



# Organic Consumers Association

*Campaigning for Food Safety, Organic Agriculture, Fair Trade and Sustainability.*

## **Generic Cease and Desist Letter Sent to Certain Companies Engaged in Organic Misbranding from OCA and Dr. Bronner's March 14, 2008**

We are writing on behalf of our clients, All One God Faith, Inc. d/b/a Dr. Bronner's Magic Soaps, of Escondido, California ("Dr. Bronner's") and the Organic Consumers Association of Little Marais, Minnesota ("OCA"), with respect to the labeling and advertising of products sold by your company. As explained in more detail below, it has come to the attention of our clients that, over a considerable period of time, these products have been sold and advertised as "Organic" or "Organics" but are not in fact "Organic" or "Made with Organic" as is understood by reasonable consumers. In particular, your company's liquid soaps, bodywashes and shampoos are made with cleansing ingredients that include petrochemical compounds and contain no certified organic material. For that reason, it appears that your company's continued sale and advertisement of these products as "Organic" or "Organics" constitutes an unfair and unlawful business practice and false and deceptive advertising within the meaning of the California Bus. & Prof. Code §17200.

### **Consumer Expectations:**

Based on survey research and other information, it is clear that a reasonable consumer of a personal care product labeled as "Organic," "Organics" or "Made with Organic" would expect, at a minimum, that the product's ingredients are free of petrochemical compounds and that the major cleansing ingredients in a soap, bodywash or shampoo product are made from certified organic materials rather than materials derived from conventional non-organic agriculture.

"Dr. Bronner's Magic Soaps" liquid soaps labeled as "Made with Organic Oils", are all certified and labeled in accordance with the requirements of the USDA National Organic Program ("NOP"); all of the all cleansing ingredients in these products are made from organic material and are free of petrochemicals.

By contrast, as explained in detail below, your company's products labeled as "Organic" or "Organics" are made with cleansing ingredients that both include petrochemicals and contain no organic (as distinct from conventional) agricultural material, preserved with synthetic petrochemical preservatives. Organic consumers seek cleansing ingredients in personal care soaps and bodywashes, that are made from organic versus conventional agricultural material, produced without synthetic fertilizers, herbicides and/or pesticides, and such ingredients should obviously also be free of

petrochemical compounds. For this and other reasons, not only do your company's products fail to meet the requirements of the USDA NOP program for labeling as "Organic" or "Made with Organic," those products do not even comply with the labeling standards of the new much more permissive and misleading Organic and Sustainable Industry Standard ("OASIS"), issued by the trade group of the same name.

For these reasons, as set forth below, the labeling of your company's products has misled consumers, and continues to mislead consumers, into purchasing your company's products in the mistaken belief that those products are at least "Made with Organic" ingredients in not containing petrochemical compounds or major cleansing ingredients made from non-organic agriculture. Many of those consumers, but for the misleading labeling of your company's products, would purchase the products of our client Dr. Bronner's instead. Our client has thus been injured, and continues to be injured, by the misleading labeling of the product lines referenced above. Further, the consumers represented by our client OCA have been injured by being misled into purchasing products whose major cleansing ingredients they reasonably believed were based on organic agriculture and free of petrochemical compounds but in fact are not. Those consumers have as a result used personal care products that, if they had not been so misled, they never would have purchased or used.

### **Legal Background**

The federal Organic Food Products Act of 1990, 7 U.S.C. §§6501 et seq. requires the U.S. Department of Agriculture ("USDA") to implement a National Organic program ("NOP") providing for establishment and enforcement of standards for labeling of agricultural and food products as "organic." Pursuant to this authority, USDA has issued regulations establishing standards for growing and raising organic agricultural products, 7 C.F.R. Part 205, Subpart C, and governing use of the terms "organic" with regard to agricultural and food products. *Id.* Subpart D.

