

FTC Organic Claims Roundtable
October 20, 2016
Segment 2
Transcript

JULIA SOLOMON ENSOR: Time to get started.

Well, hello. Welcome to the last panel of the day. My name is Julius Solomon Ensor. I am an attorney in the enforcement division in the Bureau of Consumer Protection here at the FTC. And at this point, we've had a great discussion about consumer perception of organic claims, and thank you to Hampton and Brad for moderating those.

We've heard a number of interesting perspectives on potential deception in the marketplace, and so in this panel, I want to talk about where to go from here and how that potential consumer deception can be addressed. Before we jump in and talk about potential solutions, though, I want to take a minute to identify any future consumer research needs that you think need to be conducted in order to refine our understanding of consumer perception of organic claims.

So I just want to take a minute and see whether, at this point in the discussion, there are any distinct gaps in consumer understanding that you've identified that you think might be ripe for future research at this point.

And I know John, in your willingness to pay experiments, you have noted that it could be useful to see some future research about whether increasing willingness to pay for [INAUDIBLE] products might be attributable to consumer uncertainty about which standards apply. Is that-- maybe we can start off by talking about.

JOHN C BERNARD: Yeah, I see a lot of possible areas for research here. I couldn't-- an hour to write the list all the possible things we could do. Certainly, trying to measure deception would be one thing to try and figure out. How do we measure that in an economic study? It's something I'm trying to think about. Right now, certainly, seeing people's willingness to pay gave me some different definitions, explaining about the third parties certification, explaining the differences between USDA Organic and these other organic claims.

So lots of things, though the 2-step procedure like I talked about earlier would be a basic place to start-- is auction off some things with the labels on them, and then give them information about what the label actually means and what it represents, and then seeing how that changes their opinion. And we get an idea of how much, maybe, are people overpaying for some of these things [INAUDIBLE] because they're getting stuff that they don't think they are really trying to get.

GWENDOLYN HUSTVEDT: Just to piggyback on that, I'd like to dig in on the study that you did with food, where you show just organic or USDA Organic, and look at that when we're looking at non-food products. Because of course we've been saying here that we feel like consumers have a lot of experience with the USDA Organic label relative to food and maybe less experience with the USDA Organic label on non-food products. And so that would be another

thing that would be interesting to see what the meaning, the value of USDA on that label meant to them.

JOHN C BERNARD: Right. And going back to what Laura's mentioned, of course, of all the different labels that are on products these days. And we notice in the foods these many labels. And how many of the consumers actually paying attention to this? I'd like to try to get a better idea of-- organic's not the only claim on a lot of these personal care products. And how much does that weight into what they're paying compared to what they're paying for some of the other attributes on there.

I've been talking to my grad student about could we get some eye tracking software or something like eye tracking glasses, and see how much time they spend looking at the organic part of a label, if that's the key part of their decision or for other parts on there. What's driving them to buy the different products?

JULIA SOLOMON ENSOR: Anybody else?

LAURA MACCLEERY: Well, I think, just to pick up on the last panel discussion-- if consumers think that the word organic is appropriate and fully adequate shorthand for USDA Certified Organic, and that's the reasonable consumer expectation about what the use of organic means across product categories, that's pretty telling, and would be useful, it sounds like, in terms of establishing a baseline for an enforcement action or other kinds of government response.

JULIA SOLOMON ENSOR: Thank you all very much. Of course, here at the FTC, we're driven by consumer perception, so we're always very interested in any additional research you do in refining our understanding of how consumers interpret these claims. So that'll be really interesting to see where your research takes you in the future.

So I want to get into the meat of this panel, which of course is whether there are possible ways that we can minimize consumer deception in the marketplace. And I want to start this discussion by talking about potential guidance. And I want to be very clear that at this point, we're just information gathering here. We're trying to learn from the panelists and ultimately from any comments that you submit. There's no decision that's been made at this point. We're simply information gathering.

But with that said, I want to open the discussion by asking whether consumer deception in this area is caused by a lack of guidance or by bad actors?

JOHN C BERNARD: Or both.

JULIA SOLOMON ENSOR: Or both.

LAURA MACCLEERY: Are marketers bad actors? They're going to-- maybe? Sometimes? But sometimes they're just taking advantage of the fact that there isn't a clarity around a term. And they know that the public finds that term meaningful, and so no one's going to hold them to account. I don't want to attribute nefarious motives. It's people have a profit incentive to sell their

products, and they will take advantage where they think they could make an appeal that isn't going to get them into hot water.

SCOTT FABER: And I would just add-- so I think you could certainly argue that a product like this one might be regulated as misleading by FDA, or in some ways run afoul of other rules that are in place. But I think if I were the general counsel for the company that produced this product, I would probably say this is fine. This is a perfectly legal claim to make, and in the absence of clear rules, that there is no real litigation risk posed by a claim like this one, because it's beyond USDA's authority. It's not a product that would be subject to NOP enforcement.

You could argue that FDA might have some enforcement authority, because I think one could argue that a product that has organic on the front but has banned or restricted chemicals in the ingredient line is inherently misleading. But there's obviously not a lot of enforcement in that space.

So why not? And what why wouldn't a marketing officer for a company like this one free ride on all the enormous consumer trust that has been built by companies, organic companies, and the USDA National Organic Program, one would argue you're sort of crazy not to.

JULIA SOLOMON ENSOR: So I just want to ask the question generally, then-- is there a feeling among the panelists that there is a need for new guidance? Just by a show of-- if you could raise your hands. You think there is a need for guidance in this area. OK, and we'll drill down into that.

But first I want to ask Lisa a few questions just about the current state of the USDA program. I know you and your counterpoints have spoken a little bit about the parameters of NOP, but can you just specifically identify what the limits are of its potential expansion of NOP?

