



March 12, 2010

Mr. David Vladeck, Director  
Bureau of Consumer Protection  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

Dear Mr. Vladeck,

We appreciate the important role the Federal Trade Commission plays in preventing deceptive business practices and the renewed focus on deceptive green advertising enforcement. We would like to take this opportunity to request that the Commission investigate the widespread, misleading use of “organic” claims on personal care products.

Consumers Union of the United States, the non-profit publisher of *Consumer Reports*, and the Organic Consumers Association (OCA) have been tracking the development of the U.S. Department of Agriculture’s (USDA) National Organic Program (NOP) and standards since its inception in 2002, and we have been educating consumers about which organic claims on which products are most meaningful and which are not. We have also testified to the National Organic Standards Board (NOSB) on several occasions regarding misuse of organic claims on product sectors and have repeatedly urged the USDA to prevent egregious uses of organic claims, especially on product areas they selected to include in their scope, which includes personal care products.

In particular, we have repeatedly asked the USDA to require that “organic” personal care products meet the same standards as “organic” food and to prohibit any use of the organic claim on products that don’t meet the requirements of the NOP, such as seafood, fish and the subject of this particular complaint, personal care products. The USDA is superimposing a different labeling structure for “organic” personal care products and one that deviates from that required by the NOP. As a result, an extremely confusing marketplace exists for consumers shopping for “organic” personal care products.

The USDA has recently required that all personal care products carrying a “USDA-organic” seal be required to meet the same NOP standards for “organic” food. However, USDA is not requiring that all “organic” claims on personal care products, including those that do *not* bear the “USDA-organic” seal, be NOP compliant, which *is* required for food. We believe that the USDA does have statutory authority to take enforcement actions against “organic” claims that are not in accordance with the Organic Foods Production Act 1990 (OFPA)<sup>1</sup>, as outlined in the following sections:

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<sup>1</sup> <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5060370&acct=nopgeninfo>

Section 2102 (2) [7 USC 6501] states one of the purposes of the Act to be, “to assure consumers that organically produced products meet a consistent standard.”

Section 2106 (A) and (B) [7 USC 6505] states under compliance requirements that “a person may sell or label an agricultural product as organically produced *only* if such product is produced and handled in accordance with this title” and “no person may affix a label to, or provide other market information concerning, an agricultural product if such label or information implies, directly or indirectly, that such product is produced and handled using organic methods, except in accordance with this title.”

We believe the law to indicate that *any* organic claim (not just those labeled “USDA-organic”) on a personal care product should have to comply with the NOP. The use of the USDA-organic seal is optional for all products, but any food making an organic claim on the front of the product (either with or without the USDA-organic seal) must comply with the NOP. This same requirement for foods making an organic claim should also apply to personal care products. The current inconsistency among organic claims on personal care products is incongruent with the purpose of the program, outlined in Section 2102 (above) of OFPA and could easily lead consumers to be confused, misled or deceived. In fact, in November 2009, the multi-stakeholder NOSB, responsible for advising the USDA’s NOP, overwhelmingly passed a recommendation to the USDA’s NOP for rulemaking which reflects its understanding of USDA/NOP’s obligation in regulating personal care products:

“The USDA is responsible for product organic claims but is not currently enforcing this in the area of personal care products. Consumers are not assured that organic claims are consistently reviewed and applied to the class of products known as personal care products. For instance, at a given retailer, one may find personal care products such as shampoos and lotions labeled as ‘organic’ with no clear standards or regulatory underpinning for the organic claim—and unless the product is specifically labeled as ‘USDA Organic,’ the word ‘organic’ may be used with impunity. Manufacturers of personal care products that contain organic ingredients are hindered by a thicket of competing private standards and confusion regarding the applicability of the NOP to their products. Transactions lack the regulatory clarity that applies under the NOP to food products that contain organic ingredients.”<sup>2</sup>

While the USDA has taken some important steps over the last two years that ensure personal care products that carry the “USDA-organic” seal *do* meet the requirements of the NOP, the market is still flooded with organic claims that are not labeled “USDA-

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<sup>2</sup> Final Recommendation on Cosmetics November 2009, <http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateN&navID=NationalOrganicProgram&leftNav=NationalOrganicProgram&page=NOSBFinalRecommendations&description=NO SB%20Final%20Recommendations>

organic” and therefore not required to be compliant with the NOP. The USDA has declined to take enforcement action against companies who are making organic claims that are not compliant with the NOP.

