



October 27, 2017

Federal Trade Commission  
Office of the Secretary  
600 Pennsylvania Avenue N.W., Suite CC-5610 (Annex B)  
Washington, DC 20580

**RE:** Proposed Consent Agreement; File No. 1623128

Thank you for this opportunity to provide comment on FTC's consent agreement to settle charges on the misrepresentation of several product claims made to consumers. Of particular interest to the Organic Trade Association is FTC's first case in challenging a misleading "organic" product claim.

The Organic Trade Association (OTA) is the membership-based business association for organic agriculture and products in North America. OTA is the leading voice for the organic trade in the United States, representing organic businesses across 50 states. Its members include growers, shippers, processors, certifiers, farmers' associations, distributors, healthcare professionals, importers, exporters, consultants, retailers and others. OTA's Board of Directors is democratically elected by its members. OTA's mission is to promote and protect organic with a unifying voice that serves and engages its diverse members from farm to marketplace.

The Organic Trade Association commends FTC for taking action against the deceptive use of the term "organic." Marketing a **product** as "organic" when it, in fact, contains very little organic material is misleading and inaccurate, it creates consumer confusion, and can lead to consumers mistrusting the integrity of the word "organic" on USDA National Organic Program (NOP) certified products as well as textile products certified to the Global Organic Textile Standard (GOTS). This, in turn, negatively affects the success and growth of legitimately certified organic products, and can disenfranchise consumers in their ability to trust labels in general.

Consumer demand for organic products continues to show double-digit growth with no signs of slowing, providing market incentives for organic producers, handlers and marketers across a broad range of products. It also provides great incentive for marketers to take advantage of the term "organic" and apply it to products that may contain little to no "organic" material. While "organic" claims made on agricultural products fall under the enforcement authority of USDA-NOP, there remains a largely undefined and unregulated space where inaccurate or misleading organic claims are made on non-agricultural or partially non-agricultural products.

In the non-food sector, particularly in personal care, cosmetics and textiles, it is not uncommon to find products marketed as wholly organic when, in fact, they only contain some organic content. There is a significant distinction between products wholly or largely comprised of organic content, and products that contain some organic content. Under USDA-NOP, organic "product" claims may only be made if the product is third-party certified and meets specific processing, labeling and composition requirements (70% percent or 95% organic depending on the labeling category to which the product is certified). If a product contains less than 70% organic and/or is not certified, the allowance to make an organic claim is limited to ingredient statements only, and the organic claim must not appear on the Principal Display

Panel of the product label. These labeling provisions were specifically designed to help consumers differentiate between organic “product claims” as verified through third-party certification and organic claims that apply only to the “content” of a product.

The Organic Trade Association strongly agrees with FTC’s statement that “advertisers must substantiate their organic claims.” To bring greater clarity to the situation, OTA continues to urge FTC to work with USDA to develop a policy on the appropriate use of organic claims on non-agricultural products to protect consumers from the deceptive misuse of the term on products that fall outside of USDA NOP’s scope of authority. Marketers need guidance and consumers need education tethered to a consistent labeling policy that applies to all products equally. It would be most helpful if this guidance were easily accessible in FTC’s Green Guides.

Consistent with our previous comments on this issue, the Organic Trade Association urges FTC to confer with NOP and develop a draft policy on the use of organic claims on products that are outside of NOP’s jurisdiction. We request a public comment period on the draft policy, and, once finalized, we request that The Green Guides be updated to reflect the policy.

OTA requests that the following guidelines be included in draft policy:

#### ***Organic Product Claims***

The Organic Trade Association requests that FTC acknowledge in policy that there are some product categories, including personal care, textiles, and others, that fall outside USDA-NOP’s jurisdiction for product labeling based on their non-agricultural content. A product that is non-agricultural should arguably not be labeled as “organic.” Instead, if the product contains certified organic ingredients/components, then the organic claim should be limited to an **organic content claim** (e.g. contains organic lavender oil). This is consistent with NOP’s labeling requirements, and it supports **truth in labeling**. We believe there is an important distinction between using the term “organic” to modify a product name (indicating the entire product is organic) vs. using the term “organic” to communicate that some part of the product is “organic.”

#### ***Organic Content Claims***

The Organic Trade Association supports a policy that reserves the use of the term “organic” when used to modify the product name (i.e. organic mattress, organic shampoo) for NOP certified products only, or products produced in accordance with an NOP recognized standard when NOP standards do not exist (see Organic Textiles below). Guidance of this kind supports a straightforward approach to truth in labeling. If a product is not certified to an organic standard but instead simply **contains** organic ingredients, the product itself, as a whole, should not be labeled as an organic product. Instead, marketers should be provided with guidance on best labeling practices that describes the appropriate use of an **organic content claim**.

