

February 20, 2004

Via Hand Delivery

NOP Compliance
Agricultural Marketing Service
United States Department of Agriculture
1400 Independence Ave., S.W.
Mail Stop 0203—Room 3529-S
Washington, D.C. 20250

Re: Complaint Against Certified Operation and Certifier for Violation of Organic Foods Production Act and NOP Regulations

To NOP Compliance:

We are writing to call your attention to three corrections that should be made to the above-referenced Complaint filed with your office February 18, 2004 on behalf of the Organic Consumers Association.

1. Page 9 of the Complaint includes a statement indicating that several companies, including Kiss My Face, purchase Bayliss Ranch's hydrosol water extracts to add to their products for organic label claims. Although Avalon Natural Products, Jason, and Nature's Gate do utilize Bayliss Ranch's hydrosol water extracts, we are advised by the company manufacturing the Kiss My Face brand that it has never purchased its hydrosol water extracts from Bayliss Ranch.
2. Page 9 of the Complaint refers to Exhibit 7 as being a representative print advertisement of Avalon Natural Products. Exhibit 7 is in fact a representative print advertisement of products sold under the brand name Nature's Gate. Enclosed herewith, to supplement the record, is a representative print advertisement of Avalon.
3. Footnote 3 on page 7 of the Complaint indicates that the Organic Trade Association's Personal Care Task Force (PCTF) voted at a meeting in 2001 to count ordinary water in hydrosol water extracts as "organic" because hydrosol water extracts were misrepresented to have standards of identity. That reference should be to a meeting that took place on March 8, 2002. The relevant portion of the minutes of that meeting are as follows (emphasis original; Mark Egide is CEO of Avalon, Donna Bayliss is CEO of Bayliss Ranch, and Andrea Cole until recently was a Vice President of QAI):

Mark Egide proposed that 1) hydrosols should be considered a solid ingredient but 2) infusions be considered organic only according to their

solid content from herbs. Andrea proposed broadening this policy to include anything with a standard of identity. Donna noted that hydrosols do have a standard of identity. Curt said that the bottom line is what's going to be on the label: if it is an infusion with 50% water and 50% solid, can the claim be "organic"? Consensus: the producer would have to make a "made with" claim.

Proposal: "for the purpose of this standard, a hydrosol is considered a single ingredient".

Vote: eight in favor, one abstaining. Proposal passed.

Proposal: Water infusions can be counted as a single ingredient.

Vote: one in favor, eight opposed. Proposal failed.

OTA President and PCTF Chair Phil Margolis advised via e-mail on the OTA's PCTF list serve on February 18, 2004 that although no formal revote was taken to void the March 8, 2002 vote, "the 'hydrosol issue' is still open" and that the March 8, 2002 vote does not in fact represent the current formal position of the task force. Mr. Margolis explained this issue reopened when the task force "ascertained that there was no 'standard of identity' at FDA as we had thought there was."

If you have any questions concerning the above, please contact us. Thank you for your time and attention to this matter.

Sincerely yours,

Joseph E. Sandler
Counsel for Organic Consumers Association

Cc: Bayliss Ranch and QAI