In response to OCA members’ letters urging the USDA to address organic fraud in the personal care products sector, a USDA Agricultural Marketing Service official replied, on behalf of Deputy Secretary Kathleen Merrigan:

“The USDA regulates organic personal care products only if they are made up of agricultural ingredients. We have no standards for personal care products and have no plans to develop standards at this time.”<sup>3</sup>

The review of non-agricultural ingredients is mandatory for processed foods, which enables the whole product to be certified, not simply the agricultural ingredients. Specific sections of the regulation (governing the National List of approved and prohibited substances, discussed further below) require review and approval of non-agricultural ingredients used in organic processed food—we believe the same regulatory framework already exists for certifying “organic” personal care products to the same rigor as processed food.

At the last NOSB meeting in November 2009, when the NOSB passed its recommendation, “Solving the Problem of Mislabeled Organic Personal Care Products,” NOP director Miles McEvoy agreed that this was an important issue but indicated it was “not on the top 10” list of matters slated for USDA attention. The full transcript of the meeting is available online.<sup>4</sup>

We are therefore respectfully submitting this petition to the FTC to investigate and address the underlying causes that allow for the unfair and deceptive practices that exist in the labeling of “organic” personal care products. We believe this constitutes a violation of section 5 of the Federal Trade Commission Act. “Organic” personal care products vary widely in meaning and truthfulness and at times, are simply deceiving. The lack of one meaningful, consistent standard has resulted in many companies, and certification services providing many definitions of “organic” personal care products.

The OFPA and NOP require that organic products contain minimal synthetic ingredients. When synthetic ingredients are used, it is expected and required that they be reviewed and approved by the NOSB and placed on the National List. Section 2118 (a) [7 USC

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<sup>3</sup> E-mail communication from Demaris Wilson to Alexis Baden-Mayer, July 20, 2009. Posted online at [http://www.organicconsumers.org/articles/article\\_19121.cfm](http://www.organicconsumers.org/articles/article_19121.cfm)

<sup>4</sup> <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5081269&acct=nosb>

6517] of the OFPA, under the National List states that, “the Secretary shall establish a National List of approved and prohibited substances that shall be included in the standards for organic production and handling established under this title in order for such products to be sold or labeled as organically produced under this title.” Personal care products tend to contain many synthetic ingredients, and many consumers are willing to pay more to buy “organic” personal care products in order to avoid these synthetic ingredients. Those producers who can meet the “USDA-organic” standards are adding measurable value to their products whereas as those who don’t (but still make organic claims) may not be adding any; but both producers may be reaping profits from consumers just the same.

Organic personal care products that are not compliant with the NOP can contain many petroleum-derived ingredients, conventional agricultural ingredients (those that have been treated with pesticides, etc), preservatives, colorings and fragrances which may use or contain chemicals of concern in the production or final product. For example, phthalates, some of which have been banned by the Consumer Product Safety Commission in children’s products for reproductive health effect concerns, may be lurking in many of the fragrances that could be used in organic personal care products. Parabens, EDTA, PEGs, coal tar colors (FD&C), ethanolamines—are just a few examples of synthetic materials that should certainly be reviewed and approved before being used in an organic personal care product. We believe many of those materials would not be approved after review by the NOSB. Finally, water and salt are required to be exempt from organic certification and the final calculation of organic content in a given product. However, we have noted several cases where “organic waters” are listed on ingredient panels. This would not be allowed for “organic” food and should not be allowed for “organic” personal care products. These so-called “organic” products can mislead and deceive consumers into paying more for something they did not expect.

