

January 14, 2010

By Hand

Miles McEvoy
Deputy Administrator
Agricultural Marketing Service
USDA-AMS-TMP-NOP
Room 4008—South Building
1400 Independence Ave., S.E
Washington, D.C. 20250-0020

Re: Complaint Against Handling Operations Selling and Labeling Personal Care Products as “Organic” In Violation of OFPA and NOP Regulations

Dear Mr. McEvoy:

Pursuant to the Organic Foods Production Act of 1990 (“OFPA”), 7 U.S.C. §6519, and the regulations of the U.S. Department of Agriculture National Organic Program (“NOP”), 7 C.F.R. §205.660(a), the Organic Consumers Association, a consumer group, and Dr. Bronner’s Magic Soaps, Intelligent Nutrients and Organic Essence, all producers of NOP-certified personal care products (“Complainants”) bring this complaint against certain handling operations that are selling and labeling personal care products as “Organic” in violation of the OFPA and the NOP regulations.

The Complainants are:

Organic Consumers Association, 6771 South Silver Hill Drive, Finland, MN 55603 (“OCA”), (218) 226-4164. OCA is a non-profit educational organization dedicated to promoting the interests of the nation’s organic consumers. OCA represents over 850,000 members, supporters, subscribers and volunteers. In recent years, OCA has been active in pressing the USDA and producers of organic goods to ensure that goods labeled and advertised as “Organic” comply with strict, reliable and consistent standards. OCA’s “Coming Clean” campaign has sought to educate consumers about the deceptive labeling as “Organic” of personal care products and, recently, OCA initiated a consumer boycott of deceptively labeled brands of such products. OCA’s consumer education programs urge consumers generally to “Buy Local, Organic and Fair Made.”

All One God Faith, Inc., d/b/a Dr. Bronner’s Magic Soaps, 2751 Auto Park Way, Escondido, CA 92029. Dr. Bronner’s manufactures and sells personal care and cosmetic products including the nation’s top-selling natural brand of liquid and bar soap under the brand “Dr. Bronner’s Magic Soaps.” Since 2003, Dr. Bronner’s has been certified by Oregon Tilth, a USDA-accredited certifier, as an organic operation. Dr. Bronner’s liquid soap and other body

cleansing products are labeled as “Made with Organic Oils” in compliance with the NOP; and the company also has introduced a line of organic lip balms, hair care, shaving gels, body balms and lotions, all of which are certified as meeting the requirements of the NOP for being labeled as “Organic.”

Intelligent Nutrients, Inc., 983 East Hennepin Avenue, Minneapolis, MN 55414. Intelligent Nutrients makes a wide range of organic hair and skin products that are certified “Organic” under the USDA NOP. IN’s products are distributed in high-end spas and salons throughout the country. IN’s founder, Horst Rechelbacher, is a well-known innovator in the field of natural health and beauty products and was the founder of Aveda Corporation, later sold to Estee Lauder.

Organic Essence, 629 Bertsch Ave., Crescent City, CA 95531. Organic Essence makes and sells lip balms, moisturizing creams, liquid soaps and shea butters, all certified “Organic” under the USDA NOP. The company is an innovator in bio-degradable packaging.

The handling operations *against which* this complaint is filed are the following:

- 1) **The Hain Celestial Group, Inc.**, a Delaware corporation headquartered in Melville, New York (“Hain”), makers of JASON “Pure, Natural & Organic” and “Avalon Organics” products;
- 2) **Kiss My Face Corporation**, a New York corporation headquartered in Gardiner, New York, makers of “Kiss My Face Organic” and “Kiss My Face Obsessively Organic” products;
- 3) **Levlad, LLC**, a California limited liability company headquartered in Chatsworth, California (“Levlad”), makers of “Nature’s Gate Organics” products;
- 4) **YSL Beauté, Inc.**, a New York corporation headquartered in New York City, New York (“YSL”), makers of “Stella McCartney CARE 100% Organic Active Ingredients” products;
- 5) **Giovanni Cosmetics, Inc.**, a California corporation headquartered in Compton, California; (“Giovanni”), makers of “Giovanni Organic Cosmetics,” “Giovanni Organic Body Care” and “Giovanni Organic Hair Care” products;
- 6) **Cosway Company, Inc.**, a California corporation headquartered in Carson, California (“Cosway”), makers of “Head Organics” products;
- 7) **Country Life, LLC (“Country Life”)**, a New York limited liability company headquartered in Hauppauge, New York (“Country Life”), makers of “Desert Essence Organics” products;
- 8) **Szep Elet LLC**, an Indiana limited liability company headquartered in Indianapolis, Indiana (wholly owned subsidiary of the Hungarian company Szep Elet of Budapest, Hungary)(“Ilike Organic”), makers of “Ilike Organic Skin Care.”
- 9) **Eminence Organic Skin Care, Inc.**, a Canadian corporation headquartered in Vancouver, British Columbia, Canada (“Eminence Organics”), makers of “Eminence Organic Skin Care” products;
- 10) **Physicians’ Formula Holdings, Inc.** (makers of Organic Wear), a California corporation headquartered in Azusa, CA, makers of “Organic Wear” products;

11) Surya Nature, Inc., a New York corporation headquartered in New York City, New York (“Surya Nature”), makers of “Sapien Organic” products;

12) Organic Bath Company, a California corporation headquartered in Auburn, CA, makers of “Organic Bath” and “Organic Baby” products;

13) Freeman Beauty Division of pH Beauty Labs, Inc. (makers of Freeman Goodstuff Organics), a Delaware corporation headquartered in Beverly Hills, California, (“Freeman Beauty”), makers of “Freeman Goodstuff Organics” products..

The products manufactured and sold by these companies include liquid soaps, bodywashes, facial cleansers, shampoos, conditioners, moisturizing lotions, lip balms, make-up and other cosmetic products, referred to collectively in this Complaint as “personal care products.” Each of these companies (the “Respondent Companies”) is a “handling operation,” within the meaning of the NOP Regulations, 7 C.F.R. §205.2, because each company receives and processes agricultural products, in the course of manufacturing these personal care products.

As explained in more detail below, notwithstanding the ongoing consideration by NOP of whether it should issue new regulations subjecting personal care products to the NOP Regulations, USDA *already* has the authority to seek civil penalties against the Respondent Companies for knowingly labeling their products as “Organic” in violation of the OFPA and the NOP Regulations. The statutory prohibition against such mislabeling, and USDA’s authority to enforce that prohibition, applies to *any* product—not only to agricultural products. In any event, the personal care products at issue contain agricultural ingredients and, as the NOP itself has recognized, for that reason, already come within the scope of OFPA and the NOP Regulations. That the products are not edible or potable does not alter this conclusion, as NOP has recognized by applying the NOP Regulations to textiles.

The personal care products that are marketed in the U.S. by the Respondent Companies and that are the subject of this Complaint are all labeled and sold as “Organic.” None of these products, however, comply with the NOP Regulations for a packaged, multi-ingredient product to be labeled as “Organic,” for four basic reasons:

First, none of them contains 95% organic ingredients (excluding water and salt).

Second, the main cleansing and moisturizing ingredients of these products are derived from *non-organic* agricultural material. Such non-organic agricultural material may have been grown using pesticides, synthetic fertilizers, genetic engineering, sewage sludge and/or irradiation.

Third, the main cleansing ingredients in these products typically contain or are even made entirely from petrochemical compounds, such as Cocamidopropyl Betaine, Cocamidopropyl

Hydrosultaine, Sodium Myreth Sulfate and/or Olfein Sulfonate (formulated from non-agricultural material). The main moisturizing ingredients are usually fatty alcohols reacted from conventional agricultural material, or synthetic silicone ingredients that have no agricultural content whatsoever, let alone organic agricultural content.

Typically the only organic agricultural content in most of these products, as explained further below, consists of water extracts of organic herbs, and/or reconstituted aloe vera organic powder concentrate. *The products are otherwise completely conventional non-organic formulations.*

Not only does Respondent Companies' labeling of these products as "Organic" violate the NOP Regulations, but it also violates the most basic organic consumer criteria that the NOP Regulations reflect, first and foremost that the main ingredients of a product claimed to be "Organic" are in fact made from organic agricultural material, not non-organic agricultural, petrochemical and/or synthetic silicone material. Consumer research and the statements and actions of consumer groups and retailers all demonstrate that consumers are being affirmatively deceived and misled by such mislabeling.

USDA has an obligation to remedy the mislabeling as "Organic" of these personal care products, in violation of the OFPA and NOP Regulations. A fundamental purpose of OFPA is to assure consumers that products labeled "Organic" meet a consistent standard that reflects the criteria set forth in the Act. As the National Organic Standards Board has recently emphasized, this purpose is not being served in the area of personal care products. USDA has recognized its ultimate responsibility to address cases of fraudulent and misleading labeling using the term "Organic." And the myriad private voluntary industry standards that have been issued have proven ineffective in remedying the ongoing deception of consumers, because the standard are themselves deceptive and in any event compliance with the standards is merely voluntary.

For these reasons, Complainants respectfully request NOP to investigate and impose civil penalties on the Respondent Companies for mislabeling under section 6519; to order the Respondent Companies to cease and desist from such mislabeling; and to take such other actions as NOP deems necessary and appropriate to remedy the violations of OFPA and the NOP Regulations set forth in this Complaint.

