

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

TRULY ORGANIC INC., a corporation, and

MAXX HARLEY APPELMAN, a/k/a Maxx
Harley, individually and as an officer of TRULY
ORGANIC INC.,

Defendants.

Case No. 1:19cv23832

**COMPLAINT FOR PERMANENT
INJUNCTION AND OTHER
EQUITABLE RELIEF**

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), for its Complaint alleges:

1. The FTC brings this action under Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), to obtain permanent injunctive relief, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other equitable relief for Defendants’ acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a) in connection with the false or deceptive advertisement of certain personal care products as organic or certified organic.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345.

3. Venue is proper in this District under 28 U.S.C. § 1391(b)(1), (b)(2), (c)(1), (c)(2), and (d), and 15 U.S.C. § 53(b).

PLAINTIFF

4. The FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41–58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce.

5. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and to secure such equitable relief as may be appropriate in each case, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C. § 53(b).

DEFENDANTS

6. Defendant Truly Organic Inc. (“Truly Organic”) is a Florida corporation with its principal place of business at 2160 Park Avenue, Miami Beach, Florida 33139. Truly Organic transacts or has transacted business in this district and throughout the United States. At all times material to this Complaint, acting alone or in concert with others, Truly Organic has advertised, marketed, distributed, or sold personal care products to consumers throughout the United States.

7. Defendant Maxx Harley Appelman, also known as Maxx Harley (“Appelman”), is the founder and CEO of Truly Organic. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of Truly Organic, including the acts and practices set forth in this Complaint. Defendant Appelman resides in this district and, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

COMMERCE

8. At all times material to this Complaint, Defendants have maintained a substantial course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS’ BUSINESS ACTIVITIES

9. Since at least February 2015, Defendants have advertised, labeled, offered for sale, sold, and distributed personal care and home products to consumers. These products include, but are not limited to, haircare products, body washes, lotions, baby products, personal lubricants, and cleaning sprays. Defendants’ products fall into two categories: (1) products that they “make” by purchasing wholesale bath, beauty, and home products online, adding ingredients to increase visual appeal, and repackaging; and (2) “bath bombs” and soaps that they purchase as finished products from online wholesalers and resell at a substantial markup.

10. Defendants primarily advertise their products online, including, but not limited to, on their website, www.trulyorganic.com, and on their social media accounts. Defendants also advertise these products through third-party websites, such as ulta.com, urbanoutfitters.com, nordstrom.com, and aerie.com. Defendants offer for sale, sell, and distribute their personal care products throughout the United States.

11. Defendants provide third parties with marketing materials so third parties can market and sell Defendants’ products.

12. To induce consumers to purchase their products, Defendants have disseminated or caused to be disseminated advertisements that contain the following statements, among others:

A. That Defendants' products are wholly organic or certified organic in compliance with the United States Department of Agriculture's ("USDA") National Organic Program ("NOP"), including:

1. Defendants' products contain "100% Organic Ingredients."
2. Defendants' products are "certified organic."
3. Defendants' products are "USDA [U.S. Department of Agriculture] organic" or "USDA certified organic."
4. Particular products are "100% organic."
5. Defendants' products are "Truly Organic."

B. That Defendants' products are vegan.

13. In truth and in fact, many of Defendants' products contain ingredients that are not organic. For some products that Defendants claim are "100% organic" and "Truly Organic," Defendants identify non-organic ingredients in lists that are buried among other text on product labels and webpages. Some products incorporate non-organic ingredients that could be organically sourced, such as non-organic lemon juice. Other products contain non-organic ingredients that the USDA does not allow in organic handling, including cocamidopropyl betaine and sodium cocosurfactant. Other products, such as Defendants' "bath bombs" and soaps, contain no organic ingredients because they are sourced as finished products from suppliers that do not offer any organic products. None of Defendants' products has ever been certified organic in compliance with the USDA NOP.

14. In truth and in fact, some of Defendants' products are not vegan. Specifically, certain products contain non-vegan ingredients such as honey and lactose.

