

1 UNITED STATES PATENT AND TRADEMARK OFFICE

2

3 BEFORE THE PATENT TRIAL AND APPEAL BOARD

4

5 MOM Enterprises, LLC,

6 Petitioner,

7 v.

8 ELAINE AND REINHOLD W. VIETH,

9 Patent Owner,

10

11 Case IPR 2023-00726

12 Patent 9,066,958

13

14

15

16 **HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY**

17 February 1, 2024 11:00 a.m. PT

18 DEPOSITION OF STEPHANIE MEDINA

19 Via Zoom

20

21 Vieth Ex. 2027 IPR2023-00726

22

23 Reported Stenographically by:

24 Jennifer Miller, RMR, CRR, CCR

25 NOTARY PUBLIC

1 A P P E A R A N C E S

2

3 ALAN ANDERSON LAW FIRM LLC
4 BY: ALAN M. ANDERSON, PHD, ESQ.
5 L. REAGAN FLORENCE, ESQ.
6 Crescent Ridge Corporate Center
7 11100 Wayzata Blvd, Suite 545
8 Minneapolis, MN 55305
9 (612) 756-7010
10 aanderson@anderson-lawfirm.com
11 Counsel for Patent Owners
12 -and-

13 UNGERMAN IP PLLC
14 BY: MARK UNGERMAN, ESQ.
15 2305 Calvert Street, N.W. Washington, DC 20008
16 Attorney for Patent Owner
17 (202) 461-3200
18 mungerman@ungermanip.com

19 FISH & RICHARDSON
20 BY: DAVID CONRAD, ESQ.
21 SARIKA PATEL, ESQ.
22 1717 Main Street, Suite 5000
23 Dallas, TX 75201
24 (214) 747-5070
25 conrad@fr.com
Counsel for MOM Enterprises, LLC

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1 P R O C E E D I N G S

2

3 STEPHANIE MEDINA, after
4 having been first duly sworn, was
5 examined and testified as follows:

6 ATTORNEY ANDERSON: Thank you,
7 Ms. Medina.

8 My name is Alan Anderson, and I
9 am one of the attorneys for the patent
10 owners, Reinhold and Elaine Vieth, in this
11 matter.

12 With me online is my colleague,
13 Mark Ungerman.

14 And I'm going to be asking you a
15 series of questions today. Okay?

16 THE WITNESS: Yes.

17 I would like to say that your
18 screen is frozen for me, and I saw a
19 little spiral. So I'm not sure if that's
20 an indication of some technical issues to
21 come.

22 Your screen is still frozen for
23 me.

24 ATTORNEY ANDERSON: Okay.
25 Everybody is live --

1 THE WITNESS: Oh, it's good now.

2 ATTORNEY ANDERSON: Okay. I
3 have a feeling it may be on your end
4 because --

5 THE WITNESS: Okay.

6 ATTORNEY ANDERSON: -- my screen
7 is not frozen, and everybody else seems to
8 be --

9 THE WITNESS: Okay.

10 ATTORNEY ANDERSON: I can see
11 David blinking.

12 THE WITNESS: Okay. I just
13 wanted to call that out real quick because
14 I --

15 ATTORNEY ANDERSON: All right.
16 Well, if you do have that problem at any
17 point in time, just raise your hand or say
18 something or whatever. Make it known.

19 All right?

20 THE WITNESS: Sure.

21 - - -

22 E X A M I N A T I O N

23 - - -

24 BY ATTORNEY ANDERSON:

25 Q. Okay. Could you please state your

1 full name and present home address for the
2 record.

3 A. Stephanie Rae Medina.

4 My address is 3024 Estates
5 Avenue, Pinole, California 94569.

6 Q. Have you ever previously given a
7 deposition or trial testimony?

8 A. I have.

9 Q. Okay. In a deposition or at trial or
10 both?

11 A. Deposition.

12 Q. Do you recall how many times?

13 A. I believe I've done it twice.

14 Q. About how long ago?

15 A. About 10 to 14 years ago.

16 Q. All right. Do you recall what kind
17 of case it was?

18 A. I recall -- I was representing the
19 company I worked for at the time, and it was in
20 regard to foreign material quality issues in
21 the product.

22 Q. All right. Well, since it's been
23 about ten years, let me briefly go over the
24 ground rules for today's testimony.

25 As I mentioned, I'm going to be

1 asking you a series of questions. I would
2 simply like your best, most accurate, and,
3 obviously, truthful answers to those questions.

4 I would like to ask you to
5 please wait until I have finished with my
6 question before you begin your answer.

7 And by the same token, if I
8 start to talk before you finish your answer,
9 don't hesitate to tell me to be quiet.

10 It is very important that we try
11 not to speak at the same time because it is
12 very difficult for the Court Reporter to take
13 down more than one of us speaking at once.

14 Okay?

15 A. Yes.

16 Q. Okay.

17 ATTORNEY ANDERSON: And for the
18 record, my colleague, Reagan Florence, has
19 now joined as well.

20 BY ATTORNEY ANDERSON:

21 Q. Also, please answer audibly for the
22 benefit of the Court Reporter since it is very
23 difficult for her to take down nods of the head
24 or other common responses, such as "uh-hum" or
25 "huh-huh," which will be very difficult to put

1 on the transcript and which may sound the same.

2 Okay?

3 A. Yes.

4 Q. If you do not understand any of my
5 questions, please do not hesitate to tell me to
6 rephrase them or clarify them. Otherwise, we
7 will assume that you understand the question.

8 Okay?

9 A. Yes.

10 Q. And also do you understand that you
11 are under oath here today, the same as you
12 would be if you were in court testifying?

13 A. Yes.

14 Q. All right. This is, as you know,
15 being done virtually via Zoom. And I just want
16 to make sure that you have a computer screen
17 that you can see easily in terms of any
18 exhibits that I will put up on the screen to
19 show you.

20 Do you have something that
21 you're able to do that there?

22 A. Yes.

23 Q. Great.

24 Is there anyone else present in
25 the room with you at this time?

1 A. No.

2 Q. And do you have any communication
3 devices with you, such as a phone or iPad,
4 something like that?

5 A. No.

6 Q. Okay. Great.

7 Did you meet with anyone to
8 prepare to give testimony here today?

9 A. Yes.

10 Q. With whom did you meet?

11 A. With David Conrad.

12 Q. Did you meet with anyone other than
13 Mr. Conrad in preparation for testifying here
14 today?

15 A. Yes.

16 Q. Who else did you meet with?

17 A. Sarika Patel, I believe is her last
18 name.

19 Q. Okay. Anyone else?

20 A. In one of those prep sessions, Yasmin
21 Kaderali was in attendance with us.

22 Q. Okay. How many meetings did you have
23 to prepare to testify here today?

24 A. Three.

25 Q. When was the first meeting?

1 A. I believe it was about --
2 approximately -- I don't know the exact date.

3 Q. Approximately is fine.
4 Last week? This week?

5 A. Approximately a week ago.

6 Q. Okay. Who else was present in that
7 meeting?

8 A. Which meeting?

9 Q. The first one about a week ago.

10 A. David, Sarika, and Yasmin.

11 Q. About how long did the meeting last?

12 A. Two hours.

13 Q. Was this virtual or in person?

14 A. Virtual.

15 Q. Did you review any documents to
16 refresh your memory to testify here today
17 during that meeting?

18 A. No.

19 Q. Okay. When was the second meeting
20 that you had to prepare to testify here today?

21 A. Two days after the first meeting.

22 Q. Who else was present in that meeting?

23 A. David and Sarika.

24 Q. Was it in person or virtual?

25 A. Virtual.

1 Q. About how long did it last?

2 A. One hour.

3 Q. Did you review any documents to
4 refresh your memory to testify here today?

5 A. Yes.

6 Q. And did those documents refresh your
7 memory?

8 A. Yes.

9 Q. Do you recall what documents you
10 reviewed to refresh your memory to testify here
11 today?

12 A. No.

13 Q. None at all?

14 A. I don't recall what the documents
15 were specifically.

16 Q. How about generally?

17 A. No.

18 Q. Do you recall how many,
19 approximately?

20 A. Approximately three.

21 Q. And you don't recall even generally
22 what those three documents were as you sit here
23 today; is that correct?

24 A. I recall an email, but I don't recall
25 the name or document information.

1 Q. Do you recall what the subject of the
2 email was?

3 A. No.

4 Q. So other than this email that you
5 have some recollection of, you can't remember
6 any of the other two documents that you
7 reviewed; is that correct?

8 A. Correct.

9 Q. Okay. And when was your most recent
10 meeting to prepare to testify here today?

11 A. This morning.

12 Q. Who was present for that meeting?

13 A. David.

14 Q. Anyone else?

15 A. No.

16 Q. How long did it last?

17 A. 15 minutes.

18 Q. Did you review any documents to
19 refresh your memory to testify here today?

20 A. No.

21 Q. Other than the three meetings that
22 you've now identified, did you have any other
23 meetings with anyone at which you discussed
24 your deposition?

25 A. No.

1 Q. Have you discussed Ms. Kaderali's
2 deposition that was taken two days ago with
3 her?

4 A. No.

5 Q. What is your current position at
6 Mommy's Bliss?

7 A. Senior director of R&D.

8 Q. By the way, I -- we have both --
9 MOM Enterprises doing business as
10 Mommy's Bliss.

11 If I use those names
12 interchangeably or just refer to it as
13 "Mommy's Bliss," can we agree that it's the
14 same entity that we're referring to?

15 Will you understand that?

16 A. Yeah, I agree with that. I
17 understand that.

18 Q. Okay. All right. You are a senior
19 director of research and development.

20 How long have you held that
21 position at Mommy's Bliss?

22 A. Six years.

23 Q. So since about 2018?

24 A. Correct.

25 Q. What are your duties and

1 responsibilities as senior director of research
2 and development?

3 A. I oversee quality assurance and
4 research and development teams.

5 Q. And by "research and development
6 teams," would that be for new or revised
7 products for Mommy's Bliss?

8 A. Yes.

9 Q. Is -- does -- do your
10 responsibilities cover all of the products of
11 Mommy's Bliss or only a subset?

12 A. Can you clarify?

13 Q. Sure.

14 You said that you oversee --
15 oversaw research and development teams.

16 My question is whether your
17 research and development responsibilities cover
18 the whole range of Mommy's Bliss products or
19 simply a subset.

20 A. In what regard? Like, cover the
21 products in what regard?

22 Q. Well, in terms of research and
23 development.

24 I'm looking to determine whether
25 your research and development responsibilities

1 only pertain to a particular, you know, group
2 of Mommy's Bliss products or segments, such as
3 products for babies as opposed to older kids,
4 or whether it only covers, you know, for
5 example, one of your products, gripe water, as
6 opposed to other products?