I. USDA Authority to Enforce the Ban Against Misuse of "Organic" With Respect to Labeling of Personal Care Products

NOP has, of course, issued a variety of guidance and interpretative statements, over the last decade, with respect to the application of the OFPA and NOP Regulations to personal care products. In its latest guidance document, issued in April 2008, NOP stated that:

If a cosmetic, body care product or personal care product contains or is made up of agricultural ingredients, and can meet the USDA/NOP organic production, handling, processing and labeling standard, it may be eligible to be certified under the NOP regulations.

- Any cosmetic, body care product or personal care product that does not meet the production, handling, processing, labeling, and certification standards described above, may not state, imply or convey in any way that the products is USDA-certified organic or meets the USDA organic standards.

However:

- USDA has no authority over the production and labeling of cosmetics, body care products and personal care products that are not made up of agricultural ingredients or do not make any claims to meeting USDA organic standards.

At its November 2009 meeting, the National Organic Standards Board (“NOSB”) adopted, by a 12-1 vote, a recommendation of its Certification, Accreditation and Compliance Committee that the NOP Regulations be explicitly made mandatory for personal care products. (A copy of the NOSB Recommendation is attached hereto as Exhibit 1). That Recommendation noted that, “The USDA is responsible for product organic claims but is not currently enforcing this in the area of personal care products...[T]he NOP should take the necessary initial steps to bring this product class into a coordinated existence with organic food products under the regulation.”

Although NOP has not, of course, taken any action yet with respect to implementing the NOSB Recommendation, USDA *already* has the authority to seek civil penalties against the Respondent Companies for knowingly labeling their products as “Organic” in violation of the OFPA and the NOP Regulations. The statutory prohibition against such mislabeling, and USDA’s authority to enforce that prohibition, applies to *any* product—not only to agricultural products. The OFPA, 7 U.S.C. §6519(a), provides that, “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” (emphasis added). Significantly, this provision applies by its terms to *any* product—not only to an “agricultural product” as defined in the Act. USDA itself has acknowledged that section 6519—

provides the Secretary with the authority to take action against misuse of the term “organic.” USDA will monitor use of the term “organic” in product names and will

restrict use of the term in names that are determined to be deliberately misleading to consumers.

Final Rule, National Organic Program, 65 Fed. Reg. 80548, 80582 (Dec. 21, 2000 (“Final Rule”). USDA has further recognized that, “The NOP is ultimately responsible for the oversight and enforcement of the program, including oversight of exempt and excluded operations and cases of fraudulent or misleading labeling.” *Final Rule, 65 Fed. Reg. at 80557.*

It is clear, then, that USDA has authority to prohibit and to seek penalties for the labeling of any product as simply “Organic” in violation of the OFPA and NOP Regulations, particularly if that labeling is fraudulent or misleading. Thus, for example, if a producer of a completely synthetic personal care product with *no* agricultural ingredients—for example, a jar of petrolatum—labeled and sold that product as “Organic Body Crème,” there would seem to be no question that USDA NOP could impose civil penalties on the producer of that product, just as much if it was labeled Organic Toast Spread.

Indeed, as a logical matter, NOP’s authority must extend to the labeling of *any* product insofar as such labeling is meant to imply to consumers that the product is an organic agricultural product, *even if* the product were in fact made entirely of *non*-agricultural materials. NOP cannot, logically, interpret the scope of its enforcement authority to include, for example, the mislabeling of a non-organic canola oil product as “Organic Cooking Oil”, yet to exclude the mislabeling of a synthetic motor oil product as “Organic Cooking Oil”, on the ground that motor oil is non-agricultural in the first place. Similarly, with regard to non-food fiber and textiles, NOP cannot—and to our knowledge, does not-- interpret its authority to cover the labeling of a non-organic but agricultural cotton fiber as “Organic Yarn,” but not to cover the labeling of a pure petrochemical nylon fiber from being labeled as “Organic Yarn.” NOP’s authority necessarily rests on the *representation* that a product is an organic *agricultural* product, not whether the product making that claim is in fact agricultural in the first place.

In any event, all of the personal care products that are the subject of this Complaint *do* contain agricultural ingredients, are consumed by humans and marketed in the U.S., and are themselves, therefore, “agricultural products” within the meaning of the OFPA and NOP Regulations. It is for precisely that reason that such products necessarily fall within the scope of the OFPA and the NOP Regulations, as NOP itself has repeatedly acknowledged. In its May 2, 2002 “Policy Statement on National Organic Program Scope,” NOP stated that:

[W]e have been asked if the regulations under the NOP apply to the following product, classes of products and production systems,: mushrooms; pet foods,; aquatic animals; fabrics; *cosmetics; body care products*; over the counter medications; dietary

supplements; fertilizers; soil amendments; and products from greenhouse, apiculture and hydroponic systems. Because these and other products classes of products and production systems contain agricultural products, the producer and handlers of such products, classes of products and production systems are eligible to seek certification under the NOP.

(emphasis added). Again, in its August 23, 2005 Memorandum to USDA Accredited Certifying Agents, NOP stated that:

There are agricultural products, including personal care products that, by virtue of their organic agricultural product content, may meet the NOP standards and be labeled as “100 percent organic,” “Organic” or “made with organic” pursuant to the NOP regulations. Businesses that manufacture and distribute such products may be certified under the NOP, and such products may be labeled as “100 percent organic,” “organic,” or made with organic” so long as they meet NOP requirements.

In this regard, personal care products containing some agricultural ingredients are no different than processed food products that contain agricultural and non-agricultural substances. NOP clearly has the authority to regulate—and currently does regulate—any claim that any processed food product is “Organic.”

To be sure, in its April 2008 Guidance Document, “Cosmetics, Body Care Products and Personal Care Products,” NOP stated that, “USDA has no authority over the production and labeling of cosmetics, body care products, and personal care products that... do not make any claims to meeting USDA organic standards.” At the same time, however, USDA reiterated its understanding that “If a cosmetic, body care product or personal care product contains or is made up of agricultural ingredients, ... it may be eligible to be certified under the NOP regulations.”

The authority for certification under OFPA is, of course, limited to “agricultural products.” 7 U.S.C. §§6504, 6505(a), 6506. If personal care products are eligible to be certified under NOP—as USDA has re-affirmed in the April 2008 Guidance Document—then such products must, by definition, qualify as “agricultural products.” And, in that case, section 6505(a) by its terms precludes the labeling of such products as “Organic” unless the product is produced and handled in accordance with the NOP Regulations.

Finished, multi-ingredient products containing agricultural ingredients are “agricultural products” under OFPA regardless of whether the finished product is edible or potable. A processed agricultural commodity is an “agricultural product” if it is marketed in the U.S. for “human consumption.” 7 U.S.C. §6502(1). As USDA recognized in its May 2002 Policy

Statement, “Please note, the term consumption *is not limited to products that are used for food*” (emphasis added). As the August 23, 2005 NOP Memorandum stated, NOP applies to “agricultural products, including personal care products. . . .”

That the scope of NOP is not limited to agricultural products consumed as food was made clear by USDA’s decision to make the NOP Regulations mandatory for labeling of textiles. The NOP Fact Sheet on “Labeling of Textiles” explains that “USDA regulates the term ‘organic’ as it applies to agricultural products” and that “[r]aw natural fibers, such as cotton, wool, flax etc. are agricultural products and are covered under the NOP crop/livestock production standards. . . .” The Fact Sheet emphasizes that, “Only textile products certified to the NOP product AND processing standards are eligible to be labeled ‘100 percent organic’ and ‘organic.’”

Thus, NOP forbids a finished textile product to be labeled “Organic” unless it is certified as “Organic” under the NOP Regulations. That is true even though textiles obviously are not consumed as food. And it is clear that NOP would assert authority to forbid labeling as “Organic” of a textile that was entirely synthetic (no agricultural ingredients) or contained mostly raw natural fiber that was *not* organically produced. If NOP has such authority with respect to textiles, it must have equivalent authority with respect to personal care products.

Significantly, a number of the Respondent Companies themselves have acknowledged that NOP indeed has the authority to enforce the NOP Regulations with respect to the labeling of personal care products—and at least one federal court appears to agree. One of the companies filing this Complaint with NOP, Dr. Bronner’s, filed suit in San Francisco, California, Superior Court, against Hain Celestial, Kiss My Face, Levlad, YSL Beaute, Giovanni, Cosway and Country Life, among others, under section 43(a) of the federal Lanham Act, 15 U.S.C. §43(a)(1), for false and deceptive advertising, based on the deceptive and misleading labeling by these companies of their personal care products, as “Organic.” Defendants removed the case to the U.S. District Court for the Northern District of California. *All One God Faith Inc. v. Hain Celestial Group et al*, No. 09-cv-03517 JF (N.D. Cal., Notice of Removal filed July 31, 2009).

