

■ CLASS ACTIONS

Battle over organic products turns toxic

A \$20 billion industry is litigating over what is truly organic.

By Tresa Baldas
STAFF REPORTER

THE ORGANIC MARKETPLACE is sprouting litigation over fake organic and natural products—some of them harmful—that are being sold to unwitting consumers.

In Missouri, several class actions have been consolidated into one suit against the Aurora Organic Dairy Corp., which is accused of selling bogus organic milk that does not meet federal organic standards. The lawsuit also names several retailers that sold the milk. *In Re Aurora Dairy Corp. Organic Milk*, No. 4:08MD01907 (E.D. Mo.).

In California, the state attorney general recently filed a lawsuit against five companies, including Whole Foods Market Inc., for allegedly selling natural body care and household cleaning products that tested high for a cancer-causing chemical, in violation of state law. *California v. Avalon Natural Food Products*, No. RG08389960 (Alameda Co., Calif., Super. Ct.).

Also in California, the company that makes Dr. Bronner's Magic Soaps is suing 13 competitors for allegedly misusing the organic label on their products

and falsely advertising themselves as organic manufacturers. The lawsuit claims the defendants sold and promoted soaps, lotions and other products that are made with conventionally grown crops or chemicals derived from petroleum. *All One God Faith v. Ecocert*, No. CGC-08-474413 (San Francisco Co., Calif., Super. Ct.).

Integrity compromised?

At issue in all these suits, lawyers and consumer advocates stressed, is the integrity of the organic industry, which, they claim, is being compromised by opportunists seeking to grab some of the industry's \$20 billion and growing revenue.

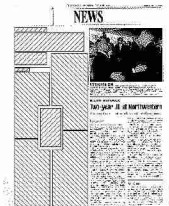
"I know that the consumers went to great lengths to create and protect the organic label, and that's what we're trying to do now—is to protect the integrity of the label," said David G. Cox of Lane, Alton & Horst in Columbus, Ohio, who is one of several plaintiffs lawyers involved in the milk class action.

Consumer advocates see litigation as their only hope in protecting the organics label from further damage.

"After years of lobbying and complaints, we finally realized the U.S. Department of Agriculture is not going to



DON DOWNING:
Litigation is necessary so consumers aren't duped, he said.



take care of business, and so did a bunch of class action attorneys....The power of litigation is our only alternative," said Ronnie Cummins, national director of the Organics Consumers Association.

Don Downing of St. Louis' Gray, Ritter & Graham, another plaintiffs' lawyer in the milk case, said litigation is essential to protect consumers from being duped into buying fake products.

"We believe that its very important that when consumers go to grocery stores and want to purchase organic milk, that the milk they purchase is in fact organic by the standards under federal law," Downing said.

Mark S. Mester, an attorney in the Chicago office of Latham & Watkins who is representing Aurora, declined comment. Aurora officials have denied any wrongdoing.

"There is absolutely no basis for claims we defrauded consumers by selling milk that isn't organic—none whatsoever. Aurora Organic Dairy has maintained continuous organic certifications for all of our farms and facilities," Marc Peperzak, Aurora Organic chairman and CEO, said in a statement.

Agriculture Department officials declined to comment.

The organics industry, meanwhile, is paying close

attention to the California litigation as it addresses natural body care and household cleaning products.

Cummins said regulation of natural products is crucial because this is how most consumers, seeking healthier lifestyles, first experiment

with natural and organic products. They first dabble with body care products, then move on to organic food.

In the California case, the state attorney general alleges that defendants' failed to warn consumers that cleaning products such as body washes and gels and liquid dish soaps contained 1,4-dioxane, a chemical known to cause cancer.

California has a specific statute, known as Proposition 65, which mandates that businesses provide persons with a "clear and reasonable warning" before exposing them to such chemicals.

In addition to violating Proposition 65, the lawsuit alleges that each defendant has engaged in unlawful business practices that constitute unfair competition.

Whole Foods Market spokeswoman Libba Letton said Whole Foods "is cooperating." She added, "We have conducted our own investigation into the allegations that some of our products contain 1,4-dioxane and do not believe that these products represent a health risk or are in excess of California's Proposition 65 Safe Harbor level for 1,4-dioxane." **NW**