7 A. Yes. We -- research and development
8 covers all products.

9 Q. Okay. And by the way, have your
10 duties and responsibilities remained
11 essentially the same since you became senior
12 director of research and development about six
13 years ago?

14 A. Yes.

15 Q. Do you have any direct reports as
16 senior director of research and development?

17 A. Yes.

18 Q. Who reports directly to you?

19 ATTORNEY CONRAD: Objection.

20 THE WITNESS: Can you clarify --

21 ATTORNEY CONRAD: Yeah. I was
22 going to say objection. Vague.

23 Ambiguous.

24 Go ahead.

25

1 BY ATTORNEY ANDERSON:

2 Q. Okay. You can answer.

3 A. Can you clarify what time you're
4 speaking about?

5 Q. Well, let's take first presently.

6 A. Presently, directly -- direct reports
7 are Pooi Yin Phang.

8 - - -

9 (Stenographer clarification.)

10 - - -

11 THE WITNESS: First name is
12 Pooi Yin, spelled P-O-O-I, space, Y-I-N.
13 So it's two words that are her first name.
14 Her last name is Phang,
15 P-H-A-N-G.

16 BY ATTORNEY ANDERSON:

17 Q. What is her position or title?

18 A. Director of quality.

19 Q. Do you have any other direct reports
20 at this time?

21 A. Yes.

22 Q. Who?

23 A. Katie Bauermeister.

24 Q. Can you spell her last name, please?

25 A. B-A-U-E-R-M-E-I-S-T-E-R.

1 Q. Any others -- oh, excuse me.

2 What's her position?

3 A. R&D manager.

4 Q. Okay. Any other direct reports at
5 this time?

6 A. No.

7 Q. Okay. To whom do you report at this
8 time?

9 A. Yasmin Kaderali.

10 Q. As CEO?

11 A. Correct.

12 Q. And during your six years as senior
13 director of research and development, have you
14 always directly reported to Ms. Kaderali?

15 A. No.

16 Q. Okay. Can you tell me who you
17 reported to that was different and what period
18 of time that was, please?

19 A. I reported to April Howell, who was
20 the president of the company at the time.

21 Q. For what period of time did you
22 report directly to Ms. Howell?

23 A. 2015 to 2021.

24 I don't recall exactly when she
25 left the company. I believe it's 2021.

1 Q. Okay. By the way, Ms. Kaderali said
2 that you had just been promoted to or were
3 being promoted to vice president of product
4 development and compliance.

5 A. Correct. That's, like, as of this
6 week, yeah.

7 Q. Okay. As of today?

8 A. Well, the announcement went out to
9 people on Friday, last Friday.

10 Q. Okay. And are your duties and
11 responsibilities as vice president of product
12 development and compliance different than what
13 they are as senior director of R&D?

14 A. Not exact -- no.

15 Q. So it's basically a change in title
16 as opposed to a change in duties and
17 responsibilities.

18 Would that be correct?

19 A. Correct. It's catching up to the
20 duties and responsibilities, the title is.

21 Q. All right. Now, you indicated that
22 you reported to Ms. Howell from 2015 to 2021,
23 approximately.

24 So what was your position at
25 Mommy's Bliss prior to becoming senior director

1 of research and development in 2018?

2 A. I was senior director of product
3 development and operations.

4 Q. How long were you senior director of
5 product development and operations?

6 A. From 2015 to 2018.

7 Q. What were your duties and
8 responsibilities as senior director of product
9 development and operations?

10 A. I oversaw the operations team, in
11 addition to quality. We did not have a
12 specific R&D team at that time.

13 Q. Did you have -- when you say you
14 "oversaw the operations team," what's the
15 operations team?

16 A. Operations is procurement and
17 warehousing logistics.

18 Q. Okay. And what's quality?

19 A. Quality is quality assurance.

20 Q. Okay. Now, you said that you had no
21 specific R&D team at that time.

22 Did you have any
23 responsibilities between 2015 and 2018 for new
24 product development?

25 A. Yes.

1 Q. What were those responsibilities?

2 A. To be the R&D person for the company.

3 There was -- there was no -- no
4 other employee doing that.

5 Q. All right. Were you employed at
6 Mommy's Bliss prior to 2015?

7 A. No.

8 Q. Who did you report to as -- I'm
9 sorry -- senior director of product development
10 and operations?

11 A. April.

12 Q. Did you have any individuals who
13 reported directly to you at that time?

14 A. I did.

15 Q. Who?

16 A. A woman named Adina Wilson.

17 Q. I'm sorry. Anita or Adina?

18 A. Adina, A-D-I-N-A.

19 Q. Wilson?

20 A. Correct.

21 Q. What was her title, if you recall?

22 A. I don't recall.

23 Q. Okay. Anyone else directly report to
24 you?

25 A. Tammy Nguyen.

1 Q. I'm sorry. Nguyen?

2 A. Yes.

3 Q. Spelled?

4 A. N-G-U-Y-E-N.

5 Q. Okay. And what was her position, if
6 you recall?

7 A. QA supervisor.

8 Q. Anyone else directly report to you at
9 that time?

10 A. Yes.

11 Q. Who else?

12 A. I'm feeling -- I'm feeling unclear on
13 what time frame we're talking about.

14 Q. This is the 2015 to 2018 time frame
15 when you held the position of senior director
16 of product development and operations.

17 A. It's just that we had different team
18 members come and go. So I'm kind of trying to
19 determine if you want to hear the list of
20 everybody within the time frame.

21 Q. I'm more interested in the list of
22 positions, if that -- during that time frame.

23 A. Okay. Would you like me for to list
24 that?

25 Q. Yes, please.

1 A. Okay. Warehouse and logistics
2 reported to me. Procurement. Quality
3 assurance. That's it.

4 I mean, within warehouse
5 logistics, there's different sub-positions, but
6 those are the functions.

7 Q. Okay. Ms. Medina, is it "Medina" or
8 "Medina"?

9 A. Medina.

10 Q. Medina. All right.

11 Ms. Medina, at some point in
12 time, you became aware of Ddrops company and
13 their product -- their Baby Ddrops vitamin D
14 product, correct?

15 A. Correct.

16 Q. Do you recall when that was?

17 A. No.

18 Q. Do you recall whether you became
19 aware of Ddrops and its product while you were
20 senior director of product development and
21 operations?

22 A. Can you clarify the question?

23 Q. Sure.

24 Do you recall whether you became
25 aware of Ddrops and their Baby Ddrops product

1 during your time that you were the senior
2 director of product development and operations,
3 in other words, the 2015 to 2018 time frame?

4 ATTORNEY CONRAD: I'm going to
5 object as vague and ambiguous.

6 You can answer, though.

7 THE WITNESS: I recall that I
8 knew that they existed, yes, between those
9 time frames.

10 BY ATTORNEY ANDERSON:

11 Q. Do you recall having any involvement
12 in the analysis and decision at Mommy's Bliss
13 to develop and begin selling a baby vitamin D
14 product?

15 A. No.

16 Q. Do you recall being part of a team
17 that included Ms. Kaderali, Ms. Howell, and
18 Caroline Lloyd and Stephanie O'Brien to decide
19 to develop and introduce a baby vitamin D
20 product?

21 A. Yes.

22 Q. What do you recall of that
23 involvement?

24 A. I recall being asked to figure out if
25 we could formulate a vitamin D product and to

1 get samples and costs.

2 Q. Who asked you to figure out whether
3 you could formulate a vitamin D product and get
4 samples and costs?

5 A. I don't recall.

6 Q. Do you recall discussing internally
7 why Mommy's Bliss was interested in developing
8 a baby vitamin D product?

9 A. Yes.

10 Q. Who do you recall discussing it with
11 internally?

12 A. The women that you mentioned that
13 were part of the leadership team:
14 Stephanie O'Brien, Caroline Lloyd, Yasmin
15 Kaderali.

16 Q. As best you can recall, why was --
17 why was Mommy's Bliss interested in seeing if
18 it could develop and introduce a baby vitamin D
19 product?

20 A. We were already a company serving
21 families of babies, and we were aware that the
22 American Academy of Pediatrics recommends
23 vitamin D supplementation for newborns.

24 And our mission is to provide
25 solutions for families, and it aligned with

1 that mission to provide a vitamin D drop for
2 families.

3 Q. Did you believe that there would be a
4 demand in the market for such a product?

5 A. I don't recall.

6 Q. Do you recall any discussions amongst
7 the leadership team -- the four other ladies
8 that you identified -- regarding, you know,
9 characteristics of the product or -- that you
10 wanted to have?

11 A. Yes.

12 Q. What do you recall in that regard?

13 A. I recall wanting it to be easy for
14 parents to give to baby and organic, if
15 possible.

16 Q. Anything else?

17 A. When we say "easy," we mean easy to
18 administer but also something that the baby
19 will actually consume and not spit up or spit
20 out.

21 That's the extent of it.

22 Q. Why were you concerned that it --
23 when you say that it -- by "easy," why were you
24 concerned that it would be -- or what do you
25 mean more specifically or more -- can you

1 describe for me what you mean by "easy to
2 administer"?

3 A. Yes.

4 We have history with gripe
5 water, which you may be aware of. That was the
6 company that -- or the product that we sell the
7 most and what the company was founded on. And
8 we know about giving babies liquids and the
9 feedback we get from consumers on how
10 challenging that can be.

11 Gripe water is a larger serving
12 size, so it's just always on our mind about
13 that consumer experience of administering
14 liquids to babies.

15 Administration is -- was and is
16 still our biggest consumer feedback area.

17 Q. What is the serving size for gripe
18 water?

19 A. It ranges, depending on the babies
20 age.

21 But it starts -- I'm not certain
22 what it was at that point in time. We adjusted
23 it over the years.

24 But it was roughly around
25 2 milliliters at the youngest age.

1 Q. Okay. And then what's the range?

2 A. Going up to 10 mL depending on the
3 age.

4 Q. By "mL," you mean milliliters,
5 correct?

6 A. Milliliters.

7 Q. Okay. And so you have known that
8 it's been a problem of having a -- if you will,
9 an easy way to administer a product to an
10 infant?

11 A. Correct.

12 Q. That's a problem; is that correct?

13 ATTORNEY CONRAD: Objection.

14 Mischaracterizes testimony.

15 You can answer.

16 THE WITNESS: Okay. Sorry.

17 It's a challenge for us. We
18 don't think there's a problem with our
19 product, but we know that it's a real-life
20 challenge for parents in giving anything
21 to a newborn or a baby.