Hain, Kiss My Face and Levlad, joined by most of the other defendant companies, then moved to dismiss the complaint on the grounds that USDA has *exclusive jurisdiction* over the labeling of products as “Organic” and that Dr. Bronner’s should have been required to file a complaint with NOP before bringing an action under the Lanham Act. In their motion (Dkt. #22 filed Aug. 7, 2009), Hain, Kiss My Face and Levlad contended that “USDA repeatedly has recognized in formal and informal pronouncements that the NOP’s scope includes non-food products” like personal care products and that the “NOP contains an extensive federal labeling regime that establishes USDA’s express and absolute control over the ‘Principal Display Panel’, the ‘Information Panel’ and the ‘Ingredients Statement’ of any multi-ingredient product to which

an organic ‘claim’ is affixed.” *Id.* at 6. The companies further insisted that USDA has “not wavered in its position that cosmetics marketed as containing ‘organic ingredients’ are subject to USDA’s general enforcement jurisdiction.” *Id.* at 12. With respect to the Lanham Act claim that deceptive labeling of personal care products as “Organic” constitutes false advertising, Hain, Levlad and Kiss My Face insisted that Dr. Bronner’s “must first take its grievance to the USDA.” *Id.* at 21. “The issues raised in the complaint are ones committed to the jurisdiction of USDA and should remain there.” *Id.* at 24.

On December 14, 2009, the District Court issued a decision and order granting these companies’ motion to dismiss the complaint, with leave to amend. *Order, All One God Faith Inc. v. The Hain Celestial Group, et al*, Civ No. CV-09-3517 JF-HRL (N.D. Cal, filed Dec. 14, 2009)(attached hereto as Exhibit 2). The Court agreed with Hain, Levlad and Kiss My Face that, in “enacting the OFPA, Congress created an exclusive federal mechanism for evaluating and approving synthetic materials....” *Order* at 4. The Court noted that the “USDA has indicated that it accepts all consumers and business complaints regarding alleged misuse of the word ‘organic’” *Id.* at 5 (citing Final Rule, 65 *Fed. Reg.* at 80627) and ruled that Dr. Bronner’s is required to file a complaint with the NOP in order to exhaust its administrative remedies. *Id.* at 10. The Court found that , “while to date the USDA has declined to exercise its authority with respect to the labeling of organic personal care products, it has asserted jurisdiction over such products in other ways, such as allowing producers and handlers of such products,... to seek USDA certification under the NOP.” *Id.* at 11. The Court found that “the labeling and marketing of ‘organic’ products falls within the exclusive jurisdiction of USDA.” *Id.* at 13.

In order for NOP to exercise enforcement authority over the mislabeling of Respondent Companies’ personal care products as “Organic,” it is *not* necessary for NOP to issue new regulations to address the particular issues arising from the inclusion of organic agricultural ingredients in personal care products. The central pressing problem is the misleading, confusing and deceptive labeling and marketing outright as “Organic” of personal care products, the main ingredients of which are not organic or made from organic material in any way. In contrast, the more restricted “Product made with Organic [specified ingredients]” claim does not have the same corrosive effect on the integrity of the term “organic” and can ultimately be permitted under regulations tailored to use of that term on personal care products, but in the interim can be left free of regulation. For example, the labeling as “Organic Shampoo” of a product based on non-organic petroleum-based cleansers and moisturizers with some organic aloe for greenwash, is much more injurious to consumers than the labeling of such a product as “Shampoo made with Organic Aloe Vera.” This is analogous to truthfully stating, in accordance with the NOP rules, “Rayon made from Organic Bamboo”, versus deceptively stating “Organic Bamboo Fiber”.

NOP could adopt the same approach it has taken with textiles, and make the NOP O95 regulations mandatory for outright “Organic” product claims in personal care, while leaving “made with Organic [specified ingredients]” for the time being unregulated until appropriate regulations can be developed through a full rulemaking proceeding. This approach addresses the most egregious and outrageous abuse of the term “Organic” in the personal care marketplace, without necessitating any new rule-making or NOP List additions in the immediate term. Products making a more restricted “made with Organic [specified ingredients]” could and would continue to be composed of petrochemical and otherwise non-organic main cleansing and moisturizing ingredients that no reasonable “Product made with Organic [specified ingredients]” standard should (or does) allow, but at least they could no longer deceptively call such products outright “Organic.”

For these reasons, the mere labeling of a finished product as “Organic” necessarily brings that labeling under the jurisdiction of the NOP insofar as consumers rely on and believe that labeling to mean that the product is an organic agricultural product. And NOP’s authority is not restricted to food, as NOP’s clear authority over non-food fiber and textiles demonstrates. NOP currently does have the authority to prohibit, and to impose penalties for, the labeling outright as “Organic” of personal care products when that labeling (i) violates the NOP Regulations, and (ii) particularly when that labeling is deceptive and misleading to consumers. As explained below, both things are true with respect to the labeling of the Respondent Companies’ personal care products.

II. The Labeling and Marketing of Respondent Companies’ Personal Care Products

A. Background: Composition of Personal Care Products

Skin, body and hair care products such as liquid soaps, body washes, shampoos, lotions and moisturizers contain cleansing agents, known as “surfactants,” and/or moisturizing agents, known as “emollients,” which constitute the main ingredients in such products. The remainder of skin, body and hair care products generally consist mostly of water.

Genuinely “Organic” personal care products use cleansing and moisturizing ingredients which are derived from organically-grown agricultural material and are free of petrochemicals. By contrast, the Respondent Companies use cleansers that are derived from petrochemicals and/or agricultural material produced using conventional, rather than recognized organic methods, and thus may have been produced using synthetic fertilizers, pesticides and/or herbicides.

Specifically, in turning non-organic agricultural material—such as conventional coconut oil—into a surfactant, a manufacturer first converts the oil into fatty alcohols, by transterifying the vegetable oil with methanol (a petrochemical) to make methyl esters, and then flowing hydrogen through the methyl esters at high pressure in the presence of a metal catalyst. This process, known as hydrogenation or hydrogenolysis, breaks down the methyl esters, leaving fatty alcohols and methanol, which can then be recovered. The resulting fatty alcohols can be used in their own right as emollient ingredients, or further reacted with other agricultural or petrochemical compounds, to produce surfactants or ester ingredients.

In turning the fatty alcohol into a surfactant, a manufacturer may employ the process of sulfation, which entails introducing, in a falling film reactor, a sulfuric ester group molecule into the fatty alcohol, such that sulfur from the sulfuric ester group molecule is linked through an oxygen atom to the fatty alcohol molecule. Sulfuric ester molecules are petroleum compounds derived as a byproduct of coal and petroleum refining. This process renders the fatty alcohol made from conventional agricultural material effective as a surface cleansing agent.

The NOP Regulations require and, as demonstrated below, consumers expect, that personal care labeled and advertised as “Organic” is composed of cleansing and moisturizing ingredients made from organic material, and are free of petrochemical compounds, especially those that generate petrochemical contaminants of concern. A number of surfactants are made in part from petrochemicals, meaning that they are derived in part from petroleum or natural gas. The most commonly used of such surfactants in Respondent Companies’ products is probably Cocamidopropyl Betaine, made by combining coconut oil with Amidopropyl Betaine, a petrochemical. This process results in contamination with traces of the petrochemicals Sodium Monochloroacetate, Amidoamine (AA) and Dimethylaminopropylamine (DMAPA). Amidoamine is suspected of causing skin sensitization and allergic reactions even at very low levels for certain users.

In some cases, surfactants are created, in part, through a chemical process known as ethoxylation, in which the petrochemical (and carcinogenic) ethylene oxide (1,2-epoxyethane) is added to fatty alcohols (derived from non-organic vegetable oils) to make them more soluble and milder, and thus more effective as a foaming and cleansing agent. This process results in 1,4-Dioxane –itself carcinogenic-- being created in at least trace amounts. 1,4-Dioxane has been detected by independent lab analysis in various products made by some of the Respondent Companies that are labeled and advertised as “Organic”. In the spring of 2008, the Organic Consumers Association released a study that disclosed the presence of 1,4-Dioxane in numerous personal care products labeled as “natural” or “organic.” (A copy of the release of the study is attached hereto as Exhibit 3). In May, 2008 the Attorney General of California sued several companies, including Avalon, seeking an injunction and civil penalties for the companies’ failure

to disclose the presence of 1,4-Dioxane in their product, in violation of California Proposition 65. (A copy of the Attorney General's Complaint is attached hereto as Exhibit 4).

With respect to emollients, again, genuine "Organic" personal care products use emollients that are derived from organically-grown agricultural material and are free of petrochemicals. By contrast, some of the Respondent Companies use emollients that are derived from petrochemicals, synthetic silicone and/or agricultural material that was produced using conventional, rather than recognized organic methods, and thus may have been produced using synthetic fertilizers, pesticides and/or herbicides. Common non-organic fatty alcohols used as moisturizers are cetyl alcohol, stearyl alcohol and/or cetearyl alcohol. Dimethicone is a pure synthetic silicone moisturizer found in many of the Respondent Companies' lotion and hair products, while another synthetic silicone ingredient, Cyclopentasiloxane, is the lead ingredient in "Avalon Organics" brand lotion.

B. Sale and Labeling of Respondent Companies' Products as "Organic" Violates the NOP Regulations

Under the NOP 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 that are produced consistent with the regulatory standards. 7 C.F.R. § 205.301(b). The few permissible non-organic substances are specifically listed in the regulations; specifically, any non-organic, non-agricultural substance or synthetic, other than those listed in section 205.605 of the Regulations, is not permitted to be included in any product labeled "Organic." 7 C.F.R. § 205.301(b).