There are four tiers of organic labeling regulated by the USDA’s NOP; each of the four tiers has specific requirements, which are summarized below. The chart below also contains a comparison between food and personal care products in order to outline specific inconsistencies.

| Label Definitions (summarized from NOP)      |                       | NOP Requirements for Food (except seafood and fish)  | NOP Requirements for Personal Care Products  |
|--|-----------------------|--|--|
| “100% organic”                               | 100% organic          | USDA seal optional but all products making an “organic” claim must be NOP compliant<br><br>Non-NOP compliant claims <b>are not allowed</b>   | Only USDA seal means NOP compliance<br><br>Non-NOP compliant claims <b>are allowed</b>   |
| “Organic”                                    | At least 95% organic  | USDA seal optional but all products making an “organic” claim must be NOP compliant<br><br>Up to 5% non organic portion must follow the NOP’s National List of approved and prohibited substances<br><br>Non-NOP compliant claims <b>are not allowed and is enforced by USDA.*</b>       | Only USDA seal means NOP compliance<br><br>Up to 5% non-organic portion only has to follow NOP’s National List for products with a “USDA organic” seal<br><br>Non-NOP compliant, organic claims <b>are allowed and not regulated by USDA.*</b> Minimum organic percentage (95%) and maximum non-organic portion (5%) is not required*  |
| “Made with organic”                          | At least 70% organic  | USDA seal not allowed but all products making an “organic” claim must be NOP compliant*<br><br>Up to 30% non-organic portion must follow the NOP’s National List of approved and prohibited substances*<br><br>Non-NOP compliant claims <b>are not allowed and is enforced by USDA.*</b> | Any personal care product with less than 95% organic ingredients does not have to comply with NOP and can make an organic claim on the front of package*<br><br>No maximum limit for non-organic portion and does not have to follow the NOP’s National List of approved and prohibited substances*<br><br>Non-NOP compliant, organic claims <b>are allowed and not regulated by USDA.*</b> Minimum organic percentage (70%) and maximum non-organic portion (30%) is not required |
| No organic claim allowed on front of package | Less than 70% organic | USDA seal not allowed on products that make an “organic” claim on front of product would be subject to USDA enforcement*   | Can make an organic claim or organic brand name on front of product, even with minimal or no organic content in product and not subject to USDA enforcement*   |

\*Denotes points of inconsistency between organic standards for food and personal care products.

In the absence of USDA enforcement against unsubstantiated organic claims, the cosmetics industry has launched competing “organic” certifications. There are several different industry-based organic certification programs including Organic and Sustainable Industry Standards (OASIS), National Sanitation Foundation (NSF) International certification, and another mark called ECOCERT, which only add to the marketplace confusion. While we appreciate industry efforts to standardize the meaning of claims used on products, it is entirely inappropriate for industry to be defining the meaning of “organic” since the meaning of that word, especially for products that fall under the scope of the independent NOP, must adhere to the requirements outlined in the OFPA and NOP. Section 2120 (a) [7 USC 6519] of the OFPA, under “Violations of title,” states, “Misuse of label—Any person who knowingly sells or labels a product as organic, except in accordance with this title, shall be subject to a civil penalty of not more than \$10,000.” These types of industry initiatives do not—and should not—be allowed to define “organic.”

Marketing activities of these industry groups only result in additional confusing messages to consumers about what organic means, what the USDA role is in organic certification of personal care products, and what is available to consumers. For example, OASIS claims to be “the first organic standard for the U.S. beauty and personal care market, bringing clarity to consumer confusion around organic product claims—with a certification seal that will become the internationally accepted seal representing verified Organic standards for personal care. The only ‘industry consensus’ standard with the support of 30 founding members.”<sup>5</sup>

Even though there are many certified USDA Organic personal care brands and products, OASIS tells consumers:

“Until today, the USA has not had a dedicated organic standard for the beauty and personal care industry. In absence of a true industry standard, companies attempted to apply the USDA NOP (National Organic Program) Organic *food* standard for beauty and personal care ingredients and products. But the USDA’s food standards were never designed for this industry, and limit certain types of ‘green chemistry’ posing significant challenges for those seeking to create certified organic products.”

NSF International claims to have “the first and only American National Standard that allows labeling and marketing requirements for personal care products that contain organic ingredients.”<sup>6</sup> In addition, many products marketed in the U.S. claim to be “certified organic” by ECOCERT®. For example, “Organic wear® 100% Natural Origin Makeup” tells consumers:

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<sup>5</sup> OASIS, “Promoting Organic Sustainable Industry Standards,” accessed at <http://www.organicseal.org> on March 11, 2010.

