

# Terressentials *Organic*

2650 Old National Pike • Middletown MD 21769-8817  
301 371-7333 • [terressentials@mailworks.org](mailto:terressentials@mailworks.org) • [www.terressentials.com](http://www.terressentials.com)

December 10, 2010

Federal Trade Commission  
Office of Secretary Donald S. Clark  
Room H-135 (Annex J)  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

**RE: 16 CFR Part 260 – Guides for the Use of Environmental Marketing Claims,  
Project No. P954501**

Dear Secretary Clark,

We are the owners of Terressentials LLC (“Terressentials”), a Maryland limited liability company that produces only personal care products that have been certified as meeting the organic standards of the USDA National Organic Program (the “NOP”). We are responding to the Federal Trade Commission's (the “FTC” or “Commission”) request for public comment on the FTC's proposed, revised Guides for the Use of Environmental Marketing Claims (the “Green Guides”). Our comments are particularly directed toward your request for consumer perception evidence on the issue of organic claims that describe non-agricultural products, as well as toward what guidance, if any, the FTC should provide regarding use of organic claims to describe non-agricultural products.

**I. Introduction**

First, however, we feel compelled to express our disappointment that the FTC has chosen not to issue guidelines with respect to organic claims made concerning agricultural products. Neither the United States Department of Agriculture (“USDA”) nor the United States Food and Drug Administration (“FDA”) has effectively regulated organic claims made with respect to cosmetics or personal care products. Consumers are confused. Manufacturers and retailers often intentionally misrepresent products as organic. And they make billions of dollars doing it, and hurt companies like ours who try to maintain a truly organic product line. And why shouldn't they, since it seems no regulatory agency thinks they are violating any laws?

Our frustration over the situation is fueled by the fact that neither consumers nor the makers of truly organic products have the clear ability to pursue litigation against manufacturers or retailers who make deceptive organic claims about personal care products or cosmetics. Various governmental entities, including the FTC, should theoretically be doing something about organic cheating, but we see nothing happening.

The attached decision in All One God Faith, Inc. v. The Hain Celestial Group, Inc., 2010 WL 2133209 (N.D. Cal. May 24, 2010), illustrates the point. See Exhibit A. The maker of Dr. Bronner's Magic Soaps sued several competitors, alleging that the competitors had violated the Lanham Act

because the Defendants had, in one way or another, mislabeled their products as organic in violation of the National Organic Program ("NOP"). The court has stayed the case, saying, in effect, that Dr. Bronner's *probably* has no right to sue its competitors for violating the NOP, because the USDA *probably* has the exclusive right to enforce the NOP. The court also said that Dr. Bronner's had to pursue its complaints against the Defendants administratively by filing a complaint with the USDA. True, the USDA has never, in the ten years since it first considered organic regulations, accepted responsibility for policing organic claims about personal care products or cosmetics (unless the products claim to be USDA certified organic). In spite of that fact, the court held that the USDA has exclusive jurisdiction over personal care products and cosmetics as to organic claims *if* regulations are adopted applying the NOP regulations to personal care products and cosmetics, as recommended by the National Organic Standards Board in March 2009. On April 23, 2010, the Deputy Administrator of the NOP, Miles McEvoy, promised to communicate with the FDA and the FTC regarding the use of the term "organic" in personal care products in order to achieve a "comprehensive approach" across agencies. The court wants to see what happens with this proposed regulatory initiative, and it wants to see the outcome of the administrative complaint by Dr. Bronner's against the Defendants.

And what will happen if the NOP declines to adopt regulations governing personal care products and cosmetics? What will happen if the USDA refuses to pursue an enforcement action against the Defendants because the NOP is merely a voluntary certification program for makers of organic personal care products and cosmetics? As far as Dr. Bronner's case alleging violations of the Lanham Act based on failure to comply with the NOP is concerned, we fear Dr. Bronner's may still be out of luck. In any case, Dr. Bronner's has amended its complaint to drop the NOP claims, and to rely instead on a claim that the Defendants' uses of the word organic, or some derivations thereof, were literally false, misleading or confusing under the Lanham Act.

Something has to be done to stop advertising claims that mislead consumers about the organic content of personal care products and cosmetics. We think that laws and regulations should be adopted that clearly forbid such misleading claims and that grant a private right of action to consumers and competitors of organic cheaters.

## **II. Consumer Perceptions of Organic Claims Made Concerning Non-Agricultural Products**

We sell our products both online and through retail stores that we own. In both cases, we often have an opportunity to discuss our products and observe consumer perceptions about what "organic" means. Consumers generally believe that an organic product is more healthy and environmentally friendly than a regular product, because it has fewer chemicals, or more ingredients that are derived from plants, or both. We attach (as Exhibit B) a 2003 article that bears this out. In other words, the "organic" label is reasonably perceived to be both an environmental claim and a comparative claim of the relative merit of the organic product as compared to a product that is not labeled "organic."

One might think that consumers are more skeptical of organic claims made about non-agricultural products than they are about organic claims made about agricultural products. In our

experience, consumers are not as skeptical as you might think. Our experience indicates that many consumers want to do whatever they can to improve their health or the environment, and will take a manufacturer's or a retailer's word for it that a product labeled as organic is somehow "organic," without demanding to understand more precisely what the manufacturer means by "organic." For example, they may assume that a glass product labeled as "organic" was made from recycled glass. Frankly, we think that consumers are relying on regulators like the FTC, the USDA, and the FDA to make sure that a product labeled as organic is in fact somehow organic. As one consumer was quoted as saying in a September 21, 2002 article, "If we see 'organic' on it, we don't read the fine print. We just trust that it is" (see Exhibit C). Based on our conversations with consumers, we think this behavior occurs in response to labeling any product as "organic," whether the product is agricultural or non-agricultural. People trust the label because they think regulators are monitoring the organic claim.

Whatever their specific reasons may be, there is no doubt in our minds, based on our interaction with customers, that a significant number of customers buy non-agricultural products based on organic claims. The proliferation of organic claims about non-agricultural products suggests this fact, because manufacturers wouldn't make the claims if the claims didn't result in additional sales. Though it is hard to believe, we have seen organic claims made about dry cleaners, cars, televisions, bicycles, glassware, mineral make-up, hair coloring and permanent wave products, and a host of other products that have no ingredients that could be characterized as "agricultural products" in the meaning of the NOP regulations and related statutes, let alone organic agricultural products that would be eligible for certification as USDA organic.