Under the USDA regulations, a processed agricultural product sold or labeled as "Organic" must "contain (by weight or fluid volume, excluding water and salt), not less than 95% organically produced raw or processed agricultural products. Any remaining product ingredients must be organically produced," in accordance with standards set forth in the regulations, "unless not commercially available in organic form, or must be nonagricultural substances or nonorganically produced" products produced consistent with the regulatory standards. The few such non-organic substances are specifically listed in the regulations; any non-organic substance or synthetic, other than those listed, is not permitted to be included in an "Organic" product. 7 C.F.R. §205.301(b). Such products may be labeled "Organic;" and the term "Organic" can modify the name of the product, *i.e.*, be in letters as large as the name of the product itself. 7 C.F.R. §205.303(a). The term "Organic" may be used on labels *only* in accordance with these rules. *Id.* §205.200.

The USDA regulations then provide for another, separate category of products, at least 70% of the contents of which consist of certified organic ingredients; the remaining 30% of the contents can consist of conventional non-organic agricultural ingredients free

of synthetic petrochemical compounds. 7 C.F.R. §205.301(c). Such products are referred to as “Made with Organic” products. Under the USDA regulations, such products may not be labeled “Organic”; rather, they may only be labeled, on the principal display panel, as “Made with organic [specified ingredients]” or “Made with organic [specified food groups].” 7 C.F.R. §205.304(a)(1). Further, the “Made with organic” statement must appear in letters that do not exceed one-half the size of the largest type size on the panel and which appear in its entirety in the same type size, style and color without highlighting. *Id.* §205.304(a)(1)(iii). Dr. Bronner’s primary business of liquid and bar soaps, the top-selling natural brand in North America, are certified to this “Made with Organic” level and display such a claim. Our survey of organic consumers indicates that Dr. Bronner’s certified USDA “Made with Organic” claim, which ensures cleansing ingredients are made entirely from certified organic material, is perceived as a weaker organic claim than an “Organics” or “Organic” labeling claim.

In a statement dated August 23, 2005, USDA clarified that body care and cosmetic products that meet the NOP requirements may be labeled in accordance with the NOP regulations. Body care products that do not meet such requirements cannot legally be so labeled. Multi-ingredient cosmetic products sold as organic in California with less than 70 percent organically produced ingredients, by weight or fluid volume, excluding water and salt, may only identify the organic content by identifying each organically produced ingredient in the ingredient statement with the word “organic” or with an asterisk or other reference mark that is defined to indicate the ingredient is organically produced. Cal. Health & Safety Code §110839.

### **Efforts to Institute Voluntary Industry Standards for “Made with Organic” Personal Care**

Over the past four years, Dr. Bronner’s, together with the Organic Consumers Association, participated in good faith in efforts to establish any additional guidelines or allowances appropriate and specific to “Made with Organic” personal care through an NSF International-American National Standards Institute (ANSI) standards development process. This effort was similar to those undertaken to develop standards recommendations for organic pet foods and supplements to the USDA. That NSF process to establish standards and allowances for labeling personal care products as “Made with Organic” has extended over several years, with its origins in the Organic Trade Association’s Personal Care Task Force. In the course of this standards development process, consumers of organic products were represented and while representatives of consumer interests were outnumbered by industry representatives, the overall decision-making process has been in accordance with ANSI requirements.

While ensuring the baseline requirement that no petrochemical compounds be utilized in ingredients, the standard developed through this process would provide additional allowances for “Made with Organic” product claims in personal care, in keeping with the USDA/NOP model and the precedent of making additional allowances in the “Made with Organic” category.

During the NSF/ANSI process, it was determined that the category of products that would be permitted under the NSF/ANSI standard to be labeled as “Organic,” would remain fully identical to the category of such products that would be permitted to be so labeled under the USDA rules. Numerous soap, lotion and balm products have been introduced and certified under the USDA NOP standards. For that reason, by a large majority vote, the NSF Personal Care Group voted that personal care products should be allowed to be labeled as “Organic” only if they meet the existing USDA NOP “Organic” standards, and that a new NSF/ANSI standard should be promulgated only for personal care products to be labeled as “Made with Organic.” Representatives of Whole Foods, the Organic Trade Association and from the Organic Consumers Association participated in that decision and voted in the affirmative.

