

Non-Profit Sues 34 Sellers of "Organic" Cosmetics

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Last week, the Center for Environmental Health, a non-profit organization, filed a [complaint](#) in California Superior Court alleging that 34 cosmetics companies violated the [California Organic Products Act of 2003](#) ("COPA") by selling, labeling, or marketing cosmetic products containing less than 70% organic ingredients as "organic." The Center seeks an order enjoining the defendants from further false and misleading labeling.

The USDA has jurisdiction over agricultural products and regulates the term "organic" as it applies to agricultural products through the National Organic Program ("NOP"). Consequently, the USDA has no statutory authority over the production and labeling of cosmetics that are not made up of agricultural ingredients or that do not claim to meet NOP organic standards. Cosmetics that contain or are made up of agricultural ingredients that satisfy NOP organic production, handling, processing, and labeling standards are, however, eligible for organic certification under USDA's NOP regulations. Certification is based on the product's organic content and other factors.

In contrast to the USDA's organic standards, COPA applies to all cosmetics that are sold in California and are represented to be "organic" or contain organic ingredients, including those that contain no ingredients that are agricultural products. Thus, even if a cosmetic product is not within the USDA's jurisdiction, sellers may still be liable under COPA for any representations that the product is organic. More specifically, COPA requires cosmetics that are sold, labeled, or represented as "organic," or made with organic ingredients to contain at least 70% organically-produced ingredients. Multi-ingredient products containing less than 70% organically-produced ingredients may either identify each organically-produced ingredient in the ingredient statement, or display the total percentage of organic ingredients if they are so referenced in the label. Notably, any person may file a suit under the statute, and the statute does not require a plaintiff to demonstrate damages to obtain injunctive relief.