22 BY ATTORNEY ANDERSON:

23 Q. Administering -- yeah, as you just
24 said, administering just about anything to a
25 newborn is a challenge that has to be overcome?

1 A. Right. We did -- yes.

2 Q. You also said that you wanted to have
3 something that the baby would actually consume
4 and not spit out or spit up.

5 Do you recall that?

6 A. I do.

7 Q. And what did you mean more -- what
8 did you mean by that?

9 A. I mean that doesn't taste bad.

10 Q. Anything else other than not tasting
11 bad?

12 A. No.

13 Q. Did you do any research and
14 development to find some easy way to administer
15 this new baby vitamin D product that
16 Mommy's Bliss was considering?

17 A. We were meant to replicate some
18 recent proven success with a new item we had
19 launched, which was our probiotics. So those
20 are different than the gripe water.

21 And we wanted to leverage what
22 we learned there into the vitamin D solution.

23 Q. Is probiotic -- how is -- how did
24 you -- well, how is probiotics administered?

25 A. Probiotics are administered by

1 placing a drop of oil on a spoon -- I don't
2 remember the exact words on the package, off
3 the top of my head, but placing the drop of oil
4 somewhere, including mother's nipple.

5 And also it was only four or
6 five drops of oil at the time, which, to us,
7 was refreshing, coming off gripe water
8 complaints.

9 Q. So the probiotics was four or five
10 drops; is that correct?

11 A. Correct.

12 Q. And when did you introduce the
13 probiotics product?

14 A. 2015 is when it launched at shelf.

15 Q. Okay. And did you do some research
16 and development to, you know, determine the
17 method of administration for the probiotics
18 product?

19 A. I wasn't at the company during that
20 time.

21 Q. You don't know?

22 A. I don't know.

23 Q. Okay. Do you recall any discussions
24 amongst this leadership group -- yourself and
25 the four other ladies you identified --

1 concerning probiotics and the four- or
2 five-drops process and bringing that to your
3 vitamin D product?

4 A. I don't recall a specific discussion.

5 Q. How about generally?

6 A. Generally, yes.

7 Q. What do you recall in that regard?

8 A. I recall we were excited about this
9 small serving size and ease of use for
10 parents --

11 Q. Did --

12 A. -- compared to the gripe water.

13 Q. Okay. Sorry.

14 And did you have any research
15 and development regarding having something that
16 the baby would consume and not spit up or spit
17 out?

18 A. Just mommy knowledge, mommy wisdom.

19 Q. What do you mean by "mommy wisdom"?

20 A. What I mean is that this leadership
21 team was half moms and knew firsthand that
22 yucky-tasting things babies will spit right
23 back out.

24 Q. Did you do any research of companies
25 that were already in the market with a baby

1 vitamin D product?

2 A. Yes.

3 Q. What did you do in that regard?

4 A. Can you clarify?

5 Q. Sure.

6 You said that you did research
7 on companies that were already in the market
8 with a baby vitamin D drops product, correct?

9 A. Correct.

10 Q. Okay. How did you go about doing
11 that research?

12 A. It wasn't very scientific. We just
13 looked online at what we could find. And what
14 stands out specifically is [REDACTED]
15 being the market leader.

16 And at that time, I was really
17 focused on organic being a point of difference
18 for us. And I wanted to understand if there
19 were other organic vitamin D.

20 So that was where I was kind of
21 honing in on, looking at competition.

22 Q. Did you buy any of these other
23 companies' products?

24 A. Yes.

25 Q. Do you recall what companies'

1 products you bought?

2 A. I recall -- I recall [REDACTED] I
3 don't recall others.

4 Q. Do you recall buying a Baby Ddrops
5 product?

6 A. No.

7 ATTORNEY CONRAD: Objection.
8 Vague and ambiguous.

9 ATTORNEY ANDERSON: Yeah. Let
10 me restate the question.

11 BY ATTORNEY ANDERSON:

12 Q. Do you recall purchasing a product
13 manufactured by Ddrops company?

14 ATTORNEY CONRAD: Objection.
15 Vague and ambiguous.

16 ATTORNEY ANDERSON: You're
17 right. Let me try again.

18 Third time's the charm,
19 hopefully.

20 BY ATTORNEY ANDERSON:

21 Q. Do you recall purchasing a Ddrops
22 company -- Baby Ddrops vitamin D product?

23 ATTORNEY CONRAD: Same
24 objection.

25 ATTORNEY ANDERSON: I think I

1 got that one, though.

2 BY ATTORNEY ANDERSON:

3 Q. Go ahead. You can answer.

4 A. Can you clarify when?

5 Q. In the time period that you were
6 considering bringing out this new vitamin D
7 product.

8 A. No.

9 Q. You don't recall?

10 A. I don't recall, no.

11 ATTORNEY ANDERSON: Okay.

12 Ms. Medina, I'm going to show on my screen
13 a document that was marked previously in
14 this matter as Exhibit 28.

15 BY ATTORNEY ANDERSON:

16 Q. Can you see my screen?

17 A. I can.

18 Q. All right. The first page of this
19 document says "2017 NPD. "

20 And if you'd like, I can scroll
21 through this.

22 My first question is:

23 Do you recall having seen this
24 document previously?

25 A. I would need to look at the document

1 to --

2 Q. All right. Let's just scroll
3 through.

4 ATTORNEY CONRAD: And, Alan,
5 same as previously with Ms. Kaderali's
6 deposition. If you don't mind uploading a
7 copy of this so that both I and the
8 witness can review as needed rather than
9 relying on the scrolling.

10 ATTORNEY ANDERSON: Even though
11 you already have one from before?

12 ATTORNEY CONRAD: I'd have to
13 locate it.

14 ATTORNEY ANDERSON: All right.
15 Let's see if I can do that.

16 ATTORNEY CONRAD: Thank you.

17 ATTORNEY ANDERSON: All right.
18 We're in business.

19 Okay. If you look in the chat
20 box, there should be a copy of what you
21 can see on the screen.

22 THE WITNESS: Okay. Let me go
23 there.

24 I have it opened.

25

1 BY ATTORNEY ANDERSON:

2 Q. Okay. Take a minute to look at
3 Exhibit 28 and tell me whether you recognize it
4 or recall having seen it previously.

5 A. I recall -- I recall this. I
6 wouldn't say I know this thoroughly, but I
7 recall it.

8 Q. Did you have any role in preparation
9 of any part of Exhibit 28?

10 A. I don't recall.

11 Q. Okay. I am going to -- if you go
12 back to the screen now that I'm sharing, I am
13 going to move to Bates-numbered page 1757.

14 And this is headed "Vitamin D
15 Drop – Competition."

16 Do you see that?

17 A. Yes.

18 Q. All right. And there are four
19 products here: [REDACTED]

20 [REDACTED]

21 Do you see those four products?

22 A. I do.

23 Q. Okay. Do you recall that these were
24 four of the existing -- the four existing
25 products that you looked at in the marketplace

1 as you were developing a Mommy's Bliss baby
2 vitamin D product?

3 ATTORNEY CONRAD: Objection.

4 Assumes facts not in evidence.

5 You can answer, Ms. Medina.

6 THE WITNESS: I don't recall
7 that specifically.

8 BY ATTORNEY ANDERSON:

9 Q. Okay. Do you recall -- you testified
10 before that you recalled [REDACTED]

11 A. Correct.

12 Q. Okay. And do you recall getting
13 information about the [REDACTED] product
14 that's in the upper right-hand quadrant of this
15 page of Exhibit 28?

16 A. For me, it's in the upper
17 left-hand --

18 Q. Okay. Oh, sorry. Upper left-hand.
19 I'm having difficulty with --

20 A. That's okay.

21 Q. That's all right.

22 A. I recall -- mostly, the content that
23 you see on the screen is what our information
24 collection was in addition to tasting the
25 product.

1 Q. Did you personally collect the
2 information about the competing products, or
3 did someone reporting to you collect the
4 information?

5 A. I know that someone reporting to me
6 did not collect this information.

7 There really wasn't someone
8 reporting to me.

9 Q. Okay. Did --

10 A. There was --

11 Q. I'm sorry. I'm talking over. I
12 apologize. It's my bad.

13 A. In R&D, at this point in time, there
14 was just me. So I do not recall anybody
15 reporting to me collecting this information.

16 I also don't recall collecting
17 this information myself.

18 Q. Do you recall somebody else
19 collecting the information?

20 A. I'm not certain.

21 Q. Okay. Do you recall any discussions
22 amongst the leadership group that you've
23 identified regarding these four products as you
24 were deciding whether or not to develop and
25 introduce a Mommy's Bliss baby vitamin D

1 product?

2 A. No.

3 Q. Do you recall whether there were any
4 features of these four products that you
5 particularly liked?

6 A. I don't recall looking at these
7 products and talking about the features, other
8 than [REDACTED]

9 Q. What do you recall with regard to
10 [REDACTED]

11 A. That we were aware of the serving
12 size being quite large for an infant, in our
13 opinion, when you could get -- when it seemed
14 like you don't need that serving size and that
15 consumers were complaining that it did not
16 taste good.

17 Q. You said that you taste-tested these
18 four products?

19 A. No.

20 Q. Okay. Did others on the team
21 taste-test?

22 A. I don't know.

23 Q. Okay. Do you recall any discussions
24 regarding -- other than [REDACTED] being a large
25 dose -- I believe it says 1 milliliter.

1 Do you recall any discussions

2 regarding, for example, [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 A. No.

6 Q. Going to the next page, 1758.

7 This has [as read]:

8 "Concept: Mommy's Bliss

9 Organic D Drop."

10 Do you see that?

11 A. Yes.

12 Q. The ingredients list [as read]:

13 "Organic sunflower oil."

14 Do you see that?

15 A. No. Where are we at, "ingredients"?

16 Q. Right here.

17 A. Oh, yes. Sorry.

18 Q. Okay. Do you recall any

19 discussion -- do you recall, first off, how it

20 was decided that the Mommy's Bliss organic

21 D drop product would be organic sunflower oil?

22 A. I don't recall.

23 Q. Do you recall any testing to

24 determine whether -- excuse me.

25 If we go down, you'll see that

1 the dosage is one drop -- do you see that --
2 per day?

3 A. Yes.

4 Q. How was it determined to use one
5 drop?

6 A. I just remember our manufacturer
7 being able to give us samples in which we only
8 needed one drop to meet the 400 IU potency.