LISA BRINES: Sure. Well, we get our authority from the Organic Foods Production Act. And it's under that act we've been authorized to implement the National Organic Program for agricultural products. Generally, the drivers for NOP to make changes to the regulations often come from recommendations from our 15-member federal advisory committee, which is called the National Organic Standards Board. It's a broad group of stakeholders that includes representatives that are growers, handlers, retailers, certifying agents, scientists, environmental representatives-- I might be missing one category there.

So in general, when we issue new guidance or propose changes to the regulations, usually the motive for that is because our advisory board has made a recommendation instructing NOP to do so. We do have a long list of outstanding recommendations from that board that we're trying to implement, so everything from aquaculture standards to pet food to livestock regulation changes. So we don't currently have on our work agenda changes to the regulation in response to personal care products.

We have-- and it's part of the meeting materials that are posted on the FTC website. We did issue a policy-- I guess it was a few years back-- regarding submission of petitions for personal care products. So these are part of the work of our advisory committee, to review materials that are

used in the production or handling of organic products. And we had received some petitions for materials for nonorganic materials that would be added to a processed personal care product.

And in the absence of criteria to evaluate those, we decided not to accept petitions on those products for the time being. But again, the scope of our authority under OFPA is for agricultural products. Thanks.

JULIA SOLOMON ENSOR: So within the parameters that Lisa has outlined here, do folks on the panel have suggestions for things that NOP can do to alleviate consumer deception in this area? Angela.

ANGELA JAGIELLO: I think that one of the things that we're interested in clarifying is the difference between a content claim versus the word organic modifying name of a product. For us that means three criteria need to be met. Sorry, in order for-- the content claim. That's easy. Made with organic, whatever on the back panel. But if you're going to be on the front panel, there would need to be a transparent standard involving certification and with government oversight.

And ideally, as is the case with the Global Organic Textile Standard, an NOP recognition.

JULIA SOLOMON ENSOR: Anybody else want to speak on this?

LAURA MACCLEERY: I'd have to think about the limits of the authority, but it seems to me that USDA and FTC could produce guidance jointly that, in the absence of these kinds of components that was just laid out for the minimum set of an effective regulatory program, that organic would not be a term that's available to be used in context not regulated by the National Organic Program.

AUDIENCE: Yes, yes, yes.

JULIA SOLOMON ENSOR: OK. Well I do want to turn to the FTC's role here. And Laura, if you could start the discussion by just speaking generally about what the FTC's authority is with respect to organic claims.

LAURA KOSS: Sure. So basically-- you know I spoke about this before-- what we have authority to do under Section 5 of the FTC Act is to take action against deceptive claims-- any claim. Of course, organic claims is something we-- well, let me take a step back.

In order to determine whether a claim is deceptive, we look to how reasonable consumers understand that claim, and we look to see whether that claim is material to consumers. And what I want to emphasize-- and I did a little bit earlier-- is that when we look at who is a reasonable consumer, and what an ad reasonably conveys, we look to not to a scientific or technical or regulatory definition. Instead we look at, again, what do reasonable consumers think this claim means?

So there could very well be a disconnect between a regulatory standard, between what the dictionary says, between what a scientist or what an expert or what the industry says it means and what reasonable consumers think it means. I talked a little bit before about marketers being responsible not just for their expressed claims, but their implied claims. And when I mean responsible, they have to determine what are the claims that they're making to reasonable consumers. And then they need to be able to substantiate those, within the case of most environmental marketing claims and with health claims, with competent and reliable scientific evidence.

So what the Green Guides do is because Section 5 is so general-- it basically says don't lie, and back up your claims-- what the Green Guides do is help marketers understand this is the commission's view of how reasonable consumers understand the claims that you're making, including the implied claims that you're responsible for, whether you intended to make those implied claims or not. So we had a very comprehensive review process for the guides, which were issued in the '90s, because since they're based on consumer perception, they have to be a living document.

So as part of that review, we asked for hundreds of comments, we did workshops, and we conducted a consumer perception study. This is not the study that we're discussing today, but-- we didn't ask for evidence on organic claims. But we did ask commenters to provide that evidence for how reasonable consumers understand the claim organic.

And we didn't receive that evidence, unfortunately. So at the time, the commission said, we're not going to include a separate section for organic under the Green Guides, but that doesn't mean that organic claims are not subject to Section 5 of the FTC Act. So if in the context of a specific advertisement, a marketer makes a claim that would be deceptive to reasonable consumers, then that marketer could still be subject to enforcement action under Section 5 of the FTC Act.

JULIA SOLOMON ENSOR: Just a quick follow up question for you, Laura. What types of evidence would be needed to develop a record to issue specific guidance on organic claims?

LAURA KOSS: Well, of course, a primary piece of that is solid, methodologically sound consumer perception evidence. But the Green Guides themselves were not simply based on consumer perception evidence. We also, as I said, looked at comments and had workshops. What we're trying to do is bolster a very strong record, because we don't issue guidance unless we feel that we have that.

JULIA SOLOMON ENSOR: So a question for the panelists, then, is within the parameters that Laura's outlined here, do you think that FTC guidance would alleviate any of the problems that we've identified today?

LAURA MACCLEERY: Well, yeah, I think it could. Absolutely, particularly if it leads to more specific standards where consumers might actually benefit from having access to properly regulated organic products in some of these areas. So it's not about ending a market for a better than average consumer products across a variety of marketplaces. It's really about creating a system that accurately rewards better products, and it distinguishes for consumers what they're

paying for, if they're paying for a marginally more expensive product that conforms with their values or their concerns.

So I do think there's a-- and I almost do think maybe a guidance would be a more effective use of resources than case-by-case enforcement action. So just developing a kind of perspective and guidance that's based on this body of work that the FTC has started and additional consumer research that it now has in its hands that shows that consumers are confused by these labels and that they have an expectation that these products are "organic" in terms of what they contain or how they've been produced. So building that record out and basing a guidance on, I think, would be very helpful.