Some predominantly non-agricultural products have a miniscule amount of organic content that has no meaningful effect on the attributes of the product. The only purpose of the organic content seems to be "fairy dusting" or "green-washing" that it gives the manufacturer of the product license to claim—at least in its mind—that the product is in some way organic. We hardly think that these sham organic products are "agricultural products" in the meaning of the NOP statutes and regulations.

In our experience, customers and retailers alike become irate when confronted with these facts, because they are unwilling or unable to believe that the federal government would permit consumers to be so widely and obviously misled. The illusion of regulation has caused the American public to drop its guard when buying products labeled as organic.

### **III. Recommendations**

#### **A. Substantiation of Organic Claims about Non-Agricultural Products**

We think that the FTC should pursue enforcement actions against companies that use the term organic in the labeling or advertisement of any product, unless the product's organic labeling and advertisement complies with current USDA standards for certification of the organic representation made.

**B. Uses of Names or Marks that Represent or Imply Organic Properties**

We think that the FTC should pursue enforcement actions against manufacturers and retailers who market their products using company names, trade names, trademarks, or service marks that state or imply that the products are organic, unless the products's organic labeling and advertisement complies with current USDA standards for certification of the organic representation made.

**C. Uses of Seals or Names of Third-Party Companies**

We think that the FTC should pursue enforcement actions against manufacturers and retailers who market their products using the names or seals of third-party companies or organizations in a manner that suggests that the products are organic or have been certified as organic, unless the products's organic labeling and advertisement complies with current USDA standards for certification of the organic representation made, and the product has indeed been properly certified as organic.

We have collected numerous copies of advertisements and websites that we believe contain deceptive advertisements of allegedly organic products—both non-agricultural products and agricultural products. These advertisements either are or should be unlawful:

1. Products that use the name or logo of a company, such as that of a trade group or organic certifier, to misleadingly imply organic product content, or certification of a product or company as organic.
2. Products that use a wholly-fanciful logo or seal that resembles or calls to mind the seal of the USDA National Organic Program, or other authoritative agency or organization.
3. The use of the USDA seal by a company with a limited number of authentically-certified organic products to misleadingly imply that all of the company's products are certified to the USDA organic standard.
4. Products using the seal of a foreign "organic" certifier that certifies against standards that do not meet or exceed the USDA National Organic Program standards.

We would be glad to supply copies of these advertisements and websites to the Commission's staff upon request.

Secretary Donald S. Clark

December 10, 2010

Page 5

**IV. Conclusion**

Please act to protect consumers from misleading organic claims to the full extent of your enforcement authority. Far more needs to be done, but we are only asking you to do what is within your power to do.

Sincerely,

Diana Kaye                      and                      James Hahn

Attachments

Slip Copy, 2010 WL 2133209 (N.D.Cal.)  
(Cite as: 2010 WL 2133209 (N.D.Cal.))

¶ Only the Westlaw citation is currently available.

United States District Court, N.D. California,  
San Jose Division.

ALL ONE GOD FAITH, INC., Plaintiff,

v.

The HAIN CELESTIAL GROUP, INC. et al, Defen-  
dants.

No. C 09-03517 JF (HRL).

May 24, 2010.

West KeySummary

Antitrust and Trade Regulation 29T  76

29T Antitrust and Trade Regulation

29TII Unfair Competition

29TII(B) Actions and Proceedings

29Tk74 Pleading

29Tk76 k. Particular Cases. Most Cited

#### Cases

Manufacturer failed to allege that its products competed directly with competitor's products and, therefore, failed to state a cause of action against competitor under the Lanham Act. Manufacturer alleged that its products and competitor's both were sold on the internet and that it was very likely that a search for organic products would yield both manufacturer's and competitor's products. Manufacturer's complaint did not permit the court to infer more than the mere possibility of misconduct. Lanham Trade-Mark Act, § 43(a), 15 U.S.C.A. § 1125(a).

John L. Cooper, Morgan Todd Jackson, Farella Braun & Martel LLP, San Francisco, CA, Joseph E. Sandler, Sandler Reiff & Young, P.C., Washington, DC, for Plaintiff.

Mali B. Friedman, Margaret Dorothy Wilkinson, Simon J. Frankel, Covington & Burling LLP, Benjamin Kneeland Riley, Matthew Greinert, Howrey LLP, Thomas H. Clarke, Jr., Timothy A. Dolan, Ropers, Majeski, Kohn & Bentley, San Francisco, CA, William J. Friedman, Covington & Burling LLP, Washington, DC, James Michael Mattesich, Marc Bradley Koenigsberg, Greenberg Traurig LLP,

Sacramento, CA, Stephen Terry Holzer, Lewitt Hackman et al, Encino, CA, R. Duane Westrup, Rhonda Elaine Klick, Westrup Klick, LLP, Long Beach, CA, Anthony J. Rotondi, Rotondi LLC, Masspeth, NY, David A. Greene, James Russell Wheaton, The First Amendment Project, Oakland, CA, for Defendants.

### ORDER <sup>FN1</sup> GRANTING YSL'S MOTION TO DISMISS AND STAYING ACTION AS TO ALL REMAINING DEFENDANTS

<sup>FN1</sup>. This disposition is not designated for publication in the official reports.

JEREMY FOGEL, District Judge.

#### I. Background

##### A. Factual and Procedural Background

\*1 On January 13, 2010, Plaintiff All One God Faith, Inc., doing business as Dr. Bronner's Magic Soaps ("Plaintiff"), filed its third amended complaint ("TAC") alleging violations of Section 43(a) of the Lanham Act by Defendants Hain Celestial Group, Inc., Kiss my Face Corporation, and Levlad LLC (collectively, "The Hain Defendants"), Giovanni Cosmetics, Inc., Country Life, LLC, Cosway Company, Inc. ("Cosway"), YSL Beaute ("YSL") (collectively, "the Count I Defendants") and Ecocert France (SAS) and Ecocert, Inc. (collectively, "Ecocert"). Defendants <sup>FN2</sup> move to dismiss the TAC under the primary jurisdiction doctrine and pursuant to Fed.R.Civ.P. 12(b)(6). In addition, YSL and Cosway move to dismiss on independent grounds and Cosway also moves for a more definite statement.