<sup>6</sup> NSF, “NSF’s New ‘Contains Organic Ingredients’ Standards for Personal Care Products Containing Adopted as American National Standard,” accessed at [http://www.nsf.org/business/newsroom/articles/0903\\_n3\\_nsf305.asp](http://www.nsf.org/business/newsroom/articles/0903_n3_nsf305.asp) on March 11, 2010.

“To ensure that Organic wear® holds the highest of eco-standards, most Organic wear® products are ECOCERT® certified organic. ECOCERT® is an internationally recognized organic certification that guarantees the genuine practice of environmental respect throughout the formulation and manufacturing of the product. The certification ensures that 100% of the total ingredients are of a natural origin. ECOCERT® is the leading European authority on organic certification, and the standards used by prestige organic brands.”

In response to the question, “What is the difference between ECOCERT® and the USDA?” Organic wear® tells consumers:

“ECOCERT® is the only organic certification for color cosmetics. USDA guidelines are for food products and they have no jurisdiction over color cosmetics.”

**Examples of non-NOP compliant “organic” personal care products**

Due to the pervasiveness of the problems with organic certification for personal care products, we are providing the following products as examples of the problems outlined in this petition. The following list represents only a handful of misleading “organic” personal care products on the market and is not an exhaustive list. It is useful, however, to illustrate the use of practices that would not be allowed for “organic” food.

1. Organic Bite Blocker Xtreme

<http://www.homs.com>

ACTIVE: Soybean oil (3%) (CAS # 008001-22-7), Geranium oil (6%) (CAS # 8000-46-2), Castor oil (8%) (CAS # 9083-41-4)

Other ingredients: Water, Demineralized, Coconut oil, Glycerin, Citric acid, Lecithin, Sodium bicarbonate, Wintergreen oil

**Exemplary of following problems with so-called organic personal care products: no organic ingredients but organic claim on front of product.**

2. The Organic Bath Company, Bubble Bath Petals, Lavender Vanilla

<http://www.freshorganicliving.com/index.php/18-bath-a-body/8-family-bath-a-body/38-bubble-bath-petals-lavender-vanilla>

Ingredients:

alpha olefin sulfonate (plant derived), corn starch, decyl glucoside (plant derived), certified organic white tea extract, Vitamin E (d-alpha tocopherol), vegetable glycerin, cocoamidopropyl betaine (plant derived), beet extract, algae extract, certified organic lavender extract, vanilla extract, botanical fragrance, glucose oxidase (natural preservative), lactoperoxidase (natural preservative)

**Exemplary of following problems with so-called organic personal care products:** use of conventional, non-organic, agricultural materials, unclear if product is less than 70% organic (foods would not be able to make an organic claim on front), synthetic ingredients (which would not be allowed for foods unless reviewed and approved by NOSB).

3. Nature's Gate Organics Body Lotion, Grapefruit and Wild Ginger Antioxidant Defense Lotion for All Skin Types

<http://www.natures-gate.com/shop/showitem.asp?ProductId=45676537&menuId=208&withLinks=1>

Ingredients:

