

April 28, 2004

Via Hand Delivery

Eileen Broomell
NOP Compliance Officer
AMS, Compliance & Analysis
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

Dear Ms. Broomell:

This letter is prompted by an abusive and threatening letter that we have received from counsel for Bayliss Ranch, in connection with the above-referenced Complaint; a copy of that letter is enclosed.

Although it is clearly Bayliss Ranch's objective to distract attention from the substantive allegations of the Complaint, it is our desire to correct the record once and for all with respect to the issue of the extent to which the companies listed in Exhibit 1 of the Complaint have "endorsed" the Complaint, as follows, and we ask that the record be corrected to reflect the following prior to USDA taking any action on the Complaint:

(1) *Prior to the filing of the Complaint, 84 companies signed a written statement (sample attached hereto), which read, in pertinent part: "By signing on and joining the long list of retailers who have already endorsed the campaign we can build a powerful voice for strong organic standards on body care products when we plan to file a legal complaint on the issue."* (emphasis added).

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(2) All of the other companies listed on Exhibit 1 to the Complaint, as filed, had endorsed the Organic Consumers Association's "Coming Clean" Campaign prior to filing of the Complaint. At the time of those endorsements, the Organic Consumers Association (OCA) had already filed and publicized its Complaint to the California SOP as part of the Campaign, and had widely publicized its intent to file a similar Complaint with the USDA NOP, as a key part of the strategy of the overall Campaign. The Campaign substantively includes advocacy of the Campaign's core arguments, which arguments have been incorporated into the Complaint to NOP.

The core strategy of the "Coming Clean" Campaign was also detailed in an OCA petition to USDA, which was publicized as part of the Campaign. The full text of this petition is attached; it has not been modified since the inception of the Campaign in March 2003. It is our belief that in endorsing the "Coming Clean" Campaign, the endorsing companies clearly intended to support the efforts of OCA to pursue USDA action to stop firms from inflating their organic labeling percentages with the ordinary non-plant water in hydrosol water extracts.

(3) Subsequent to the filing of the Complaint, 22 companies (not listed on Exhibit 1) requested that their names be added to the list of companies specifically endorsing the Campaign and Complaint.

(4) As reflected in our letter of April 15, 2004, upon releasing the Complaint, companies listed in Exhibit 1 were notified and given access to the full text of the Complaint. Thereafter, eight companies asked to be removed from the list, apparently due in part to pressure from Avalon.

In view of the above facts, OCA hereby withdraws Exhibit 1 to the Complaint as filed, and substitutes the attached new Exhibit 1, separately listing: (a) companies who signed the written statement specifically endorsing the filing of a complaint as part of endorsing the "Coming Clean" Campaign, prior to the filing of this Complaint; (b) companies endorsing the "Coming Clean" Campaign; and (c) companies who asked to be listed as supporting the Campaign and Complaint after it was filed. In addition, the first full paragraph on page 2 of the Complaint should be amended to read:

"Attached as Exhibit 1 is a list of companies explicitly endorsing the filing of a legal complaint prior to the filing of this Complaint; a list of companies endorsing the principles of this Complaint as advocated by OCA's "Coming Clean" Campaign; and a separate list of those companies which specifically endorsed the Campaign and this Complaint after it was filed."

Except as noted herein, and except for the minor corrections to factual statements set out in previous correspondence with you, OCA stands by all of the allegations of the Complaint and specifically refuses the demand of counsel for Bayliss Ranch that any of such other allegations be withdrawn or modified in any way.

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If you have any questions or need further information concerning the above, please contact the undersigned.

Sincerely yours,

Joseph E. Sandler
Counsel for Organic Consumers Association

cc: William J. Friedman, Esq.
Richard Matthews, NOP
Mark Egide, Avalon Organics
Katherine DiMatteo, OTA

Enclosures:

Substituted Exhibit 1 to the Complaint

Sample Endorsement Statement

OCA "Coming Clean" Campaign Petition to USDA