UNITED STATES DEPARTMENT OF AGRICULTURE

AGRICULTURAL MARKETING SERVICE

BEFORE THE ADMINISTRATOR

In re: Conscious Coconut LLC Tampa, Florida	)	**Administrator's Decision** **APL-005-19**

This Decision responds to an appeal (APL-005-19) of a Notice of Denial of Reinstatement issued to Conscious Coconut LLC by the U.S. Department of Agriculture (USDA), Agricultural Marketing Service (AMS), National Organic Program (NOP). The certifier has been deemed not in compliance with the Organic Foods Production Act of 1990 (Act)[1] and the U.S. Department of Agriculture organic regulations.[2]

BACKGROUND

The Act authorizes the Secretary to accredit agents to certify crop, livestock, wild crop, and handling operations pursuant to the USDA organic regulations (7 C.F.R. Part 205). Accreditation of certifying agents is done by the NOP, which also initiates compliance actions to enforce program requirements. Noncompliance procedures for certifying agents are set forth in §205.665 of the USDA organic regulations. Persons subject to the Act who believe that they are adversely affected by a noncompliance decision of the NOP may appeal such decision to the AMS Administrator, pursuant to §205.680 Adverse Action Appeals Process – General, and §205.681, Appeals of the USDA organic regulations.

[1] 7 U.S.C. 6501-6522
[2] 7 C.F.R. Part 205

FINDINGS OF FACT

1. On December 13, 2016, Conscious Coconut LLC (Coconut) was certified organic by Quality Certification Services (QCS), an accredited certifying agent, to handle products from a facility at 11234 W. Hillsborough Avenue, Tampa, Florida.
2. On August 4, 2017, QCS issued a Notice of Noncompliance to Coconut.
3. On September 29, 2017, QCS issued a Notice of Proposed Suspension after Coconut failed to respond to the Notice of Noncompliance.
4. On February 12, 2018, QCS issued a Notice of Suspension stating that Coconut's certification was suspended for 30 days, effective that day.
5. On July 23, 2018, Coconut submitted a request for reinstatement to the NOP.
6. On August 8, 2018, QCS wrote NOP stating that Coconut had been found to be selling organic-labeled tubes of coconut oil while under suspension.
7. On September 20, 2018, QCS issued a Notice of Noncompliance to Coconut for the sale of products labeled as organic while Coconut was under suspension.
8. On November 14, 2018, NOP issued a Notice of Denial of Reinstatement.
9. On November 14, 2018, Coconut filed an Appeal.

DISCUSSION

The NOP denied Coconut's reinstatement request, stating in the Notice of Denial of Reinstatement that Coconut is noncompliant with the USDA organic regulations at 7 CFR §205.100(a); 7 CFR §205.100(c); and 7 CFR §205.662(f)(1).

The organic regulations at Section 205.100(a) state that, "Except for operations exempt or excluded in §205.101, each production or handling operation or specified portion of a production or handling operation that produces or handles crops, livestock, livestock products, or other

agricultural products that are intended to be sold, labeled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients or food group(s))" must be certified according to the provisions of subpart E of this part and must meet all other applicable requirements of this part."

The organic regulations at Section 205.100(c) further state that, "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 the amount specified in §3.91(b)(1) of this title per violation."

Lastly, the organic regulations at Section 205.662(f)(1) state, "A certified operation whose certification has been suspended… may at any time, unless otherwise stated in the notification of suspension, submit a request to the Secretary for reinstatement of its certification. The request must be accompanied by evidence demonstrating correction of each noncompliance and corrective actions taken to comply with and **remain** (emphasis added) in compliance with the Act and the regulations in this part."

Specifically, NOP's review of Coconut's sales records submitted with its reinstatement request show that Coconut continued to sell coconut oil products labeled as 100% USDA organic from February 2018 – July 2018, while under suspension. Coconut had been suspended effective February 12, 2018 and had not been reinstated at the time of the sales. Sales invoices obtained by QCS and NOP show that Coconut sold 3.4-ounce tubes of Organic Conscious Coconut Oil to Spa Sudeva in Tampa, Florida on February 21, 2018; to The Detox Market of Topanga, California on April 30, 2018; to Avila Golf & Country Club in Tampa, Florida on May 10, 2018; to Fusions Spa & Wellness in Sylva, North Carolina on May 10, 2018; and to LCR Spa Shop in Carlsbad, California on May 18, 2018. These invoices constitute only a portion of Coconut's

sales since being suspended. Coconut acknowledged in an August 7, 2018 email to QCS to selling 17,500 tubes of the organic coconut oil since January 1, 2018. QCS found that these sales were valued at $(b) (4) as of July 2018. Lastly, NOP found that Conscious Coconut coconut oil products, labeled as 100% USDA organic, with the USDA organic seal, were for sale on Coconut's website on August 3, 2018.