Water, Pelargonium Graveolens (Rose Geranium) Flower/Leaf/Stem Extract\*, Salvia Sclarea (Clary) Flower/Leaf/Stem Extract\*, Helianthus Annuus (Sunflower) Seed Oil, Caprylic/Capric Triglyceride, Glycerin, Glyceryl Stearate, **PEG-100 Stearate**, Simmondsia Chinensis (Jojoba) Seed Oil\*, Prunus Armeniaca (Apricot) Kernel Seed Oil, Sorbitan Stearate, Stearic Acid, Dimethicone, Zingiber Officinale (Ginger) Root Extract\*, Citrus Grandis (Grapefruit) Peel Extract\*, Vaccinium Macrocarpon (Cranberry) Fruit Extract\*, Actinidia Arguta (Kiwi) Fruit Extract\*, Citrus Aurantium Dulcis (Orange) Peel Extract\*, Euterpe Oleracea (Acai) Fruit Oil\*, Punica Granatum (Pomegranate) Fruit Extract\*, Passiflora Incarnata (Passion flower) Flower Extract\*, Helianthus Annuus (Sunflower) Seed Extract\*, Aloe Barbadosensis Leaf Extract\*, Eugenia Caryophyllus (Clove) Flower Extract\*, Centella Asiatica (Gotu Kola) Extract\*, Echinacea Angustifolia Extract\*, Cymbopogon Schoenanthus (Lemongrass) Extract\*, Symphytum Officinale (Comfrey) Leaf Extract, Sodium Hyaluronate, Panthenol, Sodium PCA, Wheat Amino Acids, Cetearyl Alcohol, Squalane, Cetearth-20, Myristyl Myristate, Carbomer, Myristyl Laurate, Saccharide Isomerate, Ascorbyl Palmitate, Tromethamine, Cetyl Alcohol, Tocopherol Acetate, **Polysorbate 60, Disodium EDTA**, Hydroxyproline, Alcohol, Ethylhexylglycerin, Glyceryl Undecylenate, **Phenoxyethanol, Fragrance**  
\*Certified Organic

**Exemplary of following problems with so-called organic personal care products:** several synthetic ingredients, conventional agricultural ingredients.

4. Nature's Gate Organics, Lucky Bronzer

<http://www.natures-gate.com/shop/showitem.asp?ProductId=43930011>

Water, Cetearyl Ethylhexanoate, Cyclopentasiloxane, Cyclohexasiloxane, Glycerin, Steareth-21, Borago Officinalis (Borage) Seed Oil, Borago Officinalis (Borage) Seed Extract (1), Sambucus Nigra (Elder) Fruit Extract (1), Hibiscus Rosa-Sinensis Extract (1), Rhodymenia Palmata (Dulse) Extract (1), Dimethicone, Corn Starch Modified, Stearoxymethylsilane, Babassuamidopropalkonium, Chloride, Bisabolol, Acrylates/C10-30 Alkyl Acrylate Crosspolymer, Stearyl Alcohol, Tromethamine, Fragrance, Butylene Glycol, Mica, Titanium Dioxide, Iron Oxides

(1) Certified Organic by Quality Assurance International



- (2) Certified Organic by International Aloe Science Council
- (3) Certified Organic by Oregon Tilth

**Exemplary of following problems with so-called organic personal care products:**  
unclear if it exceeds 70% organic minimum content required for food to claim organic, several synthetic ingredients, conventional agricultural ingredients.

5. Avalon Organics, Lemon Clarifying Shampoo  
<http://www.avalonorganics.com/?id=88&pid=27>

**Ingredients**

Purified water, cocamidopropyl betaine, disodium cocoamphodiacetate, sodium cocoyl sarcosinate, coconut acid, babassuamidopropalkonium chloride, organic citrus limonum (lemon) peel(1), calendula officinalis (calendula) flower(1) and chamomilla recutita (chamomile) flower(2) extracts, butyrospermum parkii (shea butter), vegetable glycerin, bisabolol (chamomile), ethylhexylglycerin, arginine (amino acid), panthenol (pro-vitamin B5), tocopherol (vitamin E), organic citrus medica limonum (lemon) peel oil(1) and other essential oils

- 1) Certified by Quality Assurance International
- 2) Certified by BCS Öko-Garantie

**Exemplary of following problems with so-called organic personal care products:**  
unclear if it exceeds 70% organic minimum content required for food to claim organic, several synthetic ingredients, conventional agricultural ingredients.

## Conclusion

We respectfully request that the FTC consider the following steps:

- Investigate specific examples of misleading or deceptive uses of the “organic” claims on personal care products;
- Consider a memorandum of understanding (MOU) or other means of working with the USDA to prevent deceptive uses of the “organic” claim; and
- Prohibit or ban non-NOP compliant “organic” claims from use in the marketplace, and consider including such recommendations when updating FTC’s Environmental Marketing Guides.

We would welcome the opportunity to meet with you to discuss misleading “organic” labeling and thank you for consideration of this petition.

Respectfully submitted,

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cc: Miles McEvoy, Director, National Organic Program