

11/30/2016

The Federal Trade Commission  
Federal Trade Commission  
600 Pennsylvania Avenue NW  
Washington DC, 20580  
USA

**Re: Public comment on Green Guides – Organic Roundtable, Project No. P954501**

***Summary: In our analysis, current product labeling practices provide adequate information to allow concerned consumers to make informed purchasing decisions regarding certified organic products and products containing organic ingredients. However, the use of the term “organic” should remain exclusively under the control of the USDA National Organic Program, and ingredients listed individually as “organic” should be required to be certified organic (with an auditable supply chain).***

As experts in how to educate consumers on complex topics to ensure their ability to make informed personal decisions, we know it’s possible to provide consumers with precisely defined terms and a framework with which to compare claims such as “natural” and “organic”. In fact, a group of properly informed consumers will most often quickly reach a consensus about the *qualitative differences* between claims. There will certainly be differences in how consumers personally *value* each claim.

The late night talk shows love to make sport of catching consumers in the street and asking them random questions like, “What is a GMO” or “What is Organic”. Partly as the result of asking someone to recall specific and complex information outside of its normal context, and partly due to creative editing of the most egregiously erroneous responses, any decent production crew can make any group of consumers look like dolts.

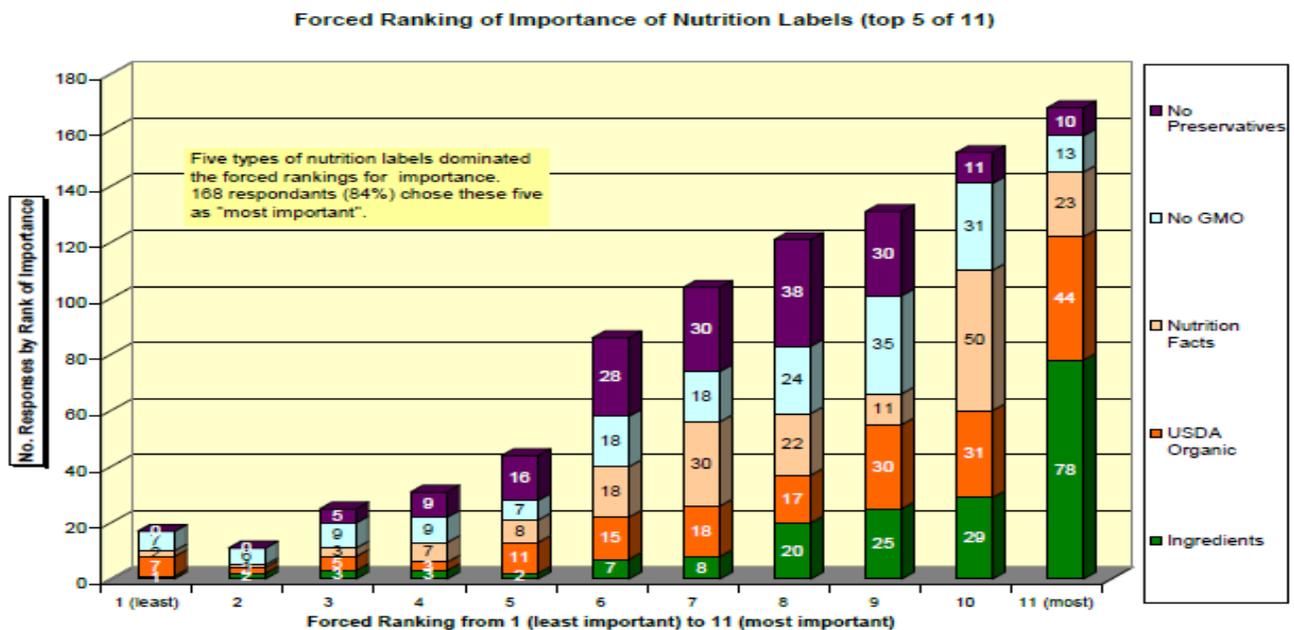
Survey companies working on behalf of trade groups and regulators don’t try to recreate this comedy scenario intentionally, but nevertheless end up with a similar set of seemingly random responses. In a representative survey about diapers for instance, a large number of participants will have no direct, personal experience with labeling and attributes on which to base an informed comment. At best, many responses will be derived from second hand media representations. However, if you ask a hunter about rifles, or a smoker about cigarettes, or a trucker about diesel engines, you will discover a wealth of informed opinion and great agility in weighing and evaluation marketing claims. Similarly, the animal activist and vegan may have little patience with the “natural” or “organic” label. She only wants to make sure no animals were harmed in testing and no animal products are in the bottle.