9 Q. That was a goal that you had of
10 having just one drop or as small of a dose as
11 possible?

12 A. Our goal was to have as small of a
13 dose as possible.

14 Q. And one drop was as small as you
15 could get.

16 Would that be fair?

17 A. That's fair.

18 Q. And you thought that that would be a
19 key feature for your product; is that correct?

20 A. We thought it would be a feature for
21 our product. But, again, we were also really
22 excited about launching organic.

23 So, yes, we wanted to make it
24 easy to administer and organic.

25 Q. Okay. And the one drop was a key

1 feature of your decision process?

2 A. One drop, for me, means easy to
3 administer. So, therefore, yes.

4 Q. Okay. You also have -- on this page,
5 it says [as read]:

6 "Servings: 90."

7 Do you see that?

8 A. Yes.

9 Q. How did you come up with 90 as the
10 servings that you would have in a product -- in
11 the product?

12 A. I don't recall.

13 Q. Did you do any testing to determine
14 90 versus 95? 85?

15 A. No, I don't recall. I don't recall.

16 Q. All right. You said that your
17 manufacturer told you or led you to believe
18 that you could get the necessary amount of
19 vitamin D with one drop, correct?

20 A. Yes.

21 Q. Okay. Who is that manufacturer?

22 A. [REDACTED]

23 Q. Did you have any interaction with
24 [REDACTED] concerning what sources they may
25 have tested for the vitamin D?

1 A. Can you clarify the question?

2 Q. Well, the product that you ended
3 up -- the ingredient you that you ended up
4 using is organic sunflower oil, correct?

5 A. Correct.

6 Q. Do you know whether [REDACTED]
7 tested any other ingredients?

8 A. I'm not certain.

9 Q. Did you have any direct interaction
10 with [REDACTED] regarding coming up with
11 the composition for the Mommy's Bliss organic
12 vitamin D product?

13 A. I don't remember.

14 Q. Do you recall the name of anybody at
15 [REDACTED] with whom you interacted
16 personally on this project?

17 A. Yes.

18 Q. Who?

19 A. Mimi. And I cannot pronounce her
20 last name. It starts with a P.

21 Q. Okay. Anyone else at [REDACTED]
22 other than Mimi P.?

23 A. As far as the -- can you clarify the
24 question?

25 Q. Yes. As far as the development of

1 the vitamin D product.

2 A. No.

3 Q. Do you recall whether you gave
4 direction to [REDACTED] that you wanted a
5 one-drop product?

6 A. No.

7 Q. You don't recall one way or the
8 other?

9 A. No, I do not.

10 Q. Okay. Going back to the previous
11 page, in the lower left-hand corner, do you see
12 a photograph of the Ddrops product?

13 A. Yes.

14 Q. Does that refresh your recollection
15 that someone at least at Mommy's Bliss
16 purchased at least one Ddrops baby vitamin D
17 product?

18 ATTORNEY CONRAD: Objection.

19 Vague and ambiguous and assumes facts not
20 in evidence.

21 THE WITNESS: Do I answer?

22 ATTORNEY CONRAD: Yes. That's
23 just an objection for the record.

24 THE WITNESS: Okay.

25 ATTORNEY CONRAD: So if I

1 instruct you not to answer, that means --

2 THE WITNESS: Okay. All right.

3 ATTORNEY CONRAD: That's just
4 for the record.

5 THE WITNESS: Okay.

6 I just would be assuming. I
7 don't know where that bottle came from.

8 BY ATTORNEY ANDERSON:

9 Q. Okay. Well, do you see that the
10 bottle has the seal broken at the top?

11 A. Yes.

12 Q. Okay. And do you recall -- do you
13 have any recollection of seeing the product
14 packaging or the bottle at this time?

15 A. No.

16 Q. Do you recall tasting the Ddrops baby
17 vitamin D product?

18 A. No.

19 Q. Do you recall any discussions on your
20 leadership team regarding --

21 A. I do --

22 Q. -- the Ddrops?

23 You do?

24 A. Sorry I interrupted you.

25 I do not recall any discussions

1 regarding Ddrops in the leadership team.

2 Q. Okay. And I apologize if I asked you
3 this.

4 Do you recall any discussions in
5 the leadership team concerning going with a
6 90-dose bottle?

7 A. No.

8 Q. Do you recall any discussions in the
9 leadership team concerning using sunflower oil
10 as the ingredient?

11 A. No.

12 ATTORNEY ANDERSON: I'm going to
13 show you next a document that is going to
14 be marked as Exhibit 41.

15 - - -

16 (Whereupon, Exhibit 41 was
17 marked for identification.)

18 - - -

19 ATTORNEY ANDERSON: It has
20 production numbers DDROPS-0019844 to 852.

21 It is a copy of a baby vitamin
22 Ddrops product.

23 BY ATTORNEY ANDERSON:

24 Q. My question for you is -- and I'll go
25 through it slowly -- whether you recall having

1 seen this product package or the bottle
2 previously.

3 A. Okay. Let me do this.

4 ATTORNEY CONRAD: Objection.

5 Vague or ambiguous.

6 THE WITNESS: I'm downloading
7 right now.

8 Okay. Will you restate the
9 question?

10 BY ATTORNEY ANDERSON:

11 Q. Sure.

12 Do you recall having seen
13 previously the packaging shown in Exhibit 41 or
14 the bottle that is shown in Exhibit 41?

15 ATTORNEY CONRAD: Objection.

16 Vague and ambiguous.

17 THE WITNESS: Can you clarify
18 what time frame?

19 BY ATTORNEY ANDERSON:

20 Q. In the time frame when you were
21 considering to develop and introduce a
22 Mommy's Bliss baby vitamin D product.

23 A. No, I don't recall.

24 Q. Okay. I want to direct your
25 attention in particular to the image shown on

1 the Bates-numbered page 19850.

2 Do you see that image there?

3 A. Yes.

4 Q. Okay. And then I'm going to show
5 you, back in Exhibit 28, the image in the lower
6 left-hand corner.

7 Do you see that?

8 A. Yes, I do.

9 Q. All right. And I realize it's
10 difficult because of the way that the screen
11 sharing works, but can you -- does that look to
12 be the same or similar to you to the image
13 on --

14 A. I can't confirm that -- the small
15 print. I can try to zoom in on the download.

16 Q. All right. Let me see if I can make
17 it easier for you. Hang on.

18 Can you see the two exhibits now
19 side by side?

20 A. I can. I can't make out -- maybe I'm
21 just getting old. Hold on one second.

22 I can't exactly make out what --
23 on the PowerPoint, what it says to the right of
24 "400. "

25 Oh. It's, like, two lines.

1 So -- I think it says 400 IU per drop, but I
2 can't see what it says underneath that on the
3 left, on the other side.

4 Q. Okay. So you just can't tell?

5 A. They look different to me in some
6 regard -- in several regards.

7 Do you want me to explain that
8 to you?

9 Q. No. I'm just asking, which you
10 testified.

11 A. Okay.

12 Q. Thank you.

13 Considering the image in
14 Exhibit 28, do you know -- do you have any
15 recollection as to who would have purchased a
16 Ddrops baby vitamin D product at Mommy's Bliss
17 at the time you were working on the new
18 product?

19 ATTORNEY CONRAD: Objection.
20 Misstates testimony. Assumes facts not in
21 evidence.

22 THE WITNESS: I'm not certain.

23 When you showed that closeup
24 view, it looked like a European label or
25 something. I'm not sure exactly what was

1 on there, why I couldn't read it.

2 BY ATTORNEY ANDERSON:

3 Q. Okay. You don't recall any -- do you
4 recall any discussions in your leadership team
5 that was working on the development of the new
6 Mommy's Bliss vitamin D product concerning
7 purchasing a Ddrops product?

8 A. I do not.

9 Q. Okay. When we were at Exhibit 28, of
10 the four products that you had there on that
11 page -- and I can bring it back if you want.

12 But of those four products,
13 Ddrops was the only one that had a one-drop
14 dose.

15 Do you recall that?

16 A. I recall seeing that on the exhibit.

17 I don't recall being aware of
18 that when we formulated -- or at the time of
19 that document.

20 Q. Well, looking back at Exhibit 28 and
21 the Bates-numbered page 1757, the only feature
22 that's called out for the Ddrops product is one
23 drop per serving.

24 Do you see that?

25 A. I do.

1 Q. Do you recall any other products that
2 you looked at back at the time that you were
3 developing the Mommy's Bliss baby vitamin D
4 product that had a one-drop-per-serving dose?

5 A. I don't recall looking at competitors
6 with one-drop servings, only our own probiotics
7 that had a few-drop servings as a reference.

8 Q. Well, clearly, on Exhibit 28, you did
9 look at Ddrops, and it had a one-drop serving,
10 correct?

11 A. I don't recall myself looking at that
12 point.

13 Q. Did you -- do you recall who would
14 have made this page of Exhibit 28 and called
15 out as the one feature from Ddrops the one drop
16 per serving?

17 A. No, I don't recall who made this
18 page.

19 Q. Okay. And you have no recollection,
20 as you sit here today, of any discussion about
21 the fact that Ddrops was the only competing
22 product, at least shown in your documents, that
23 had a one-drop serving size, correct?

24 A. Correct. I do not recall.

25 Q. And just to be clear, your probiotics

1 product did not have a one-drop serving size,
2 did it?

3 A. Correct. It was about -- it was four
4 or five drops. I can't remember exactly.

5 Q. Okay.

6 THE WITNESS: Do you mind if I
7 put it on mute to blow my noise?

8 ATTORNEY ANDERSON: Not at all.

9 I'm now going to show you a
10 document that will be marked as Exhibit 42. It
11 has production number MOM_0001728.

12 - - -

13 (Whereupon, Exhibit 42 was
14 marked for identification.)

15 - - -

16 ATTORNEY ANDERSON: Please take
17 a moment to look at this one-page exhibit.
18 And if you'd like, I can zoom in a bit
19 more here.

20 But I believe this is a layout
21 of the Mommy's Bliss vitamin D organic
22 drops product that you introduced in the
23 2016-2017 time frame.

24 ATTORNEY CONRAD: And while
25 she's reviewing the document, since we

1 have been discussing exhibits that are
2 marked under the protective order highly
3 confidential, attorneys' eyes only, I
4 wanted to designate this transcript the
5 same, highly confidential, attorneys' eyes
6 only.

7 ATTORNEY ANDERSON: Okay.

8 THE WITNESS: I have reviewed
9 the document.

10 BY ATTORNEY ANDERSON:

11 Q. Okay. Do you recognize it as the
12 layout of the Mommy's Bliss vitamin D organic
13 drops product that we've been discussing?

14 A. Yes.

15 Q. And just so we're clear, do you
16 recall when you first introduced into the
17 market the Mommy's Bliss vitamin D drops
18 product?