If a product may be labeled "Organic" under the USDA regulation, the term "Organic" may be used on the label to modify the name of the product, *i.e.*, be in letters as large as the name of the product itself and the USDA Organic seal may be displayed. 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 Respondent Companies are marketing and labeling their personal care products outright as "Organic"--as part of the product name, product brand, product description or otherwise-- despite the fact that (i) they do not contain at least 95% organic ingredients and that (ii) they contain numerous non-agricultural ingredients and substances *not* allowed by section 205.605 of the Regulations.

In fact, the main cleansing and moisturizing ingredients of these products are derived from *non*-organic material (conventional agricultural, petrochemical or synthetic silicone material), rather than organic agricultural material. To justify the claim that their products are “Organic,” the Respondent Companies often place a small strainer of organic herbs in hundreds of gallons of production batch water, and then list the resulting “organic herbal water extracts” at the beginning of the ingredient lists. Alternatively or in addition, the water byproduct of essential oil distillation, termed “floral water” or “hydrosol,” is used to justify organic product claims. In reality, these are “organic water” tricks, and the products are based on the same non-organic cleansers and moisturizers found in any conventional, mass-market personal care product.

Even more common than use of organic “hydrosol” water as the basis for the advertising and labeling of a personal care product as “Organic” is the use of reconstituted 200 X aloe powder water. The way in which use of such aloe powder water can be made the basis for the advertising of a product as “Organic” can be illustrated by the following sample formulation:

84.85% Water
10% Olefin Sulfonate (pure petroleum surfactant)
5% Cocamidopropyl Betaine (hybrid petro/veg surfactant/viscosity builder)
0.175% 200 X organic aloe vera concentrate

$200 \times 0.175\% = 35\%$, reducing “water” to 50%, which when backed out, the reconstituted organic aloe “content” gives the product $35/50 = 70\%$ “organic water” content.

Again, the resulting product is a completely conventional petrochemical-based formulation, with inclusion of organic aloe powder used to justify making ordinary water the basis for an “Organic” claim.

Most companies engaging in organic fraud in personal care, utilize 200 X powdered organic aloe or organic floral waters as the basis for a claim, in the advertising and labeling, that the entire product is “Organic,” even though all their actual main cleansing and moisturizing ingredients in the product are not organic, and often are partly or entirely petrochemical based. (Attached hereto as Exhibit 5 is a chart listing the ingredients of sample products of the Respondent Companies, with organic water extracts, aloe vera and juices eliminated so as to highlight the main cleansing and/or moisturizing ingredients).

Specific facts as to the marketing and labeling of the products of the Respondent Companies, and the actual ingredients of those products, are set forth below. In the ingredient lists below, the actual main cleansing and moisturizing ingredients are highlighted in bold.

Hain Celestial

Hain Celestial produces, and sells throughout the United States, personal care products labeled and advertised as “JASON Pure Natural & Organic” and “Avalon Organics.” The terms “Pure, Natural & Organic,” “Organic” and/or “Organics” appear prominently on the labels or containers of these products and in the advertising and promotional materials for the products.

The products include liquid soaps, body washes, moisturizing crèmes, face crèmes, shampoos and other products. The Hain Celestial “Organic” brands accounted for more than \$25 million in sales in 2008, according to SPINS.

JASON “Pure, Natural & Organic” personal care products do not contain at least 95% organic ingredients. And those products contain numerous non-agricultural substances not allowed by section 205.605. In fact, the major cleansing ingredients in Hain Celestial’s “JASON Pure Natural and Organic” personal care products are not made from organic material at all ; rather, all such ingredients are made from *conventional* agricultural material combined with petrochemicals. Further, JASON liquid soap, bodywash and shampoo products contain Sodium Myreth Sulfate, as the main cleansing ingredient; that ingredient is made in significant part with the petrochemical ethylene oxide, as the primary cleansing ingredient. Further, because this ingredient is ethoxylated with the petrochemical ethylene oxide, its use results in the inclusion, in these products, of trace amounts of the carcinogenic substance 1,4-Dioxane. Virtually all the JASON products are preserved with synthetic petrochemically-derived preservatives.

For example, the ingredients of “JASON PURE, NATURAL & ORGANIC Tea Tree Melaleuca Satin Soap For Hands and Face” are:

Aqua (Purified Water), **Sodium Myreth Sulfate**, Organic Tea Tree Leaf Extract, Organic Aloe Barbadensis Leaf Gel, **Decyl Glucoside, Glycerin, Lauramide MEA, Glycol Stearate, Olive Oil**, Organic Chamomile Extract, Jasminum Officinale Flower Extract (Jasmine), Citrus Arantium Dulcis Oil (Orange), Eucalyptus Globulus Leaf Extract (Eucalyptus), Geranium Maculatum Extract, Tocopheryl Acetate (Vitamin E), Helianthus Annuus Seed Oil (Sunflower), Panthenol (Vitamin B), Lecithin, Allantoin, Citric Acid, Citrus Grandis Fruit Extract (Grapefruit), Sodium Benzoate, Potassium Sorbate, Fragrance Oil Blend, Color (Natural)

Attached hereto as Exhibit 6 are examples of labels of and advertising materials for Jason “Pure, Natural and Organic” products. Also submitted with this Complaint are samples of product containers for Jason’s “Pure, Natural and Organic” Satin Soap.

Similarly, Hain's "Avalon Organics" products do not have at least 95% organic content (exclusive of water and salt) and contain numerous substances not allowed by section 205.605. Again, the major cleansing ingredients in Hain Celestial's "Avalon Organics" personal care products are not made from organic material; rather, all such ingredients are made from conventional agricultural material combined with petrochemicals. In particular, the main cleansing ingredient in "Avalon Organics" body and hair care products is Cocamidopropyl Betaine which, as noted above, is made by combining petrochemical and conventional agricultural compounds, and which has no organic content. For example, the ingredients of "AVALON ORGANICS Liquid Soap Lavender" are

Water (Purified), **Cocamidopropyl Betaine, Disodium Cocoamphodiacetate, Sodium Cocoyl Sarcosinate, Coconut Acid, Babassuamidopropalkonium Chloride**, Mentha Piperita Leaf (Organic) (Peppermint), Calendula Officinalis Flower, Chamomilla Recutita Flower Extracts, Vegetable Glycerin, Bisabolol (Chamomile), Ethylhexyl Glycerin, Arginine (amino acid), Panthenol (Pro-Vitamin B5), Tocopherol (Vitamin E), Mentha Piperita Leaf Oil (Organic) (Peppermint), Other Essential Oils

The main moisturizing ingredient of "AVALON ORGANICS" Hand & Body Lotion Lavender, is Cyclopentasiloxane, a pure synthetic silicone oil ingredient. The ingredients of the product are:

Water Purified, **Cyclopentasiloxane, Cetearyl Alcohol, Polysorbate 60, Helianthus Annuus (Organic Sunflower) Oil, Cetyl Alcohol, Vegetable Glycerin, Sorbitol, Stearyl Alcohol, Dimethicone**, Lavandula Angustifolia Flower (Organic) (Lavender), Calendula Officinalis Flower, Chamomilla Recutita Flower Extracts, Babassuamidopropalkonium Chloride, Bisabolol (Chamomile), Theobroma Cacao (Organic) (Cocoa Butter), Organic Linium Usitatissimum, Cocos Nucifera Oils (Flaxseed & Coconut), Sodium Chloride, Beta Glucan (Oat), Ethylhexylglycerin, Arginine (amino acid), Stearic Acid, Organic Lavandula Angustifolia Oil, Other Essential Oils

Attached hereto as Exhibit 7 are examples of labels of and advertising materials for these "Avalon Organics" products. Also submitted with this Complaint is a sample product container of "Avalon Organics Hand and Body Lotion."

Kiss My Face

Kiss My Face is one of the top “core” natural U.S. personal care companies with sales of over \$20 million, according to Nutrition Business Journal’s Natural and Organic Personal Care Report (2006). Kiss My Face produces and sells throughout the United States, a line of personal care products labeled and/or advertised as “Organic” and/or “Obsessively Organic,” including body washes and gels, shampoos and body lotions and crèmes. These products include a line advertised as “Organic Self Foaming Liquid Soaps” and labeled “Obsessively Organic,” with the latter words appearing directly above the primary product descriptor on the front label; and a line of body washes and liquid soaps branded “SUDZ by Kiss My Face” that includes products prominently advertised “Organic Shower Gel” and “Organic Foaming Soap,” in several varieties.

None of the Kiss My Face products for cleansing the skin and hair that are advertised as “Organic” contain anything close to 95% organic ingredients (excluding water and salt) and all of them contain numerous substances not allowed by section 205.605. Indeed, the main cleansing ingredients of these products are derived from conventional, rather than organic, agricultural material and/or are made with petrochemicals, such as Olefin Sulfonate and Cocamidopropyl Betaine. For example, the ingredients of a product labeled and advertised as “Kiss My Face Organic Foaming Hand Soap In the Pink” are:

Organic Aloe Barbadensis, Organic Citrus Aurantium Dulcis (Orange) Water, Organic Cymbopogon Schoenanthus (Lemon Grass) Water, Organic Juniperus Communis (Juniper) Water, Organic Hibiscus Sabdariffa (Hibiscus) Water, Organic Citrus Medica Limonum (Lemon) Fruits Extract, Organic Chamomilla Recutita (Matricaria) Flower Extract, Organic Rosmarinus Officinalis (Rosemary) Leaf Extract, **Olefin Sulfonate, Cocamidopropyl Betaine, Glycerin**, Sodium Chloride, Grapefruit Fragrance, Potassium Sorbate, Tocopherol, Citric Acid.

