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Federal Trade Commission
Office of the Secretary
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Washington, D.C. 20580

Submitted via www.ftc.gov.

**Comments of Consumer Reports and Consumers Union to the
Federal Trade Commission on the Green Guides – Organic Roundtable
“Consumer Perceptions of ‘Organic’ Claims”
Project No. P954501**

Consumer Reports and Consumers Union welcome the opportunity to submit written comments on the October 20, 2016, roundtable hosted by the Federal Trade Commission (FTC) and the U.S. Department of Agriculture (USDA) to better understand how consumers perceive “organic” claims for non-agricultural products and services and to explore what approaches the agencies can take to address potential deception.¹ After participating in the roundtable as part of its discussion group, we appreciate the chance to comment further.

Over the last several years, we have taken numerous steps to examine the marketplace, encourage “green” marketing that is truthful and not misleading, and empower consumers with knowledge they can use to make more informed choices. The term “organic” has been a focus of ours in these efforts, including through our work to ensure the integrity of the USDA Organic label overseen by USDA’s National Organic Program (NOP).

Consumer Reports regularly conducts survey research to better understand what product labeling means to consumers and how it may affect their purchasing decisions. Generally, with regard to food, we have found that consumers have a sophisticated understanding of “organic” as a meaningful term, and that they insist on a high bar for “organic” and for terms they perceive as similar, such as “natural.” In April 2016, the Consumer Reports National Research Center released a report on its nationally representative survey of 1,001 adult U.S. residents on food labels. It finds, among other conclusions, that consumers expect strong standards for organic

¹ Consumers Union is the policy and mobilization arm of Consumer Reports, an independent, nonprofit organization that works side by side with consumers to create a fairer, safer, and healthier world. As the world’s largest independent product-testing organization, Consumer Reports uses its more than 50 labs, auto test center, and survey research center to rate thousands of products and services annually. Founded in 1936, Consumer Reports has over 7 million subscribers to its magazine, website, and other publications.

food and that they are looking at labels on processed foods to help inform first-time purchase decisions.² Another survey we conducted in December 2015 found that: (1) a range of environmental and safety concerns are important to food shoppers; (2) consumers want more stringent standards for natural and organic labeling on meat and poultry; (3) and consumers demand more standards for natural and organic labels on packaged and processed foods.³

In addition, Consumer Reports uses its testing and journalism capacities to help consumers make informed choices. This includes several examples of content related to “organic” claims on non-agricultural products. In May 2016, we reported that five of six plant-based insect repellents we tested lasted one hour or less against *Aedes* mosquitoes—including one marketed as “EcoSmart Organic,” which, despite its name, does not contain certified organic ingredients or bear the Department of Agriculture’s organic seal.⁴ In December 2015, we released the findings of our testing of “organic”-labeled mattresses and reported that these mattresses may have only some materials that are actually certified organic. We wrote that for a mattress to be truly organic, it should have at least 95 percent certified organic materials and should also prohibit potentially harmful chemicals used in processing.⁵ In August 2014, we released a video recommending to consumers that the best label to look for in beauty products, if seeking to avoid potentially harmful ingredients, is USDA Organic.⁶

Drawing on our survey research and testing results and adding additional expert analysis, we also operate the website GreenerChoices.org, which ranks labels by the quality of the information that they provide to consumers. We rate the transparency and credibility of various standards for “green” marketing claims so that consumers can be better informed about which labels are more reliable and which are not worthy of their trust. Through this work, we find wide variation in how meaningful the labels are, how well the programs are run, and how strong of a system of validation or accountability there is within different certification programs.

We have long been concerned by the potential for consumer deception from products that market themselves as “organic” but do not comply with the NOP’s highly transparent and meaningful standards for agricultural products. In 2010, Consumers Union filed a petition with the FTC urging the agency to investigate the misleading use of “organic” claims on personal care

² Consumer Reports, Consumer Reports National Research Center, Food Labels Survey (Apr. 2016) (online at www.consumerreports.org/content/dam/cro/news_articles/health/PDFs/ConsumerReports-Food-Labels-Survey-April-2016.pdf).

³ Consumer Reports, Consumer Reports National Research Center, Natural Food Labels Survey (Dec. 2015) (online at www.consumerreports.org/content/dam/cro/magazine-articles/2016/March/Consumer_Reports_Natural_Food_Labels_Survey_2015.pdf).

⁴ “Does ‘Natural’ Mosquito Repellent Work?,” Consumer Reports (May 24, 2016) (online at www.consumerreports.org/insect-repellent/does-natural-mosquito-repellent-work).

⁵ “Organic Mattress Labels You Can Trust,” Consumer Reports (Dec. 15, 2015) (online at www.consumerreports.org/mattresses/organic-mattress-labels-you-can-trust).

⁶ “Safer Makeup,” Consumer Reports (Apr. 2014) (online at www.consumerreports.org/video/view/healthy-living/news/3726512048001/safer-makeup).

products that do not comply with the requirements of the NOP.⁷ We noted that “organic” personal care products vary widely in meaning and expressed our concern that the lack of one meaningful, consistent standard had led to many companies and certification services providing many different definitions of what constitutes an “organic” personal care product. We asked the FTC to consider a memorandum of understanding or other means of working with USDA to prevent deceptive uses of the “organic” claim, and to take action that would address unfair or deceptive practices in the marketplace as well as their underlying causes.