19 A. I recall, yes, the year.

20 Q. What year?

21 A. 2016.

22 Q. Do you recall the quarter?

23 A. I believe it was Q3.

24 ATTORNEY ANDERSON: I'm sorry.

25 Somehow I lost the screen share, but now

1 you can see it?

2 THE WITNESS: Yes.

3 ATTORNEY ANDERSON: Okay.

4 THE WITNESS: Is there a
5 question? I'm sorry. I might have missed
6 it.

7 ATTORNEY ANDERSON: No. I'm
8 going to ask you a question.

9 BY ATTORNEY ANDERSON:

10 Q. So if we look at the directions —
11 and if you want, I can zoom in, although it
12 becomes a bit pixelated.

13 But the directions say, in part
14 [as read]:

15 "Place one drop daily onto
16 mother's nipple or a pacifier."

17 Do you see that?

18 A. Let me get there.

19 I see that sentence starting
20 after other sentences, yes.

21 Q. Okay. And do you recall where that
22 specific instruction came from?

23 A. I believe it came from our probiotic
24 drops.

25 Q. Are you aware of any other baby

1 vitamin D products in the market at the time
2 that you introduced your product that had that
3 same instruction?

4 A. I don't recall.

5 Q. Do you recall that Ddrops had that
6 instruction?

7 A. I do not recall that.

8 Q. You just don't recall one way or the
9 other?

10 A. I don't know if they had that
11 instruction.

12 Q. You just don't know one way or the
13 other?

14 A. Correct.

15 Q. Okay. Would it surprise you to learn
16 that they had that instruction?

17 A. Can you clarify at what point in
18 time?

19 Q. At the time that you introduced it --
20 introduced your Mommy's Bliss vitamin D organic
21 drops product.

22 A. I don't know if I would be surprised.
23 It seems very common to use those kinds of
24 instructions.

25 Q. Who else are you aware of that used

1 that instruction in the 2016–2017 time frame
2 for baby vitamin D drops?

3 A. I don't know specifically for baby
4 vitamin D drops.

5 ATTORNEY ANDERSON: Okay. I'll
6 show you now a document that's been marked
7 previously as Exhibit 30.

8 And this is a nine-page document
9 relating to Mommy's Bliss organic drops
10 baby vitamin D product.

11 BY ATTORNEY ANDERSON:

12 Q. Do you see that on your screen?

13 A. I do.

14 I only see that one screen. I
15 don't have the download.

16 Q. Okay. I just have a few questions
17 for you about it.

18 Well, first off, do you
19 recognize this as some marketing information or
20 marketing materials that Mommy's Bliss used to
21 market and sell its baby vitamin D drops
22 product?

23 A. I'm not clear where this came from.
24 It looks familiar, but I don't know exactly
25 where it's from.

1 Q. Okay. And if we go toward the bottom
2 of the first page, it says, as one of the
3 bullet points [as read]:

4 "Just one drop per day."

5 A. I see that.

6 Q. Okay. And do you -- that was one of
7 the features that I believe you said was --
8 that you -- one of the features of your product
9 that you were promoting, correct?

10 A. Yes, it -- yes.

11 Q. If you go to the next page, it says,
12 as you see in the middle there [as read]:

13 "Vitamin D, the sunshine
14 vitamin."

15 Do you see that?

16 A. Yes.

17 Q. Do you know where that came from?

18 A. No. I think it's oftentimes referred
19 to as "the sunshine vitamin," but I'm not sure
20 where it came from.

21 Q. Okay. Do you recall that Ddrops used
22 that phrase on its bottle and packaging?

23 A. No.

24 Q. And on the third page, there is a
25 comment from, I think, a customer Jess A. that

1 references [as read]:

2 "I struggled getting baby to
3 take all the supplement from those
4 droppers and questioned why it had
5 to come with all the extra stuff."

6 Do you see that?

7 A. I do.

8 Q. That relates to your desire to have
9 an easy-to-administer product; is that correct?

10 A. I believe so, yes.

11 Q. Okay. And if we go to the next page,
12 there is a question — or an answer to one of
13 your set questions: "How do I give this to my
14 baby?"

15 And you said — you say [as
16 read]:

17 "You can place the drop
18 directly onto the breast prior to
19 feeding. It's so easy to administer
20 because it is only one drop per
21 day."

22 Do you see that?

23 A. Yes.

24 Q. Okay. And that's your
25 ease-of-administration point that you mentioned

1 previously, correct?

2 ATTORNEY CONRAD: Objection.

3 Misstates testimony.

4 THE WITNESS: Can you ask the
5 question one more time?

6 BY ATTORNEY ANDERSON:

7 Q. Sure.

8 I'm just trying to -- in this
9 answer to your question "How do I give there to
10 my baby?" am I correct that the form answer
11 from Mommy's Bliss was, in part [as read]:

12 "or you can place the drop
13 directly onto the breast prior to
14 feeding. It's so easy to administer
15 because it is only one drop per
16 day. "

17 Do you see that?

18 Do you see that?

19 A. I do see that, yes.

20 Q. Okay. And that is the
21 ease-of-administration feature that you had
22 mentioned you were -- wanted to have --

23 ATTORNEY CONRAD: Objection.

24 Misstates -- sorry. Go ahead.

25 ATTORNEY ANDERSON: That's okay.

1 BY ATTORNEY ANDERSON:

2 Q. That's the ease-of-administration
3 feature that you wanted to have in the
4 Mommy's Bliss product, correct?

5 ATTORNEY CONRAD: Objection.
6 Misstates testimony.

7 THE WITNESS: That's my
8 interpretation of "ease of
9 administration."

10 One of the two points I
11 explained was the serving size. The other
12 is taste.

13 BY ATTORNEY ANDERSON:

14 Q. Sure.

15 Do you recall -- I apologize if
16 I asked this.

17 But do you recall any
18 taste-testing of the alternative of whatever
19 ingredients you considered for the
20 Mommy's Bliss product?

21 A. Can you clarify the timing?

22 Q. At the time that you were developing
23 the product.

24 A. I recall tasting the samples we got
25 from [REDACTED].

1 Q. And do you recall what ingredient
2 samples you received -- what different
3 ingredient samples you received from
4 [REDACTED]?

5 A. I don't recall varying samples. I
6 just know that we tasted the one with sunflower
7 oil.

8 I don't recall if there were
9 others.

10 Q. Do you recall how many samples you
11 received to taste-test?

12 A. No.

13 Q. Who -- do you recall who, other than
14 yourself, taste-tested?

15 A. No.

16 Q. The one-drop instruction that you
17 had, would it be fair to say that you're not
18 aware of it being a common instruction for baby
19 vitamin D drops?

20 ATTORNEY CONRAD: Objection.

21 Vague and ambiguous.

22 You can answer.

23 THE WITNESS: I don't know any
24 instructions for other vitamin D drops.

25 I know our products. And the

1 instructions seemed similar and common to
2 what we were already doing with the
3 probiotics.

4 BY ATTORNEY ANDERSON:

5 Q. Except probiotics, as you said, was
6 multiple drops.

7 A. Which is not relevant to the
8 instructions, just the serving size.

9 Q. Okay. Why do you say it's not
10 relevant to the instructions, just the serving
11 size?

12 A. Well, for me, I just think -- I mean,
13 serving -- serving size is one thing, and then
14 how to administer it is another.

15 That's what I mean by that.

16 Q. Well, are you aware of any other baby
17 vitamin D drops products that has a
18 administration of one drop?

19 A. No.

20 Q. You're not aware of Ddrops being one
21 drop?

22 A. As far as timing is concerned, now I
23 am. But at the time of developing the product,
24 I was not aware of that or I don't recall being
25 aware of that.

1 Q. Okay. So even though, on Exhibit 28,
2 the only feature for Ddrops product is one drop
3 per serving, you just don't recall that?

4 A. I don't.

5 Q. Okay. Do you recall that in
6 approximately 2020 Mommy's Bliss had to
7 reformulate its baby vitamin D product because
8 of a stability or rancidity problem?

9 A. I do.

10 Q. Okay. What do you recall with regard
11 to the need to reformulate the baby
12 vitamin D — the Mommy's Bliss baby vitamin D
13 drops products due to the rancidity or
14 stability problem?

15 A. Can you clarify the question?

16 Q. Sure. I want an overview.

17 What do you recall generally
18 about that need to reformulate?

19 A. I recall we were not suspecting we
20 would have to reformulate, but we found out we
21 should after we made a change in the bottle
22 itself.

23 Our intent was to move from a
24 glass bottle to a plastic squeeze bottle, which
25 we did with the sunflower formula. But after

1 the first run, we evaluated the product and
2 determined that it could go rancid and needed
3 to find a long-term solution to prevent that
4 from happening.

5 Q. What was your role in terms of the --
6 reformulating the product?

7 A. My role was the -- I was the
8 department head of -- of the individuals
9 carrying out the actions to determine the next
10 formula.

11 So they were sharing with me
12 information and getting guidance from me.

13 Q. Do you recall that changing the
14 formulation to MCT or medium-chain
15 triglycerides was the only alternative oil that
16 you considered or tested?

17 ATTORNEY CONRAD: Objection.

18 Assumes facts not in evidence.

19 THE WITNESS: I recall that was
20 the only oil after we determined that the
21 rancidity wasn't coming from mishandling
22 or a supply chain issue. So we did not
23 immediately reformulate for this issue.

24 We first did an investigation
25 with our manufacturer to determine if

1 there was some other issue. We proved
2 that there wasn't. And, therefore, we had
3 to stabilize the formula.

4 BY ATTORNEY ANDERSON:

5 Q. And so once you determined that the
6 cause wasn't something other than the
7 formulation, the only new formulation that you
8 considered was MCT oil, correct?

9 A. Correct.

10 Q. And how did you decide -- or what
11 caused you to decide to go to MCT oil?

12 A. We received guidance from an expert
13 in the industry that there would be no risk in
14 oxidation, which we essentially measure as -- a
15 peroxide value as an indicator of that
16 rancidity if we went to MCT.

17 Q. Who is that expert that you just
18 identified?

19 A. His name is Jerry Oliveras.

20 Q. And he is a -- or was a -- is he
21 still a consultant, quality food safety and
22 regulatory food compliance, for Mommy's Bliss?

23 A. Yes, he's still a consultant. He is
24 not as active now as he was before for
25 Mommy's Bliss.

1 Q. He had a Mommy's Bliss email address?

2 A. He did.

3 Q. And he listed Mommy's Bliss as his
4 office address on his emails, correct?

5 A. I don't recall.

6 Q. Okay. At the time that you
7 reformulated the Mommy's Bliss product to be
8 MCT oil, do you recall being aware that Ddrops'
9 product was made with MCT?