Consumers in general are often confused by different classifications -- of all types of products. Determining the depth of their confusion may serve some purpose, but the confusion should be no surprise. With label claims like Natural and Organic (not to mention Naturally Raised and All-Natural) even highly trained and knowledgeable experts often disagree.

It's clear that a great deal of time, expertise, caution and effort went into the design and execution of the "Recycled Content and Organic Claims" survey. Yet by the authors' own admission, the accuracy and usefulness of the results should be recognized as being "severely limited". I am attaching a far less sophisticated survey, completed in 2010, which may shed light on how consumers perceive label claims.

About 200 full responses were received from 20,000 customers who were offered the survey through an email campaign. Respondents self-selected and were not compensated. The FDA was interested in research on "health conscious" consumers, so self-selected health food store customers was an appropriate proxy. No attempt was made to create a representative sample of a broader population. A number of label claims (primarily seals and logos) were force-weighted against each other by respondents.

The USDA Organic seal was by far the most significant seal to consumers. However, the most common response to the survey overall was that no amount of claims, seals and certifications was more important than the content of the ingredient panel. ***In short, the individual needs and preferences of health conscious consumers trumped all marketing claims.*** A consumer with celiac disease, for instance, was less impressed with a Gluten Free logo than with a list of ingredients that clearly stated there were no ingredients containing gluten. That wheat might be organic was irrelevant to her. Other customers noted they did not eat rice; no marketing claim can overcome that objection if there is rice in the ingredients list.



***The FTC should bear in mind that concerned consumers are already quite able to differentiate one product from another and one marketing claim from another.***

While it would be helpful to educate every consumer about every possible product attribute in every category, this kind of education would not necessarily decrease confusion among consumers to whom the attributes are not important. Conversely, once a consumer decides that particular attributes matter, the label information currently required on body care and food products seems to be adequate for them to make appropriate decisions. Consumers simply do not have the bandwidth to care about every attribute all the time.

***Rather than ask How do consumers perceive organic (or recycled) claims?, the more practical question is Do concerned consumers have adequate information to differentiate product attributes on retail shelves? We believe they do.***

The body care offerings at a national chain of health food stores (where I am employed) will carry about 1,000 unique products. The grocery chain is recognized as a leader in transparent disclosure, and for banning ingredients that may be dangerous. The chain also emphasizes specialty products that appeal to customers who need fragrance free, hypo-allergenic, vegan, and other formulas. For the record, there are only a handful of products that make a claim to be an “organic” product, and *all of them carry a USDA certified organic seal*. A quick survey of the USDA National Organic Program Organic Integrity Database (an official list of all certified organic producers and products) verifies the observation that only a limited number of products claim certified organic status.