Olefin Sulfonate is a pure petrochemical and is misleadingly described on the labels of certain Kiss My Face products as being “from coconut.” The Cocamidopropyl Betaine in Kiss My Face products is made from petrochemicals and conventional agricultural material. Despite the long litany of “Organic Water” extracts before the actual main ingredients, the product is water white.

Attached as Exhibit 8 hereto are examples of advertising materials for Kiss My Face “Organic” products. Also submitted with this Complaint is a sample of the tube for “Kiss My Face SUDZ Organic Self-Foaming Soaps” and of a tube for “Kiss My Face Obsessively Organic” liquid soap.

Levlad/Nature’s Gate.

Levlad produces and sells throughout the United States, under the brand name “Nature’s Gate,” a line of personal care products advertised, labeled and offered for sale as “Nature’s Gate Organics.” These include shampoos, skin lotions, liquid soaps, body washes and deodorants. These Nature’s Gate “Organics” products accounted for more than \$5 million in sales in 2008, according to industry data.

Nature’s Gate “Organics” personal care products do not contain 95% organic ingredients (excluding water and salt) and contain numerous non-agricultural substances not allowed by section 205.605. The main cleansing ingredients of these products in fact contain petrochemicals or petrochemical compounds, such as Disodium Laureth Sulfosuccinate, made with Ethylene Oxide, and Cocamidopropyl Betaine. The use of an ingredient ethoxylated with the petrochemical Ethylene Oxide can produce trace amounts of the carcinogenic substance 1,4-Dioxane. The Nature’s Gate “Organics” products use principal cleansing agents which are derived from conventional agricultural material (produced using synthetic fertilizers, pesticides and/or herbicides), rather than from organic agricultural material.

For example, the ingredients of Nature’s Gate “Organics” Lavender & Aloe Nourishing Shampoo for Normal to Dry Hair include not only Disodium Laureth Sulfosuccinate, Ethylene Oxide and Cocamidopropyl Betaine, but other petrochemical compounds as well. Those ingredients are:

Water, Organic Lavandula Intermedia (Lavender) Flower/Leaf Stem Extract, **Disodium Laureth Sulfosuccinate, Cocamidopropyl Betaine, PEG-120 Methyl Glucose Dioleate, Decyle Glucoside**, Organic Lavandula Angustifolia (Lavender) Oil, Organic Echinacea Angustifolia Leaf Extract, Organic Aloe Barbadensis Leaf Extract, Organic Arctium Lappa (Burdock) Root Extract, Organic Glycyrrhiza Glabra (Licorice) Root Extract, Organic Juniperus Communis (Juniper) Fruit Extract, Organic Salvia Officinalis (Sage) Leaf Extract, Organic Althaea Officinalis (Marshmallow) Root Extract, Organic Equisetum Arvense (Horsetail) Leaf Extract, Panthenol, Soyamidopropalkonium Chloride, Hydrolyzed Wheat Protein, Hydrolyzed Wheat Starch, Isoceteth-20, Polysorbate 80, Disodium EDTA, Polyquaternium-10, Alcohol, Glyceryl Undecylenate, Phenoxyethanol, Citric Acid, Fragrance.

Attached as Exhibit 9 hereto are examples of labels of and advertising materials for Nature’s Gate “Organic” products. Also submitted with this Complaint is a container of “Nature’s Gate Organics” Liquid Soap.

YSL Beaute

YSL Beauté, Inc. produces, and sells throughout the United States, a line of products called “CARE” including a “cleansing milk” and “purifying foaming cleanser” which are labeled, advertised and offered for sale as “100% Organic Active Ingredients.” These YSL Beauté, Inc. products are certified by Ecocert to contain 50% organic content (from aloe vera and/or flower waters primarily) and are not 100% organic; however Ecocert has nonetheless certified the misleading labeling of these products as “100% Organic”.

The YSL Beaute products do not meet the requirements of the NOP Regulations for being labeled “100% Organic” because they do not contain 100% organically produced ingredients, and in fact contain principal cleansing agents consisting of fatty alcohols, made from conventional rather than organic agricultural material, by combining the petrochemical methanol with conventional vegetable oil, and then hydrogenating at high pressure to produce the fatty alcohol and recover the methanol.

For example, the ingredients of “Stella McCartney CARE 100% Active Organic Ingredients Nourishing Night & Day Cream” are:

Organic Centaurea Cyanus Flower Water; **Jojoba esters; Organic Helianthus annuus (sunflower) seed oil; Dicaprylyl carbonate; Aqua (water); Glycerin; Alcohol; Cetyl alcohol; Hydrogenated lecithin; Palmitic acid; Organic Bertholletia excelsia seed oil; Organic Theobroma grandiflorum seed butter;** Bambusa ruginosa stem powder; Organic Mauritia flexuosa fruit oil; Xanthan gum; Tocopherol; Geranol; Linalool; Hexyl cinnamal; Organic Anthemis nobilis flower oil; Organic Citrus arantium dulcis (orange) peel oil; Organic Citrus medica limonum (lemon) leaf oil; Organic Cymbopogon martini oil; Organic Eugenia caryophyllus bud oil; Organic Lavandula hybrida oil; Organic Ocimum basilicum (basil) oil; Organic pelargonium graveolens flower oil; Organic Pogostemon cabin oil; Organic Rosmarinus officinalis (rosemary) Leaf oil; Organic Salvia sclarea (clary) oil; Organic Vetiveria zizanoides root oil; Organic Ribes nigrum (black currant) bud extract; “6SB01-1”

Attached hereto as Exhibit 10 are examples of advertising and marketing materials for Stella McCartney CARE “100% Organic Active Ingredients” products. Also submitted with this Complaint is a container of Stella McCartney CARE “Nourishing Night and Day Cream.”

Giovanni

Giovanni produces and sells throughout the United States, personal care products advertised and offered for sale as “Giovanni Organic Cosmetics,” “Organic Body Care” and/or “Organic Hair Care.” These products include body washes, lotions, bar soaps, body butters, shampoos and conditioners. It is estimated, based on industry data, that sales of Giovanni “Organic Cosmetics” products in 2008 exceeded \$8 million.

Although the products contain “organic water” extracts of organic herbs that are over 99% water, none of the main cleansing or moisturizing ingredients in these Giovanni products is made from organic material. Giovanni product labeled as “Organic” do not contain at least 95% organic ingredients (excluding water and salt) and do contain non-agricultural substances not allowed by section 205.605.

For example, the ingredients of Giovanni’s product advertised and labeled as “Organic Body Wash—Lavender Vanilla Snow” are

Organic Lavandula Angustifolia (Lavendar), Organic Echinacea Angustifolia (Coneflower), Organic Aginko Bilboa (Ginko Bilboa), Organic Rosasinensis (Hibiscus and Vanilla Planifolia (Vanilla) extracts (Aqueous), **Sodium Cocoyl Glutamate**, **Disodium Cocamphodiacetate**, **Cocamidopropyl Betaine**, **Vegetable Glycerin**, Panthenol (*Pro Vitamin B5)), Tocopheryl Acetate ((Vit. E)), Citric Acid ((corn)), Sodium Hydroxymethylglycinate, Essential Oil Fragrance.

Attached as Exhibit 11 hereto are examples of labels of and advertising and marketing materials for Giovanni “organic” and “Pure Organic Technology” products. Also submitted with this Complaint is a container of Giovanni “Pure Organic Technology Body Wash.”

Cosway (Head Organics)

Cosway produces and sells throughout the United States, a line of shampoos and conditioners under the “Head Organics” brand, which are labeled, advertised and offered for sale as “Head Organics,” including “Head Organics Clearly Head Shampoo.” These products labeled and marketed as “Organic” do not contain at least 95% organic ingredients (Excluding water and salt), and do contain non-agricultural substances not allowed by section 205.605.

The cleansing agents in Head Organics Shampoo consist of and/or contain petrochemicals or petrochemical compounds. These agents include Cocamidopropyl Betaine, made with Amidopropyl Betaine; Sodium Lauryl Sulfoacetate, containing Sulfoacetate made from chloracetic acid; and Cocamidopropyl Hydrosultaine made from Hydrosultaine.

For example, the ingredients of “Head Organics Clearly Head Shampoo (16.9 oz. size) are:

Aqueous Solution of Organic Botanical Extracts: Camellia Sinensis Leaf Extract (Green & White Tea), Aloe Barbadensis (Aloe Vera) Leaf Extract , Zingiber Officinale (Ginger) Root Extract, Punica Granatum (Pomegranate) Extract, Water. **Sodium Lauryl**

Sulfoacetate, Cocamidopropyl Betaine, Disodium Laureth Sulfosuccinate, Cocamidopropyl Hydrosultaine, Glyceryl Isostearate, PEG/PPG-18/18 Dimethicone, Sodium Chloride, Ethylhexylglycerin, Citric Acid, Laureth 2, Glycerin, Botanical Fragrance.

Attached as Exhibit 12 hereto are examples of advertising and marketing materials for Cosway “Head Organics” products. Also submitted with this Complaint is a container of “Head Organics Hair Gel.”

Country Life/Desert Essence

Country Life produces, and sells throughout the United States, a line of body washes, cleansing gels, shampoos and conditioners under the name, “Desert Essence Organics.” According to industry data, sales of these items in 2008 exceeded \$4 million.

