



February 15, 2011

Systemic Problems with Organic Labeling and Signage Resulting in Widespread Market Place Misrepresentation

Request for Rule Change—Manufacturers Must Change UPC and Alert Retailers When a Product's Organic Status Is Downgraded

Dear members of the National Organic Standards Board,

The organic label is one of the most valued and coveted designations in the marketplace today, which is why it is important to protect its integrity and prevent its misuse.

When food manufacturers who were once committed to the organic label discontinue sourcing organic ingredients, and downgrade their products to 70% “made with organic” or conventional, they should ensure that retailers are aware of this change and their products are not incorrectly labeled “Organic” by in-store signage or advertising.

To prevent in-store mislabeling of products that were once organic, manufacturers should be required to change their product’s Universal Product Code (UPC) and accompanying barcode.

The Cornucopia Institute considers a change in organic status to represent a material change in the product, which justifies and necessitates a change in the UPC to alert retailers of the change. Without manufacturers/distributors alerting retailers of the product’s change, retailers run the risk of mislabeling non-organic products as organic through their in-store signage—unwittingly cheating consumers, who rely on such signage for their purchasing decisions.

This is especially problematic in cases like the switch from certified organic status of the core product line of Silk soymilk (Dean Foods/WhiteWave) and Peace Cereal and Golden Temple bulk granola (Hearthside Food Solutions) where the packaging design and overall appearance did not change. Many retailers did not notice the change and continued to use in-store signage or advertisements to represent the products as organic, sometimes for as long as months, even years after the switch.

We have noticed through our investigation a number of retailers in several states, including some retailers that are certified organic, that have continued to unwittingly mislabel these products as “organic” and we have gathered numerous additional anecdotal reports from consumers who continued to purchase these products, unaware of the change.

We formally request that the National Organic Standards Board recommend a rule change and develop a guidance document for the NOP to adopt, to address this problem in the marketplace.

Protecting Organic Integrity

Companies that switch their products from organic to conventional without changing their UPC or alerting all retailers of the change sometimes benefit for months or even years from in-store signage that continues to identify the product as organic. The problem is especially troublesome when bulk items are involved, since consumers rely exclusively on in-store signage (bin labels) by the retailer and have no way of independently verifying the organic status of the foods they buy.

We can document several instances where in-store signage, including in certified organic retail stores, erroneously identified products as “organic” because manufacturers switched from organic to conventional without changing the UPC/barcode or notifying the retailer. In one of the cases we investigated, the inaccuracy of the signs was discovered during an audit by their certifier (an excellent endorsement of the certification process for retailers).

Not changing the UPC places an unreasonable burden to correctly label in-store signage entirely on retailers, as well as the contractors that make bulk bin labels.

Especially with bulk items, it is unrealistic to expect retailers to check every incoming box for a change in organic status. Retailers, who generally re-order products that they have stocked on a long-term basis, depend on distributors and manufacturers for truthful labeling information, and manufacturers should be ultimately responsible for alerting distributors, brokers and all retailers when a product is no longer certified organic. Retailers can order updated bulk bin labels only if they are made aware of the change in organic status—a responsibility that should fall on the shoulders of the manufacturer, not the employees who receive the incoming shipments. A change in the product’s UPC would go a long way in mitigating much this problem.

The Scope of the Problem

According to retailers, some manufacturers alert them of changes in the organic status of their products, but other manufacturers have not done so. Moreover, some manufacturers apparently notify the distributors and larger retail chains, but have failed to notify smaller independent natural foods retailers.

Whether those that do not alert retailers of the change from organic to conventional are simply careless or are hoping that the change will not be discovered is open to debate; in

either case, these companies continue, in many stores, to profit from organic labeling without bearing the cost and commitment of organic certification.

This failure to alert retailers has posed a serious problem in stores across the country. In many stores, “organic” signs were removed from bulk bins of Golden Temple granola only after a representative of a certified organic competitor alerted the retailer of the change.

Golden Temple had neglected to notify the retailers that their granola was no longer organic, and many stores continued for months to identify the non-organic granola as organic. Customers who bought this bulk item purchased a non-organic product thinking it was organic, and had no way of independently verifying the product’s organic status. This constitutes consumer fraud.

Even as we prepared this document, in late January 2011, we continued to receive reports of stores where Golden Temple’s formerly organic granola continued to be mislabeled.

The same company’s nationwide packaged cereal brand, Peace Cereal, also switched from organic to conventional in 2008. The product’s packaging design did not change substantially (with the exception of the removal of the organic seal, which was replaced by a new “All-Natural, Low Fat, Vegan” seal—see photos below) and the company apparently did not change its UPC or notify retailers of the change.

