Laura Koss, Attorney
Division of Enforcement
Bureau of Consumer Protection
Federal Trade Commission

December 10, 2010

RE: Proposed revisions to guidelines: Guides for the Use of Environmental Marketing Claims; Proposed Rule; Proposed, Revised Green Guides, 16 CFR Part 260, Project No. P954501

Dear Ms. Koss:

The Organic Trade Association (OTA) is pleased to provide comments on the proposed revisions to the Guides for the Use of Environmental Marketing Claims.

OTA is the not-for-profit 501(c)(6) membership-based trade association for organic agriculture and products in North America. Its members include growers, shippers, processors, certifiers, distributors, importers, exporters, retailers, farmers' associations, and others. OTA's Board of Directors is democratically elected by its members. OTA's mission is to promote and protect the growth of organic trade to benefit the environment, farmers, the public and the economy (www.ota.com).

OTA's comments are on Questions 13 and 14 of the Request for Comments.

Question 13. What guidance, if any, should the Commission provide concerning free-of claims based on substances which have never been associated with a product category? How do consumers understand such claims? Please provide any relevant consumer perception evidence.

Claims that state that a product is free from genetic engineering should only be allowed on products for which there are genetically engineered analogues.

For organic products, it is important to note that the organic system claim covers the process of production as well as the final product, so the claim that the product was made without using GE organisms covers more than the product itself. It should further be noted that GE products are currently allowed in the organic regulation only in vaccines for livestock, and are specifically prohibited for use in any other aspect of organic production or processing. Therefore, non-GE claims are valid for organic products that use oils or other ingredients that could come from GE corn, soybeans, or other crops with GE analogues.

Question 14. What guidance, if any, should the Commission provide concerning organic claims about non-agricultural products? How do consumers interpret organic claims for non-agricultural products? Do consumers understand such claims as referring to the products' ingredients, manufacturing, or processing, or all three? Please provide any relevant consumer perception evidence.

OTA's comments concern two major emerging markets: personal care products (a term OTA uses to indicate both cosmetics and soaps) and processed fiber products, including textiles.

OTA very much appreciates FTC's statement that "[m]arketers must have substantiation for their environmental benefit claims, including implied claims. More specifically, to the extent that reasonable consumers perceive organic or natural claims as general environmental benefit claims or comparative claims, the marketer must be able to substantiate those claims and all other reasonably implied claims, as described in Part V.A.4 above."

Despite that general statement, OTA urges FTC to include in these guides an explicit notice that the statements above apply to all products making an organic claim.

FTC states, "…the Commission requests comment on what guidance, if any, it should provide regarding the use of organic claims to describe nonagricultural products."

To address these problems, OTA first requests that FTC declare misleading the use of the term "organic" on any non-agricultural product (excluding the common chemical connotation) that does not include certified organic agricultural product as an ingredient, but seeks to imply a "green" or environmentally benign character. Regardless of any particular study on consumer perception, such use of the term "organic" is clearly misleading.

FTC covers a number of topics related to personal care and textile products, but states that "for products that are outside the NOP's jurisdiction, the current record is insufficient for the Commission to provide specific guidance." OTA respectfully suggests that FTC can still develop useful guidance in some important respects, and further requests that FTC remain in active contact with USDA-NOP regarding both external complaints and issues and NOP-identified issues. To that end, OTA notes that NOP intends to collaborate with FDA on a market study on cosmetics.

OTA strongly supports NOP's position that any agricultural ingredient that is claimed to be organically produced, in any product, must be certified to the USDA-NOP standard and requests that FTC communicate this point in its guidance.

Two problems arise immediately. First, there are products or operations that have no organically produced agricultural ingredients but that nonetheless claim to be "organic" (including some pesticides, air fresheners, and dry-cleaning operations). Second, there are some primarily non-agricultural products (such as household cleaning products) that are labeled "organic" on the basis on having a small percentage of organically produced agricultural ingredients.

OTA requests that FTC acknowledge that there are some products, including some personal care products, textiles, and other products or operations, that may include some amount of an organically produced agricultural ingredient, but that nonetheless do not or may not fall under USDA-NOP's jurisdiction for product labeling.

As a reminder, organic certification is not strictly speaking the certification of a product. Rather, it is a process certification that involves the use of various methods, including the option to use certain materials under certain conditions, in growing and processing agricultural products. In the strictest sense, an apple is not organic; it has been grown organically. Thus the fact that Global Organic Textile Standard (GOTS) is a "process review standard" (cited in Footnote 401) is quite accurate. This is true not just for fiber but for all organic product certified under the USDA-NOP—including personal care products—and is, in fact, the overwhelmingly supported approach within the US organic

community. Thus, there is no general "need for analytical verification to determine the presence of various chemicals in textile [or other] products." While periodic testing is required under the Organic Foods Production Act, it is meant to discover fraud, not ensure product purity.

Personal care products

FTC is the Federal agency responsible for consumer protection, and as such, should take action in the areas of organic personal care and "natural" claims (for "natural" claims, please see below.).

OTA supports USDA-NOP regulation of personal care products that use the term "organic" in the product description and is working to further this end. OTA realizes that there are other organic personal care certifications and is reviewing them for consistency with the eventual goal of USDA-NOP regulation. FTC should help make clear to consumers that in the absence of government standards, private standards have been developed, and may vary substantially.