The following spreadsheet captures the main marketing claims made by a selection of natural and “Certified Organic” body care products found in our stores. From the consumer’s point of view, several decision paths unfold at once:

- There is a base standard that is expected given that the products are being sold by a store well known for its carefully curated products.
- There are quality statements that telegraph additional general information such as “100% Natural” and “USDA Organic”.
- Typically, a concerned consumer will turn the package to read the ingredient list if they wish to avoid certain ingredients. Most products make this process easier by stating what the product does not contain in larger print on the main display panel. These ***upclaims*** are often the most important selling point for the product.
- ***Upclaims*** are the stepping stones from weaker standard (e.g. Natural) to a stronger one (e.g. Certified Organic). They may also call attributes not specifically included in a standard. Thus you see a Natural product “made with organic ingredients”, or Organic “100% grassfed” meat.
- In the attached pictures of representative body care products, one sees careful restraint in not first claiming a higher standard and then ***qualifying*** it downward. For instance, it’s extremely rare, not to mention illegal, to claim a product is organic “except for some synthetic preservatives”.

- A key **upclaim** is to list individual ingredients within the ingredients list as “organic” or “natural” both on conventional and non-certified organic products.

Also, note that the “Made with Organic” claim, a legally allowed statement for products containing at least 70% organic ingredients, is rarely used. Nine out of ten certified organic products qualify for the Organic or 100% Organic label claim. I would suggest this reinforces the point that upclaims are preferred to downclaims (qualified claims). Natural “plus-plus” is a stronger claim than Organic “minus-minus”.

***In short, upclaims rule, downclaims drool.***

Image #	Brand Name	Product	Does not Contain	Organic Ingredients Listed using:	USDA Seal	Certifier	Other Seals
1	John Masters Organics	Shampoo	GMO's, parabens, DEAs MEAs, TEAs, Sodium laurel sulfate, artificial color, artificial fragrance	*Certified Organic (partial)	None		None
2	Badger	Sun Balm	none listed	*Certified Organic (95%?)	Yes	NH Dept of Agr	Cruelty Free
3	Motherlove	Skin Care	No petroleum or synthetic ingredients. No parabens or artificial preservatives	*Certified Organic (100%?)	Yes	Oregon Tilth	Cruelty Free
4	Nature's Gate	Toothpaste	Flouride and Carrageenan	none identified as organic	None		Cruelty Free, Water Aid, Soy Ink, FSC
5	Tom's of Maine	Toothpaste	Flouride Free	none identified as organic	None		Terracycle, BPA Free
6	Everyone	Baby Oil	Gluten Free, no synthetic fragrance, paraben free	*Certified Organic (95%?)	Yes	CCOF	GF, nonGMO, Bcorp, Cruelty Free, Recycle
7	Nourish Organic	"100% Natural" Body Wash	No parabens, phthalates, petochemicals, artificial fragrances or preservatives, silicones, propylene glycol, mineral oils, sufates, synthetic dyes, triclosan, EDTA, or aluminum.	Organic [Latin Name] [Common Name] 95% Organic?	Yes	Oregon Tilth	GF, Vegan, Recycle, Cruelty Free, Made in USA
8	Avalon Organics	Conditioner	No GMOs, parabens, harsh sufates or preservatives, synthetic colors or fragrances, phthalates or animal testing.	*Certified Organic (partial)	None		Charity, cruelty free, recycle
9	Dessert Essence	Body Cleanser	none listed	*Certified Organic (95%?)	Yes	Oregon Tilth	Cruelty free
10	Badger	100% Natural Sun Screen	Hypoallergenic, nonComedogenic, nonGMO, NonNano,	*Certified Organic (partial)	None		NSF Certified, Natural Products Association Certified
11	Burt's Bees	98.9% Natural Skin Lotion	Hypoallergenic. No parabens, Phthalates, Petrolatum or SLS	none identified as organic	None		Cruelty Free, Pediatrician Tested, Greater Good Certified
12	Chagrin Valley	Dry Shampoo	none listed	Organic [Common Name] (100%?)	Yes	Ohio EFFA	Cruelty Free, Vegan, NonGMO

If it is the FTC's mission to "develop rules to maintain a fair marketplace...and educate consumers" it would do well to consider how the USDA National Organic Program has, within the scope of its congressional mandate, fostered the growth of a \$40 Billion industry whose rules apply equally to all participants. One of the keys to the success of the NOP is its enforcement provisions. Certifiers and their inspectors are accredited and audited. Organic operations are inspected both annually and at times without notice. Noncompliance requires a written acknowledgement and corrective action plan. Continued noncompliance can and will lead to suspension or termination of the organic certification.