<sup>FN2</sup>. On April 16, 2010, the parties stipulated to and the Court ordered the withdrawal of Levlad LLC's motion to dismiss *nunc pro tunc* in respect of the February 22, 2010 injunction entered by the United States Bankruptcy Court for the District of Delaware in *In re: Natural Products Group, LLC, et al*, Case No. 10-10239(BLS) (Defendant Levlad LLC's parent company).

Slip Copy, 2010 WL 2133209 (N.D.Cal.)  
(Cite as: 2010 WL 2133209 (N.D.Cal.))

On December 14, 2009, the Court granted Defendants' motions to dismiss Plaintiff's second amended complaint ("SAC") holding that: (1) Plaintiff has failed to exhaust administrative remedies available through the United States Department of Agriculture ("USDA"); (2) pursuant to the primary jurisdiction doctrine, it was inappropriate for this Court to interpret and impose the regulatory framework of the USDA National Organic Program ("NOP"), especially in light of the fact that the USDA itself has refused to apply the same standards to Defendants; and (3) Plaintiff has failed to state a claim under the Lanham Act because the allegations of the SAC required the Court to interpret, apply, and enforce federal regulatory standards that would negate the legislative prohibition against private actions. Order at 14, 18. The Court also concluded that Plaintiff had failed to state a Lanham Act claim against YSL because it did not allege adequately that Plaintiff's products and YSL's products are in competition. Because it was not entirely clear that the defects in the SAC could not be cured by amendment, Plaintiff was granted leave to amend.

The TAC does not invoke the NOP regulations explicitly. Instead, it alleges that the Count I Defendants' labeling of their products and Ecocert's certification of products as "Organic" or some derivation thereof are literally false, misleading or confusing to the consuming public because the products contain cleansing and moisturizing ingredients derived from conventional agricultural material, contain petrochemicals, or both. TAC ¶¶ 55-103. Plaintiff alleges that consumer survey research reflects the beliefs and expectations of consumers that personal care products labeled as organic will not contain synthetic compounds including preservatives, *id.* ¶ 34; cleansing or moisturizing agents derived from conventionally-produced agricultural materials, *id.* ¶ 35; or petrochemicals, *id.* ¶ 37. All of these alleged consumer expectations were alleged in the SAC, which expressly attributed these expectations to NOP criteria. MTD at 4 (asserting that "Plaintiff has merely switched the alleged source of consumer expectations from NOP criteria to consumer research surveys").

\*2 Plaintiff also amended its allegations with respect to its alleged competition with YSL in the marketplace. Plaintiff now asserts that its "liquid soaps and moisturizing lotions are available for sale directly to consumers, on the Internet, through Dr. Bronner's

website," while YSL's products "are available for sale directly to consumers online, on the Internet, through a number of websites, including Sears and Fragrancenet.com, among others." *Id.* ¶ 54. Plaintiff and YSL thus allegedly "compete for the business of consumers searching online for 'Organic' liquid body cleansers and moisturizing lotions/creams." *Id.*

The day after it filed the TAC, Plaintiff also filed an administrative complaint with the USDA. In its administrative complaint, Plaintiff alleged that Defendants <sup>FN3</sup> do not comply with the NOP regulations in the labeling of their personal care products. Request for Judicial Notice ("RJN"), Ex. A (Plaintiff's Administrative Complaint).<sup>FN4</sup> It also contended that USDA has jurisdiction to impose mandatory regulation of the labeling as "organic" of personal care products and that Defendants' personal care products—because they are consumed by humans, marketed in the United States, and contain agricultural ingredients—are themselves agricultural products within the meaning of the OFPA and NOP regulations. *Id.* at 3, 6.

FN3. The respondent companies named in the administrative complaint include the same Defendants named in the instant action, as well as several additional companies.

FN4. Plaintiff does not oppose any of Defendants' requests for judicial notice. The Court takes judicial notice of the administrative complaint as it is a matter of public record. *See Lee v. City of Los Angeles*, 250 F.3d 668, 688-89 (9th Cir.2001), citing *Fed.R.Evid.* 201.

## B. Regulatory Background

### 1. The Organic Foods Products Act and the NOP's production and labeling standards for agricultural products

The Organic Food Products Act of 1990, 7 U.S.C. §§ 6501 *et seq.* ("OFPA") authorized the USDA to implement the NOP, providing for establishment and enforcement of standards for labeling agriculture and food products as "organic." The purpose of the statute is "(1) to establish national standards governing the marketing of certain agricultural products as or-

Slip Copy, 2010 WL 2133209 (N.D.Cal.)  
(Cite as: 2010 WL 2133209 (N.D.Cal.))

ganically produced products; (2) to assure consumers that organically produced products meet a consistent standard; and (3) to facilitate interstate commerce in fresh and processed food that is organically produced.” 7 U.S.C. § 6501. The NOP was established in 2000. *See National Organic Program, 65 Fed.Reg. 80,548 (Dec. 21, 2000)* (codified as 7 C.F.R. pt. 205) (“the Final Rule”). The program includes standards for growing and producing organic agricultural products, including grains, fruits, vegetables, livestock, etc. *See* 7 C.F.R. Part 205, Subpart C. Among other things, the regulations govern use of the term “organic” in the labeling and marketing of such agricultural and food products. *See* 7 C.F.R. Part 205, Subpart D. The statute requires that agricultural products labeled as “organic” be certified as meeting the requirements of the regulations by a certifying agent accredited by the USDA, and forbids the labeling as “organic” products that have not been so certified. 7 U.S.C. §§ 6514(a), 6515, 6519. The NOP mandates that govern the production, marketing, and labeling of “organic” products are complex, detailed, and specific.

## 2. Enforcement of organic product standards

\*3 In enacting the OFPA, Congress created an exclusive federal mechanism for evaluating and approving synthetic materials and for challenging decisions made by the USDA pursuant to that mechanism. It expressly declined to create a private right of action to enforce the statute or its implementing regulations. In order to create a consistent national standard for organic products, Congress authorized the USDA to create a National List of approved and prohibited ingredients that may or may not be permitted in the production, handling, and processing of organic products. *See* 7 U.S.C. § 6517. Congress created the National Organic Standards Board (“NOSB”) to advise the Secretary of Agriculture with respect to the ingredients that should be approved or prohibited on the National List. *See* 7 U.S.C. § 6518. It also mandated that the NOSB “establish procedures under which persons may petition the [NOSB] for the purpose of evaluating substances for inclusion on the National List.” 7 U.S.C. § 6518(n).