While it is several years later, we are pleased that the FTC and USDA have indicated an interest in the subject of “organic” claims on non-agricultural products by issuing a staff report, holding the recent roundtable, and requesting written comment. The FTC staff report, “Consumer Perception of ‘Recycled Content’ and ‘Organic’ Claims,” includes several survey results indicating that consumers may be deceived by “organic” claims on non-agricultural products.⁸ These include about an even split from respondents on whether organic claims have the same meaning for food and non-food products.⁹ They also include findings that about 35% of respondents erroneously believed “organic” claims for shampoos or mattresses imply that the product meets some government standard, and that about 30% believed that USDA certifies organic claims for these products.¹⁰

As a general matter, we recognize that sufficient research and an adequate understanding of the marketplace are necessary for regulatory or enforcement action. We are hopeful that the staff report, roundtable discussion, and written comments will help the two agencies as they determine approaches to take that would address deception in this space. However, when it comes to providing consumers with greater clarity on non-agricultural products that market themselves as “organic,” meaningful federal action is long overdue.

Choosing “greener” products is a rational decision that consumers are entitled to make. Indeed, consumers are looking for “green” labels for very legitimate reasons, some of which were also addressed in the FTC’s staff report.¹¹ For some, it is because they wish to be exposed to fewer chemicals of concern—which is perfectly rational, given that scientific research is currently insufficient to yield a broad understanding of the impact on human health of compounded single-chemical and multi-chemical exposures. For other consumers, it is because they want their dollars to go toward more sustainable types of food production that are less polluting or otherwise damaging to the environment. The rapidly increasing market shares of many “green” products show that the market is recognizing that it is an express choice of consumers to go in the direction of these products. However, the regulatory infrastructure has not

⁷ Petition of Consumers Union and the Organic Consumers Association to the Federal Trade Commission, c/o David Vladeck, Director, Bureau of Consumer Protection (Mar. 12, 2010) (online at consumersunion.org/pdf/FTC-petition-0310.pdf).

⁸ Federal Trade Commission, *Consumer Perception of “Recycled Content” and “Organic” Claims*, Joint Staff Report of the Bureau of Economics and Bureau of Consumer Protection (Aug. 10, 2016) (online at www.ftc.gov/system/files/documents/public_events/975753/consumer_perception_of_recycled_content_and_organic_2016-08-10_-_published_on_ftc-gov.pdf).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *See, e.g., Id.* at 26.

caught up to what consumers would like to see in terms of transparency and clarity. Therefore, it is rational for consumers to take precautions and insist that “green” standards provide them with meaningful guidance in the marketplace.

From our perspective, the need to maintain the Greener Choices website—interpreting the various private labels for consumers—is itself significant. In the absence of USDA or other forms of leadership, the proliferation of labels that has occurred and the stark divergence among them clearly indicates the potential of confusion for consumers. The companies and certification groups behind these labels are essentially competing for the mantle of being the most meaningful standard in the public eye. In addition to the volume of different meanings being overwhelming for consumers—many of whom probably will not pore through the details of the various labels we have analyzed on our website—it is not a fair competition, as some of these labels are not transparent or they are limited to certain ingredients or aspects of organic production.

While we believe in the power of informed consumers and consumer education is a critical part of our mission, we are concerned in this area that education falls short, given the lack of consistent, meaningful standards upon which consumers can rely. Consumer education about marketing or labeling is most effective when a research-backed, industry-wide standard for that marketing or labeling exists, and the education is used to help consumers understand how to apply it in their lives.

Ultimately, there is no substitute for a validated regulatory program, such as the NOP, that sets out clear and transparent standards developed in public, has a public process for validation, and has clear guidance for manufacturers and consumers. We agree with the general consensus at the October roundtable about the NOP’s unparalleled value. It is a program that is open, accountable, and transparent, and reflects democratic values. It has been carefully shepherded so that it remains meaningful to consumers. It is clear from our research and market behavior that its high standards have influenced what consumers perceive the “organic” claim to mean.

If consumers think that the word “organic” is an appropriate and fully adequate shorthand for USDA Certified Organic, and this is a reasonable consumer expectation about what “organic” means across product categories, then this expectation should be used as a baseline for enforcement actions or other kinds of government responses. The same thoughtful and valuable set of criteria should be applied to each marketplace, with standards tailored to reflect reasonable consumer expectations and what the NOP criteria might mean when applied to non-agricultural products. Otherwise, the consumer trust and equity earned by the highly valuable NOP is applied to undeserving products that are not regulated in the same way, either in terms of their context or the process for validation. Consumers then pay a cost, in the form of the higher prices they may pay for products that carry the “organic” claim but might fail to provide the actual value that consumers are seeking.

Therefore, we urge the FTC and USDA to help create a system that accurately rewards truly organic products, and distinguishes for consumers what they are paying for if they buy a more expensive product to conform with their values or their concerns. The agencies could

achieve this goal through enforcement actions and through the development of guidance aligning use of the “organic” claim with consumer expectations, especially if the guidance leads to specific standards for products currently unregulated by the NOP. If the agencies do not take these steps, they should produce guidance that considers the use of “organic” to be deceptive if used when the product is not regulated by the NOP.

Whichever approach the FTC and USDA take, we look forward to working with the agencies to ensure that “organic” claims in non-agricultural products are truthful and not misleading. Consumers’ preferences are driving the burgeoning marketplace for greener products, and these preferences, and consumers’ expectations, should similarly drive the standards under which “organic” claims are governed.

Thank you for your consideration.

Respectfully submitted,

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