

SANDLER, REIFF & YOUNG, P.C.

January 26, 2010

Via E-Mail

Robert C. Cumbow, Esq.
Graham & Dunn, PC
Pier 70
2801 Alaskan Way Suite 300
Seattle, WA 98121-1128

Re: Éminence Organic Skin Care, Inc.

Dear Mr. Cumbow:

This firm represents the Organic Consumers Association (OCA) in connection with the complaint filed with the National Organic Program, U.S. Department of Agriculture, on January 14, 2010 (the OCA Complaint). Our client has forwarded to us your letter directed to Mr. Ronnie Cummins, National Director of OCA, dated January 21, 2010, and your e-mail of January 23, 2010 directed to Ms. Alexis Baden-Mayer, Political Director of OCA.

For the reasons set out in detail in the OCA Complaint, it is the position of OCA that the Organic Foods Production Act of 1990, 7 U.S.C. §§6501 et seq., and the USDA National Organic Program (NOP) regulations, 7 CFR Part 205, currently do apply to personal care products that contain agricultural ingredients and are labeled and marketed as Organic and that USDA has the authority and obligation, right now, to seek civil penalties and other appropriate remedies against companies that knowingly label their products as Organic in violation of the NOP regulations.

It is also the position of OCA (i) that most of Éminence's Organic Skin Care products are not certified to NOP standards because those products do not contain 95% organic content (exclusive of water and salt) and because these products contain ingredients (such as Alpha Olefin Sulfonate) which are not permitted to be included in any product labeled and marketed outright as Organic; and (ii) that the labeling of these products as Organic is deceptive and misleading to consumers, regardless of whatever permissive industry certification Éminence may in fact have obtained, because the main cleansing and/or moisturizing ingredients in these products are not derived from organic agricultural material and, in fact in some cases consist of petrochemicals that consumers do not expect to find in any product labeled as Organic.

Each and every factual statement made with respect to Éminence products in the OCA Complaint and on OCA's website is truthful. OCA, of course, has every right to petition the

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USDA to enforce its regulations against companies that OCA believes are violating those regulations and to explain in such a petition, as OCA has done, why those companies' labeling and marketing practices do violate the law and why such violations cause the injury to consumers described in the Complaint.

For these reasons, OCA rejects the suggestion that any statement it has made with respect to Éminence products is false and defamatory, and OCA must respectfully decline your request that it remove Éminence's name and references to Éminence products from the OCA Complaint or from communications issued in reference to that Complaint.

OCA will today post to its website a spreadsheet indicating the "hazard scores" of the products of the companies named in the OCA Complaint, based on the Environmental Working Group's "Skin Deep" cosmetic safety database. The majority of personal care products mislabeled as "Organic" scored in the "Moderate Hazard" category, while the majority of products truthfully certified as "Organic" in accordance with USDA NOP standards scored in the safest "Low Hazard" category. It is OCA's understanding, however, that although Éminence initially committed to submit product and ingredient information to EWG, Éminence then refused to do so and OCA shall advise the public accordingly. However, if Éminence does decide to honor its pledge to submit product and ingredient information to EWG, and it turns out to be the case that the majority of Éminence's products do in fact score in the safest "Low Hazard" category, OCA will certainly communicate that fact to the public at that time.

If you have any questions concerning the above or need to communicate with OCA further with respect to this matter, please contact the undersigned.

Sincerely yours,

A handwritten signature in black ink, appearing to read "J. E. Sandler". The signature is fluid and cursive, with a long horizontal stroke at the end.

Joseph E. Sandler

cc: Mr. Ronnie Cummins
Ms. Alexis Baden-Mayer

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