10 A. Yes.

11 Q. And do you recall how or when it was
12 that you became aware that the Ddrops product
13 was made with MCT?

14 A. I don't recall exactly when.

15 Q. At some point prior to the
16 reformulation?

17 ATTORNEY CONRAD: Objection.

18 Vague and ambiguous.

19 You can answer.

20 THE WITNESS: At some point
21 during the work to determine the new
22 formula.

23 BY ATTORNEY ANDERSON:

24 Q. Okay. So at some point during the
25 work to determine the new formula, you became

1 aware that Ddrops' product used MCT, correct?

2 A. Correct.

3 Q. And do you recall how you became
4 aware of that?

5 A. I became aware of it via an online
6 search.

7 Q. This is an online search that you
8 personally conducted?

9 A. Yes.

10 Q. And can you describe for me what you
11 did for this online search?

12 A. I don't recall the specifics.

13 But essentially like a Google
14 search of other vitamin D brands and to get an
15 understanding of what they're using. So it
16 wasn't only Ddrops.

17 Q. Do you recall any other products that
18 you looked at?

19 A. I believe -- I recall at least one.
20 I'm not sure if I recall all.

21 But one was -- or maybe I recall
22 two, actually: [REDACTED].

23 Q. So the three competing products that
24 you recall researching when you were doing the
25 reformulation are Ddrops, [REDACTED]

1 [REDACTED] correct?

2 A. Those are what I recall. I don't
3 remember if there were more.

4 Q. Did you prepare any sort of a report
5 or memo concerning your research for others at
6 Mommy's Bliss?

7 A. I recall mentioning it in an email
8 but no report or memo.

9 Q. Okay. This would be -- who -- do you
10 recall who you sent the email to?

11 A. I recall sending that note to Jerry.

12 Q. That would be Mr. Oliveras?

13 A. Yes.

14 Q. Anyone other than Mr. Oliveras?

15 A. I don't recall.

16 Q. As best you can recall, what did you
17 tell Mr. Oliveras in this email concerning the
18 results of your online search?

19 A. I just recall that it really wasn't
20 the intent of the email. It was just a side
21 note that I -- the intent was to, you know,
22 just keep plowing ahead at a solution to stay
23 in good supply.

24 The email was in regard to
25 supply assurance while they were trying to find

1 a solution. And so I knew that they were going
2 down a path of figuring things out with the
3 manufacturer, and I was mostly checking in on
4 timing and supply.

5 Q. Do you recall discussing the results
6 of your online research with anyone other than
7 your email with Mr. Oliveras?

8 A. No.

9 Q. The -- do you recall what the
10 ingredient was for -- strike that.

11 Was the email that you sent to
12 Mr. Oliveras one of the documents you reviewed
13 in preparation for your testimony here today?

14 A. Yes.

15 Q. Do you recall any of the -- or do you
16 recall what the ingredient was for [REDACTED]

17 A. No.

18 Q. Do you --

19 A. I could guess, I think, but I'm not
20 certain.

21 Q. Okay. Do you recall whether it was
22 MCT?

23 A. I believe it was MCT mixed with olive
24 oil. I'm not certain.

25 Q. Do you recall what the ingredient was

1 for [REDACTED]

2 A. Fractionated coconut oil, which is
3 MCT.

4 ATTORNEY ANDERSON: I'm going to
5 show you now a document that's been marked
6 previously as Exhibit 31. It's a series
7 of emails.

8 BY ATTORNEY ANDERSON:

9 Q. Can you see Exhibit 31 on the screen,
10 please?

11 A. I can see it.

12 Q. Okay. Great.

13 I'm going to scroll down to the
14 first email on the document, which is an email
15 from QC office to April Howell on May 29th of
16 2020. You're a copyee.

17 Do you see that?

18 A. I do see it.

19 Q. Okay. And do you recall having
20 received a copy of this email on or about
21 May 29th of 2020?

22 A. I actually don't recall the details
23 of this email.

24 I see that I was copied on it,
25 but I would have to read it.

1 Q. All right. Please take a moment to
2 read it.

3 A. Okay.

4 Okay. I see.

5 Q. And then so having had a chance to
6 read exhibit -- excuse me -- that first email
7 in Exhibit 31, do you recall having received it
8 at or about the time of May 29th of 2020?

9 A. Yes.

10 Q. Do you recall whether you did your
11 online research before or after receiving this
12 email?

13 A. I don't recall.

14 Q. Okay. Go to the next email in the
15 chain. It's from yourself to QC office and
16 others dated May 29th of 2020.

17 Do you see that?

18 A. Yes.

19 Q. Okay. And in the email, you say that
20 you [as read]:

21 [REDACTED]

22 [REDACTED]

23 Do you see that?

24 A. I do.

25 Q. Okay. And then you reference

1 [as read]:

2

3 Do you see that?

4 A. Yes.

5 Q. Okay. Do you recall -- does seeing
6 that email refresh your memory as to whether
7 you had done your online research of
8 competitors' ingredients?

9 A. I don't recall.

10 Q. Okay. If we scroll up, there's an
11 email from yourself to --

12 A. It's actually to me.

13 Q. Oh, I'm sorry. It's to you from --
14 here we go -- the QC office and others in which
15 they say [as read]:

16

17 Do you see that?

18 A. Yes.

19 Q. Looking at this email, does that help
20 you to determine whether you had done your
21 online research of other competitors'
22 ingredients by that time?

23 A. That doesn't refresh my memory of
24 when that happened related to the email.

25 Q. And then if we scroll up again, we

1 now have an email from you dated June 3rd of
2 2020 to QC office and others.

3 Do you see that?

4 A. I do.

5 Q. And in this email, you state, in part
6 [as read]:

7 [REDACTED]

8 [REDACTED]

9 A. Yes.

10 Q. Do you see that?

11 Do you recall -- and then at the
12 bottom, it says [as read]:

13 [REDACTED]

14 I think it's supposed to be --

15 [REDACTED]

16 A. Yes.

17 Q. Do you see that?

18 A. Yes.

19 Q. Okay. Is this the email that you
20 were referencing in terms of your email?

21 A. Yes.

22 Q. Okay. So by June 3rd of -- so this
23 is the email that you reviewed in preparation
24 for testifying here today, correct?

25 A. That one, yes.

1 Q. All right. And so this would
2 indicate that by June 3rd of 2020 you had done
3 your online research?

4 A. Yes.

5 Q. Okay. Now, in it, you say that
6 [REDACTED] are all
7 MCT, correct?

8 A. Correct.

9 Q. Okay. Do you recall that none of the
10 other products, other than Ddrops, was a
11 single-drop product?

12 A. No.

13 Q. You just don't recall one way or the
14 other?

15 A. I don't recall.

16 Q. When you did your online research,
17 did you look at -- what, more specifically, did
18 you look at?

19 Did you look at something on
20 their various manufacturers' or sellers'
21 website or some third-party seller? What?

22 A. I recall trying to be mindful of a
23 solution that maintains our organic status and
24 mild flavor.

25 So it was a very casual research

1 in which I looked online to see what other
2 brands were doing.

3 Q. Okay. Did you buy any of these
4 products?

5 A. Not that I recall.

6 Q. Do you recall taste-testing any of
7 them or taste-testing MCT oil?

8 A. Not for vitamin D.

9 Q. For something else?

10 A. We had been formulating with MCT oil
11 for other items. I've tasted MCT oil because
12 it's pretty commonly used.

13 Q. What other items have you used it
14 for?

15 A. We actually haven't launched in
16 market. But we were using it for formulations
17 for some topicals actually for baby.

18 Q. In June of 2020?

19 A. I don't know when that work started,
20 but I know we had some experience by June 2020.

21 Q. Okay. But no experience using MCT
22 for baby vitamin D drops, correct?

23 A. Only in the fact that the D itself
24 also has MCT oil in it.

25 Q. What do you mean by that, "the D

1 itself"?

2 A. The vitamin D drop formula from
3 [REDACTED] has two ingredients now, the MCT oil
4 and vitamin D. But the vitamin D portion of it
5 also contains MCT oil from their supplier.

6 Q. Okay. And when you say [REDACTED] do
7 you mean [REDACTED]

8 A. [REDACTED], correct.

9 Q. Okay. All right.

10 And the testing that you had
11 [REDACTED] do, that was solely with regard
12 to using MCT oil, correct?

13 A. Can you say that question again?

14 Q. The --

15 ATTORNEY ANDERSON: Madam Court
16 Reporter, could you please reread the
17 question?

18 - - -

19 (Whereupon, the record was read
20 as follows:

21 "QUESTION: And the testing
22 that you had [REDACTED] do,
23 that was solely with regard to using
24 MCT oil, correct?")

25 - - -

1 THE WITNESS: What testing are
2 you referring to?

3 BY ATTORNEY ANDERSON:

4 Q. Okay. Well, you had [REDACTED]
5 do some testing as to whether MCT oil -- one
6 drop of MCT oil would provide the nutritionally
7 sufficient dose, correct?

8 A. Yes, that -- correct in that when we
9 say "MCT oil," you mean the MCT oil version of
10 the formula? So --

11 Q. Correct.

12 A. Yeah. I believe there was testing to
13 validate we could get the right vitamin D
14 potency in the one-drop serving.

15 Q. Okay. And the only new ingredient
16 that you tested or that you had [REDACTED]
17 test was MCT, correct?

18 A. No. It would be the whole formula.

19 Q. Well, MCT and vitamin D?

20 A. Correct.

21 Q. Yeah. Just to be clear, the only
22 reformulation that you had [REDACTED] test
23 was MCT oil and vitamin D?

24 A. I think I'm getting caught up on your
25 word "test."

1 Q. Well, you had -- all right.

2 What is hanging you up with the
3 word "test"?

4 A. To me, "testing" means analysis of
5 the formula.

6 Q. Okay. And didn't [REDACTED] do
7 testing of the formula to see that one drop of
8 MCT and vitamin D would provide the 400 UI
9 dose?

10 A. Yes.

11 Q. Okay. And by the way, looking at the
12 May 29th email, for example, it's from the QC
13 office.

14 Mr. Oliveras is sending an email
15 from the QC office --

16 A. Yes.

17 Q. -- of Mommy's Bliss?

18 And why was that?

19 A. He was -- that was his email -- his
20 Mommy's Bliss's email. He was the one
21 receiving and sending from that email address.

22 Q. Okay.

23 A. You -- yeah.

24 Q. Do you recall -- did you have any
25 involvement in the decision to, in fact, change

1 the Mommy's Bliss product to use MCT oil?