### **Personal Care Products Under the NOP and Emerging NSF Standards**

Organic integrity in personal care means an organic product is composed of certified organic ingredients produced with minimal processing in compliance with the NOP, which ensures the integrity of organic foods as well. Personal care products truthfully labeled as “Organic” are certified under the USDA National Organic Program and do not utilize synthetic petrochemical preservatives. They make use of natural unrefined oils and waxes, rather than hydrogenated fatty alcohols, oils and synthetic silicones, as emollients and moisturizers. Traditional natural simple soaps are used in hand and body washes, instead of modern synthetic surfactants usually made in part with petrochemicals.

The truthful labeling of a product as “Organic” leaves absolutely no room for hydrogenation of organic oils, sulfation of fatty alcohols from oils, synthetic petrochemical preservatives and the like. Petrochemical compounds obviously cannot be part of ingredients in “Organic” products.

More specifically, with respect to personal care products, it is clear that the labeling of a product as outright “Organic” is understood by reasonable consumers to mean that the product is made from more than 95% organic material and could be certified under the federal NOP. The labeling of a product as “Organics” (plural), while not technically conveying full compliance with the NOP “Organic” standards, is understood by reasonable consumers as meaning that the product complies at least with the requirements for labeling as “made with Organic” under the NOP or emerging NSF standard, specifically that primary cleansing ingredients are free of petrochemicals and are made from certified organic materials as distinct from materials derived through conventional agricultural methods. Certainly, the ingredients should be free of non-renewable petrochemical compounds, and in the case of a personal cleansing product, the primary cleansing ingredients should be made from organic agricultural material. A reasonable organic consumer would expect that products, the labeling of which includes any form of “Organic” claim, will be free, at a minimum, from ingredients including petrochemical compounds.

In the view of our clients, an outright “Organic” claim necessarily implies only very limited processing of organic agricultural material, and the NOP synthetic

allowances are generally for simple single-step “kitchen chemistry” processing. For example, calcium sulfate is allowed under the NOP, and is used to make tofu out of soybeans. Similarly, making soap with NOP-permissible alkali has been allowed under the USDA NOP ever since the USDA’s original regulations were promulgated. That is because soap-making is, indeed, more similar to making tofu than it is to modern detergent synthesis, in which even relatively ecological plant-based surfactants are much more process- and input-intensive. No non-soap surfactant can be produced in a kitchen, and in the factories where they are made, very little so far have been produced from organic material owing to the intensive hydrogenation reaction necessary to make fatty alcohols, the basic sub-ingredient needed for most modern plant-based surfactants. The categorical and historical difference between traditional simple soap-making versus modern process-intensive detergent manufacture, is reflected in the exemption of soap from the FDA regulation of cosmetics. Soap has and continues to be made from organic oils in very simple home kitchen-style operations as well as in factories, and there are numerous boutique home soap-crafters. The back-to-nature soap-crafter movement of the last few decades parallels the general organic movement as a whole that has rejected modern process/synthetic-intensive agriculture, food and personal care.

However, in terms of the more permissive standard for “Made with Organic” labeling under NSF, there is a significant difference between use, in a personal care product, of cleansers that are based on renewable plant-based certified organic resources without petroleum compounds, and use of cleansers which are made in part or entirely from petroleum compounds. Thus, while processes such as hydrogenation and sulfation should not be used at any stage of the manufacture of personal care products bearing an “Organic” label, they do not utilize carbon compounds from petroleum and thus could be used to modify organic agricultural material in the manufacture of cleansing ingredients for personal care products labeled as “Made with Organic.”

Under the emerging NSF standard, the “Made with Organic” claim serves the consumer’s interest in accurate and truthful labeling in that it requires the utilization of certified organic versus conventional agricultural material in these more intensive processes that produce primary cleansing ingredients, but disallows an outright “Organic” claim given an organic consumer expects that processes like sulfation and hydrogenation will not be used in any way in producing cleansing ingredients for outright “Organic” products. The NSF standard creates an incentive for use of organic material in the more intensive processes otherwise allowed, through a requirement that once a given processed ingredient is made from organic material, only the organic form of the ingredient can be used by certified companies using that ingredient, not the conventional form.