The statute requires the USDA to establish an “expedited administrative appeals procedure” that allows a person to appeal any action taken under the federal program by the USDA or its certifying agents if that

action “(1) adversely affects such person; or (2) is inconsistent with the organic certification program established under this chapter.” 7 U.S.C. § 6520(a). There also is a judicial remedy for persons dissatisfied with a “final decision” of the USDA. *See* 7 U.S.C. § 6520(b) (authorizing the appeal of a final decision by the Secretary to the United States District Court). Apart from this limited private remedy, only the federal government is authorized to initiate enforcement of the statute. *See* 7 U.S.C. § 6519(a) (establishing that “any person who knowingly sells or labels a product as organic, except in accordance with this chapter, shall be subject to a civil penalty of not more than \$10,000).

The Final Rule provides that “[t]he NOP is ultimately responsible for the oversight and enforcement of the program, including ... cases of fraudulent or misleading labeling.” Final Rule at 80,557. The USDA has indicated that it accepts all consumer and business complaints regarding alleged misuse of the word “organic,” and it has rejected private enforcement actions. According to the Final Rule,

[a]nyone may file a complaint, with USDA, an [State Organic Program’s] SOP’s governing State official, or certifying agent, alleging violation of the Act or these regulations. Certifying agents, SOP’s governing State officials, and USDA will receive, review, and investigate complaints alleging violations of the Act or these regulations ... Citizens have no authority under the NOP to investigate complaints alleging violation of the Act or these regulations ... Only USDA may bring an action under 7 U.S.C. § 6519.

*Id.* at 80,627; *see also id.* at 80,556 (noting, in a discussion of common law nuisance claims for pesticide drift onto organic farms, that the OFPA “itself does not provide for the right to bring suit as a Federal cause of action, and [the USDA] could not grant it through this regulation”).

## 3. Application of the OFPA to personal care products

\*4 The OFPA defines the term “agricultural product” as “any agricultural commodity or product, whether raw or processed, including any commodity or product derived from livestock that is marketed in the United States for human or livestock consumption.” 7



Slip Copy, 2010 WL 2133209 (N.D.Cal.)  
(Cite as: 2010 WL 2133209 (N.D.Cal.))

U.S.C. § 6502(1). The statute provides further that “no person may affix a label to, or provide other market information concerning, an agricultural product if such label or information implies, directly or indirectly, that such product is produced and handled using organic methods, except in accordance with this chapter.” *Id.* at § 6505(a)(1)(B).

At the end of 2000, during deliberations on the regulations, commenters “asked that the NOP include in the final rule certification standards for cosmetics, body care products, and dietary supplements.” Final Rule, 80,557. The USDA concluded, however, that “[t]he ultimate labeling of cosmetics, body care products, and dietary supplements ... is outside the scope of these regulations.” *Id.*

In May 2002, the USDA issued a “Policy Statement on National Organic Program Scope” indicating that because cosmetics and body care products may “contain agricultural products the producers and handlers of such products, classes of products and production systems are eligible to seek certification under the NOP.” See Hain Defendants’ Request for Judicial Notice in Support of Motion to Dismiss the SAC (“Def. RJN SAC”), Ex. H.<sup>FN5</sup> At the same time, it clarified that NOP labeling standards were not mandatory for personal care and cosmetic products, but that manufacturers of such products voluntarily could seek USDA certification and only then would be subject to the NOP standards for organic labeling.

<sup>FN5</sup>. The Court took judicial notice of Defendants’ Exhibits A-M in its order dismissing Plaintiff’s SAC. These documents remain a part of the record on this motion.

In April 2004, the USDA changed its position, declaring that producers of personal care and cosmetic products could not seek even voluntary participation in the NOP. In a Guidance Statement, the USDA stated that the “OFPA does not extend” to products over which “USDA has no regulatory authority,” including such products as “personal care products.” Def. RJN SAC, Ex. I at 2-3. A few months later, the USDA again changed its position and suspended the Guidance Statement, thereby once again permitting qualified personal care product handlers voluntarily to certify and participate in the NOP.

The USDA issued its most recent guidance on the

application of NOP standards to personal care products in April 2008. USDA Guidance Statement, “Cosmetics, Body Care Products and Personal Care Products.” Def. RJN SAC, Ex. B. It confirmed again that producers and handlers of personal care products may seek USDA certification:

If a cosmetic body care product or personal care product contains or is made up of agricultural ingredients, and can meet the USDA/NOP organic production, handling, processing and labeling standards, it may be eligible to be certified under the NOP regulations ... Any cosmetic, body care product or personal care product that does not meet the production, handling, processing, labeling, and certification standards described above, may not state, imply or convey in any way that the product is USDA-certified organic or meets the USDA organic standards.

\*5 *Id.* At the same time, the USDA again made clear that the NOP regulatory regime does not govern the labeling of personal care products unless the labeling itself implies certification under the specific NOP standards:

USDA has no authority over the production and labeling of cosmetics, body care products and personal care products that are not made up of agricultural ingredients or do not make any claims to meeting USDA organic standards. Cosmetics, body care products, and personal care products may be certified to other, private standards and be marketed to those private standards in the United States. These standards might include foreign organic standards, eco-labels, earth friendly, etc. USDA’s NOP does not regulate these labels at this time. *Id.*

Plaintiff contends that because a product that meets the NOP standards may be eligible to carry the USDA label, products that do not meet the standards may not carry the USDA label and “may not state, imply or convey in any way that the product is USDA-certified organic or meets the USDA organic standards.” *Id.*

Finally, in March 2009, the NOSB adopted a discussion draft recommendation urging USDA to amend its existing regulations to (1) “assur[e] consumers that the federal government is policing [organic personal care product] claims”; and (2) “allow[ ] for the

Slip Copy, 2010 WL 2133209 (N.D.Cal.)  
(Cite as: 2010 WL 2133209 (N.D.Cal.))

development of a complete federal organic cosmetic program.” See Def. RJN SAC, Ex. K (March 23, 2009, NOSB Discussion Document). On December 10, 2009, after the Court issued its order dismissing the SAC, the NOSB formally recommended that the existing rules be amended to provide that NOP standards for labeling a product as “organic” or “made with organic [ingredient]” apply to personal care products. D. RJN TAC, Ex. B <sup>FN6</sup> (NOSB Formal Recommendation to the NOP). On April 23, 2010, Miles McEvoy, Deputy Administrator of the NOP, issued an official memorandum stating that the NOP will: (1) communicate with the Food and Drug Administration (FDA) and the Federal Trade Commission (FTC) regarding the use of the term “organic” in personal care products in order to achieve a “comprehensive approach” across agencies; (2) obtain information regarding organic labeling of personal care products in the marketplace; and (3) “consider the recommendations of the NOSB on rulemaking and take them under advisement for future incorporation.” Request for Judicial Notice (Dkt.117), Ex. A.