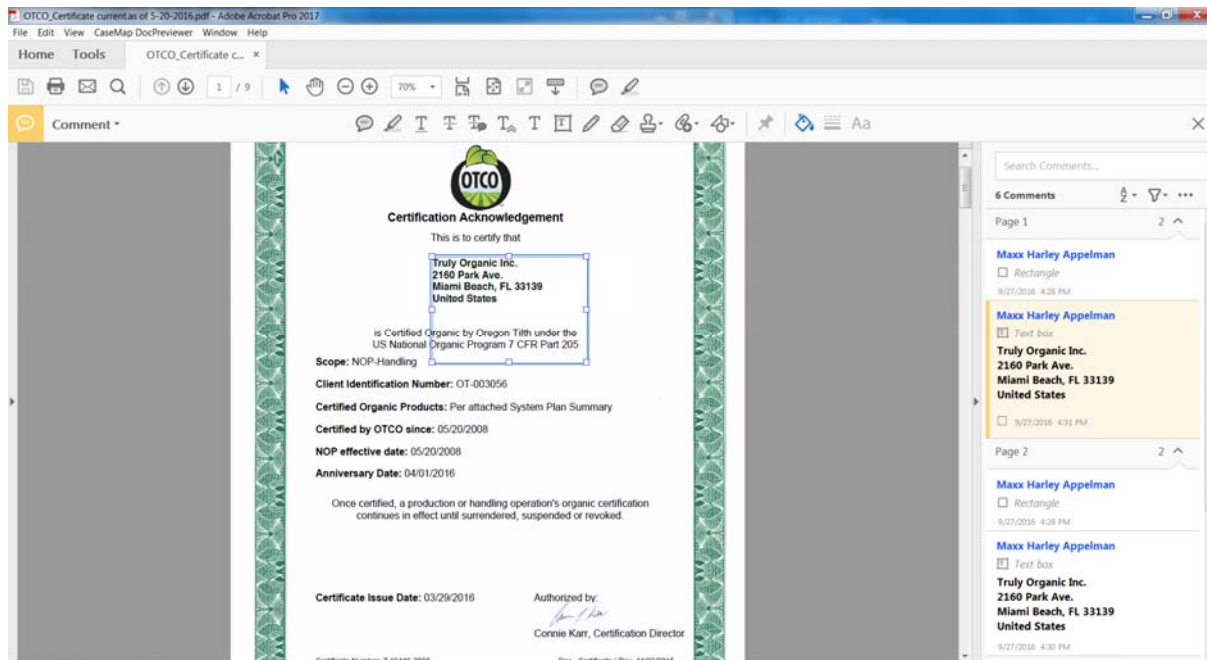
15. On May 4, 2016, the USDA contacted Defendants to notify them that NOP had received complaints alleging that Truly Organic “markets its product as organic in violation of the USDA organic regulations.” The same day, Appelman responded claiming that “previous management” erroneously used the USDA Organic seal, and “we have removed the seal from all packaging, marketing/promotional materials, website, everything as you can see and are selling a completely redesigned group of products. We are well aware of the rules and regulations that govern the USDA Seal and have not used the seal whatsoever and do not plan to unless we gain proper certification.”

16. On May 5, 2016, Appelman sent an email to a Divisional Merchandise Manager at Urban Outfitters, Inc. In his cover email, Appelman claimed that “everything is certified organic (and actually the most organic in the world),” and “everything is vegan, made in the USA, cruelty free, fair trade, non gmo and gluten free [sic].” Appelman attached a press kit containing multiple claims that Truly Organic products were vegan, certified organic, and “100% organic.”

17. During the course of the USDA’s investigation into Defendants’ business practices, USDA staff corresponded directly with Defendant Appelman and instructed him that, based on their findings, Defendants could not represent any Truly Organic products as “USDA Organic” or “Certified Organic.”

18. On June 16, 2016, the USDA issued a Notice of Warning to Defendants confirming that Truly Organic “is not a certified organic operation, but represented its products as such on product labels and company website.” The Notice closed the USDA’s investigation because Defendants “took action to discontinue representing [their] products as certified organic.”

19. In late September 2016, more than three months after the USDA closed its investigation, Defendants electronically altered an organic certification document to claim falsely that Truly Organic had been certified. Specifically, document metadata shows that Appelman deleted the name of the legitimately certified company, and replaced it with Truly Organic's information. Defendants then provided this certificate to third parties as purported substantiation for Defendants' "certified organic" claims:



20. Around the same time, Defendants also falsified Material Safety Data Sheets and supplied those documents to third parties for use in marketing Defendants' products.