SCOTT FABER: And I'll just add that the organic industry is the fastest growing segment of the grocery store. The growth of non-food organic has really exploded over the last decade, as OTA and others have recorded. And then you see other estimates of the potential growth of this sector, which is now around \$3 billion in annual sales to as much as \$20 billion in annual sales over the next few years.

So this is an-- and then we know from our own experience administering our Skin Deep Database, that not only are we seeing a proliferation of the use of the term organic in various ways on the package, but just the number of people who come and search Skin Deep grows all the time. So just this year alone, so through October 11th, we've had 150,000 unique searches for the word organic as people are looking through Skin Deep, or about 500 a day.

So people are clearly looking more and more for this information as they're making their shopping choices. And it's just hard to imagine many circumstances where a product that is primarily composed of chemicals-- in some cases chemicals that have been restricted elsewhere around the world-- should ever carry the word organic in the product name or the brand name or even with some sort of qualified claim. And still, without undermining the integrity of the NOP program, and ultimately deceiving consumers who, as we saw from Matt's research, a significant share of-- I think it was like 33%, when they see organic on the brand name on the product, think that means that everything in the bottle is organic.

So I think ultimately having strict guidance that says here are the circumstances when you can use these sorts of claims is ultimately going to make sure consumers aren't buying something different from what they think they're buying.

JULIA SOLOMON ENSOR: So I want to drill down a little bit more specifically on that. I hear what you're saying, that there's a gap here and that guidance may very well be useful. But based on the consumer perception evidence, what do you think that guidance would look like? I know OTA has had some problems.

ANGELA JAGIELLO: I could restate, yes. We would love the guidance to state that organic can be used for content claims on the back panel. But if it's going to be on the front panel or modifying the name of a product, that it meet four criteria-- that it's beholden to a transparent standard, that it involves certification, that there's government oversight, and ideally, that there's NOP recognition as with GOTS.

JULIA SOLOMON ENSOR: And Laura, I'm going to look to you to address the issues of standards and certifications.

LAURA KOSS: OK. Well, in terms of standards, the FTC is not a standard setting body. We're a truth in advertising agency. We're not an environmental agency. We don't set environmental standards. That's outside the scope of our Section 5 authority.

During the Green Guides process, during the review, a lot of commenters-- in a variety of contexts, not just in organic-- asked us to endorse particular standards, and said, bake these into your guidance, and then consumers will be less confused. We declined to do that in those cases, because those standards didn't necessarily track with how reasonable consumers understand those claims. And a standard for us, to refer to it as guidance, has to accurately reflect and track consumer perception.

With regard to certifications, the Green Guides did include a new section on certifications, noting the importance of the prevalence of certifications in the marketplace and the importance to consumers on-- especially in the environmental marketing area, consumers are looking to third parties, because they can't independently verify the veracity of claims in the environmental area.

But the commissions actually noted that certifications could be deceptive. We looked at them in terms of claims. In other words, if a certification is featured in an advertisement or on a package, we look at that like we would any other claim. What does that imply? What does that mean to reasonable consumers? And in some cases, we said marketers should qualify their certifications if consumers can be deceived by an unqualified certification.

We also talked about certification as substantiation. In other words, is a certification required? Can the commission have a database, for example, of approved certifiers that use certain standards? And the commission declined to do so, and explained, essentially, that what we require under Section 5 of the FTC Act is that marketers have competent and reliable scientific evidence for their claims. And that is a flexible standard. So the commission declined to say that we were going to require a certification or any particular certification, or that we were going to have a database for that, because we wanted marketers to have that flexibility to substantiate their claims.

JULIA SOLOMON ENSOR: Thank you, Laura.

GWENDOLYN HUSTVEDT: I just wanted to reflect or reiterate something that I was hearing Angela and also Lisa say, but that I thought might be important to say again, which is that I feel that we're seeing that there are clearly different categories. And so that the Federal Trade Commission's policy or guidance as it moves forward should take that into account, that categories such as textiles have done extensive work, that is, developed a standard, and has worked with the National Organic Program.

And while there is still absolutely room for deception within the textiles market-- the rayon produced from organic bamboo is the most humorous example. And so we're very pleased when we see the Federal Trade Commission going after bad actors-- I feel comfortable calling them

bad actors-- who are using a very far away and distant organic certification followed by an environmentally damaging process to then call the resulting products something healthier, more environmentally friendly, or even, heaven forbid, actually organic.

And so I feel like the Federal Trade Commission is doing their work and in preventing that kind of deception. So I just wanted to bring that up, that as we go forward, potentially separating out the personal care from the textiles or other categories that may arise as we investigate.

ANGELA JAGIELLO: I have a question for Laura. I recognize the difficulty with blessing a particular standard. Could you imagine guidance that specified organic as an ingredient descriptor on back panel versus product name modification? I'm just trying to get a sense of what might be possible for guidance.

LAURA KOSS: Well, again, we wouldn't give specific guidance on organic without having solid evidence, solid record. And in terms of-- but as I mentioned, under Section 5, if consumers-- organic claims are still subject to the FTC Act. So offender-- in a particular context, if somebody made an unqualified claim, and consumers understood it some way, and then the product-- there was a claim on the back, that in fact could deceive consumers. The FTC already gives guidance on how to make effective claims and how to make effective qualifications so that consumers aren't deceived.

But just so I understand, you're saying that organic should only appear-- I'm not sure what you're asking. Are you saying that you would prefer that organic claims only appear on the back?

ANGELA JAGIELLO: I think there's going to have to be-- in my opinion, there would need to be some conference with the National Organic Program and some draft guidance and some public comment. But I think that ideally, organic as an ingredient modifier on the back panel is one thing. Organic on the front panel without any guidance for what that means is a completely different problem.

LAURA KOSS: Right. Well, we'd have to look at-- we don't look at claims in isolation. We'd have to look at the net impression of an advertisement or a package or whatever the promotional material is. So in a specific situation-- or we've given guidance in general that what we state, what the law is, is that we would look at the net impression of the ad. And if the placement of a claim, and depending on where it is, it could be deceptive. So it depends on the net impression.