Such flexibility for a temporary allowance for conventional forms, until organic forms of major ingredients become available, can only exist with respect to the more permissive “Made with Organic” standard. No outright “Organic” claim should be permitted if there are any major ingredients that are non-organic. The NSF “Made with Organic” standard in particular allows use of the processes that yield the modern cosmetic chemistry building blocks of glycerin, fatty alcohol and fatty acid and also allows for more complicated additional processing (eg. sulfation) into modern plant-based synthetic surfactants, emulsifiers and emollients that are also allowed under the

NSF standard. The NSF standard further allows use of various synthetic preservatives that do not have significant toxicity issues. Thus, an NSF certified “Shampoo Made with Organic Coconut Oil” could include Sodium Coco Sulfate, Coco Glucoside, Cetyl Alcohol, and Benzyl Alcohol.

The emerging NSF standard then, will allow personal care products labeled as “Made with Organic” to include process-intensive plant-based surfactants, hydrogenated oils and the like, that are made from certified organic material without any petroleum compounds. But such ingredients cannot be used in a product labeled “Organic,” since it is the fundamental expectation of consumers that “Organic” personal care products will be free of highly processed hydrogenated or sulfated ingredients, or preserved with synthetic preservatives. And in no event should the cleansing ingredients of any personal care product labeled as either “Organic”, “Organics” or “Made with Organic” contain any petrochemical compounds. The NOP “Organic” and emerging more permissive NSF “Made with Organic” standards for personal care thus will ideally complement and not conflict with each other, enabling a clear distinction to be made by consumers between “Organic” and “Made with Organic” personal care.

Unfortunately, the NSF/ANSI process is threatened with the issuance of a new and misleading standard developed by industry with no consumer input, namely, the OASIS standard, issued in early March 2008.

Through OASIS, certain members of the industry are attempting to conflate the more permissive NSF “Made with Organic” standard with the much more rigorous and strict USDA NOP “Organic” standard. While the OASIS standard does forbid petrochemical compounds in cleansing ingredients, the OASIS standard allows a product to be labeled outright as “Organic” (rather than “Made with Organic”) even if it contains hydrogenated and sulfated cleansing ingredients made from conventional instead of organic agricultural material, and preserved with synthetic petrochemicals, making the standard not merely useless but affirmatively misleading to consumers looking for a reliable indicator of truly “Organic” product integrity in personal care. Organic consumers of outright “Organic” products expect such products to be minimally processed, with no sulfation or hydrogenation, with no synthetic preservation, and the cleansing ingredients made from organic not conventional agricultural material.

### **Dr. Bronner’s Products**

As you know, Dr. Bronner’s manufactures and sells, in California and throughout the U.S., personal care and cosmetic products including the nation’s top-selling natural brand of liquid and bar soap in a number of varieties under the brand “Dr. Bronner’s Magic Soaps,” and lotions, hair rinses, shaving gels and balms under the brand, “Dr. Bronner’s Magic.”

In July 2003, a USDA-accredited certifying agent, Oregon Tilth Certified Organic, certified Dr. Bronner’s as an organic operation with respect to nine specific bar soap products and six specific liquid soap products. Dr. Bronner’s liquid and bar soaps, in general, comply with the USDA requirements for labeling a product as “Made with

Organic,” and thus carry such a label on the front panel, not exceeding 50% of the type size of the largest font otherwise appearing on the label.

In manufacturing these products, Dr. Bronner’s uses certified organic oils to make all cleansing ingredients, without conventional agricultural material or petrochemicals, or any petrochemical preservatives. For example, the ingredients in Dr. Bronner’s “Eucalyptus Pure-Castile Soap Made with Organic Oils” are the following:

Water, Saponified Organic Fair Trade Coconut Oil, Saponified Organic Fair Trade Olive Oil, Organic Glycerin, Organic Hemp Seed Oil, Organic Simmondsia Chinensis (Jojoba) Seed Oil, Organic Eucalyptus Globulus Oil, Citric Acid, Tocopherol

Dr. Bronner’s has also introduced a line of organic lip balms, body balms and lotions, and more recently shaving gels and organic hair care products in the form of a conditioning rinse and leave-in conditioner, all of which are certified as meeting the requirements of the NOP for being labeled as “organic.” These products are properly labeled and marketed as “Organic.”