Our concern as an industry is that this robust set of rules that maintain a fair marketplace for organic food, feed and fiber may be undermined by other product categories using the organic designation outside of the enforcement and compliance mechanisms of the NOP. THE USDA Organic seal has within it a large number of *Yes You Cans* and even more *No You Can'ts*. But, each and every one has been negotiated by the community through a long term consensus process. The rogue company that wants to define for itself what "organic" body care, car care, hair care, pet care or clothing care means, based solely on what is convenient for it, will not find itself welcome in the longstanding and formidable organic community. The USDA Organic seal already means something unique. In turn it has given unique meaning to the word "organic". Allowing any regulatory body besides the USDA National Organic Program to sanction the use of the word *organic* incurs the risk of damaging this carefully established meaning and the regulatory framework behind it.

#### **Key observations and recommendations:**

1. In the healthy/natural retail channel, most products are already labeled in ways that do *not* imply attributes the product does not actually possess. In particular, the organic claim is carefully managed through the ingredients list (for non-certified products), and through the USDA Organic seal (for certified products). There does not appear to be any potential for confusion here.
2. The USDA certified organic products (bearing the organic seal) contain only ingredients that are allowed by the NOP. While the Organic Foods Production Act did not specifically contemplate body care products as part of its scope, some products have been certified based on their containing only non-synthetic oils, minerals, and botanicals that would normally be allowed in organic food products. **The USDA and FTC should be vigilant that body care products displaying the organic seal only contain ingredients found in organic foods.** And especially, these products should not be allowed to contain non-organic ingredients based on the premise that the National List has not excluded them. These are very narrow guardrails in which to operate, but the OFPA

was not designed or intended to expand to body care and cosmetic (and other) products. If makers of those products wish to claim certified organic status, they should be encouraged to approach the appropriate legislative body to establish regulatory authority to do so.

3. ***Finally, and most importantly, the use of the term “organic” preceding individual ingredients in a product that is not certified organic presents a critical challenge.*** Without proper oversight and auditing, there is no effective control over the source of those ingredients. ***Ingredients that are identified as organic on a principle display panel or in the ingredient list must be identified specifically as certified organic.*** This rule compels the manufacturer to buy only from certified organic suppliers, which in turn establishes a legal audit trail to verify the ingredients used are in fact organic. Otherwise, “organic” ingredients are called that based solely on the opinion of the formulator.

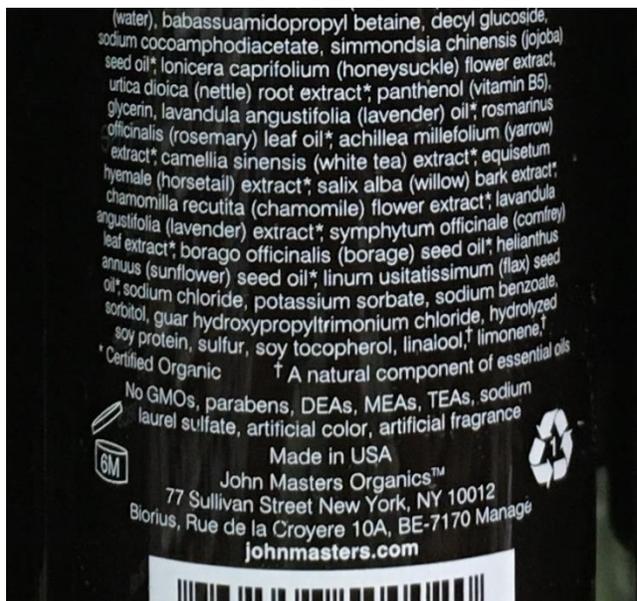
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6	Everyone	Baby Oil	Gluten Free, no synthetic fragrance, paraben free	*Certified Organic (95%?)	Yes	CCOF	GF, nonGMO, Bcorp, Cruelty Free, Recycle
7	Nourish Organic	"100% Natural" Body Wash	No parabens, phthalates, petochemicals, artificial fragrances or preservatives, silicones, propylene glycol, mineral oils, sulfates, synthetic dyes, triclosan, EDTA, or aluminum.	Organic [Latin Name] [Common Name] 95% Organic?	Yes	Oregon Tilth	GF, Vegan, Recycle, Cruelty Free, Made in USA
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10	Badger	100% Natural Sun Screen	Hypoallergenic, nonComedogenic, nonGMO, NonNano,	*Certified Organic (partial)	None		NSF Certified, Natural Products Association Certified
11	Burt's Bees	98.9% Natural Skin Lotion	Hypoallergenic. No parabens, Phthalates, Petrolatum or SLS	none identified as organic	None		Cruelty Free, Pediatrician Tested, Greater Good Certified
12	Chagrin Valley	Dry Shampoo	none listed	Organic [Common Name] (100%?)	Yes	Ohio EFFA	Cruelty Free, Vegan, NonGMO

