



November 13, 2006

TO: Eileen Broomell, Office of Compliance, National Organic Program
RE: Complaint concerning multiple violations of the Organic Foods Production Act and National Organic Program's regulatory standards by Wal-Mart Stores, Inc.

Dear Ms. Broomell,

The Cornucopia Institute is filing this complaint with your office concerning possible multiple violations of the Organic Foods Production Act and National Organic Program (NOP) regulatory standards by Wal-Mart Stores, Inc. The Cornucopia Institute has gathered direct evidence, including photographs, regarding the sale of *nonorganic* products as *organic* by Wal-Mart.

Specifically, Wal-Mart has in-store signage advertising its display of *natural* yogurt as *organic* yogurt. This misrepresentation of a nonorganic product as organic for sale to consumers violates the Organic Foods Production Act of 1990 and National Organic Program's organic regulations

The Cornucopia Institute sent a certified letter on September 13, 2006 to Lee Scott, President and CEO of Wal-Mart Stores, Inc. notifying Mr. Scott and the retailer, in part, that in-store display labeling of *natural* yogurt as *organic* yogurt was in error and a "violation of the Organic Food Production Act." The Cornucopia Institute also attempted to email Mr. Scott and Wal-Mart Stores, Inc. this information prior to that time but we were refused an email address by a company representative and instead referred to the firm's web page for consumer comments (on which the information was duly posted).

Despite our private communication to Mr. Scott, more than one month later, photographic evidence of the same mislabeling fraud was again gathered at separate Wal-Mart stores.

Furthermore, we have documented that numerous Wal-Mart stores have overtly identified and cordoned off a specific cooler in the produce department as "organic." Close inspections of these coolers have shown that a high percentage of the products displayed are not labeled as certified organic but rather, once again, items traditionally distributed by natural foods retailers such as imitation meat products, refrigerated eggroll wrappers and condiments.

The sale to consumers of products misrepresented as organic is covered by the following section of the Organic Foods Production Act:

SEC. 2106 [7 USC 6505] COMPLIANCE REQUIREMENTS.

(a) DOMESTIC PRODUCTS.—

(1) IN GENERAL.—On or after Oct. 1, 1993—

(A) a person may sell or label an agricultural product as organically produced only if such product is produced and handled in accordance with this title; and

(B) no person may affix a label to, or provide other market information concerning, an agricultural product if such label or information implies, directly or indirectly, that such product is produced and handled using organic methods, except in accordance with this title.

The National Organic Program regulations provide guidance for punitive action for misrepresenting the sale of nonorganic products as organic in the following section:

§ 205.100 What has to be certified.

(c) Any operation that:

(1) Knowingly sells or labels a product as organic, except in accordance with the Act, shall be subject to a civil penalty of not more than \$10,000 per violation.

Contact information for the President and CEO of Wal-Mart Stores, Inc. is:

Lee Scott
President and Chief Executive Officer
Wal-Mart Stores, Inc.
Bentonville, Arkansas 72716-8611

We are asking that you fully investigate this complaint to determine whether violations of the Organic Foods Production Act have occurred, are occurring, or will occur. At the conclusion of your investigation, we ask that you take all warranted enforcement actions to bring this retailer into compliance with the OFPA and NOP rules in a timely fashion and to fine the company if appropriate.

We expect the USDA to take these allegations seriously and conduct a meaningful investigation. Failure to do so will only encourage future scofflaws and organic product misrepresentations, and it will make a mockery of the federal organic regulations that are so diligently observed by the vast majority of participants in the nation's organic agriculture and food sector.

It should be noted that nothing in this formal complaint shall be interpreted as a waiver of our right to appeal under the Adverse Action Appeals Process cited above.

You may contact us at your convenience.

Sincerely,



Will Fantle
Director of Research
715-839-7731