FN6. Plaintiff does not object to Defendants’ requests for judicial notice in support of their instant motion to dismiss. The Court will take judicial notice of the NOSB’s formal recommendation as it is a public record. Fed.R.Evid. 201(b).

## II. Legal Standard

### A. Motion to Dismiss pursuant to Rule 12(b)(6)

Dismissal under Fed.R.Civ.P. 12(b)(6) “is appropriate only where the complaint lacks a cognizable legal theory or sufficient facts to support a cognizable legal theory.” Mendiondo v. Centinela Hosp. Medical Center, 521 F.3d 1097, 1104 (9th Cir.2008). For purposes of a motion to dismiss, the plaintiffs’ allegations are taken as true, and the court must construe the complaint in the light most favorable to the plaintiff. Jenkins v. McKeithen, 395 U.S. 411, 421, 89 S.Ct. 1843, 23 L.Ed.2d 404 (1969). At the same time, “[w]hile a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127

S.Ct. 1955, 167 L.Ed.2d 929 (2007) (internal citations omitted). Thus, a court need not accept as true conclusory allegations, unreasonable inferences, legal characterizations, or unwarranted deductions of fact contained in the complaint. Clegg v. Cult Awareness Network, 18 F.3d 752, 754-755 (9th Cir.1994). “[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged-but it has not ‘show[n]’-that the pleader is entitled to relief.” Ashcroft v. Iqbal, 129 S.Ct. 1949, 1590 (2009) (quoting Fed.R.Civ.P. 8(a)(2)).

\*6 Leave to amend must be granted unless it is clear that the complaint’s deficiencies cannot be cured by amendment. Lucas v. Department of Corrections, 66 F.3d 245, 248 (9th Cir.1995). When amendment would be futile, however, dismissal may be ordered with prejudice. Dumas v. Kipp, 90 F.3d 386, 393 (9th Cir.1996).

## III. Discussion

### A. Primary Jurisdiction Doctrine

The primary jurisdiction doctrine does not implicate subject-matter jurisdiction as such, but it is a “prudential doctrine under which courts may, under appropriate circumstances, determine that the initial decisionmaking responsibility should be performed by the relevant agency rather than the courts.” Sytek Semiconductor Co., Ltd. v. Microchip Technology, Inc., 307 F.3d 775, 780 (9th Cir.2002). The primary jurisdiction doctrine applies when both the court and an administrative agency have jurisdiction over the same matter. United States v. Western Pac. R.R. Co., 352 U.S. 59, 63-64, 77 S.Ct. 161, 1 L.Ed.2d 126 (1956). Four factors traditionally are considered by the court in applying the doctrine: “(1) the need to resolve an issue that (2) has been placed by Congress within the jurisdiction of an administrative body having regulatory authority (3) pursuant to a statute that subjects an industry or activity to a comprehensive regulatory authority that (4) requires expertise or uniformity in administration.” Sytek Semiconductor Co., Ltd., 307 F.3d at 781.

In its previous order, the Court determined that the USDA has jurisdiction over personal care products and that the primary jurisdiction doctrine is applicable. Order at 11-12 (holding that while to date the

Slip Copy, 2010 WL 2133209 (N.D.Cal.)  
(Cite as: 2010 WL 2133209 (N.D.Cal.))

USDA has declined to exercise its authority with respect to the labeling of organic personal care products, it has asserted jurisdiction over such products in other ways, such as allowing producers and handlers of such products, including Plaintiff, to seek USDA certification under the NOP). Plaintiff, in an about face from its position on Defendants' previous motion to dismiss, but consistent with the Court's order, now contends in its administrative complaint that the USDA has jurisdiction over the labeling of organic personal care products. RJN, Ex. A at 3, 6. Plaintiff's "extensive campaign to try to convince the [agency] to act on [defendant's] supposed misstatements and violations demonstrates that [plaintiff] understood that this subject fell within the [agency's] domain." *PhotoMedex, Inc. v. Irwin*, 601 F.3d 919, 930 (9th Cir.2010). Moreover, the NOSB's formal recommendation to the NOP-that the existing rules be amended to make clear that the NOP standards for labeling a product as "organic" apply to personal care products-presupposes that the USDA has jurisdiction over the products involved. RJN TAC, Ex. B

Plaintiff currently has an active administrative action pending before the USDA. While the TAC does not invoke the NOP regulations explicitly, it asserts essentially the same allegations found in Plaintiff's administrative complaint with respect to Defendants' labeling of personal care products. It also requests that the same product standards identified in the SAC be imposed on Defendants by this Court. Defendants contend that if the Court does not dismiss or stay the current action, it will be forced to evaluate how the "alleged consumer understandings line up with the existing regulations" and potentially "impose product standards that conflict with those selected by Congress" pursuant to the OFPA. MTD at 6-7, *comparing* TAC ¶¶ 33-44 (alleging that reasonable consumer expect that organic products have *no* synthetic ingredients or petrochemical compounds) (emphasis added), with 7 U.S.C. § 6510 and 7 C.F.R. § 205.301(b) (authorizing the use of some synthetic ingredients in "organic" products); compare RJN TAC, Ex. D (Q & A regarding petrochemicals) (noting that the National List, which contains materials eligible as a class for use in organic products, may include petrochemical-based ingredients); with TAC ¶ 35 (stating that survey research shows that consumers believe that a product labeled "organic," "organics," "100% Organic Active Ingredients," "Pure Organic Technology," or "Made with Organic Ingredients" does not contain cleansing or moisturizing

agents derived from conventionally-produced agricultural materials); 7 U.S.C. § 6510(a)(4) (allowing up to 5% non-organic content in an "organic" product) and 7 C.F.R. § 205.301(c) (permitting products labeled "made with organic ingredients" to contain up to 30% non-organic agricultural content).