2 A. Yes.

3 Q. What was your involvement in that
4 regard?

5 A. I approved it, along with my -- my
6 boss at the time, who was April.

7 Q. Okay. And did you have any
8 discussions with April concerning approving it
9 or why?

10 A. No.

11 Q. Why did you approve it?

12 A. Because it allowed for us to
13 transition the formula pretty seamlessly
14 without any consumer impact.

15 Q. Can you explain to us what you mean
16 by that?

17 A. I mean that we were able to keep our
18 serving size, which is the ease of use, and
19 keep it mild flavored, keep it organic, keep
20 the peroxide value low.

21 And I think all of those points
22 are what kept it seamless.

23 Q. Did you begin, what I'll call,
24 featuring or touting to consumers that
25 Mommy's Bliss now was made with organic

1 MCT oil?

2 A. I don't recall a specific nuanced
3 promotion around that, no.

4 I know that we had to update our
5 marketing content to be accurate to the label.

6 ATTORNEY ANDERSON: I'm going to
7 show you first what I've marked as
8 Exhibit 43.

9 - - -

10 (Whereupon, Exhibit 43 was
11 marked for identification.)

12 - - -

13 ATTORNEY ANDERSON: And it has
14 Bates numbers DDROPS-0022429 to 432.

15 BY ATTORNEY ANDERSON:

16 Q. I've got it up.

17 Do you see the screen, ma'am?

18 A. I can. Let me open it real quick.

19 Q. Yeah. I've got it up on my screen
20 where you see two pages at once.

21 A. Okay. Hold on one second.

22 I'm going to go back to your
23 screen.

24 Q. Yeah. I'd just like you to tell me
25 whether you recognize this exhibit as images of

1 the Mommy's Bliss packaging -- and I'll go to
2 the second page -- that has the MCT as the
3 ingredient.

4 A. I do recognize this.

5 Q. Okay. By the way, do you have any
6 involvement in the marketing or how you go
7 about marketing the baby vitamin D product?

8 A. No.

9 Q. I asked you just a minute ago about
10 whether you went -- sorry -- whether
11 Mommy's Bliss, after it changed to MCT oil,
12 then featured that in its marketing.

13 ATTORNEY ANDERSON: I'm going to
14 show you what I have marked as Exhibit 44.

15 - - -

16 (Whereupon, Exhibit 44 was
17 marked for identification.)

18 - - -

19 ATTORNEY ANDERSON: It has
20 production number MOM_0001367. And it is
21 a page of, from what I think, one of your
22 marketing pieces.

23 I believe this is how it was
24 produced to us by MOM.

25

1 BY ATTORNEY ANDERSON:

2 Q. Do you recognize this document?

3 A. It looks like what you would see on
4 our website, not necessarily a document.

5 Q. Okay. And do you see where the
6 second item under what's in it is organic
7 MCT oil?

8 A. I do.

9 Q. Does that refresh your recollection
10 that MOM featured, as the ingredient, organic
11 MCT oil?

12 A. Sure. Yes.

13 ATTORNEY ANDERSON: Can we go
14 off the record for a minute?

15 ATTORNEY CONRAD: Yes.

16 - - -

17 (Whereupon, a recess was taken.)

18 - - -

19 ATTORNEY ANDERSON: Thanks,
20 everyone.

21 We're back on the record.

22 BY ATTORNEY ANDERSON:

23 Q. Ms. Medina, do you recall that before
24 we took our short break here we were talking
25 about the reformulation of the Mommy's Bliss

1 vitamin D product in 2020?

2 A. Yes.

3 Q. And you recall that we were talking
4 about you approved or recommended the
5 reformulation to use MCT oil to -- MCT oil at
6 that time?

7 A. I approved it.

8 Q. Okay. And the change to MCT oil
9 resolved the rancidity issue that had come up,
10 correct?

11 A. Yes.

12 Q. And do you recall approximately when
13 Mommy's Bliss actually introduced to the market
14 its revised MCT oil-based product?

15 A. I can't recall the exact year. It
16 was 2020 or 2021.

17 Q. Okay. Do you recall learning
18 anything about how it was received in the
19 market?

20 A. I don't recall learning anything
21 specific about that formula being received in
22 market, no.

23 Q. Anything generally?

24 A. I don't recall, like, being in a
25 specific conversation about, like, that being a

1 release.

2 To us, it was a flow-through.

3 It wasn't, like, a relaunch or anything like
4 that. We kept the same UPC, et cetera.

5 ATTORNEY ANDERSON: Okay. I'm
6 going to show you a document that will be
7 marked Exhibit 45.

8 It has production numbers
9 MOM_001729 to 1749.

10 - - -

11 (Whereupon, Exhibit 45 was
12 marked for identification.)

13 - - -

14 ATTORNEY ANDERSON: It titled
15 "Vitamin D Market Share Review 2020–2022. "

16 BY ATTORNEY ANDERSON:

17 Q. My question for you is whether you
18 recall having seen this document previously.

19 A. I'm going to look at it.

20 Q. Sure.

21 A. I recall seeing some of this
22 document. I don't recall the intricacies of
23 the document.

24 Q. Did you have -- is this a
25 Mommy's Bliss document, to your knowledge?

1 A. Yes.

2 Q. And do you know who prepared it?

3 A. No.

4 Q. Did you have any involvement in the
5 preparation of it?

6 A. No.

7 Q. Do you know what the purpose of
8 Exhibit 45 is?

9 A. To discuss our market share.

10 Q. So what do you mean by discuss your
11 market share?

12 A. To review what our market share is.

13 Q. And that included the market share in
14 the liquid -- baby liquid vitamin D product
15 line, correct?

16 A. Correct.

17 Q. Do you recall having any discussions
18 at Mommy's Bliss regarding Exhibit 45?

19 A. No.

20 Q. Do you recall whether Mommy --
21 whether the company, Mommy's Bliss, acted on
22 the information or in accordance with the
23 information contained in Exhibit 45?

24 A. No.

25 Q. You just don't recall one way or the

1 other?

2 A. I don't recall.

3 Q. One way or the other?

4 A. No. I don't recall any specific
5 actions.

6 ATTORNEY ANDERSON: Okay. I'm
7 going to show you next a document that
8 Mommy's Bliss produced in what's called
9 native form as a spreadsheet.

10 And for the record, it is
11 Bates-numbered MOM_0001727, highly
12 confidential, attorneys' eyes only.

13 And since it was produced in
14 native format, I have printed two pages of
15 it. So it's a spreadsheet, but I printed
16 these two pages.

17 I'd like you to take a minute to
18 look at these two pages and tell me
19 whether you recall having seen them
20 previously.

21 And you tell me when you're done
22 looking at the first page, and then I'll
23 scroll down to the second page.

24 - - -

25 (Whereupon, Exhibit 46 was

1 marked for identification.)

2 - - -

3 THE WITNESS: Okay.

4 BY ATTORNEY ANDERSON:

5 Q. Have you had a chance to look at
6 Exhibit 46?

7 A. I thought you were still trying to
8 send it over.

9 Q. Oh, didn't I? I thought I did.

10 A. I'm sorry. Okay.

11 Q. 46.

12 A. Let me reopen that. Sorry.

13 Q. That's okay.

14 A. You said spreadsheet, so --

15 Q. Right. It was produced by MOM --

16 A. Okay.

17 Q. -- as a spreadsheet in native format.

18 I then printed it --

19 A. Oh, I see.

20 Q. -- into the form that you see here.

21 A. Okay.

22 Q. And so I was simply stating for the
23 record that as a spreadsheet it was produced as
24 MOM_0001727.

25 A. Unfortunately, for some reason, I'm

1 not able to rotate it. So --

2 Q. Well, how about if you just look at
3 my screen --

4 A. Sure.

5 Q. -- rather than going like that.

6 A. Yeah.

7 Q. Just look at my screen where it's
8 properly rotated, I believe.

9 A. Okay.

10 Q. Okay. And just look at the first
11 page and tell me -- and then tell me when
12 you're done looking at the first page, and I'll
13 scroll down to the second.

14 ATTORNEY CONRAD: I think you'll
15 need to share your screen.

16 ATTORNEY ANDERSON: Oh, aren't
17 I?

18 THE WITNESS: Not yet.

19 ATTORNEY ANDERSON: Oh, my bad.
20 There we go. That will make it easier for
21 you to look at.

22 THE WITNESS: All right. Now we
23 are on the same page.

24 I do not recognize this
25 document.

1 BY ATTORNEY ANDERSON:

2 Q. Okay. And then just look at the
3 second page.

4 A. No, I don't think I've seen this.

5 ATTORNEY ANDERSON: Okay. And
6 then I'm going to have you look at a
7 document -- another document that MOM
8 produced as a spreadsheet as MOM_0002596.

9 - - -

10 (Whereupon, Exhibit 47 was
11 marked for identification.)

12 - - -

13 ATTORNEY ANDERSON: And, again,
14 this is pages printed from that
15 spreadsheet, and it will be Exhibit 47.

16 BY ATTORNEY ANDERSON:

17 Q. My question for you is:

18 Do you recall having seen
19 this -- these pages from the spreadsheet
20 previously?

21 A. No, I have not.

22 Q. Okay.

23 ATTORNEY CONRAD: For the
24 record, Exhibit 47, MOM_0002596, was
25 marketed highly confidential, attorneys'

1 eyes only.

2 ATTORNEY ANDERSON: Yes.

3 Correct. Sorry.

4 Just give me a second here, and

5 I'll see if I have anything further.

6 Thank you, Ms. Medina. I have

7 no further questions for you at this time.

8 I appreciate your time here

9 today.

10 ATTORNEY CONRAD: Ms. Medina, I

11 have a few more questions for you.

12 I'd first like to go back to

13 Exhibit 28.

14 - - -

15 E X A M I N A T I O N

16 - - -

17 BY ATTORNEY CONRAD:

18 Q. Do you have that in front of you, or
19 do you need me to provide that again?

20 A. I have it here.

21 Q. Okay. So on Exhibit 28, I'd like you
22 to turn to the page -- the bottom right number
23 ends in 1757.

24 And let me know when you have
25 that.

1 A. 1757, I see it.

2 Q. And this is the page that's titled
3 "Vitamin D Drop – Competition."

4 Do you see that?

5 A. I do.

6 Q. And on this page, there is a listing
7 of several different products that the other
8 counsel had asked you some questions about.

9 Do you remember that?

10 A. Yes.

11 Q. On this page — this slide, do you
12 see any comparison of the methods of
13 administration that any of these products
14 instruct its customers to use?