The Desert Essence products labeled and marketed as “Organics” do not contain at least 95% organic ingredients (excluding water and salt) and do contain non-agricultural substances not allowed by section 205.605. The cleansing agents in the “Desert Essence Organics” body washes, shampoos and conditioners consist of and/or contain petrochemicals or petrochemical compounds, including Cocamidopropyl Betaine, and are derived from conventional, rather than organic, agricultural materials. For example, the ingredients of “Desert Essence Organics Body Wash—Almond” are:

Aqueous Infusion of Organic Extracts: Prunus Amygdalus Dulcis (almond) Extract, Camillia Sensis (green Tea) Leaf Extract, Salix Alba (Willow) Bark Extract and Macrocystis Pyifera (Sea Kelp) Extract, **Sodium Coco-Sulfate, Cocamidopropyl Betaine, Decyl Polyglucose, Vegetable Glycerin**, Citrus Grandis (Grapefruit) Seed Extract, Alpha Hydroxy Acids (Glycolic Acid from sugar cane and Malic Acid from fruits), Beta Hydroxy Acid (salicylic Acid), 1,2,-Octanediol, Phenoxyethanol, Potassium Sorbate, Proprietary Blend of Essential Oils.

Attached as Exhibit 13 hereto are examples of advertising and marketing materials for Country Life/Desert Essence “Organics” products. Also submitted with this Complaint is a container of Desert Essence “Organics Body Wash.”

Ilike Organic Skin Care

Ilike Organic Skincare produces and sells throughout the United States, generally in high-end spas, a line of cosmetics which are labeled, advertised and offered for sale as “Organic Skin Care.” Not only do these products not contain 95% organic ingredients, but few if *any* of the ingredients are actually organic. For example, the ingredients of Ilike Organic “Organic Skin Care Nettle Exfoliating Wash” are:

Linum Usitataissimu; Water; Glycerine; Oleic Acid; Potassium Carbonate; Urtica Dioica; Stearic Acid; Methyl Glucose Sesquistearate; Cetyl Alcohol; Citrus Limon; Cymbopogon Citratus; Ascorbyl Palmitate; Tocopherol; Chlorophyll; Citral; D-limonene.

Attached as Exhibit 14 hereto are examples of advertising materials for Ilike “Organic” products. Also submitted with this Complaint is a container of Ilike “Organic Skin Care Nettle Exfoliating Wash.”

Eminence Organic Skin Care

Eminence Organic Skincare produces and sells throughout the United States, generally in high-end spas, a line of cosmetics which are labeled, advertised and offered for sale as “Organic Skin Care.” Again, not only does this product not contain 95% organic ingredients, but few if *any* of the ingredients are actually organic. For example, the Eminence Organic Stone Crop Gel Wash’s main cleansing ingredient is Olefin Sulfonate, which is a pure petroleum surfactant. The ingredients of this product are:

Stone crop plant, Stone Crop Juice, Shea Butter Extract, Meadow Foam Seed Oil, Cellulose (plant source), **Alpha Olefin Sulphonate**, Benzoic Acid (plant source), Citric Acid, Essential Oil.

Attached as Exhibit 15 hereto are examples of advertising materials for Eminence “Organic” products. Also submitted with this Complaint is a container of “Eminence Organics Stone Crop Gel Wash.”

Physicians’ Formula Organic Wear

Physicians’ Formula produces and sells throughout the United States a line of make-up and cosmetics under the brand “Organic Wear”, touted as the “1st ECOCERT Certified Organic Line of Make Up in the United States.” However the organic content of most products is only 10 to 25% organic. For example the “Physician's Formula Organic Wear 100% Natural Origin Loose Powder” is certified by Ecocert to contain only 10.6% organic content. The ingredients are as follows:

Mica, Magnesium Stearate, Organic Zea Mays (Corn) Starch, Calcium Carbonate, Kaolin, Glyceryl Caprylate, Carthamus Tinctorius (Safflower) Seed Oil, Glycerin, Organic Glycine Soja (Soybean) Oil, Organic Olea Europaea (Olive) Fruit Oil, Oryza Sativa (Rice) Hull Powder, Organic Simmondsia Chinensis (Jojoba) Seed Oil, Cinnamic Acid, Citrus Grandis (Grapefruit) Fruit Extract, Sodium Levulinate, Tocopherol, Water. May Contain: Iron Oxides, Titanium Dioxide.

Attached as Exhibit 16 hereto are examples of advertising materials for “Organic Wear” products. Also submitted with this Complaint is a container of “Organic Wear Pressed Powder.”

Surya Sapien Organic

Surya Nature produces and sells throughout the United States a line of personal care labeled as “Sapien Organic”, that is labeled on the front label as “Certified Organic” by Ecocert. These products do not contain 95% organic ingredients (excluding water and salt) and do contain non-agricultural substances not allowed under section 205.605. For example, the label of Surya Sapien Organic Styling Gel notes that the product is “10.1% organic” (mostly from aloe vera) and that the ingredients are:

Deionized Water (Aqua), Organic Aloe Barbadensis Leaf Juice, **Glycerin**, **Dehydroxanthan Gum**, Benzyl Alcohol (and) Dehydroacetic Acid, Magnesium Aluminum Silicate, Citrus Aurantium Dulcis (Orange) Oil, Cedrus Atlantica (Cedarwood) Bark Oil, Citrus Aurantium Bergamia Fruit Extract (and) Eugenia Caryophyllus (Clove) Leaf Oil, Dextrin (and) Organic Malpighia Glaba Fruit Extract* and Sodium Hydroxide.

Attached as Exhibit 17 hereto are examples of advertising materials for Surya Nature “Sapien Organic” products. Also submitted with this Complaint is a container of “Sapien Shower Gel,” labeled as “Ecocert Organic Cosmetic.” The back of the container represents that the product is a “certified organic formula.”

Organic Bath

Organic Bath distributes and sells throughout the United States a line of personal care branded as “Organic Baby” and another as “Organic Bath”, both of which are claimed on the labels and in marketing to be “Certified Organic” by OPCA - Washington DC (“Organic Products Certification Agency International,” which is not a USDA NOP approved certifier). These products do not contain 95% organic ingredients (excluding water and salt). The main

cleansing ingredients of these products (Olefin Sulfonate, Cocamidopropyl Betaine and Sodium Cocoamphoacetate) are made in part or entirely from petroleum, misleadingly claimed to be “from coconut”.

For example, the ingredients of “Organic Bath Co. Cleansing Wash – Pomegranate Fig” are:

aqueous infusion of certified organic white tea, **alpha olefin sulfonate, decyl glucoside, Cocamidopropyl betaine, vegetable glycerin**, sea salts, certified organic mango extract, certified organic pineapple extract, certified organic aloe vera gel, Vitamin E (d-alpha tocopherol), Vitamin B5 (pantothenic acid), Vitamin C (ascorbic acid), grapefruit seed extract, caramel, beet extract, pomegranate extract, fig extract, botanical fragrance, glucose oxidase (natural preservative), lactoperoxidase (natural preservative).

The “Organic Baby Calming Baby Bath” ingredients’ are:

aqueous infusion of organic chamomile, organic aloe vera gel, **sodium cocoamphoacetate, decyl glucoside, vegetable glycerin, amino acid**, organic lavender essential oil, sweet orange essential oil, vitamin B5 (pantothenic acid), vitamin C (ascorbic acid), grapefruit seed extract, polyhexanide.

Attached as Exhibit 18 hereto are examples of advertising materials for “Organic Bath” and “Organic Baby” products. Also submitted with this Complaint is a container of “Organic Bath Company Bodywash ‘Certified Organic.’”

Freeman Beauty

Freeman Beauty distributes and sells throughout the United States a line of personal care branded as “Goodstuff Organics” with a seal on the front label that declares “Organic Fair Trade Ingredients”. However, products such as the “Freeman Good Stuff Organics Creamy Body Wash, Coconut & Aloe Vera” are composed almost entirely of synthetic *non*-organic ingredients. In fact, the product’s formula is based on Olefin Sulfonate, a pure petrochemical surfactant, Cocamidopropyl Betaine (a hybrid petrochemical non-organic surfactant), and various ethoxylated ingredients (PEG 4 Rapeseedamide, Disodium Laureth Sulfosuccinate, Laureth 4, PEG/PPG 18/18 Dimethicone). The ingredients of this product are:

Water, **Sodium C12 16 Olefin Sulfonate, Cocamidopropyl Betaine, PEG 4 Rapeseedamide, Cocoa Seed Butter**, Chamomila Recutita (Matricaria) Flower Extract, Rice Extract, Aloe Barbadosis Leaf Juice, **Coconut Oil, Grapeseed Oil, Tocopheryl Acetate, Cocamidopropyl PG Dimonium Chloride Phosphate, Disodium Laureth Sulfosuccinate, Glycol Distearate, Laureth 4, PEG/PPG 18/18 Dimethicone**, Citric

Acid, Sodium Chloride, Disodium EDTA, Methylchloroisothiazolinone, Methylisothiazilinone, Limonene, Linalool, Fragrance

Attached as Exhibit 19 hereto are examples of advertising materials for Freeman “Goodstuff Organics” products. Also submitted with this Complaint is a container of Freeman “Goodstuff Organics Creamy Body Wash.”