SCOTT FABER: Can I add one wrinkle that won't surprise you at all? Which is that-- well, first off, a lot of these sales are migrating on the line for all the reasons you can imagine. They're nonperishable, and so on. And we've found that many of the organic claims that are being made online are not also being made on the package. And so when you buy, you'll go-- trust me, when you go home tonight and start shopping for personal care products, you'll see lots of organic claims online. But then when you buy the product, the underlying product, it won't have organic anywhere on the package.

So clearly-- so that might be, as you're thinking about a guidance or updating the Green Guides, thinking about this problem of internet advertising versus on-package advertising as something to consider as well.

LAURA KOSS: Right. The Green Guides did address the issue of internet pointing out-- sending people to a website is a qualification. And it actually said that that's not going to be an effective qualification, because that qualification is not in close proximity to the claim that's being made.

JULIA SOLOMON ENSOR: So I want to go back to a point that Gwendolyn briefly raised. I think it's related to your point about different products and different categories that we're looking at here. And the question for the panelists is whether potential FTC guidance might create an inconsistency with NOP, and how to deal with that?

[LAUGHTER]

GWENDOLYN HUSTVEDT: Yeah, that was good.

LISA BRINES: All right. I'll bite. Yeah, I think we would-- if the direction is for FTC to develop guidance in response to the research presented in this panel and public comment, I think and I anticipate the NOP would work closely with the FTC on development of that guidance. I think part of the driver for this study was to assess whether there is consumer confusion for organic on non-agricultural products. And what I'm hearing from some of the panelists is that sometimes there is an expectation that organic on one product means the same thing as organic on another product.

So I think in terms of if guidance is forthcoming, to ensure that even if there are accommodations for different product categories based on the needs for those individual industry sectors that, overall, it would be consistent with what the NOP has set forth for organic products on agricultural products. So again, it's not unusual. We have one standard. It applies to a very broad range of agricultural products-- wild harvested, livestock products, fruits, vegetables, and so on. So it may be a manageable task, but we'd want to look closely at the details to make sure we wouldn't be furthering confusion by having two separate sets of guidance and standards.

SCOTT FABER: And I would just add that it's important-- well, it would be helpful to think about how other claims being made on personal care are also either deceptive or, in combination with organic claims, misleading consumers, and to work with FDA to think about and to provide guidance so that manufacturers can avoid claims like organic when it's not appropriate, but also claims around unscented products that, indeed in fact include fragrance ingredients, or hypoallergenic claims which are not-- different form of substantiated, but are unsubstantiated.

So I think while this is certainly important to focus on the misuse of organic claims in personal care, there are a lot of really misleading claims being made in personal care, some of which are probably even more troubling than the misleading organic claims. So I don't want to-- expanding the scope sometimes makes it harder to-- and of course the Green Guides has a limit to their scope, but of course Section 5 doesn't prevent you from going after some of the other equally misleading claims in the personal care space.

And I think for the benefit of manufacturers, giving them that guidance would be helpful, so they know what the rules are.

JULIA SOLOMON ENSOR: Thanks, Scott. Well, before moving on to our next topic here, which is consumer education, I did want to take a minute. I know that Angela and OTA have a number of thoughts about different standards there are in the marketplace, currently GOTS and [INAUDIBLE]. I just wanted to ask a question about how helpful these existing standards in the marketplace are to consumers? And then as a follow up question to that, does the research suggests potential conflicts between consumer perception and those existing standards in the marketplace that we should be thinking about?

ANGELA JAGIELLO: I am so distracted by the fact that I had a question to ask Lisa before we moved on. May I do that?

JULIA SOLOMON ENSOR: Go ahead.

ANGELA JAGIELLO: OK. I think that most of the products that are problematic contain a combination of agricultural and non-agricultural ingredients. Can you help us understand where NOP's scope of it-- at what percentage does the balance shift, and the product becomes a concern of NOP or not inside the scope of enforcement?

LISA BRINES: I don't think we have any published policy in terms of something that would be available in our program handbook, which is generally where we provide guidance to industry on the standards in terms of what would be a threshold where we would take enforcement action. I would certainly encourage anyone with interest in this area, that if they do see those claims, and they think they might fall under organic standards, to please submit them to our compliance division so they can be evaluated. Sometimes we need to get legal opinions on whether or not we can take action. My understanding is that compliance can also follow up with FTC. So if there are things that fall outside of the scope of our authority, there are things we can do. So just encouraging those submissions to NOP so they can be evaluated, sometimes on a case by case basis.

GWENDOLYN HUSTVEDT: Just to jump in really quickly, because I know there's people watching or who haven't thought about all of these categories. But of course, all the questions that you asked about the percentage of content, and people-- and the way you described it. But of course with something like a mattress, by weight it can be 95% metal. And then the agricultural component could be a very small percentage. But the consumer's experience of that product, the agricultural parts of that product are what they are experiencing intimately.

And so it can be very tricky to just draw a line in the sand, because there could be products that would be very reasonably covered by the standard, but by weight, the percentage system doesn't quite work.

LISA BRINES: Yeah, I think that fiber example is a good example. And we have-- we do get complaints submitted on mattress products. And we do have, with the policy memo, with the

GOTS standards being in place and recognized by NOP, we feel like we do have the tools necessary to follow up on those when we need to.

JULIA SOLOMON ENSOR: Well, Angela, I want to give you a moment to talk about the standards. A question, if that's of interest to you. And the question is basically, how helpful are the standards that are out there to consumers? And are there potential deception issues between consumer perception and what those standards actually require?

ANGELA JAGIELLO: Sure. I think third party standards can be helpful, provided that they're meaningful standards, so that there is transparency baked in, that there is verification and government oversight. I think those can be very helpful.

JULIA SOLOMON ENSOR: Does anybody else want to weigh in on any of the standards that are out there in the marketplace?