As of the writing of this complaint—years after the switch—the cereal continued to be identified as organic by the label sticker and in-store signage in several certified organic retailers across the country (documented during recent visits by Cornucopia staff to multiple stores in Massachusetts and Wisconsin).

In another prominent example, Dean Foods (White Wave) switched their core product line of Silk soymilk products from organic to conventional in early 2009, without changing its UPC or packaging. While Dean Foods said it alerted its distributors, these distributors failed to notify all retailers. Many retailers were unaware of the switch until a report by The Cornucopia Institute, which was widely covered in the news media, alerted them of the change. In many cases, in-store signage had continued to identify conventional Silk products as organic, and customers who were unaware of the change continued to buy the product thinking it was still organic.

For months afterwards, the Cornucopia Institute received numerous phone calls and e-mails from irate consumers who were unaware that they had purchased non-organic Silk—these were customers who had purchased certified organic varieties of Silk for years, and discovered to their horror that they had been feeding their children conventional soymilk since the switch. Dean Foods had changed just one small word from “organic” to “natural” on their packaging, but had not changed the UPC, leaving many retailers unaware of the change.

Request for Guidance or Rule Change

We consider it unreasonable to expect retailers who reorder products, and their employees, to carefully inspect every incoming shipment, especially of bulk items, for changes in organic status in an effort to keep in-store signage up-to-date. This expectation places a tremendous burden on retailers, and many changes in organic status will likely go unnoticed for months, even years, unless manufacturers assume the responsibility of ensuring that all retailers are aware of the change.

In most retail stores, the ordering and stocking system is highly automated, and labor is typically provided by low-wage entry-level staff. In many stores, the computer point-of-sale systems automatically re-order when inventory drops. Other retailers use hand-held scanners to scan the shelf tags provided by distributors to enter orders. This methodology does not present an opportunity to carefully scrutinize products when existing products are re-ordered.

To ensure that retailers correctly label products in their stores, and to prevent delays in updating in-store signage, manufacturers should be required by the federal organic standards to change their UPC when their product is reformulated from organic to “made with organic” or conventional, or from “made with organic” to conventional.

We also request the rule change or guidance document to include calling on food manufacturers to notify all parties involved in the path from manufacturer to consumer, including distributors and all retailers, if an organic product is no longer organic, or downgraded from “Organic” to “Made with Organic [Ingredients].”

While some retailers print their own bulk bin labels in-store, many others contract with a third party that prints the labels. Only when retailers, and label contractors, are promptly alerted of upcoming changes in organic status can they ensure that bulk bin labels are accurate and up-to-date.

Any change in organic labeling, as required by USDA regulations, should necessitate a change in the UPC and barcode.

1. UPC/Barcode

Whenever a product’s organic status changes, the package must be redesigned and reprinted anyway—the organic label and USDA seal must be removed or added. **Changing the product’s UPC (barcode) on the product package should also be required when a product’s organic status changes.** Barcodes are under the control of the food manufacturer, which assigns the product’s identifying number. Other than reprinting the packaging, which must happen anyway when a product is no longer organic, there is no cost involved in changing a product’s UPC/barcode.

Manufacturers change barcodes regularly when a product is reformulated or for minor changes to the product. It is not unreasonable to expect them to change the barcode when the organic status of the product also changes.

A change in the UPC/barcode will serve as a heads-up to the retailer that something about the product has changed. While it is unreasonable to expect retailers to inspect every incoming shipment of the product for changes in organic status, it is quite reasonable to expect them to carefully inspect a product whose barcode has changed for a possible change in organic status.

2. Notifying Customers

Manufacturers have the means to notify their customers regarding their products—for example, voluntary recalls or notifications regarding undeclared allergens are sent almost instantaneously to distributors, brokers, vendors, and retailers. The same due diligence should be required when a product's organic status is downgraded. It is also important that manufacturers of bulk bin items notify the third party that makes the bulk bin labels, to ensure bulk bins are appropriately labeled. This general requirement for comprehensive notification could be a rule change or guidance by the NOP, whichever is deemed more appropriate by the NOSB in consultation with NOP staff.

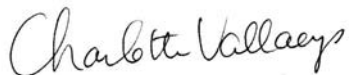
Conclusion

We request that the NOSB and NOP take action to prevent manufacturers from profiting for months, sometimes years, from incorrect in-store signage that is a direct result of their failure to notify their customers of a change from “organic” to conventional status. A rule change requiring a change in UPC and guidance requiring manufacturers to notify distributors, vendors, and all retailers, is urgently needed—manufacturers must be honest and forthright with their customers regarding the organic status of their products.