Also consistent with NOP’s labeling requirements as well as the GOTS labeling requirements, FTC should clarify that for products containing **agricultural** ingredients that are labeled and marketed in the United States as “organic,” the “organic” ingredients **must** be USDA NOP certified. NOP’s position is that any agricultural ingredient that claims to be organically produced, in any product, must be certified to the USDA-NOP standard.

### ***Organic Textiles and the Global Organic Textile Standard (GOTS)***

FTC and USDA have model policy to build from. On May 20, 2011, NOP announced a [Policy Memorandum](#) addressing the labeling of textile products containing organic ingredients (such as organic cotton, organic wool, and organic linen). NOP Policy Memo 11-14, entitled “Labeling of Textiles that Contain Organic Ingredients,” clarifies that while the NOP regulations do not include specific processing or manufacturing standards for textile products, a product can be labeled as “organic” and make reference to NOP certification if it is produced in full compliance with both the NOP production standards (crops and livestock for raw materials) and the NOP handling standards (processing for the finished product). However, as most of these methods and ingredients are not applicable to textile processing, NOP labeling is likely unachievable for most garments and textile products that use a variety of dyestuffs and auxiliary agents.

As a practical alternative, the policy memo explicitly confirms that textile products produced in accordance with the [Global Organic Textile Standard \(GOTS\)](#), such as apparel, mattresses, or socks, may be sold as “organic” in the U.S., although they may not refer to NOP certification or carry the USDA Organic seal.

FTC should make clear to marketers that in the absence of government standards, private standards have been developed and NOP Policy is in place that expressly recognizes the GOTS standard. OTA requests that FTC also expressly acknowledge GOTS, defer to NOP’s Policy Memorandum on Textiles, and monitor and enforce the use of the term “organic” on textiles that are not certified either under NOP or GOTS. For products that are making organic content claims only, OTA requests that FTC include reference to the Textile Exchange [Organic Content Standard](#)<sup>1</sup>.

### **USDA vs. FTC jurisdiction of organic needs also needs to be better defined**

It is clear that USDA-NOP has authority over **agricultural** products that make organic claims. How “agricultural” does a product need to be to fall under the oversight of USDA’s NOP? If a product is 60% agricultural and 40% non-agricultural, does it fall under NOP’s oversight? Most of the non-food products that are making deceptive organic claims are a mix of agricultural and non-agricultural ingredients. It is the “botanical” or “agricultural” nature of the product that brings it into the “organic” fold. The percentage of agricultural ingredients may range from 1% to 100%. The Organic Trade Association is unaware of any policy or clarification from USDA’s NOP that specifies the agricultural content of a product that would bring it under NOP’s scope of enforcement. Logic would suggest at least 70% agricultural content or more since products made of 70% organic ingredients may be certified under NOP’s regulations and the organic regulation applies to “agricultural products” only. The Organic Foods Production Act (OFPA), however, specifies that the certification exemption for processed food “shall not apply to agricultural products that contain less than 50% organic ingredients.”

The oversight of misleading organic claims would be significantly improved if USDA were to clearly communicate the extent of its authority over products that contain both agricultural and non-agricultural ingredients **and** exercise that authority. This would define the jurisdiction boundaries between USDA

---

<sup>1</sup> The Organic Exchange “organic content” standards are chain-of-custody standards that give third-party verification to a final product containing a given amount of organically grown cotton. The OE 100 and OE Blended are voluntary standards and do not address the use of chemicals or any other aspects of production beyond the integrity of the organic fiber.



and FTC, and help support an FTC-USDA policy directed at companies and marketers making egregiously misleading organic claims on products that are **truly** “non-agricultural” and outside NOP’s scope of enforcement.

**Conclusion**

The Organic Trade Association and many other organizations and consumers have been requesting that FTC take action on misleading organic claims for over 15 years. As communicated in several public comment opportunities related to revisions to FTC’s Green Guides and during the October 2016 roundtable on consumer perception of organic claims, we strongly agree that for product categories not covered by the National Organic Program, long-standing FTC substantiation principles should apply. Accordingly, we commend FTC for taking an affirmative stance that marketers must have a reasonable basis for claiming that their non-agricultural products are “organic.” We are extremely encouraged by the precedent this action will set, and we encourage FTC to elaborate and incorporate guidance specific to “organic” claims into the FTC Green Guides.

On behalf of our members across the supply chain and the country, the Organic Trade Association thanks FTC for the opportunity to comment.

Respectfully submitted,

  
Gwendolyn Wyard  
Vice President, Regulatory and Technical Affairs  
Organic Trade Association

cc: Laura Batcha  
Executive Director/CEO  
Organic Trade Association