GWENDOLYN HUSTVEDT: The things that come to mind, based on my research with another collaborator that John and I have collaborated with before that has to do with animal welfare and cruelty-free products and the whole zone of consumers' sensitivity related to the treatment of animals, which we found in our research, that one study, that Hikaru Peterson and I did. We could not predict whether or not the consumer would be interested in purchasing the organic labeled product based on any of the questions we asked them. Any of their attitudes or perceptions, we couldn't predict it.

But we could predict their purchase of a product labeled as animal-friendly based on their answer to a single question. It predicted 50% of the variance within the model. And so it shows that it was a very strong motivator and one that I think is a separate conversation. But based on my research, I feel that consumers would be strongly concerned, reflected what they believed that the standard reflected.

LAURA MACCLEERY: I'll just say, we rank the transparency and credibility of various food labeling programs on greenerchoices.org on the Consumer Reports website. And we find there's a wide variance in how meaningful the labels are, how well the programs are run, whether there's validation or any kind of system of accountability within different certification programs.

And from our perspective, the need to maintain a massive website of the various private certification labels in order to unpack them for consumers itself bespeaks a kind of-- the proliferation of the labels and the possibility for confusion for consumers, most of whom probably will not find themselves poring through the details of the little various sticker kind of insignias on various products on our website.

And so there is no substitute for a validated government regulatory program, like the National Organic Program, that sets out clear and transparent standards developed in public, with a public process for validation, and that allows clear guidance for manufacturers and clear guidance for consumers. I think it's just-- it's sort of a best in class kind of program. And the NOP should be very proud that it's built this up and that other people want to use its good marketing and consumer trust in their product areas.

But there's a need to really extend its reach, because there is this sort of free market approach with all of these different programs. Some of them do do some good, I have no doubt. And we've seen that in our reviews. But it's really-- they're not a substitute for a validated program that consumers trust. And I think the comparative survey research will probably bear that out, I would gather, that this is the most trusted brand, the US organic program with the USDA certification, of all of these kinds of labels.

SCOTT FABER: And I'll just add to Laura's comments that there are obviously other certifications that companies are relying on when they're making an organic claim, in part because they have to instantiate the claim, or because they want to carry the seal of that certifier. And there are a number of problems that we've identified with those relying on those tools.

One is they are a black box. So unlike the NOP, which is subject to rule making and probably more consumer participation than you like sometimes, there-- it's a public process. And so the public has a say in the standard setting.

I just in the process of preparing for this panel was trying to dig deeper into one particular certification that-- it's a private organic certification. And first of all, you have to pay to view the standard itself-- not terribly transparent. And secondly, when you go into the certification itself, there's one page-- I don't want to call out anybody's certification standard-- but one page of prohibited chemicals.

We have a-- EWG has an EWG-verified seal. We're not claiming it's an organic seal, but if you want to carry our seal on your personal care product, we have a 112-page list of all the prohibited ingredients, which is on our website. And you don't have to pay \$100 to see.

So I think that's one of the-- I understand the limits of a guidance versus a rule, but I think as you're thinking about the guidance, and allowing companies to rely on certifiers, it's important to keep in mind there are limits to what those private certifiers can do, beginning with the limits of a group like Consumer Reports to wade through them all and figure out which ones are valuable.

LAURA KOSS: Right. And under Section 5 of the FTC Act, there is no requirement that certifiers make their standards public. But that doesn't mean that if we were looking at a claim, if we were looking at a marketer's claim, and they had a substantiation, we would look behind the substantiation to ensure that that constitutes competent and reliable scientific evidence.

JULIA SOLOMON ENSOR: Thank you all. We're starting to running a little bit short on time. I want to make sure that we get to a few more topics, so I'm going to move us on to the question of consumer education, and whether consumer education would be an effective way to clear up consumer confusion about current standards for making organic claims.

So I think maybe we can start out with a general question. I think, John, this bears in some of your research, whether there is a need to explain to consumers what either organic or USDA Organic means.

JOHN C BERNARD: Yeah, I think there's definitely a lot more room for education. Again, most of time, I ask them about food. And even with food, there's not a real good understanding. I often give people lists of things or possible things that organic could mean and have them check them off. And I get pretty good answers. Usually the thing that comes up is no pesticides, right? That's the number one thing. If I'm asking about organic, it's the number one thing they say. It's not no synthetic pesticides, they just think no pesticides.

And then I get a few answers, but then they put some extra stuff on there that really doesn't have anything to do with organic. I've asked them to compare organic and natural, and I get very similar answers for natural being the same thing as organic. This is a lot of-- [INAUDIBLE] a lot of room to figure out, for people learn what organic is even in food. You can recognize a USDA label and everything, but even there there's not a full understanding of what it is.

So certainly, we can go to the others' products and I can see consumers are going to be very confused. They're not going to have really any idea what's some of these other things are for organic. I admit to being confused myself. There's third party certifiers, and I don't know what they're saying, what the certification entailed, and I don't really know what those other organic products are either.

So I think there's a lot of room-- a lot of confusion left over. And we can see it in the supermarket, too. Like one of my local supermarkets, where they have an organic food section, but it's not called the organic food section. The label says organic slash natural, which means people think those are kind of the same things, and they'll buy those same things together.

Or if you look at some of the other organic products, they'll also have a non-GM label on it, for example. And of course the non-GM label's redundant, because organic means non-GM. So why do they have the non-GM label on there? It's obviously because they don't think people understand entirely what organic is. And there's other examples of essentially duplicate labeling, saying it's an attribute that organic entails, which suggests to me that at least marketers don't think the everybody understands organic, and they want to get those other words out in front of people, trying to get them to buy their products.

So I think certainly with food there is more room for education, and beyond food, there's tons of room for education, or even just like we've been saying, setting the standard so we can educate people what they are.

JULIA SOLOMON ENSOR: And so I think that leads to a question for Lisa, which is what types of consumer education campaigns is USDA currently conducting for NOP? Angela, I am going to turn to you next for your proposal.