C. The Sale and Labeling of Respondent Companies’ Products as “Organic” Is Deceptive and Misleading to Consumers

As noted, USDA has specifically recognized that, “The NOP is ultimately responsible for the oversight and enforcement of the program, including oversight of exempt and excluded operations and cases of fraudulent or misleading labeling.” Final Rule, 65 *Fed. Reg.* at 80557. And USDA has committed to “monitor use of the term ‘organic’ in product names and will restrict use of the term in names that are determined to be deliberately misleading to consumers.” *Id.* at 80582. In this case, Respondent Companies’ labeling of their personal care products as “organic,” in violation of the NOP Regulations, is clearly misleading and deceptive to consumers.

As the NOSB noted in its Recommendation adopted at its November 2009 meeting:

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.

Specifically, the labeling of Respondent Companies’ personal care products as “Organic” is deceptive, first, because such consumers expect and believe that a personal care product labeled “Organic” will use main cleansing and moisturizing ingredients made from organic agricultural material, not non-organic material (conventional agricultural, synthetic silicone or petrochemical material), and will *not* contain or be made from petrochemical compounds, such as Cocamidopropyl Betaine, Cocamidopropyl Hydrosultaine, Sodium Myreth Sulfate and/or Olfein Sulfonate. Second, the labeling is deceptive because consumers seeking “Organic” personal care products would not purchase Respondent Companies’ products if the consumers were aware of the true composition of those products; but rather, would purchase another product that is certified “Organic” or “Made with Organic [specified ingredients]” under the NOP.

This was demonstrated by consumer research conducted last year by Dr. Bronner's, the topline results of which are attached hereto as Exhibit 20. Dr. Bronner's manufactures and sells personal care and cosmetic products including the nation's top-selling natural brand of liquid and bar soap under the brand "Dr. Bronner's Magic Soaps." Since 2003, Dr. Bronner's has been certified by Oregon Tilth, a USDA-accredited certifier, as an organic operation. Dr. Bronner's uses certified organic oils to make all the main cleansing and moisturizing ingredients in its products, without conventional agricultural material or petrochemicals, or any petrochemical preservatives, at all. Dr. Bronner's liquid soap and other body cleansing products are labeled as "Made with Organic Oils" in compliance with the NOP; and the company also has introduced a line of organic lip balms, body balms and lotions, and shaving gels and organic hair care products, all of which are certified as meeting the requirements of the NOP for being labeled outright as "Organic." The principal cleansing and moisturizing ingredients of these products are made with organic material and the products contain no petrochemical compounds or preservatives at all.

The consumer research conducted by Dr. Bronner's included a statistically valid random sample telephone survey of 400 California consumers of organic personal care products; and personal interviews of 453 randomly selected organic products shoppers in at Whole Foods, Trader Joe's, and six independent natural product outlets, throughout California. In the phone survey, 89% of respondents believed that a product labeled as "Organic" should not contain petrochemicals; 87% believed such a product should not contain synthetic preservatives; and 92% believed such a product should not contain cleansing ingredients based on conventional agricultural materials. When asked if they were looking for a liquid soap they consider "Organic," 70% of respondents indicated they would prefer a liquid soap with major cleansing ingredients based on organic agriculture from farms that do not use synthetic pesticides and herbicides.

Even more tellingly, in the phone survey, consumers ranked "Avalon Organics Glycerin Hand Soap," "Jason Pure Natural and Organic Satin Soap," "Nature's Gate Organics Liquid Soaps" and "Kiss My Face 'Obsessively Organic' Liquid Soap" all as being *more "organic"* than Dr. Bronner's liquid soap labeled "Made with Organic Oils". It is perhaps not surprising that consumers would regard a product labeled outright as "Organic" as being more organic than a product labeled merely "Made with Organic [specified ingredients]."

Yet all of those Respondent Companies' products in fact use principal cleansing agents derived from conventional and petrochemical material, which consumers said they would *not* expect to see in a product labeled "Organic." And, 85% of respondents stated that *if they knew* a brand actually contained petrochemicals and that its major cleansing ingredients were derived

from conventional agriculture, *they would not buy that brand but would look for another product.*

The personal interviews of organic consumers yielded similar results. Consumers ranked soaps that they were shown, hypothetically labeled “Blue Sky Organics” and “Pure Natural and Organic” as being more organic than a “Blue Sky Liquid Soap Made with Organic Oils.” Consumers also ranked the Avalon, Nature’s Gate and Kiss My Face “Organic” products as being “more organic” than Dr. Bronner’s liquid soap. Yet, even though the Avalon, Nature’s Gate and Kiss My Face products all are based on main cleansing ingredients made from non-organic agricultural and petrochemical compounds, 57% of those same respondents said a product labeled “Organic” should not contain cleaning ingredients derived from conventional agriculture, and 66% said such products should not contain petrochemicals. Again, asked whether if they were looking to buy a liquid soap they considered organic, and they knew a particular soap’s major cleansing ingredients were made from conventional, non-organic agriculture, combined with petrochemical compounds, 58% of respondents said they would “look for another brand with more organic materials.”

Consistent with this survey research is other evidence that has been compiled by OCA in the course of its “Coming Clean” campaign. (A description of that campaign is attached hereto as Exhibit 21). A survey conducted by OCA in connection with that campaign (results attached hereto as Exhibit 22) revealed, among other things, that 98.6% of responding organic personal care consumers believed that a product with a derivation of the word “organic” in its name should be either 100% organic or, at a minimum, not contain synthetic detergents or preservative ingredients.

In addition, in the course of that campaign, OCA has received hundreds of messages from consumers across the country complaining that, if they knew that the Respondent Companies’ products labeled “Organic” contained petrochemicals and used main cleansing ingredients that were not derived from organic agricultural materials and used petrochemicals, they never would have purchased such products, and they felt completely deceived. Attached as Exhibit 23 hereto are some examples of the more than 1,300 messages received by OCA from consumers during the initial stage of that educational campaign.

Leading consumer groups, including Consumers Union, have also recognized the serious impact on consumers of the deceptive and misleading labeling as “Organic” of personal care products that no reasonable consumer would consider organic. Michael Hansen, Consumers Union senior scientist, told the NOSB at its meeting on November 3, 2009:

Our basic position is that no organic claims should appear on any personal care product that does not come under the purview of NOP. So that means, we believe that for personal care products there should be the same standard as food. We understand that there may be some alternative standards for, quote, "made with organic" or other non-USDA organic products, but we believe that that is not in line with the NOP. So we think the NOP has to make a decision. You either have to take it all on -- that means for all categories -- or do none of it.

We think you should take it all on, so as to have consistency in the meaning of organic, not only within personal care products, but also in a consumer's comparison of what that product label means vis-a-vis food. There should be one standard, whether it is for personal care products or food. So one way we think this could be done is that there should be a section on the National List for, quote, "made with organic", end quote, and, quote, "organic". So there should be sections on the National List for these personal care products.

In 2006, Consumer Union launched a new women's shopping magazine titled *ShopSmart--No Hype + No Ads + Just Great Buys*; like Consumer Reports and other CU publications, the magazine accepts no advertising revenue. The inaugural issue of the publication included a piece entitled, "How to find real organic body care products." A copy of the article is attached hereto as Exhibit 24. The piece pictures several of Hain's Avalon and Jason products, Kiss My Face and Nature's Gate products, all labeled as "Organic," and warns consumers that:

THE WRONG STUFF: Labels may lie, but ingredient lists are pretty straightforward, and yet many of those we found on so-called organic products (like those at left) were eye opening. Along with ingredients like organic aloe juice and and tea tree oil were potentially unhealthy chemicals, although the amounts at which these substances become problematic are generally unknown. Parabens, which we found in many products, may among other things disturb the endocrine system. Other examples include Cocamidopropyl Betaine, which can trigger allergic reactions, and Phenoxyethanol, which can irritate skin and eyes. These and other synthetics such as disodium EDTA and Sodium Myreth Sulfate that aren't approved by the government's organic program just shouldn't be in "organic" products. So before you buy, read the labels front and back!

Included in Exhibit 24 are three other articles from later issues of Consumer Union's *Shop Smart*, warning and educating consumers about the deceptive labeling of personal care products as "Organic:" : "When organic isn't," "What you should know about chemicals in your cosmetics;" and "What's your beauty IQ?"

The deception of consumers through the labeling practices of the Respondent Companies has also affected the marketing practices of retail outlets in varying ways. At one end of the spectrum, many retail outlets have themselves been confused and misled by the labeling practices of the Respondent Companies, and have contributed to the further deceptive promotion of these products as “Organic.” For example, Jimbo’s, a regional health food chain of four stores in San Diego County, California featured “Organic” personal care products in its September 2006 in-store flier (attached hereto as Exhibit 25), which stated that:

Organics is the trend of the moment in the personal care industry; however, it is more than just a sales and marketing gimmick. Organics means a crop is produced with no synthetic pesticides or fertilizers and takes ‘natural’ a step further, as it is considered the healthiest option for crops and the environment. The Nature’s Gate Organics line is an example of taking health and beauty to the next level in personal care.

Yet, as noted above, the main cleansing ingredients in Nature’s Gate “Organic” products *are* based on petrochemicals combined with non-agricultural material that was produced with “synthetic pesticides and fertilizers.” See, to the same effect, the promotional in-store flier (attached hereto as Exhibit 26) of the national chain Sunflower Markets, touting special offers of “organic” personal care products sold by the Respondent Companies.