om

# Image 1

Brand: John Master Organics

Claim: certified organic ingredients called out using asterisk and footnote on ingredients panel.



Product containing mostly non-organic botanical ingredients. Ingredient include Latin and common name. Asterisk denotes certified organic ingredient.

Brand “John Masters Organics” contains *organic* in the brand name and appears to appropriately represent the contents of the product.

Not a certified organic product.

Notice the statement of prohibited ingredients.

Note there are no upclaims.

Image 2



Certified organic product. Ingredient include Latin and common name. Asterisk denotes certified organic ingredient.

Brand "Badger"

No "Does not Contain" statement or other upclaims.



Image 3



Another product containing primarily certified organic food and botanic ingredients. “Organic” ingredients called out using asterisk and footnote.

Brand “Motherlove Herb Company”

Certified USDA Organic by Oregon Tilth

Notice the statement of prohibited ingredients on primary display panel, which reiterate USDA Organic standards.

Notice the additional Cruelty Free certification on the side panel.

Image 4



**INGREDIENTS/INGRÉDIENTS :** Calcium Carbonate, Glycerin, Water (Eau), Aloe Barbadensis Leaf Juice, Sodium Lauroyl Sarcosinate, Xanthan Gum, Flavor (Aroma/arôme)\*, Mentha Viridis (Spearmint/menthe verte) Leaf Oil, Quillaja Saponaria (Soap Bark/buisson à savon) Root Extract, Camellia Sinensis (White Tea/thé blanc) Leaf Extract, Punica Granatum (Pomegranate/grenade) Fruit Extract, Vaccinium Macrocarpon (Cranberry/canneberge) Fruit Extract, Vitis Vinifera (Grape/raisin) Seed Extract, Zingiber Officinale (Ginger/gingembre) Root Extract, Sodium Bicarbonate, Calcium Glycerophosphate, Bisabolol.

\*Natural Flavor \*Arôme naturel

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crueltyfree andvegan

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Here is a product one might *expect* to be called natural or organic, but it is not.

Brand “Nature’s Gate” makes no attempt to convey with text that the product is natural or organic on the main display panel, but emphasizes the natural source of its ingredients using both Latin and common names.

Note: some of the ingredients might prevent this product from being certified organic.

Certification seals predominate on the ingredients panel. Product benefits and a relatively clean (and short) ingredient list reassure consumers of the product’s safety and value.

Notice the prominent statement that the product does not contain either Fluoride or Carrageenan. Both ingredients are of concern to some consumers; these upclaims make it clear that they are not used.

Image 5



Here is a product one might *expect* to be organic, but it is not.