LISA BRINES: Thank you. Yeah, the National Organic Program-- we are within a marketing agency, but we are a regulatory program. So most of what we do is not actually marketing but regulating compliance and accrediting certifying agents. So certainly we do have some promotional materials that we distribute about what organic is, what the rules are, but not necessarily in a promotional-type way. The Agricultural Marketing Service does have a number

of research and promotion programs that are outside of the NOP that are generally commodity-specific programs.

So these are programs that are driven and funded by industry. So industry-- authorized by Congress, but driven by industry to do research on promotional activities. So I'll let Angela speak about one of the ones that's in process for organic was an option under the last farm bill. Most of the 22 research and promotion programs that's currently administered by AMS are commodity-specific, so one for cotton, for Hass avocados, things-- but industry-driven rather than through NOP.

JULIA SOLOMON ENSOR: Thanks, Lisa. And Angela, of course I want to turn to you to ask you about OTA's current proposal for research and promotion program. Specifically if you could address why it's important and what types of promotion and consumer education projects you might see coming out of the program, if it were established.

ANGELA JAGIELLO: Sure, happy to. I'll say that education is an important tenet of organic. Our research shows that 2/3 of consumers are new to the organic label within the last two years. And that's always the case. Every time we ask the question how long have you been purchasing, within the last two years.

So people coming into the market are new. It's a very complex multibenefit system. We are committed to the idea that we are always going to be educating about the label. However, we can't educate in the absence of a clear guidance. That is like the equivalent of us trying to hand a decoder ring to the consumer about what is organic and what's not.

So I think that we can talk about the research and promotion proposal. It's a proposal at this point. It's not at the goal line yet. Certainly there could be some robust education efforts to help people understand what organic is, but this is an area of regulatory oversight that is a major hole for the organic system that has to be addressed by the authorities.

JULIA SOLOMON ENSOR: Yeah, and I hear your point on that. Do you want to take some time to talk about your proposal? I want to make sure that I give you that opportunity if you do want to--

ANGELA JAGIELLO: I think honestly, that's a little bit of a rabbit trail, for the discussion we're having today.

JULIA SOLOMON ENSOR: All right

ANGELA JAGIELLO: Respectfully.

JULIA SOLOMON ENSOR: So does anybody else have any thoughts on messaging or consumer education that might be effective at alleviating any of the deception issues that we've talked about today?

LAURA MACCLEERY: It's hard to--

JULIA SOLOMON ENSOR: Oh, sorry, Gwendolyn. Before we jump into that, I'm sorry. I didn't notice that you'd raised your [INAUDIBLE].

GWENDOLYN HUSTVEDT: Sure. I guess that it just occurred to me when she mentioned the big holes or big gaps that need to be filled. And the fact that I'm an expert on this topic simply through my own curiosity. There's been no incentives coming from any direction whatsoever for me to engage in this research. Simply just found it interesting and intellectually stimulating. And so I wonder what would happen if there was actually-- I have received a USDA Sustainable Agriculture Research and Education Grant that John and I received together and worked on probably about eight years ago now. And certainly we felt like there was some recognition on the part of the USDA that what we were looking at was valuable, but we were a pretty unique study. And I haven't seen a similar one done since.

And so it just occurred to me that it's kind of hard to educate when we're not actually-- when educators aren't doing much about the topic. And so it would be great to see some signals coming from a variety-- from industry, from regulators, policy makers, from a variety of directions, saying, yes, please we'd like more about this.

Sorry it was kind of actually a pitch. I just realized if I wasn't interested just personally, I wouldn't be sitting here.

JULIA SOLOMON ENSOR: Thank you.

LAURA MACCLEERY: Consumer education, obviously, is our bread and butter. And we take it to heart. We think an empowered consumer can really change the world.

That said, it's hard to imagine how just education would do anything in this area, because you would need to be very blunt and straightforward at the point of sale with consumers. So if you had a sign that was required in the aisle where people were buying personal care products or online that said, USDA says organic is meaningless with regard to personal care products, or there is no official definition of organic with regard to mattresses.

That sort of active countermanding of what's on the label would be, I think, the only marginally effective strategy to actually clarify the rules for consumers. And it's sort of ridiculous, right, to have built up all this equity in the term organic, and to then have the National Organic Program or some other purveyor of the benefits of the program out there having to warn off consumers about the use of that term.

So that, just to me, really puts the point on consumer education is wonderful where there is a standard, where you're talking something like the Nutrition Facts Panel, and there's a body of research that supports it, and the government's behind the label, and it's important for consumers to understand how to apply it in their lives. Here, what you're trying to do is countermand the marketing that's inappropriate by a set of products. And the only kind of consumer education that would be effective is absurd.

SCOTT FABER: And compare it to all of the very prescriptive rules we have for structure function claims, nutrient content claims, the other sorts of disclosures that can be on a food package. You know it is really-- it really helps eliminate how different we treat personal care from other things that are in the grocery store.

One odd wrinkle in this area is that many of the companies that own a brand that might be free riding on this sort of organic claim also own organic food brands. And so it just-- really, that to me underscores why we need some clearer signposts for the marketers to know when a claim is appropriate or not. In some sense, they're shooting themselves in the foot.

JULIA SOLOMON ENSOR: Lisa?

LISA BRINES: Thank you. Actually, Gwendolyn mentioning her research grant reminded me that every year our advisory committee sets forth a document on their research priorities for organic. So they finalize it every fall. It's usually an inventory of topics of interest to the organic community, where they've identified their research needs that are not being met.

So I guess in terms of opportunities for the public or others to provide information on those research needs, we do have currently an open comment period to our National Organic Standards Board. They'll be meeting next month in St. Louis, November 16 through 18, I believe. We'll be voting on those final recommendations for this year.

But certainly, generally those are topics that they have struggled with over their public meetings, where they've identified a need for more information, for them to be able to make a more informed decision. But I would encourage comments on those organic topics if it would be appropriate. They are used by other agencies, disseminated. Betsy, who spoke this morning-- part of her role in the organic working group is to work with the research committee across USDA agencies that fund research to make sure that these priorities are on their radar for getting funding.