\*7 Defendants argue persuasively that the TAC necessarily would require the Court to interpret and apply the NOP regulatory framework when determining questions such as what "organically produced," "nonagricultural," or "synthetic" mean. 7 C.F.R. § 205.2 (defining these and other terms utilized in NOP regulatory language). Each of these terms, as defined by the USDA, is utilized by Plaintiff in the TAC to describe consumer expectations, the science of manufacturing personal care products, and the prayer for relief's requested injunction. Because the USDA's enforcement of NOP standards governing personal care products has been recommended formally by the NOSB and currently is under the NOP's review, and because Plaintiff has an active administrative action pending before the USDA, it would be inappropriate for this Court to adjudicate Plaintiff's Lanham Act claim and impose a potentially conflicting set of standards. See *Shipley v. United States*, 608 F.2d 770, 775 (9th Cir.1979) (holding that "where a pending administrative proceeding might render the relief sought in district court unnecessary, it is proper for the district court to stay the case before it pending the outcome of the administrative proceeding"); see also *Schering-Plough Healthcare Prods., Inc. v. Schwarz Pharma, Inc.*, 586 F.3d 500, 508-09 (7th Cir.2009) (citations omitted) (holding that "[t]he FDA should be given a chance to opine on the proper labeling before a Lanham Act suit is filed ... since it has more experience with consumers' understanding of drug labels than judges do").

"Whether to stay or dismiss without prejudice a case within an administrative agency's primary jurisdiction is a decision within the discretion of the district court." *Davel Commc'n, Inc. v. Qwest Corp.*, 460 F.3d 1075, 1091 (9th Cir.2006), citing *Reiter v. Cooper*, 507 U.S. 258, 268-69, 113 S.Ct. 1213, 122 L.Ed.2d 604 (1993). "[W]here the court suspends proceedings to give preliminary deference to an administrative agency but further judicial proceedings are contemplated, then jurisdiction should ordinarily be retained via a stay of proceedings, not relinquished via a dismissal." *Id.*, citing *N. Cal. Dist. Council of*

Slip Copy, 2010 WL 2133209 (N.D.Cal.)  
(Cite as: 2010 WL 2133209 (N.D.Cal.))

*Hod Carriers, Bldg. & Constr. Laborers, AFL-CIO v. Opinski*, 673 F.2d 1074, 1076 (9th Cir.1982). Defendants argue that dismissal is more appropriate than a stay because any questions remaining following the disposition of the administrative complaint should proceed under the review standards of the Administrative Procedure Act, not before this Court under the Lanham Act. However, without knowing how the USDA will proceed regarding the NOSB's recommendation and Plaintiff's administrative complaint, the Court cannot presume that there will be nothing left for it to decide. Accordingly, the Court will exercise its discretion to stay the case pending further action by the USDA.<sup>FN7</sup>

FN7. The Court does not address the merits of Cosway's motions to dismiss and for a more definite statement. Instead, the motions will be terminated without prejudice in light of the stay.

#### B. YSL's independent motion to dismiss pursuant to Rule 12(b) (6)

\*8 Notwithstanding the principles of primary jurisdiction, YSL contends that the TAC should be dismissed as to YSL on the separate basis that the facts as alleged are insufficient to support a Lanham Act claim. To state a claim for false advertising under the Lanham Act, a plaintiff must allege that "(1) the defendant made a false statement either about the plaintiff's or its own product; (2) the statement was made in commercial advertisement or promotion; (3) the statement actually deceived or had the tendency to deceive a substantial segment of its audience; (4) the deception is material; (5) the defendant caused its false statement to enter interstate commerce; and (6) the plaintiff has been or is likely to be injured as a result of the false statement, either by direct diversion of sales from itself to the defendant, or by a lessening of goodwill associated with plaintiff's product." *Newcal Industries, Inc., v. Ikon Office Solution*, 513 F.3d 1038, 1052 (9th Cir.2008), quoting *Jarrow Formulas, Inc. v. Nutrition Now, Inc.*, 304 F.3d 829, 835 n. 4 (9th Cir.2002). "For the purposes of the Lanham Act, 'competitors' are 'persons endeavoring to do the same thing and each offering to perform the act, furnish the merchandise, or render the services better or cheaper than his rival.'" *New.Net v. Lavasoft*, 356 F.Supp.2d 1090, 1116 (C.D.Cal.2004), citing *Kournikova v. General Media Communica-*

*tions, Inc.*, 278 F.Supp.2d 1111, 1117 (C.D.Cal. May 2, 2003). "They are parties vying for the same dollars from the same consumer group." *Id.*

As it did in its previous motion to dismiss, YSL claims that Plaintiff fails to allege that its products compete directly with YSL's. In its previous pleading, Plaintiff did not allege that its products could be found in the same store or even the same state as YSL's. The Court declined to infer that merely because Plaintiff and YSL sell cosmetic products, both of which are labeled as organic, they compete directly with each other. The Court also noted that Plaintiff did allege that the products of other Defendants were "typically sold in the same sections, and often on the same shelves, of the same retail outlets, including grocery stores, natural food stores, drug stores, and other outlets," SAC ¶ 83, and on the same websites. *Id.* ¶ 84.

Plaintiff now alleges that its products and YSL's both are sold on the Internet and that in turn they "compete for the business of consumers searching online for 'Organic' liquid body cleansers and moisturizing lotions/creams." TAC ¶ 54. These newly alleged facts improve little upon Plaintiff's previous allegations. The fact that Plaintiff and YSL both sell their personal care products on the Internet does not mean that they are in direct competition. Plaintiff claims in its opposition papers that "when consumers search the internet for organic products those search results will very likely display web sites that contain both Dr. Bronner's and YSL Beaute's products," Opposition to YSL at 5, but the TAC itself contains no such allegation. Even in its opposition papers, Plaintiff only goes so far as to claim that it is *very likely* that such a search would yield both Plaintiff and YSL products. *See contra Kournikova*, 278 F.Supp.2d at 1117 (holding that the parties were competitors where they both sold merchandise specifically featuring Anna Kournikova over the internet, as well as in magazines and stores). "[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct the complaint has alleged-but it has not 'show[n]'-that the pleader is entitled to relief." *Iqbal*, 129 S.Ct. at 1950, quoting *Fed.R.Civ.P. 8(a)(2)*.