15 ATTORNEY ANDERSON: Object to
16 the form of the question.

17 THE WITNESS: I do not see
18 anything about how to administer it from
19 those companies, no.

20 BY ATTORNEY CONRAD:

21 Q. And here on the upper right where it
22 says [REDACTED], "beneath it is a
23 nutrition information panel and a listing of
24 other ingredients.

25 Do you see that?

1 A. I do.

2 Q. And what is the ingredient listed
3 there?

4 A. Fractionated coconut oil.

5 Q. All right. And which product would
6 that be referring to?

7 ATTORNEY ANDERSON: Object to
8 the form of the question. No foundation.

9 THE WITNESS: "Fractionated
10 coconut oil refers" to MCT oil.

11 BY ATTORNEY CONRAD:

12 Q. Thank you. Actually, my question was
13 different. It was a poorly phrased question.

14 Is that panel and the listing of
15 other ingredients referring to [REDACTED]

16 [REDACTED]

17 A. That is my understanding, yes.

18 Q. Earlier -- I'm switching gears here.

19 Earlier in your testimony, you
20 mentioned that the vitamin D drop formula from
21 [REDACTED] has two ingredients, and the
22 vitamin D portion of it also contains MCT oil
23 from their supplier.

24 Do you remember talking about
25 that?

1 A. I do.

2 Q. Can you explain what you meant by
3 that?

4 A. What I meant by that is the vitamin D
5 ingredient is manufactured using MCT oil.

6 So if the formula is one part
7 MCT oil and one part vitamin D, within that
8 vitamin D portion, there's also MCT oil too as
9 a carrier for that vitamin D.

10 Q. Is that -- and I believe you
11 testified that that is how that vitamin D
12 portion is obtained by [REDACTED] from their
13 supplier?

14 A. Yes.

15 ATTORNEY CONRAD: I'm going to
16 share in the chat another exhibit.

17 - - -

18 (Whereupon, Exhibit 1027 was
19 marked for identification.)

20 - - -

21 ATTORNEY CONRAD: It will take a
22 moment to upload.

23 This will be Exhibit 1027 with
24 the title "Product Technical
25 Specifications and Acceptance Criteria."

1 Bates-labeled MOM_0000011.

2 BY ATTORNEY ANDERSON:

3 Q. Please let me know when you have an
4 opportunity to open that.

5 A. Okay. I see it now.

6 Q. All right. On this exhibit, 1027 --
7 well, first off, do you recognize this exhibit?

8 A. I do.

9 Q. What is it?

10 A. It is a specification that we create
11 for this product.

12 Q. Is this a specification that -- well,
13 let me ask you more generally.

14 Was [REDACTED] involved in
15 the creation of this specification?

16 ATTORNEY ANDERSON: Object to
17 the form of the question.

18 THE WITNESS: They were involved
19 as our formulator partner. And once we
20 came to an alignment of what the formula
21 is, we create a specification.

22 So some of this content does
23 originate from them.

24 BY ATTORNEY CONRAD:

25 Q. Okay. And can you go to the section

1 that's titled "Ingredients"?

2 A. I'm there.

3 Q. All right. It says [as read]:

4 [REDACTED]

5 [REDACTED] [REDACTED]

6 [REDACTED]

7 Do you see that?

8 A. I do.

9 Q. And then beneath that, it says --
10 underneath [REDACTED] it says [as read]:

11 [REDACTED]

12 [REDACTED]

13 Do you see that?

14 A. I do.

15 Q. What is that referring to when it
16 says [REDACTED]?

17 ATTORNEY ANDERSON: Object to
18 the form of the question. No foundation.

19 THE WITNESS: That speaks to
20 what I was saying earlier, that the
21 vitamin D3 contains -- as an ingredient
22 itself, contains MCT oil as well.

23 BY ATTORNEY CONRAD:

24 Q. Okay. Switching gears once more.

25 There were some questions that

1 you were asked about relating to the change of
2 the formula from sunflower oil to medium-chain
3 triglycerides.

4 Do you recall that?

5 A. I do.

6 Q. And one of the things that you
7 mentioned in your answers was something you
8 described as a flow-through.

9 Do you remember using those
10 words?

11 A. I do.

12 Q. What do you mean by "flow-through"?

13 A. I mean that in order to fix the
14 rancidity issue, we identified a formula change
15 was necessary. But we were really careful that
16 that formula change would not impact the
17 consumer experience.

18 We wanted to stay consistent to
19 what we were already doing in flow-through, so
20 not go through the process of potentially
21 having to justify to our retail customers that
22 it was a super-new item because that could, in
23 theory, indicate that they would have to
24 reaccept it or even put a new SKU or UPC to it.

25 We wanted it to be a very small

1 adjustment to improve it but not change it
2 entirely.

3 Q. With the change from sunflower oil to
4 MCT oil, did Mommy's Bliss's customers require
5 it to go through a whole new acceptance
6 process?

7 ATTORNEY ANDERSON: Object to
8 the form of the question. No foundation.

9 THE WITNESS: Thankfully, no.
10 BY ATTORNEY CONRAD:

11 Q. Was there a change required to the
12 SKU?

13 A. No.

14 Q. Are you aware of any consumer praise
15 that's specific to the change to MCT oil from
16 sunflower oil?

17 A. No.

18 ATTORNEY CONRAD: No further
19 questions.

20 ATTORNEY ANDERSON: I have just
21 a few.

22 - - -
23 E X A M I N A T I O N
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25

1 BY ATTORNEY ANDERSON:

2 Q. First off, are you aware that in
3 introducing the revised, reformulated product,
4 that you told -- that Mommy's Bliss told its
5 customers, its purchasers, that the new product
6 was made with MCT oil?

7 A. I'm aware that it was discussed that
8 we should look into that. I am not aware of
9 the specific conversation that was had.

10 Q. So you're just not aware whether
11 Mommy's Bliss disclosed to its customers that
12 it had changed the ingredients to MCT?

13 A. I am aware of a discussion that we
14 said we should ask them if this is a reason to
15 change the UPC.

16 Q. And did you ask them that, to your
17 knowledge?

18 A. I'm not fully -- I'm not aware of
19 that.

20 Q. You just don't know one way or the
21 other?

22 A. I don't know one way or the other.

23 Q. But the discussion internally at
24 Mommy's Bliss was that you should ask your
25 customers, correct?

1 A. Correct.

2 Q. Okay. And you said that you wanted
3 the change in the ingredients to flow
4 through -- do you recall that? -- and not
5 impact the consumer experience.

6 A. I don't recall that being my exact
7 words. I do recall the use of "flow-through,"
8 meaning, like, we want this to be a seamless
9 transition.

10 Q. Okay. Well, wouldn't curing or
11 fixing the rancidity problem obviously impact
12 the consumer experience because they would no
13 longer be buying product that would lead to
14 rancidity?

15 A. I'm not aware of us having very much
16 product that led to rancidity.

17 Q. That's not my question.

18 My question is:

19 Isn't it true that by
20 reformulating so that you solved your rancidity
21 problem, that was a positive impact for the
22 consumer experience?

23 A. I don't know if the consumer had an
24 experience of rancid product ever.

25 Q. Well, if you hadn't changed the

1 formula, they were going to have a rancid
2 product, weren't they?

3 ATTORNEY CONRAD: Objection.
4 Speculation.

5 THE WITNESS: We were aware of
6 the potential to go rancid given peroxide
7 value results, and so we wanted to avoid
8 that happening.

9 I am not aware of consumer
10 feedback that they had rancid vitamin D.

11 BY ATTORNEY ANDERSON:

12 Q. Well, you knew that it was enough of
13 a likely problem that you acted expeditiously
14 to change the formula so that you would not
15 have rancidity, correct?

16 A. Correct.

17 Q. And by the way, the exhibit that your
18 counsel showed you, Exhibit 1027, the
19 specifications, is that one of the documents
20 that you discussed in preparation for your
21 testimony here today?

22 A. I don't recall that, no.

23 Q. You just don't recall one way or the
24 other?

25 A. I don't think we did, no.

1 Q. Okay. Did you discuss Exhibit 28,
2 which is the PowerPoint?

3 I can show it to you again, if
4 you want.

5 A. Yes, we did.

6 Q. Okay. And with regard to Exhibit 28,
7 you were asked some questions about [REDACTED]

8 Do you see that?

9 A. Yes.

10 Q. And where it says "vitamin D," you
11 were asked about the ingredients.

12 Do you see that?

13 A. Yes.

14 Q. Okay. [REDACTED], however,
15 required four drops for its application,
16 correct?

17 A. Correct.

18 Q. By the way, what's your educational
19 background, ma'am?

20 A. I have a Bachelor's of Science in
21 agribusiness with a concentration in marketing.

22 Q. Okay. Do you have any education or
23 training in chemistry?

24 A. No. Work experience.

25 ATTORNEY ANDERSON: Thank you.

1 I have nothing further.

2 ATTORNEY CONRAD: Nothing
3 further here.

4 Thank you, Ms. Medina, for your
5 time.

6 THE WITNESS: Of course.

7 THE COURT STENOGRAPHER: And,
8 Mr. Conrad, would you like the same order
9 as Tuesday?

10 ATTORNEY CONRAD: Yes. Rough,
11 no expedite.

12

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14 (Whereupon, the deposition
15 was concluded at 4:55 p.m.)

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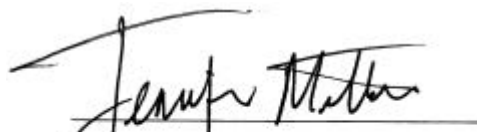
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1	ATTORNEY'S NOTES
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CERTIFICATE

I HEREBY CERTIFY that the
proceedings, evidence and objections are
contained fully and accurately in the
stenographic notes taken by me upon the
deposition of Stephanie Medina, taken on
February 1, 2024 and that this is
a true and correct transcript of same.



Jennifer Miller, RMR, CCR, CRR
and Notary Public

(The foregoing certification of
this transcript does not apply to any
reproduction of the same by any means
unless under the direct control and/or
supervision of the certifying reporter.)

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), the undersigned certifies that Patent Owners Exhibits 2023-2066 are being served on February 8, 2024, by filing Patent Owners Exhibits 2023-2066 through the Patent Trial and Appeal Case Tracking System (P-TACTS) and by electronic mail as directed by Petitioner upon the following counsel of record for Petitioners:

David B. Conrad
Lance E. Wyatt
Sarika Patel
Casey Kraning
Fish and Richardson P.C.
To: IPR53953-0001IP1@fr.com

/Mark E Ungerman/
Mark E. Ungerman
(Reg. No. 32,070)