In the appeal, Coconut admitted to selling its coconut oil products while its organic certification was suspended but stated it hasn't actually placed any product certified by QCS into production. Coconut states that the suspended QCS-issued certification was for the 'brand Conscious Coconut' and products it wishes to directly manufacture *in the future*, including coconut oil jars, capsules and wipes. Instead, all the products that have been sold were produced by other businesses holding separate certification.

For example, Coconut argues that the 3.4-ounce tubes of coconut oil, which have been sold since Coconut's founding in May 2015 and which were sold during the suspension, are certified organic by Quality Assurance International (QAI) under Coconut's contract with (b) (4) (b) (4) in Miami, Florida. A picture of a 3.4-ounce tube of coconut oil submitted with the Appeal shows the Conscious Coconut name on the tube and the USDA organic seal. The box for the tube also states it is Conscious Coconut oil, has the USDA organic seal, and states "Certified Organic by Quality Assurance International." QAI is (b) (4) s certifier. Coconut acknowledges that it continues to sell the 3.4-ounce tubes of coconut oil on its website, but thought this was acceptable, because the tubes are manufactured by (b) (4)

As a second example, Coconut states that its other product, which is also still being sold, consists of one-time use coconut oil packets, which are certified by Organic Certifiers under (b) (4) . A picture of the one-time use packets shows the Conscious

Coconut name and the USDA organic seal. The back of the packets state, "Distributed by Conscious Coconut" and then "Certified Organic by OC." Organic Certifiers is the certifier of (b) (4)

Coconut states that because the products are manufactured and/or processed/handled by other operations, which are certified by other certifiers, it was not aware that selling said products during the suspension period violated the organic regulations.

Documentation reviewed when considering the reinstatement request substantiates Coconut's continued violation of the organic regulations and supports NOP's decision to deny reinstatement of Coconut's certification. Coconut's certificate states it is certified for handling and identifies the facility as 11234 West Hillsborough Avenue, Tampa, Florida. The certified product is listed as 100% organic Conscious Coconut coconut oil. The February 12, 2018 Notice of Suspension issued by QCS specifically stated that "This Suspension is for your operation located in Tampa, Florida," and that "a suspended operation cannot sell or label product as organic." Despite this, Coconut continued to represent, market and sell coconut oil products identified as USDA 100% organic while under suspension.

(b) (4) which Coconut identified in its Appeal as the manufacturer of its 3.4-ounce tubes of coconut oil, is a private label contract manufacturer specializing in the production of creams, lotions, liquids, gels, tablet, capsules, and other items. (b) (4) was initially certified organic by QAI effective July 3, 2013 for "handler/processor – no products – facility only." However, (b) (4) s certification was amended on March 24, 2015 to include specific certification for handling 100% organic Conscious Coconut coconut oil. Coconut stated in its Appeal that it has been certified organic through QAI since May of 2015. However, it is (b) (4) (b) (4) hat is certified by QAI, not Coconut; Coconut and (b) (4) are two separate legal

entities. (b) (4) which Coconut identified in its Appeal as the manufacturer of its one-time use packets of coconut oil, is certified organic by Organic Certifiers. (b) (4) (b) (4) is certified for the handling of coconut oil, but its certificate doesn't specifically provide for Coconut's products.

Coconut is incorrect in its claim that it didn't violate the organic regulations because the products it sold were manufactured and/or processed/handled by (b) (4) (b) (4) which are organically certified. Coconut's operation in Tampa, Florida was suspended on February 12, 2018. Coconut's only location is at 11234 West Hillsborough Avenue, Tampa, Florida. Coconut was specifically informed that it could not sell or label product as organic during its suspension. However, Coconut continued to sell product from and through its Tampa, Florida operation, as evidenced by the sales invoices which show the 11234 Hillsborough Avenue, Tampa, Florida address. The fact that Coconut continued to sell products after specifically being told that such activity is prohibited is an aggravating factor to Coconut's violation of selling products as organic while under suspension. Additionally, although Coconut states its own certification was only for potential future manufacturing, the certificate doesn't make that distinction and merely states it is for the handling of 100% organic Conscious Coconut coconut oil. Limiting Coconut's suspension to future activity would be premature and ineffective. Therefore, the suspension applied to all aspects of Coconut's business. Coconut can't circumvent the suspension of its certification by pointing to the organic certification of these other entities.