At the other end of the spectrum, some retailers have recognized the deception that is occurring and have tried to educate their own consumers about it. Whole Foods Market itself, the single largest retailer of organic-positioned personal care products in the world, explains to its own customers in its in-store pamphlet entitled *Organics and You*, (attached hereto as Exhibit 27) that organic-labeled *food* products contain at least 95% organic content without prohibited synthetics or ingredients, as required under the USDA National Organic Program: “All products labeled as ‘organic’ must be certified by a USDA-accredited certifying agency.” At the same time, in another customer pamphlet, *What’s Cooking* (attached hereto as Exhibit 28), the company warns consumers that, ‘Currently, there is no national standard that regulates how supplements and body care can be sold as ‘organic’ in the same way that the USDA National Organic standards regulate organic food products.’ Another Whole Foods consumer pamphlet, *Cosmetics, Choosing Beauty to Believe In* (attached hereto as Exhibit 29) strongly cautions customers that not to trust organic claims on labels of personal care products without checking the ingredients: “**LOOK BEYOND ‘NATURAL’ OR ‘ORGANIC’**. The **BACK** of the label is where you will find the most accurate information about ingredients.”

Joe Dickson, head of Quality Standards at Whole Foods, who in 2010 will become a member of the USDA National Organic Standards Board (“NOSB”), recently underscored the

problem of consumers being misled and confused by the labeling as “organic” of personal care products that do not meet the NOP requirements for food products to be labeled “Organic.” In written comments submitted to the NOSB for its November 2009 meeting, Mr. Dickson stated that, “We strongly support the Committee’s recommendation that personal care products be explicitly recognized by the USDA. The mislabeling of personal care products is currently a major source of confusion for consumers, and we believe the NOP, NOSB, the organic industry and other Federal agencies must act quickly and decisively to ensure consumers’ ongoing trust in the organic label for all agriculturally-derived products, including personal care.”

Industry concern about deceptive labeling of personal care products as “Organic,” particularly in the retail sector, was further demonstrated by the endorsement of OCA’s “Coming Clean” campaign by more than 600 companies. Attached hereto as Exhibit 30 is copy of the campaign pledge and the list of endorsing companies, mostly retailers.

Thus, the marketing and labeling of Respondent Companies’ products as “Organic” not only violates the NOP Regulations, but is clearly deceptive and misleading to consumers.

III. NOP Has An Obligation to Remedy the Mislabeling as “Organic” of Personal Care Products

The Complainants respectfully suggest that NOP has an obligation—both legally and from the policy standpoint—to remedy the mislabeling as “Organic” of Respondent Companies’ personal care products. One of the fundamental purposes of OFPA, as expressed by the Congress in enacting it, is “to assure consumers that organically produced products meet a consistent standard.” 7 U.S.C. §6501(2). USDA has recognized that, “The NOP is ultimately responsible for the oversight and enforcement of the program, including oversight of exempt and excluded operations and cases of fraudulent or misleading labeling.” Final Rule, 65 *Fed. Reg.* at 80557. The labeling of personal care products by the Respondent Companies is clearly such a case of “fraudulent or misleading labeling” for which NOP is “ultimately responsible.” As the NOSB stated in its Recommendation adopted at its November 2009 meeting, “The USDA is responsible for product organic claims but is not currently enforcing this in the area of personal care products.”

To protect the integrity of the NOP and to protect consumers from continuing to be deceived and misled, NOP must act immediately to stop the labeling by Respondent Companies of their personal care products as “Organic.” As noted, some of the Respondent Companies themselves have contended that NOP not only has immediate authority to enforce the NOP with respect to personal care products, but has exclusive jurisdiction over these labeling practices.

As USDA explained in its April 2008 Guidance Document, “FDA does not define or regulate the term ‘organic’ as it applies to cosmetics, body care or personal care products.”

One option *not* available to NOP is to rely on voluntary private industry standards. Such standards have proven entirely ineffective. OCA and other consumer representatives participated in good faith in efforts to establish a voluntary industry standard for personal care products “made with Organic [specified ingredients]” through an NSF International-American National Standards Institute (ANSI) standards development process. ANSI/NSF Standard 305-2009e, “Personal Care Products Containing Organic Ingredients,” was adopted in April 2009. Under this standard, *personal care products are allowed to be labeled as “Organic” only if they meet the existing USDA NOP “Organic” standards.* The NSF standard does allow personal care products labeled as “Made with Organic [specified ingredients]” to include process-intensive plant-based surfactants, hydrogenated oils and the like, that are made without any petroleum compounds. The standard does not, however, permit use of such ingredients at all in a product labeled outright as “Organic.”

To be sure, were all affected companies to comply with ANSI/NSF 305, the Respondent Companies would not, any longer, be able to market and label their products as “Organic” or “Organics” as they now do. None of the Respondent Companies, however, purports to comply with ANSI/NSF 305 and, since the standard is voluntary, there is no way to compel them to do so.

A second voluntary industry standard has been promulgated by a group called “Organic and Sustainable Industry Standards” or OASIS. The OASIS standard has been developed by industry with essentially no consumer input. While the OASIS standard does forbid petrochemical compounds in cleansing ingredients, the OASIS standard allows a product to be labeled outright as “Organic” (instead of “Made with Organic [specified ingredients]”) even if it contains hydrogenated and sulfated cleansing ingredients made from conventional rather than organic agricultural material and even if the product is preserved with synthetic petrochemicals, all of which organic consumers seek to avoid in personal care products labeled as “Organic.” Thus, the OASIS standard has no potential to remedy the deceptive marketing and labeling practices of the Respondent Companies.

There is yet a third private standard, developed and issued by a private agency based in France, Ecocert France (SAS). Some products sold in the U.S. have been labeled or advertised as “Organic” or “100% Organic” based on this standard, even though the main cleansing and moisturizing ingredients contain *no* certified organic material and even though the cleansing ingredients in these products have been made in part with petrochemicals. For example, Surya Nature’s “Sapien” Shower Gel product is labeled on the principal display panel as being certified

as “Organic” by Ecocert and represents on the back label that the product is “natural and Organic certified by ECOCERT...” Yet the principal cleansing ingredient—the second ingredient listed after water—is Disodium Cocyl Glutamate, and the third ingredient listed, another principal cleansing agent, in Cocamidopropyl Betaine, neither of which is made from any organic material. . Indeed, the organic content requirement for certified products under Ecocert is only 10% and the label of the “Sapien Shower Gel” indicates that in fact only 11.53% of the ingredients “proceed from organic farming.” . Thus, compliance with the Ecocert standard would not address the deceptive marketing and labeling practices of the Respondent Companies.

Even if there were a means to compel compliance with the OASIS and Ecocert standards, those standards are misleading and deceptive in their own right. To illustrate how permissive private standards such as OASIS serve to mislead and deceive, under OASIS one can substitute 10% non-organic Sodium Coco Sulfate for Olefin Sulfonate in the formulation noted in section B, and increase the organic 200X aloe concentrate by only 0.25%, with the result that the product can be said to contain 85% “organic content” (ie. “organic water” used to “reconstitute” the aloe) and can therefore be labeled outright as “Certified Organic” under OASIS --even though all the cleansers in that product are conventional and non-organic. (By contrast, under NSF ANSI 305, the product would be restricted to a “Bodywash made with Organic Aloe Vera” claim, and could not be termed “Certified Organic”; Complainants have no issue if OASIS or Ecocert certified only the more restricted “Product made with Organic [specified ingredients]” claim for their permissive criteria).

The Respondent Companies engage in precisely the deceptive and misleading labeling and marketing of products outright as “Organic” (agricultural products), that no reasonable consumer would consider to be organic (agricultural products). For the reasons and examples cited above, voluntary industry standards are ineffective to remedy the deceptive practices described in this Request.

For these reasons, USDA not only has the authority, but also the obligation, to act to remedy the unlawful, deceptive and misleading labeling of personal care products as “Organic,” by the Respondent Companies.

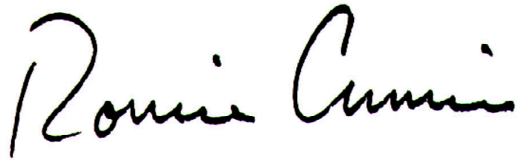
CONCLUSION

For the reasons set forth above, USDA NOP should review the labeling practices of the Respondent Companies for compliance with the OFPA and the NOP Regulations, pursuant to 7 C.F.R. §205.660(a); should exercise its authority under 7 U.S.C. §6519(a) to impose civil penalties on the Respondent Companies for knowingly selling and labeling their products as “Organic” in violation of the OFPA and NOP Regulations; and should take such other action as

NOP deems necessary and appropriate to remedy the unlawful, deceptive and misleading labeling practices of the Respondent Companies.

Respectfully submitted,

ORGANIC CONSUMERS ASSOCIATION

A handwritten signature in black ink that reads "Ronnie Cummins". The signature is written in a cursive, flowing style.

By: Ronnie Cummins, National Director

DR. BRONNER'S MAGIC SOAPS

By: David Bronner, President

INTELLIGENT NUTRIENTS

By: Horst M. Rechelbacher, Founder

ORGANIC ESSENCE

By: Ellery West, President