21. Defendants continued to supply marketers and Internet influencers with product samples that had labels featuring the false certifications for use in the sale of Defendants' products for months after resolving the USDA investigation.

22. Through 2018, Defendants continued to endorse and upload Internet influencer videos to Truly Organic's YouTube channel containing "certified organic," "USDA organic,"

and “vegan” claims, and featuring images of Truly Organic product packaging containing such claims. For example:



23. Until the FTC contacted Defendants in May 2019, Truly Organic’s website incorporated the statement “100% Organic Ingredients – Truly Organic” in its metadata. Based on this metadata, consumers searching for 100% organic products on Google were served the following Google Snippet as a top result:



24. While disseminating the claims described above, Defendants regularly purchased hundreds of gallons of bath, beauty, and home products that they were aware did not contain 100% organic ingredients from online wholesalers with the intention of taking the largely finished products, adding ingredients to increase visual appeal, repackaging, and selling to consumers. Also, while disseminating the claims described above, Defendants purchased and offered for sale certain non-organic bath and beauty products, including soaps and “bath bombs,” sourced as finished products from online wholesalers that do not offer organic products.

25. Defendants ceased making certain unlawful “organic” claims on a piecemeal basis, only after the FTC informed them of its investigation, and as the FTC identified each unlawful claim.

26. Defendants have stated that they may seek USDA certification in the future.

27. Based on the facts and violations of law alleged in this Complaint, the FTC has reason to believe that Defendants are violating or are about to violate laws enforced by the Commission because, among other things: Defendants engaged in their unlawful acts and practices repeatedly over a period of nearly ten years; Defendants engaged in their unlawful acts and practices willfully and knowingly; Defendants’ unlawful acts and practices were the subject of prior enforcement action by the USDA, yet Defendants continued to engage in such practices; to the extent Defendants ceased their unlawful activities, they only did so after learning of the FTC’s investigation; and Defendants remain in the organic personal care product business and maintain the means, ability, and incentive to resume their unlawful conduct.

VIOLATIONS OF THE FTC ACT

28. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or deceptive acts or practices in or affecting commerce.”

29. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

COUNT I
(False or Unsubstantiated Representations)

30. Through the means described in Paragraphs 9-26, Defendants have represented, directly or indirectly, expressly or by implication, that:

- A. Defendants' products contain "100% Organic Ingredients."
- B. Defendants' products are "certified organic."
- C. Defendants' products are "USDA organic" or "USDA certified organic."
- D. Defendants' products are "100% organic."
- E. Defendants' products are "Truly Organic."
- F. Defendants' products are vegan.

31. In truth and in fact, many of Defendants' products contain non-organic ingredients, none has ever been certified organic in compliance with the USDA NOP, and some of Defendants' products incorporate non-vegan ingredients. Accordingly, the representations set forth in Paragraph 30 are false or misleading, or were not substantiated at the time the representations were made.

32. Therefore, the making of the representations as set forth in Paragraph 30 of this Complaint constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT II
(Means and Instrumentalities)

33. As described in Paragraph 10, Defendants have distributed the promotional materials described in Paragraphs 11 and 21-22 to third parties for use in the marketing and sale of Defendants' products.

34. In so doing, Defendants have provided the means and instrumentalities to these third parties for the commission of deceptive acts or practices.

35. Therefore, Defendants' practices, as described in Paragraphs 33 and 34, constitute deceptive acts or practices in violation of Section 5 of the FTC Act.

CONSUMER INJURY

36. Consumers are suffering, have suffered, and will continue to suffer substantial injury as a result of Defendants' violations of the FTC Act. In addition, Defendants have been unjustly enriched as a result of their unlawful acts or practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

37. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of any provision of law enforced by the FTC. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

PRAYER FOR RELIEF

Wherefore, Plaintiff FTC, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and the Court's own equitable powers, requests that the Court:

A. Award Plaintiff such preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief, including temporary and preliminary injunctions;

B. Enter a permanent injunction to prevent future violations of the FTC Act by Defendants;

C. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and

D. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Respectfully submitted,

ALDEN F. ABBOTT
General Counsel



Dated: September 13, 2019

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