UPC barcodes are routinely changed when products are reformulated—a change from organic to conventional status constitutes a significant product change that justifies a new barcode, especially since this will serve as a notification for retailers.

Ultimately, organic consumers must be protected from fraud whether the dynamic was created intentionally or through negligence.

Sincerely,



Charlotte Vallaey
Farm and Food Policy Analyst
The Cornucopia Institute

Attachment: Photos of mislabeling in various stores across the country and online retailers

We have not disclosed the names of retailers in this document because we believe they are among the victims in this unfortunate scandal.

Photo taken at a retailer with approximately 300 stores nationwide, at a store near Boston, January 17, 2011. Note the "Organic" sign beneath shelves of conventional Peace Cereal. The retail chain in question immediately communicated with all regional managers concerning these problems, and ensured the mislabeling problems were corrected in a timely fashion (as of February 11, 2011, these problems were corrected, nationally, by this particular retailer).



Peace Cereal packaging prior to change from organic to conventional



Photo taken at a retailer with approximately 200 stores, at their store in Davenport, Iowa, on January 26, 2011. Note the “Made with organic oats” signs on the bulk bin labels of conventional granola.



Photos taken at a retailer with approximately 100 stores nationwide, at a store in Champaign, Illinois. Photo taken in January 2011. Note the “made with organic oats” claims on bulk bin labels of conventional granola.



Screenshot of a web-based organic retailer, taken January 31, 2011. Note the text includes “organic oats” and ingredient list includes “organic rolled oats.” The oats in Golden Temple’s granola have been conventional since 2008.

Navigation Menu:
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 » Groceries » Health & Beauty » Meat, Poultry & Seafood » Prepared Food
 » Vegan & Vegetarian » Vitamins & Supplements » Kosher

Product Page:
 Catalog » Bulk Foods » **ORGANIC AND NATURAL BULK GRANOLAS & CEREALS**
Golden Temple, Granola, Apple Cinnamon, per pound
\$3.79 Qty: 1 Add to Cart

Nutrition Facts
 Serving Size 1/2 cup (55 g)
 Servings Per Container
Amount Per Serving
Calories 190 Calories from Fat 20
% Daily Value*
Total Fat 2g 3%
 Saturated Fat g 0%
 Trans Fat N/A*g
Cholesterol 0mg 0%
Sodium 5mg 0%
Total Carbohydrate 38g 13%
 Dietary Fiber 4g 16%

Product Description:
 Golden Temple Granola is the number one granola in natural foods, this being the Apple Cinnamon variety. Golden Temple Products make your good health and well-being a priority. That's why they create deliciously nutritious granolas. They begin making the granola by using the finest, freshest ingredients from the most abundant fields and orchards anywhere. Their organic oats are freshly milled just down the road from the facility. To benefit your health, there is an added light sprinkling of ingredients like fennel, nutmeg, cardamom and epazote, which also help in the digestion of whole grains. Take care of your health by giving yourself every nutritional advantage. Start each morning right with a bowl of Golden Temple cereal. All Golden Temple Ingredients are grown and processed without genetically modified organisms.
 Kosher.
 Ingredients: Organic Rolled Oats, Unsulfured Molasses, Water, Cornstarch, Unsulfured Apples, Cinnamon, Honey, White Grape

Other Features:
 Search bar, Manufacturers: Please Select, Suggest new product, New Products (Dr. Bronner's, LightLife), Newsletter Signup, Vitamins and Supplements.

Screenshot of a national retailer’s online website, taken on January 31, 2011. Note the conventional granola is listed as “organic” and “organic rolled oats” are listed in the ingredients list.

Product Page:
 Granola, Coconut Almond Golden Temple, Organic
 Please select a store to see pricing and aisle location info.
 1 Add to List

Ingredients:
 Organic Rolled Oats, Expeller Pressed Canola Oil, Coconut, Organic Evaporated Cane Juice, Almonds, Honey, Sea Salt, Epasote Leaf, Organic Cardamom Seed, Organic Fennel Seed, Organic Fenugreek Seed and Organic Nutmeg.

Warnings:
 Allergen Information: Contains coconut & almonds. Produced in a facility that also processes soybeans, peanuts, tree nuts, wheat.

Shopping List:
 My Shopping List
 View/Print Full List
 Your List
 Select / Manage Lists
 add a note to this list
 Show: 5 | 10 | All
 (5 most recently added items shown.)
 Save List
 Hide List