JULIA SOLOMON ENSOR: Thank you. I want to make sure that we give the panelists each a minute to wrap up here. But before we get to that final wrap-up, the final question that I wanted to ask the panelists is about the role of enforcement, and whether bringing cases and moving forward with enforcement action is an effective way to deal with consumer deception.

LAURA KOSS: It's certainly not a bad way. I think obviously an enforcement action, well-posed, can speak with all the power of a guidance document. It won't resolve questions for every player in a marketplace, but it will resolve certain patterns of behavior that are unacceptable to authorities. And so where there are cases where the FTC feels, or the National Organics Programs feels, that the organic label is misleading consumers, it should absolutely act.

SCOTT FABER: And I don't think it's an either/or. FTC has been terrific at bird-dogging some of the really outrageous claims that are made on personal care. And those enforcement actions obviously have broad impacts on the industry. So more enforcement of misleading claims-- absolutely needed. Clear guidance on when, if ever, it's appropriate to put organic on the front of a package that's filled with chemicals-- also badly needed.

JULIA SOLOMON ENSOR: Thank you. All right. Well, with that I want to, before we conclude entirely, give each of our panelists a minute to say anything new or emphasize any view, and to thank you all for your participation today. I know I've found this extremely useful, so thank you all. Matt, I'll start with you.

MATT JONES: Thanks, Julia. I just want to take this opportunity to underscore what a few others have said, and that this is a great area for future research, and that I think we've identified some really good questions here today where further evidence would be very useful, particularly how and why perceptions of organic claims for non-agricultural products might differ from perceptions of food or agricultural products, and also, when qualifiers or certifications are used, how much that is valued by consumers. So additional research on willingness to pay and how willingness to pay is affected by both government certified and third party certified stamps, I think, would be very useful.

SCOTT FABER: Well, and I'll just-- even the folks who did not raise their hand when I asked if you all use personal care products this morning. All of us use personal care products. Increasingly we're using our dollars to reflect our values. And whether that means values related to our own personal health or our values related to the environment, that's a wonderful trend that should be encouraged. But consumers can't accurately use their dollar to reflect their values if they're being deceived.

And I think the evidence shows clearly that many consumers are buying things that are labeled as organic when, indeed, they would not meet any definition for the word organic. It's also the case that misleading uses of the word organic are undermining the integrity of one of the great success stories in food and agriculture-- the \$40 billion organic foods industry.

And I think-- the last point I'll make is that adding to this confusion is the fact that most consumers, according to our research, believe that the chemicals in this bottle have been reviewed for safety. So that's why these misleading claims are even more deceptive than you might initially think. Thank you, FTC and USDA, for the research you've done, which is fantastic, and for having this roundtable.

GWENDOLYN HUSTVEDT: Thank you for inviting me. I didn't anticipate what having my life's work validated would feel like.

[LAUGHTER]

LAURA MACCLEERY: That's wonderful, Gwen. Well, thank you for holding this forum. It's really tremendous to have this conversation, and I really appreciate all the effort by Brad and all of the moderators that went into the thoughtful discussions.

I think the context is that we all live in a global economy. And there's now an almost limitless number of consumer products that anyone can access through online purchasing or in the stores. And in that context, people are looking for trusted intermediaries. They want to know that someone has vetted the content of a product and that the product is going to be not only safe, but also reflect, hopefully, what they value and the kind of economy they'd like to see. So they bring

these kind of aspirational values to the table when they go shopping. And they should. That's the idea of a marketplace of ideas that reflects a marketplace of products.

And so I think we're talking about what's the equity in this incredibly valuable program that has been carefully shepherded and kept meaningful and kept as a substantial goalpost for consumers? And how is that equity being applied to products that are undeserving, are not regulated in the same way, either in terms of their context or in terms of the process for validating what is the input to those products which is open and accountable and transparent and reflects our democratic values in the case of the organic program?

And so I think, to echo Scott's point, we really want to see that the same thoughtful valuable set of criteria that are appropriate to each marketplace and reflect the inputs to a mattress, to take Gwendolen's point about 95% of the mattress being metal--

GWENDOLYN HUSTVEDT: Oh, I made that up.

LAURA MACCLEERY: --or whatever, some other kind of thing than the textiles. So that the standards are tailored to reflect reasonable consumer expectations and what organic might mean when you apply it to a mattress. Right? And that's what they think is already reflected in law to the degree that they're being misled, or that they think that should be reflected in law, which was also results in the FTC survey.

So you know I think there's a very powerful beginning here. And there has been stops and starts in this area. I hope this particular effort is seen through to a new set of rules that actually provide real guidance for consumers and provide a high bar for the products involved in the organic program.

LAURA KOSS: I want to reiterate what Matt said about the importance of doing additional research in this area. For example, for willingness to pay studies, why are consumers willing to pay? In other words, trying to get at the implied claims that consumers are seeing. What features of organic are material to them?

And also, we at the FTC of course continue to monitor the marketplace and bring law enforcement actions when appropriate, but you can be our eyes and ears. So to the extent that you become aware of deceptive claims in this area, please let us know. And I just want to thank everybody for coming and for your participation.

JOHN C BERNARD: Yeah, I wanted to thank everybody in the panel for inviting me here today as well. And let's see-- mostly, Matt said what I was going to say, right? A need for more willingness to pay research, which I think is something I'd really like to be doing.

It's obvious that consumers are confused. I looked at from early on when Angela mentioned her survey she did, which was with people who know a lot about organic and concerned [INAUDIBLE] consumers. And yet 60% of them thought these other products were being certified from the government. So that shows me that great extent consumers are concerned-- concerned and confused.

And then I don't know how much more are they spending than they should be spending. If they're spending money for things-- if we're not even sure what a reasonable consumer thinks one of these organic products are, it's hard for us to judge if they're being-- how much they're being deceived and how much it's costing them overall.