Brand “Tom’s of Maine” makes no attempt to convey with text that the product is natural or organic on the main display panel, but emphasizes the natural source of zinc and xylitol in the formula.

Some of the ingredients would prevent this product from being certified organic.

This “certification-agnostic” packaging predominates in body care products in the natural retail channel. Instead, clearly stated product benefits and a relatively clean (and short) ingredient list reassure consumers of the product’s safety and value.

Image 6



Another product containing primarily certified organic botanic ingredients. "Organic" precedes ingredient Latin and common name.

Brand "Everyone"

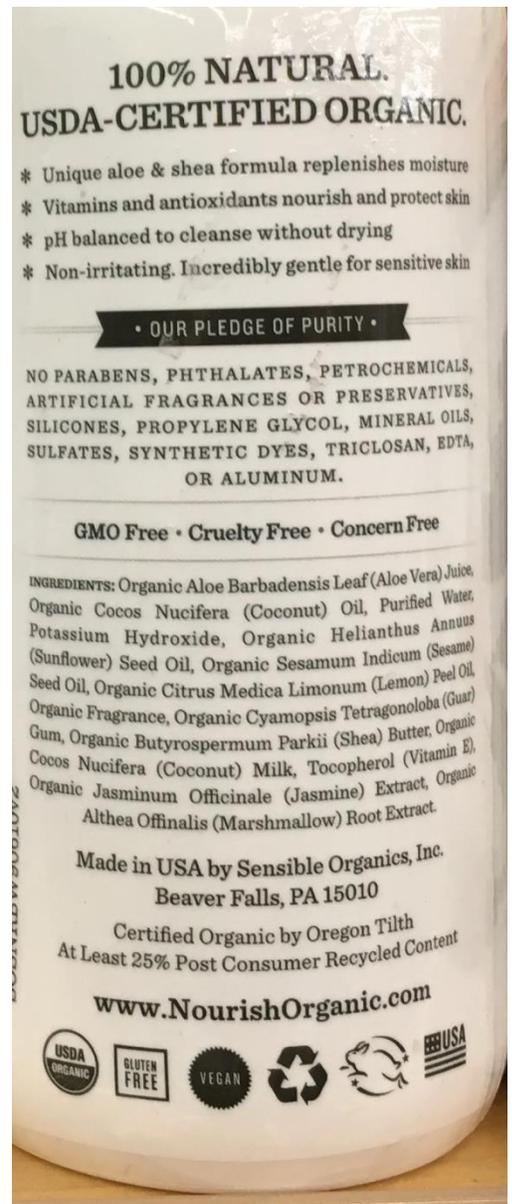
Certified USDA Organic by Oregon Tilth

Notice the statement of prohibited ingredients which constitute an upclaim from Organic.

Notice the large number of additional certifications and logos on the label.

Image 7

Certified organic ingredients with “Does Not Contain” statement



Another product containing primarily certified organic botanic ingredients. “Organic” precedes ingredient Latin and common name.

Brand “Nourish Organics” and “Sensible Organics” contain *organic* in the brand name and appears to appropriately represent the contents of the product.

Certified USDA Organic by Oregon Tilth

Notice the statement of prohibited ingredients.

Image 8



Another product containing primarily certified organic botanic ingredients. “Organic” precedes ingredients’ Latin and common names.

Primary upclaim is “Contains organic ingredients”.

Brand “Avalon Organics” contains *organic* in the brand name but is **not** a certified organic product and is probably not eligible to be certified based on ingredients that may be prohibited by the USDA NOP National List.

Certified by QAI, but not as organic. Product complies with ANSI 305 standard. This is a proprietary technical standard with little public awareness.

Notice the statement of prohibited ingredients, many of which are aligned with certified organic standards.

Notice cause affiliation logos and other certifications.

Image 9



Another product containing primarily certified organic botanic ingredients. “Organic” precedes ingredients’ Latin and common names.

Brand “Desert Essence”

Certified USDA Organic by Oregon Tilth

No upclaims.

