



Cosmetics Claims: Origin and Composition, Natural, and Fragrance-Free

June 22, 2015 2:00 – 3:30 PM

What Is a “Natural” Cosmetic Product? Defining and Substantiating Common Claims



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The Market

Over the past two decades, the natural and organic cosmetics industry has enjoyed growth at double digit rates annually. In recent years, the industry has slowed to growth at single digit rates annually, but nevertheless, the market for natural and organic cosmetics continues to expand.



The Challenges

- **Ensure that labeling is truthful and not misleading**, but convey distinguishing features. Determine parameters within a legal landscape where there are no defined regulatory standards for a number of advertising terms.
- **Decide whether nongovernmental certifications and standards are useful** or provide sufficient protection if a claim is challenged.
- The 'natural' confusion that has permeated the food industry also permeates the cosmetics industry, as ingredients derived from 'natural' sources may not be, alone, enough for a product to be labeled as 'natural.'



Who Is the Reasonable Consumer?

- 2007 Survey Results:
 - 78% of consumers believed that “natural” claims for personal care products are regulated
 - 83% of consumers thought that there should be one meaning for natural
 - **65% of consumers thought that for a personal care product to be labeled natural, the product had to have at least 95% natural ingredients**

FDA Statements on Natural Claims for Cosmetic Products

- **The FDA has not defined ‘natural’** for use in cosmetic labeling.
 - To borrow from the guidance that the FDA has provided with respect to food s, it is reasonable to assume that the FDA would not object to the use of the term natural if the product does not contain synthetic substances. However, the guidance that the FDA has provided as to food does not squarely fit for cosmetics.
- **To date, the FDA has not pursued an enforcement action against a cosmetics manufacturer for the use of “organic,” “natural” or “green” claims.**

FTC Guidance

- No specific FTC policies on natural cosmetic and personal care products.
- Therefore, the lawfulness of a **“natural” claim should be viewed under the anti-deception provisions of the FDCA and federal and state consumer protection laws.**



How a Marketer Should View “Natural”

- **Ingredients** – To what extent are ingredients natural? *i.e.*, from a plant, animal or mineral.
- **Processing** – Seek to minimize processing. Consider that synthetic additives may impact whether product should be properly viewed as natural.
 - See definition of “chemically altered” in the Dietary Supplement Health and Education Act (DSHEA) of 1994, in which Congress clarified that chemically altered does not include certain physical modifications.



Non-Governmental Standards

- Non-governmental standards are instructive in developing claims that are truthful and not misleading.
- Though not a legal safe harbor, such standards may be a compelling defense to a threatened class action or competitor challenge.



Natural Products Association (NPA)

- The NPA standard is based on four hallmarks:
 - Natural ingredients
 - Safety
 - Responsibility
 - Sustainability



<http://www.npainfo.org/NPA/NaturalSealCertification/NPANaturalStandardforPersonalCareProducts.aspx>

Natural Products Association (NPA)

- **95% natural ingredients**
 - Not processed in ways that significantly or adversely alter the purity of natural ingredients
 - Include ingredients derived from a purposeful, renewable source found in nature
 - Be minimally processed and avoid the use of synthetic or harsh chemicals so as not to dilute the materials' purity
- **No known toxic ingredients**
- Contain non-natural ingredients only where viable natural alternatives are unavailable, and only when the pose absolutely no potentially suspected human health risks.
- NPA has published an Illustrative List of ingredients.



See *Formulating, Packaging, and Marketing of Natural Cosmetic Products*, p.27 (Eds. Nava Dayan and Lambros Kromidas) (John Wiley & Sons 2011); see also <http://www.npainfo.org/NPA/NaturalSealCertification/NPANaturalStandardforPersonalCareProducts.aspx>.