\*9 The Court's previous order offered explicit detailed comments with respect to the deficiencies in Plaintiff's Lanham Act claim against YSL. It appears

Slip Copy, 2010 WL 2133209 (N.D.Cal.)  
(Cite as: 2010 WL 2133209 (N.D.Cal.))

that Plaintiff cannot cure these deficiencies consistent with the requirements of Fed.R.Civ.P. 11. Accordingly, the Court will grant YSL's motion to dismiss without leave to amend.

**IV. ORDER**

Good cause therefore appearing, the instant action will be STAYED as to Defendants The Hain Celestial Group, Inc, Kiss My Face Corporation, Levlad, LLC, Giovanni Cosmetics, Inc., Cosway, Ecocert, and Country Life, Inc. YSL's motion to dismiss will be GRANTED, without leave to amend. A case management conference to determine the progress of the administrative proceedings before the USDA is hereby scheduled for September 10, 2010.

**IT IS SO ORDERED.**

N.D.Cal.,2010.  
All One God Faith, Inc. v. Hain Celestial Group, Inc.  
Slip Copy, 2010 WL 2133209 (N.D.Cal.)

END OF DOCUMENT

## Organic Label Is Definitely Hip, But May Be Hype

BY MICHELLE COLE

c.2003 Newhouse News Service

Organic cornflakes. Organic shampoo. Organic mouthwash. Organic deodorant. Organic cotton T-shirts.

Even something as vague as style is now commodified in a magazine called Organic Style.

The word "organic" permeates the American marketplace.

But "organic" doesn't always mean "natural" or "chemical-free." And sometimes the word is found on the label of a product that isn't organic at all.

Organic, it turns out, may be the new empty label of the decade, harnessing society's expanding appetite for all things healthful and environment-friendly.

Labels, however, are tricky.

Except for foods and agricultural goods, such as lavender or cotton, the federal government plays almost no role in saying how "organic" is used on labels and in advertising. Neither does it police store shelves, where products of debatable pedigrees appear in greater numbers.

James Riddle brought a container of "organic" herbicide to the National Organic Standards Board's May meeting to underscore his concern.

"Nothing in it was organic whatsoever," said Riddle, who is both a board member and an inspector of organic agricultural goods.

Ray Green, manager of the state of California's organic program, says he's even seen an "organically certified" zoot suit.

"The word 'organic' is cropping up anywhere and everywhere," Green said. "And it's buyer beware."

The word "organic" has been part of the scientific lexicon for more than a century. It denotes compounds containing carbon. The most common pesticides are technically "organic" chemicals.

But in the past 30 years, "organic" has also become synonymous with "healthful" and "environment-friendly."

According to the U.S. Department of Agriculture, foods and agricultural crops must meet a precise set of rules before they can carry the word "organic." Those rules include: "no synthetic fertilizers," "no added chemicals" and "raised without antibiotics or hormones."

It's only been in the past few years that "organic" has jumped from apples to skin lotion to yoga wear. And, along the way, acquired a certain cachet with American marketers.

"What's driving 'organic' is a buzz," said Laurie Demeritt, president of the Hartman Group, a research firm specializing in the health and wellness markets.

Most people think of organic as being "healthy" or "quality" or "foodie gourmet," Demeritt said.

For some, organic is just plain hip.

Celebrities schmoozing backstage at this year's MTV Video Music Awards sipped organic green tea soda.

Nike debuted a new "Nike Organics" apparel line last fall featuring premium-priced \$28 "100 percent certified organic T-shirts" and elastic-waisted \$38 shorts.

"It's perfect timing," said Eraina Duffy, Nike's director of sustainable business integration. "The consumers' awareness of what's going into their bodies naturally translates to what goes on their bodies."

Organic Style magazine -- launched in September 2001 -- today has a circulation of more than half a million.

Spokeswoman Jill Meisner describes the typical Organic Style reader as a "sophisticated, educated" woman, 25 to 45 years old. She's a well-paid professional who "desires fulfillment that transcends work and the urban/suburban status quo," Meisner said.

Organicweddings.com, a Web site that sells hemp wedding gowns and "tree-free" invitations, gets 7,000 hits a month.

"Organic is really (about) purity and getting back to basics," said Michelle Kozin, who started organicweddings.com nearly two years ago.

Marketers and advocacy groups say the American public has become more aware of the word "organic" since last fall, when the USDA adopted its long-awaited rules regulating foods and agricultural crops.

A spring survey by the Organic Trade Association found nearly half of shoppers polled had seen the new green and white "USDA organic" seal on foods.

And they're buying those products.

According to the Organic Trade Association, organic food sales in the United States are growing an average of 20 percent a year – jumping from \$5.5 billion in 1998 to an estimated \$13 billion this year.

The USDA has assumed responsibility as lead agency regulating organic foods. But no other government agency has taken similar responsibility for regulating nonfood products wearing an organic label.

It falls to the federal Food and Drug Administration to ensure that cosmetics and other body care products are safe. But a spokeswoman says the FDA does not verify whether such products are truly organic.

The Federal Trade Commission has not yet investigated the veracity of an organic claim, said Michelle Rusk, an attorney in the agency's division of advertising practices.

Regulating "organic" could be difficult, Rusk said, because the FTC would "have to determine if the use of the word `organic' raised some expectations in consumers' minds and that they were being misled."

Shampoo and other body care products compose one realm drawing the most complaints from the Organic Consumers Association, with more than 500,000 members nationwide.

In the past few years, the word "organic" has either joined or replaced the word "natural" on shampoos and other body care products. In most cases, these products contain at least one ingredient certified as organic under USDA rules -- such as herbs or lavender water.

But many of these shampoos also contain olefin sulfonate, cocamidopropyl betaine, sodium myreth sulfate, methyl/propylparaben and other synthetic preservatives or petroleum-derived lathering agents found in less-expensive, detergent-laden shampoos.

And that bothers Ronnie Cummins, founder and national director of the Organic Consumers Association.

"People are paying top dollar for stuff labeled `organic' when, in some cases, these products aren't that different than conventional," he said.

Manufacturers say these synthetic ingredients are necessary to create a shampoo that will lather and remain safe to use.

"We have water mixed with oils. Imagine if you left that in your shower at room temperature for a week. It would fester and mold. We have to put something in there to stop it," said Tim Schaeffer, spokesman for Avalon Natural Products.