### **Your Company’s Products**

Your company manufactures and sells personal care products that are labeled and advertised as “Organic” or “Organics”. Our clients contend that this labeling is fundamentally false, deceptive and misleading to consumers. The principal basis for this contention is that the primary cleansing ingredients of your liquid soaps, bodywashes and shampoos contain no certified organic material and do contain various petrochemical compounds combined with conventional agriculture compounds. These products do not meet the NOP standard or the emerging NSF standard, or even the recently promulgated OASIS standard for being labeled even as “Made with Organic.”

As noted above, consumers assume and expect that products labeled “Organic”, “Organics” or “Made with Organic” will include cleansing ingredients that are made from certified organic material free from petrochemical compounds. Your products’ primary cleansing ingredients, however, consist in part of petrochemical compounds that, as explained above, would not be allowed either under the NOP or NSF standards or even the very permissive OASIS standard.

As noted, these cleansing ingredients include such substances as [Olefin Sulfonate OR Cocoamidopropyl Betaine OR Sodium Myreth Sulfate AND/OR Whatever depending on company], made in significant part made with petrochemicals (e.g., Ethylene Oxide and Amidopropyl Betaine). None of these highly processed cleansers are made with organic materials. A particularly egregious violation of organic integrity is the practice of ethoxylating ingredients with the petrochemical ethylene oxide [some not other companies]. No reasonable consumer would expect that such ingredients would be included in any personal care product labeled “Organic” in any way. Cocamidopropyl Betaine, is made with petrochemical compounds.

For that reason, your company's products do not comply even with the very permissive OASIS industry standard, which at least forbids use of petrochemical compounds in cleansing ingredients.

Your company's liquid soaps, bodywashes and shampoos also do not comply with Whole Foods' new March 2008 "Premium Standard" that attempts to restrict the use of petrochemical compounds in products so designated. Whole Foods noted in its press release, that it is implementing such a standard in part to address consumer confusion resulting from false and misleading labeling and branding of products in personal care, branding and labeling practices in which your company is engaged.

### **Consequences of Misleading and Deceptive Labeling**

Dr. Bronner's liquid soaps labeled as "Made With Organic Oils" directly compete with your company's liquid soap and bodywash products sold under the \_\_\_\_\_ brand and labeled as "Organics" or "Organic." A reasonable consumer desiring to purchase a soap or bodywash with cleansing ingredients made from organic agricultural material would purchase your product based on the belief that your company's products contain only such cleansing ingredients. Thus, many consumers are being misled by your company's labeling of products as "Organic" or "Organics" to purchase your company's soap and bodywash products rather than those sold by Dr. Bronner's.

A reasonable consumer of liquid soap or bodywash products desiring to purchase an "Organic" or "Made with Organic" product would expect such products' cleansing ingredients to be made from organic versus conventional agricultural material and be free of petrochemical compounds and preservatives. If such a consumer was made aware of the true composition of your products, that consumer would purchase Dr. Bronner's products—all of which are in fact free of all petrochemicals-- rather than your company's products whose cleansing ingredients in particular contain them and no certified organic material whatsoever. By advertising, labeling and offering for sale as "Organic" or "Organics" products which a reasonable consumer would not regard as "Organic" or "Made with Organic" if the consumer understood the true composition of these products, your company has increased its share of the retail market for liquid soaps and bodywashes at the expense of the market share of Dr. Bronner's.

Our clients contend that your company's labeling and advertising practices, therefore, constitute false and deceptive advertising and an unfair and unlawful business practice under California law.

A number of these consumers who have been misled by these misleading and deceptive labeling and advertising, are represented by OCA, and have themselves been injured by these practices, in that these consumers have been misled into purchasing your products that they would not, but for the false and misleading labeling, ever have purchased.

For these reasons, our clients demand that your company commit to this office on or before April 20, 2008, commit in writing to eliminate all "Organic" and "Organics"

branding and labeling from the packaging of your company's products by September 1, 2008.

Our clients have authorized us, in the event that your company declines to make this commitment, to pursue all appropriate legal proceedings to remedy the injury to our clients as set out above.

If you have any questions or wish to discuss this matter further, please have your counsel contact the undersigned.

Thank you for your time and prompt attention to this important matter.