Image 10

“All ingredients are sustainably sourced from plants, minerals or are a product of fermentation.”

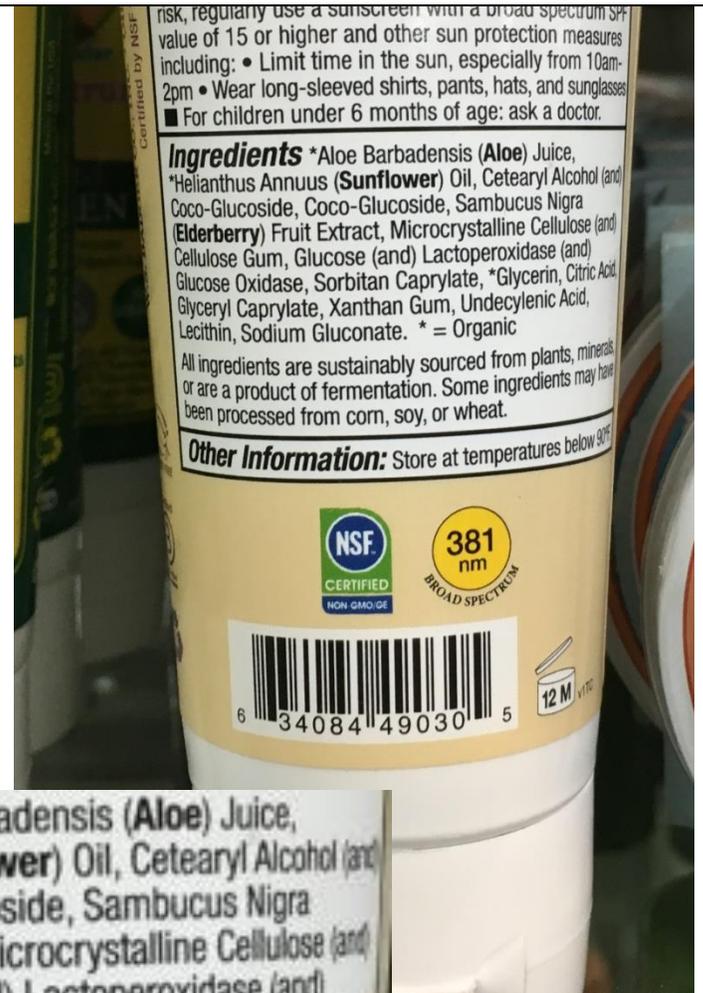
Some ingredients called out as Organic using asterisk and footnote.

Brand “Badger”

Not Certified Organic.

