents to apply to the Administrative Law Judge for in camera treatment of the Confidential Material, pursuant to Rule 3.45(b).

6. Complaint Counsel shall not disclose Confidential Material pursuant to an informal request for information from a member of Congress or Congressional Committee or Subcommittee. If the Commission receives an official request for information from a Congressional Committee or Subcommittee, Complaint Counsel immediately shall notify Respondents' counsel of the request, such notice period to be thirty (30) days, if possible, or as much notice as possible under the circumstances. Any Confidential Material produced pursuant to an official request from a Congressional Committee or Subcommittee shall be accompanied by a copy of this Protective Order to the requesting party.

7. Complaint Counsel shall promptly provide Respondents' counsel with notice of any request to the Commission, under the Freedom of Information Act, for Confidential Material. Confidential Material shall not be disclosed pursuant to a Freedom of Information Act request, except as required by law.

8. Within ten (10) days after the final disposition of this proceeding, including the exhaustion of all appeals, Complaint Counsel shall return to Respondents' counsel the originals of all Confidential Material that has not been received into evidence. The return of copies of any Confidential Material shall be governed by Rule 4.12 and the Federal Records Act, 44 U.S.C. § 3301 et seq.

9. Confidential Material shall at all times be kept by Complaint Counsel in secure facilities and in a manner that reasonably ensures that it is not disclosed in violation of paragraph 4 above.

10. Complaint Counsel shall ensure that each consultant and expert to whom Confidential Material is to be disclosed signs prior to disclosure (or, where disclosure has been

made prior to entry of this order, within ten (10) days after entry of this order) a written acknowledgment form (attached hereto as Exhibit A) that he or she has read this Protective Order and understands that he or she is bound by its terms. A copy of each executed acknowledgment form obtained by Complaint Counsel shall promptly be submitted to the Administrative Law Judge and shall be provided to Respondents' counsel at the conclusion of this proceeding, provided that acknowledgment forms executed by persons that have been designated by Complaint Counsel as testifying witnesses shall be provided to Respondents' counsel at the time of such designation or within ten (10) days after entry of this order, whichever is later.

11. This Protective Order shall not be construed to require the production of any privileged document, nor shall the production of a document hereunder be construed as a waiver of any objection to the admissibility of the document. This Protective Order shall not preclude Respondents from disclosing Confidential Material to any person or entity.

12. In the event of a breach of this Protective Order, Respondents may apply to the Administrative Law Judge, the Commission, or a Court for any appropriate relief.

13. The obligation to maintain confidentiality pursuant to this Order shall continue after the conclusion of these actions and any subsequent or related proceedings.

AGREED TO AS FORM AND CONTENT:

Matthew D. Gold /kojs

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John R. Fleder / kjs

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(202) 737-5600

COUNSEL FOR RESPONDENTS

SO ORDERED, this 31 day of May, 2001.

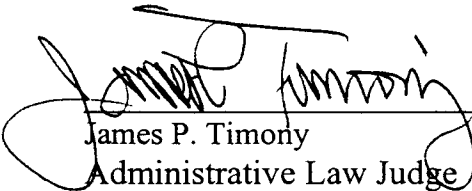

James P. Timony
Administrative Law Judge

EXHIBIT A

I have read the foregoing Protective Order entered in the Federal Trade Commission (FTC) proceeding styled In the Matter of Natural Organics, Inc. and Gerald A. Kessler, FTC Dkt. No. 9294, and the attorneys providing me with Confidential material or information protected by the Protective Order have explained its meaning and effect. To the extent that I receive Confidential Material as defined in the Protective Order, I agree to be bound by the terms of the Protective Order and will not disclose any Confidential Material to any person or entity, except as expressly permitted thereunder. I also agree to return all Confidential Material to Natural Organics, Inc. at the conclusion of this proceeding.

I further agree that Confidential Material given to me may not be used for any purpose other than this litigation. Any use of Confidential Material by me, or by any person or entity with which I am affiliated, for the benefit of any competitor of Natural Organics, Inc., in any other litigation relating to Natural Organics, Inc., in any publication, or for any other purpose without the prior express written consent of Natural Organics, Inc. is a violation of the Protective Order.

I understand that the intended beneficiaries of my agreement to be bound by the Protective Order include the parties and third parties who submitted confidential information, and that therefore I may be liable to such submitters for compensatory and punitive damages resulting from improper disclosure or misappropriation of the information they provided.

Dated: _____

(signature)

(printed name)