Further, a review of Coconut's website shows that Coconut continues to sell its 3.4-ounce tube of 100% organic USDA-labeled Conscious Coconut coconut oil, as well as the one-time use packets of coconut oil. One can order these products directly on Coconut's website which

provides for direct payment by various means. Additionally, Coconut's 3.4-ounce tube of coconut oil is for sale on the websites of other entities, including Amazon and Lucky Vitamins. The tubes are labeled Conscious Coconut, 100% USDA organic, and have the USDA organic seal. Additionally, Coconut's webpage states its products are "certified USDA organic" and the USDA organic seal is clearly displayed.

It is also noted that Coconut has used contractors to manufacture/process/handle its products, without identifying those contractors in its Organic Handler/Processor Plan (OGP). Coconut's OGP dated February 16, 2018 and its initial June 8, 2016 OGP, were reviewed and identify Coconut's processing/handling and storage facilities to be used for organic production, as (b) (4) which is certified organic by Global Organic Alliance (GOA); and (b) (4) (b) (4) which is certified organic by Oregon Tilth Certified Organic (OTCO). (b) (4) (b) (4) is identified as a fulfillment center. The June 16, 2017 Organic Handler Plan Renewal Form stated that there were no changes to the plan currently on file, which would be the June 8, 2016 OGP. Coconut stated that coconut oil will be purchased from (b) (4) which will ship it directly to (b) (4) to fill the 3.4-oz tubes with coconut oil and then ship the packets to the (b) (4) (b) (4) for distribution of the final product.

However, while Coconut's OGPs identify (b) (4) as its contractors for packing and ingredients/sourcing, Coconut states that its coconut oil products have been manufactured and packaged by (b) (4) as discussed above. Although Coconut's June 8, 2016 OGP states that "current coconut oil tubes are certified by QAI through (b) (4) " Coconut's February 16, 2018 OGP doesn't identify (b) (4) as a contract handler, processor, manufacturer, producer, or fulfillments center.

Additionally, neither OGP lists (b) (4) in any capacity. Further, Coconut stated during the pendency of the appeal that it has never used the services of (b) (4) and only identified it on the OGPs because it was considering (b) (4) as a contractor. The QCS OGP forms specifically ask for the identity of contractors, handlers, producers and facilities used in the production of the organic goods yet Coconut failed to update its OGP to include (b) (4) and remove (b) (4) The suspension notice, by stating that only Coconut's Tampa operation was suspended, may have been distinguishing it from the other locations identified in the OGPs. However, those other locations are (b) (4) (b) (4) which along with (b) (4) are totally separate entities certified by other USDA-accredited certifiers.

CONCLUSION

The evidence substantiates that Coconut has violated the organic regulations at 7 CFR §205.100(a); 7 CFR §205.100(c); 7 CFR §205.201; 7 CFR §205.400; 7 CFR §205.406(c); and 7 CFR §205.662(f)(1). Coconut sold and has continued to market and sell its 100% organic USDA-labeled products, using the USDA organic seal while under suspension, which became effective February 12, 2018, and its continued sales after issuance by NOP of the Denial of Reinstatement on November 14, 2018 is an aggravating factor to the violation. Additionally, Coconut has failed to identify in its OGPs or otherwise notify QCS of all the contractors it uses in producing its organic coconut oil products. A party seeking to receive or maintain organic certification must comply with the Act and all applicable organic regulations.

Lastly, the November 14, 2018 Notice of Denial of Reinstatement states that selling product as organic without certification may result in civil penalties. The organic regulations at 7 C.F.R. §205.100(c) state that, "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 the amount specified in §3.91(b)(1) of this title per violation." Therefore, as Coconut not only sold products as organic after being suspended but continued to do so after specifically being told not to, constituting an aggravating factor and willful violation, Coconut is subject to a civil penalty.

DECISION

The appeal is denied and the Notice of Denial of Reinstatement is upheld. Coconut's certification remains under suspension for a minimum of 120 days from issuance of this decision, after which Coconut may apply for reinstatement in accordance with the organic regulations at 7 CFR §205.662(f)(1). Although Coconut is subject to a civil penalty of up to $17,593.00 per violation, Coconut is ordered to pay a civil penalty of $12,000.00, representing a reduced penalty of $2,000.00 per violation. In this case, each of the five sales invoices and the website sales as a whole represent a separate violation. Additionally, Coconut is ordered to immediately cease marketing and selling its products as organic.

Attached to this formal Administrator's Decision is a Request for Hearing form. Coconut has thirty days to request an administrative hearing before an Administrative Law Judge. If Coconut does not request a hearing in that period, this Decision will be implemented and the November 14, 2018 denial of reinstatement of Coconut's certification will become final.

Done at Washington, D.C., on this 18th day of June, 2019.

Bruce Summers
Administrator
Agricultural Marketing Service