Still, the Organic Consumers Association and other advocates who fought through 12 years of public hearings to get strict rules governing organic foods are pressing the federal government to adopt a new set of standards regulating shampoos, textiles and the plethora of other products labeled "organic."

The industry sees the benefits, too.

The Organic Trade Association, which includes growers, manufacturers and distributors of organic products, recently convened a task force to decide what ingredients should be allowed in personal care products and what rules should govern the use of the word "organic" on their labels.

Industry-adopted rules would be voluntary -- and are likely to be years away from adoption. But, as happened with organic food rules, they may serve as groundwork for federal regulation.

Another industry task force is working on rules for organic clothing and textiles.

USDA rules specifically address how cotton, wool and other textiles are grown and/or produced. But once the cotton has left the field, there are no rules governing how it is cleaned, bleached, dyed or chemically treated, such as for fireproofing or steam resistance.

Article on Knight Ridder News Service

posted Saturday, September 21, 2002  
4:49 a.m. CT in the

Amarillo Globe-News

## Organic. . . paying the price

By Maria Gallagher  
Knight Ridder News Service

When Mike and Shelley Spear go shopping, the groceries they buy are typical for a family with two young children: cereal and frozen waffles. Pasta and marinara sauce. Vegetables, eggs, milk and ice cream.

But a closer look at their cart reveals a subtle difference: The Spears, who live in Philadelphia's Mount Airy neighborhood with their 5-year-old daughter, Hannah, and 3-year-old son, Isaac, buy organic foods whenever possible.

"We don't eat exclusively organic," said Shelley Spear, 42, a child-welfare social worker. "We try to at home because it's hard when we're out. I figure we're still reducing the amount of processing chemicals that we take in."

"In a perfect world, my cupboard would be filled with organic food," said Mike Spear, 45, who handles environmental claims for an insurance company. "We can't spend all (our) time going from store to store just to do that." And the price difference between organic and non-organic foods "is often outrageous," he added.

Despite the cost, and the American Dietetic Association's view that organically grown and conventionally grown foods are nutritionally equal, an increasing number of Americans are turning to organic products, the fastest-growing segment of the retail food industry.

Packaged Facts, a New York-based market research firm, estimated that retail sales of organic foods nationwide reached \$9.3 billion in 2001. While that's just a nibble of the \$400 billion spent on food each year, annual growth for organics since 1996 has been strong, ranging between 20 percent and 25 percent.

**By 2005, annual sales of organic food and non-food products (such as soaps, toothpaste, and organic-cotton sheets and towels) are likely to reach nearly \$20 billion, according to Organic Consumer Trends 2001, a study published by the Natural Marketing Institute and the Organic Trade Association.**

Personal values are more important than price for the typical organic shopper, said Maryellen Molyneaux, president of the Natural Marketing Institute.

"Lifestyles of health and sustainability are important to them," said Molyneaux, whose company is

based in Harleysville, Pa.

**"It's instrumental in what they purchase: how it affects them, their family, the community and the planet. They're looking for companies to have stronger corporate values, to be more environmentally minded."**

Major food processors are already tapping into these sentiments. In 1998, Coca-Cola Co. bought Odwalla Inc., a maker of natural juice. A year later, General Mills acquired Cascadian Farm, which produces organic frozen and pickled foods, and Muir Glen, a line of organic canned tomatoes, pasta sauces and condiments.

Kraft Foods Inc. owns Balance Bar Co., which makes energy snacks, and Boca Burger Inc., a line of vegetarian burgers. H.J. Heinz Co. introduced an organic ketchup this summer. PepsiCo's Frito-Lay unit is developing natural and organic variations of Tostitos, Cheetos and Sun Chips.

When the Organic Trade Association surveyed its own membership - which includes growers, processors, distributors and retailers - the category that showed the strongest growth from 1999 to 2000 was soy foods and other meat/dairy alternatives, which increased by 215 percent.

That was followed by meat, poultry and eggs (64 percent); canned and jarred products (51 percent); dairy (40 percent); and non-frozen entrees and mixes (26 percent).

Between 2000 and 2005, dairy and soy foods are projected to be the top-performing categories, with beverages and cooking oils coming on strong.

The range of available organic products has expanded well beyond fiber-rich cereals and soy milk. Mainstream supermarkets such as Genuardi's are carrying organic microwavable frozen dinners, soups and salad dressings, breads and jams, pastas and sauces, tortilla chips and salsas, yogurt and chocolate-chip cookies.

Whole Foods Market Inc., the nation's biggest natural-foods retailer, offers organic products in almost every category, including meat and poultry. Weavers Way, a co-op in Mount Airy that counts the Spears among its members, stocks hard-to-find organic items such as cheeses, microwavable popcorn, breakfast toaster pastries, waffle cones and ice cream.

**Until recently, there was no national standard for what constituted an organic product, which led to one-upmanship on grocery shelves. Consumers were left wondering how "100 percent certified organic" and "certified organic" differed from "made with organic ingredients," or whether a "natural" product was somehow less pure than an "all natural" one.**

**"If we see 'organic' on it, we don't read the fine print. We just trust that it is," Shelley Spear said.**

**But starting Oct. 21, American companies and those that export products to the United States must comply with new Department of Agriculture guidelines. Products labeled "100 percent organic" must contain only organic ingredients produced without synthetic fertilizers, pesticides, antibiotics or hormones.**

**Those that contain 95 percent organic ingredients by weight can call themselves "organic." A product labeled "made with organic ingredients" must contain at least 70 percent organic ingredients. If a product contains less than 70 percent organic ingredients, it cannot use the term "organic" on the label except in the ingredients list.**

Companies that meet the standard may use a USDA-designed green-and-white seal that identifies products as "100 percent organic" or "organic," which will help consumers identify those foods at a glance. No national standard was developed for "natural" products, a term that has been applied broadly to non-organic foods produced without artificial additives, hormones, antibiotics and preservatives.

Mike Spear can't prove that buying organic products has improved his family's health, but he said that doing so "just makes me feel better in terms of emotion, buying a product that contributes to the values that we favor."

Shelley Spear used to feel guilty about buying Cheerios because her children didn't care for organic cereal.

"We've gotten over that," she said, "Our approach with them is not that 'this is the diet you have to have.' It's 'this is the diet that we prefer.' If something is not forbidden, maybe it won't be so attractive."