FTC notes that "The USDA's National Organic Program ("NOP") regulates the term "organic" for agricultural products." However, there is a substantial gap between products that must meet the NOP rule, and products that may only have a small percentage of one or a few organic agricultural ingredients. This latter category includes many personal care products, textiles, and even household cleaning products.

OTA recommends to consumers personal care products that are certified to organic standards. OTA recognizes that standards differ, and that some products may be certified that are not marketed as certified due to international issues, but certification to a third-party, transparent standard allows consumers to know that what they are buying has had independent, third-party review. FTC should also recommend third-party certification and also clarify that in products making organic claims, any agricultural ingredients labeled "organic" must meet the National Organic Program rule.

In August 2010, the Organic Trade Association partnered with *KIWI* Magazine to conduct a follow-up to the *2009 U.S. Families' Organic Attitudes & Beliefs* study to identify and track changes from 2009 benchmarks and also benchmark families' knowledge of and perceptions about organic personal care products (and the "natural" claim; see below).

The target audience for the research included *KIWI* Magazine's Parents' Advisory Board (PAB), supplemented with a national online panel of U.S. households. All panelists were invited to participate in a web survey via e-mail and were provided an appropriate incentive to do so.

Data collection took place between Aug. 11, 2010, and Aug. 27, 2010, and yielded a total of 763 usable surveys, including 377 KIWI PAB panelists and 386 national panelists. Data from both panels were combined and weighted to reflect the demographics of U.S. households online. The total sample of 763 reflects the target population of U.S. households online at a confidence interval of +/- 5% at the 95% confidence level.

Overall, U.S. families are buying more organic products than ever before and are increasingly experimenting with organic products in varied categories. Four in ten (41%) parents report they are buying "more" organic foods today than they were a year ago, up significantly from the three in ten who reported similar purchases in 2009.

Although findings indicate parents are increasingly aware of the USDA Organic seal, are using it more and more when shopping for organic products, and report that they are increasingly trustful of organic

products' authenticity, there still exists quite a bit of confusion over what makes a food or non-food product "organic." In fact, regardless of their level of experience with organic products, parents generally believe that organic personal care products such as shampoo follow the same rules as organic produce such as fruits and vegetables. In fact, about *six in ten parents* overall believe organic personal care product standards are "more stringent" than (20%) or are "the same" as (40%) organic produce standards.

"Seasoned Organics," a consumer segment with the most experience shopping for and using organic products, are the most likely group to view organic personal care product standards as being less stringent (29%), but even among these more experienced organic users, the majority (66%) believe personal care product standards are the same (43%) or more stringent (23%) than organic produce standards.

Textiles

Similar to the situation with NSF International's development of its organic personal care standard NSF/ANSI 305, and despite the claims of competitors that are not focused solely on organic standards, there is growing recognition both within the United States and internationally that the Global Organic Textile Standard (GOTS) is the premier organic textile processing standard for global use. Approximately 1,500 companies with a total of 2,811 facilities in 55 countries were certified to GOTS in 2009. The standard and the list of companies are available at www.global-standard.org.

FDA states, "…rather than proposing duplicative or potentially inconsistent advice, Commission staff will continue to consult with NOP staff to ensure that marketers have sufficient guidance regarding organic claims for textile products." OTA agrees that USDA-NOP "has indicated that organic claims for finished textile products fall within its jurisdiction," but notes that NOP has no plans to develop fiber processing standards. In the meantime, textiles and other processed fiber products are being marketed as "organic," and some simply processed items, such as cotton balls and wipes, are certified to the NOP standard. As with personal care products, FTC should make clear to consumers that in the absence of government standards, private standards have been developed, and may vary substantially.

Finally, OTA does not understand why a survey about organic practices would ask "if organic cotton textiles were made from recycled materials or contain soy." The only question is whether the materials used have been handled in accordance with organic production and processing standards. With such questions being asked of consumers under the guise of a survey about organic standards, there is little wonder that some consumers might be confused.

The "natural" claim

OTA included several questions about consumers' perceptions of the word "natural" as part of the *KIWI* Magazine survey cited above. Consumers mistakenly attribute a number of characteristics of organic food to food labeled as "natural."

Over one-third of consumers surveys falsely believe that foods with a "natural" claim:

- Do not contain artificial ingredients;
- Are produced without the use of antibiotics or synthetic hormones;
- Are not genetically engineered;
- Are produced without the use of sewage sludge or radiation to destroy organisms such as bacteria or insects;

- Are grown without synthetic pesticides or fertilizers (fruits and vegetables); and
- Are minimally processed; and that
- Anyone who sells or mislabels a food as "organic" or "natural" that was not produced according to standards may be fined up to $10,000.

Further, over one-quarter of consumers surveyed erroneously believe:

- A system has been put in place to certify that specific practices are used for food products;
- Label claims must be certified by an organization accredited by the USDA;
- Growers must be certified by an organization accredited by the USDA; and
- Animals used in the production of foods are treated humanely, fed an organic or natural diet and not raised in confinement.

Genetic engineering

Finally, genetically engineered (GE) products are engineered by definition, and foods containing them, even as minor ingredients, should not be allowed to be labeled "natural." Seventy-eight percent of respondent to the *KIWI* study cited above agreed that GE products do not belong in products labeled "natural." OTA requests that FTC confirm that it will not accept the labeling of GE foods as "natural."

Thank you very much for your consideration.

Best regards,

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Executive Director

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