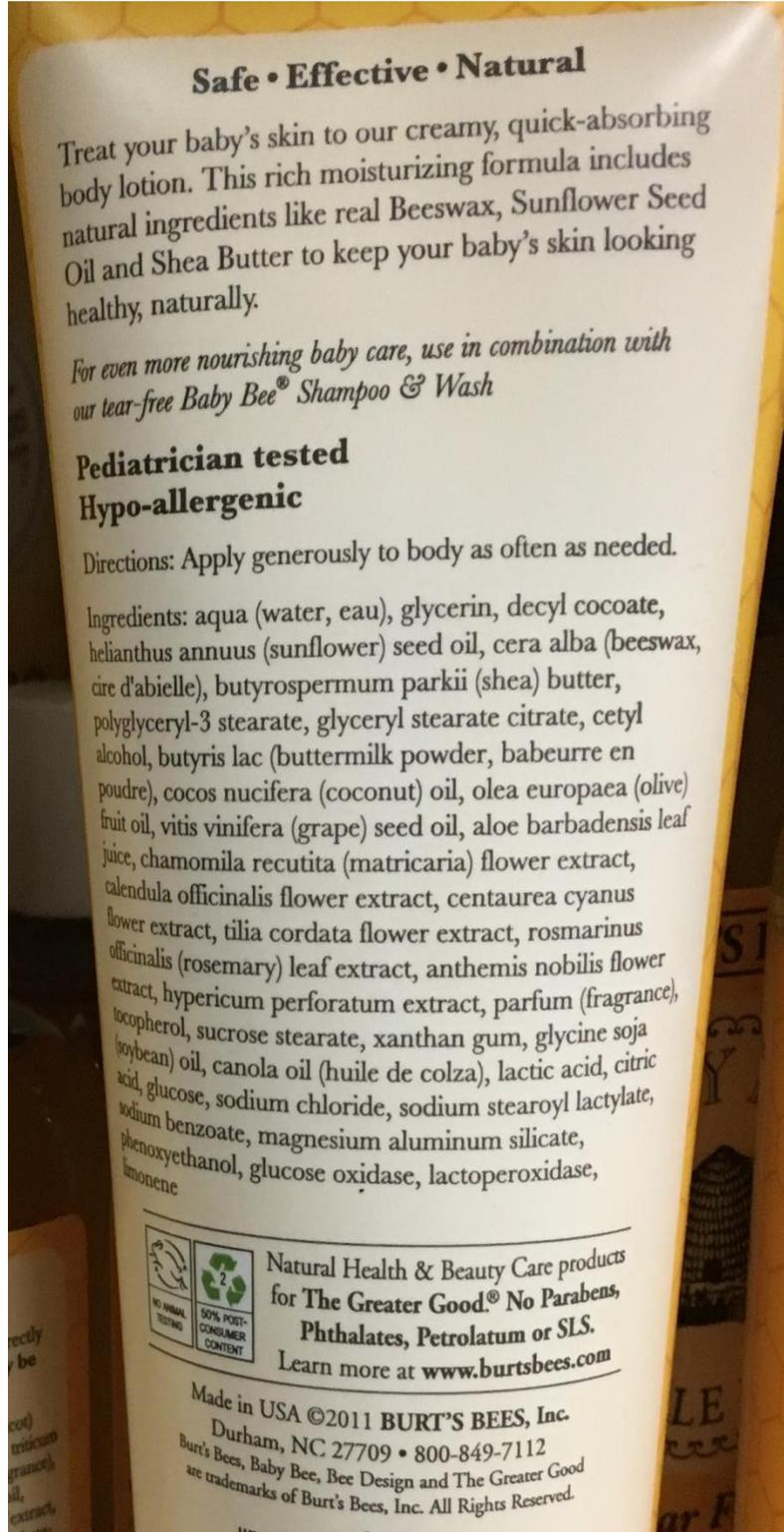
NonGMO upclaim (see NSF Seal)

Multiple upclaims including nonGMO, nonNano, etc.



**Ingredients** \*Aloe Barbadensis (Aloe) Juice, \*Helianthus Annuus (Sunflower) Oil, Cetearyl Alcohol (and) Coco-Glucoside, Coco-Glucoside, Sambucus Nigra (Elderberry) Fruit Extract, Microcrystalline Cellulose (and) Cellulose Gum, Glucose (and) Lactoperoxidase (and) Glucose Oxidase, Sorbitan Caprylate, \*Glycerin, Citric Acid, Glyceryl Caprylate, Xanthan Gum, Undecylenic Acid, Lecithin, Sodium Gluconate. \* = Organic

Image 11



“All ingredients are sustainable sourced from plants, minerals or are a product of fermentation.”

Some ingredients called out as Organic using asterisk and footnote.

Brand “Burt’s Bees Baby”

Not Certified Organic.

“No parabens, Phthalates, Petrolatum or SLS”

Note upclaim “98.9% Natural”

Image 12



**Ingredients:** Organic Arrowroot Powder; Organic Cornstarch; Organic Tapioca Flour; Kaolin Clay; Organic Burdock Root; Organic Plantain; Organic Essential Oils: Lavender and Rosemary

Certified organic product containing only food and botanical ingredients.