Best Practices to Use a Natural Claim

- A natural claim stands the best chance of being found truthful and not misleading if:
 - The **ingredients** that are the subject of the claim are present in significant amounts (70-95%, excluding water and salt) and are derived from **plant, animal or mineral** sources;
 - The ingredients that are the subject of the claim are **processed only through basic physical methods or biological processes** (*i.e.*, enzymolysis or fermentation); and
 - The product **meets consumers' reasonable expectations.**



See *Formulating, Packaging, and Marketing of Natural Cosmetic Products*, p.65 (Eds. Nava Dayan and Lambros Kromidas) (John Wiley & Sons 2011).

Is It Organic?

- The FDA regulates cosmetics under the FDCA and FPLA and “organic” is not defined under either law. Therefore, the **FDA does not regulate the use of “organic”** beyond general parameters applicable to misbranding under the FDCA.
- The **USDA’s National Organic Program (NOP) standards can be applied** to cosmetics and personal care products.
- **California** is the only state to regulate organic cosmetics and personal care products.

Is It Organic?

- If a cosmetic 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 as **“organic”** under the NOP regulations.
- **Organic certification is holistic.** That is, the entire supply chain, including the operations that produce organic ingredients, handlers, and manufacturer of the final product must all be certified under the NOP regulations by an accredited organic certifying agent.

Organic Label Claims



- 100% Organic
 - Excluding water and salt, **product must contain only organically produced ingredients.**
 - USDA Organic Seal okay
 - Must display the certifying agent's name and address



Excerpted from USDA Agricultural Marketing Service National Organic Program guidance on Cosmetics, Body Care Products and Personal Care Products, *available at*: <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5068442>.

Organic Label Claims



- Organic

- Excluding water and salt, **product must contain at least 95% organically produced ingredients.**
 - Remaining product ingredients must consist of nonagricultural substances approved on the National List or nonorganically produced agricultural products that are not commercially available in organic form, also on the National List.
- USDA Organic Seal okay
- Must display the certifying agent's name and address



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Organic Label Claims



- Made with Organic Ingredients

- Excluding water and salt, **product must contain at least 70% organically produced ingredients.**
- Principal display panel (PDP) may display up to 3 organic ingredients
- USDA Organic Seal not to be used
- Must display the certifying agent’s name and address
 - **Example:** Body lotion made with at least 70% organic ingredients (excluding water and salt) and only organic herbs may be labeled either “body lotion made with organic lavender, rosemary, and chamomile” or “body lotion made with organic herbs.”



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Organic Label Claims



- Less than 70% Organic Ingredients
 - Product may not utilize the term organic anywhere on the PDP, but **specific ingredients may be identified as organic.**
 - USDA Organic Seal not okay
 - May not display a certifying agent's name or address



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Vegan Claims

- Marketers should keep in mind that **“vegan” implies more** than just that there are no ingredients derived from animals.
- Often, the vegan moniker is used to convey:
 - No cruelty to animals or animal testing
 - Environmentally friendly
 - Pure, healthy and clean lifestyle



Green Claims

- Recycled/post-consumer packaging
- Recyclable packaging
- Eco-friendly
- Degradable
- Ozone safe
- No CFCs
- Low carbon footprint



love earth

Green Claims

- The FDA has not issued guidance on green claims.
- The **FTC issued the “Green Guides”** on how it reviews green claims and the substantiation needed to support various green claims.
- A marketer must be able to substantiate all reasonable consumer takeaways.

Green Claims

- Green claims need to be appropriately qualified.
 - Example: – Packaging is “recyclable”
 - BUT recycling facilities do not exist in most places
 - BUT the cosmetic product itself would have to be completely disposed of and the packaging sufficiently cleaned before recycling
 - » *e.g.*, nail polish glass bottles may be “recyclable”, but a recyclable packaging claim that is applied to or on the glass bottle is misleading because the polish itself is considered a hazardous household waste by the EPA



- As the threat of consumer class actions increases for the personal care products industry, marketers should **keep in mind reasonable consumer expectations** and should **gather substantiation**, where appropriate, when making common claims.



- **It is critical that a marketer have an understanding of its supply chain and be alert for weaknesses** in raw material sourcing or contract manufacturer misrepresentations or inexperience.



Thank You!

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