So, yeah, I think we need to do a lot more to figure out what people think they should be. In then maybe building from that or see what kind of standards maybe we should have, and what these products should be considered to be.

ANGELA JAGIELLO: Well, I want to reiterate-- thank you for hosting this roundtable. I've learned a lot, and I really appreciate the hard work that everyone brought to the table.

Consumers have told us that when they buy organic food and non-food products, that they expect that the same-- that the products are going to be regulated in similar manners. There is a huge enforcement and oversight gap in this area. And we're looking forward to some work between, hopefully, FTC and NOP to offer some regulatory guidance to help marketers and consumers. Essentially, clear up consumer confusion, help level the playing field for fair competition, and help us maintain equity in the organic label.

LISA BRINES: All right. Thank you. Just briefly, I want to thank the FTC folks here for helping to arrange this event today, although I won't attempt to qualify that claim with a percentage. But I know it was a disproportionate amount. So thanks for coordinating this study.

I do want to echo the comment that Laura had made about if you do see claims that are deceptive, please send those to NOP. We can sort out the enforcement authority if we need to, but we need to hear that feedback in order to know if we can take enforcement action. And we look forward to collaborating with the FTC as the comments come in to see what opportunities there are for improvement in order to maintain that confidence in the organic label. Thank you.

JULIA SOLOMON ENSOR: Thank you all. This concludes our final panel today. I want to remind everybody in the audience that you're invited to submit written comments, either through the cards which Amber has, or online. And with that, thank you all. And I'll turn the microphone over to Matt Jones to introduce our final speaker today.

[APPLAUSE]

MATT JONES: So our closing remarks will be given by Ginger Jin, who is the director of the Bureau of Economics at the FTC. Ginger, in addition to being our bureau director, is also a professor of economics at the University of Maryland, and her area of research is in information asymmetries among market participants. So this is right in there. And also potential solutions, ways to resolve problems that arise from those information asymmetries. And so I just want to thank Ginger for giving the remarks.

GINGER JIN: Thank you Matt. Please join me in thanking all of our panelists in providing their thoughtful and provocative discussion.

[APPLAUSE]

It's great to see the combination of research coming out of academia, industry, consumer groups, and interagency combined initiatives, and open conversation about the relevant empirical evidence in a public forum like this. I would really want to thank USDA for its cooperation with the FTC on the consumer perception research discussed here today, and for contributing to today's three panel discussions. It's very encouraging to see such interagency cooperation in policy areas where our jurisdictions overlap, particular in the effort to learn more about consumer perception as it's related to a product claim regulation.

As you can see the FTC-USDA study highlights the value of controlled surveys of consumer views in the evolving policy area where understanding of consumer perception is needed. It's important to take survey instruments seriously, because the value and the reliability of the information gained would depend on the quality of our survey instruments. I would like to encourage more use of such consumer surveys in the future. That said, it's also important to weigh the limitation of the approach used along with the results when considering policy implications. The panel has discussed those limitations and values of our study very well, so I think this is a really great example of that.

Today's discussion highlighted several areas where additional research might be useful. I think the panelists have touched on this. I will repeat some of them here, just as organic food of thought for the conversation and research to continue beyond today's roundtable.

The first area that would benefit more research is consumer education. As the panelists have recognized, the key question is how we can improve consumer understanding of what organic claims really mean for non-food products in general, and specifically, what organic certifications and seals signal to consumers about product content.

A more fundamental question is why consumers value certification? Economic theory will suggest that this is because certifications are independently verified and costly to obtain, and therefore they convey credible information. However while we consume shampoos, mattress, or lipsticks, it's really hard for us to tell exactly what's the organic content in those products even after consumption.

So that means information asymmetry occurs before purchase. It continues after the purchase. This would add complexity to the market function of organic certification. And therefore, as the panelists have all highlighted, it's really important to know how valuable it is for the certifier to be a government agency or to be a government-approved private agency as compared to just a completely private entity. I think research in this area will be really, really important for us to decide what to do next step.

Another area where the future research could provide valuable policy insights is the effect of qualified claims. In particular, do specific types of qualifiers improve consistency of consumer perception of the real organic content of a product? The study from FTC and USDA provides some evidence that qualifying organic claim for the specific components could reduce consumer misperception.

However, we do not directly study the effectiveness of percentage qualifiers. We have seen some really interesting and excellent research in this area. It will be interesting to know more about how percentage qualifiers change consumer perception, or more generally, what qualifiers are most effective in reducing consumer misperception.

And finally one more area of additional research is on the supply side, namely the cost of compliance with current or potential alternative standards for organic claims. I know this is sort of less discussed but always in the backdrop. I just want to highlight a few questions there.

For example, what are the likely effects of the change in standards on product offering, product price, product quality, and competitiveness of the market? And second, would potential standard reduce or even ban organic claims for non-food products, because it may make them really costly to produce or somehow nondesirable to consumers. Would alternative standards effectively require all claims to be qualified in some way in practice? And how would that change consumer perception and consumer welfare in general?

So these are just a few questions I gathered from today's discussion. Today's discussion here shows that agency are actively seeking rigorous empirical evidence of consumer perception in this area and are carefully considering the results and implications from all angles. I would like to encourage more activities along these lines, and more importantly, with active engagement from the industry, from academia, and the consumer groups.

So on behalf of the Federal Trade Commission, I thank you, the audience, for listening to the informative and lively discussion here. And the conversation will not end with today and with today's roundtable. So please feel free to post any questions or comments on our roundtable web page, which is accessible via www.ftc.gov/organicperceptions. You can actually also mail your comments to our FTC address provided at the roundtable web page. The comment deadline is December 1, 2016.

So finally, we aim to be green, so we're going to reuse the FTC event badge, security badge for future events. So please return your badge to event staff or security as you exit the building. Thank you very much.

[APPLAUSE]