

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
BEFORE THE ADMINISTRATOR

In re:)
)
)
Everlaan Organics,) **Administrator’s Decision**
Db a Maple Organics) **APL-062-23**
)
Surrey, British Columbia, Canada)

This Decision responds to an Appeal (APL-062-23) of a Notice of Denial of Reinstatement of Certification under the National Organic Program (NOP) issued to Everlaan Organics, dba Maple Organics (Everlaan) of Surrey, British Columbia, Canada by the NOP of the U.S Department of Agriculture’s, Agricultural Marketing Service. The operation has been deemed not in compliance with the Organic Foods Production Act of 1990 (Act)¹ and the U.S. Department of Agriculture (USDA) organic regulations.²

BACKGROUND

The Act authorizes the Secretary to accredit agents to certify crop, livestock, wild crop, and/or handling operations to the USDA organic regulations (7 C.F.R. Part 205). Certifying agents also initiate compliance actions to enforce program requirements, as described in section 205.662, Noncompliance procedure for certified operations. Persons subject to the Act who believe they are adversely affected by a noncompliance decision of a certifying agent, or a

¹ 7 U.S.C. 6501-6522

² 7 C.F.R. Part 205

noncompliance decision of the NOP may appeal such decision to the USDA Agricultural Marketing Service (AMS) pursuant to § 205.680 Adverse Action Appeals Process – General, and § 205.681, Appeals of the USDA organic regulations.

FINDINGS OF FACT

1. On July 16, 2021, Everlaan’s organic handling certification was suspended by USDA accredited certifying agent Oregon Tilth Certified Organic (OTCO).
2. On or about July 14, 2022, Everlaan applied to USDA accredited certifying agent Pro-Cert Organic Systems Ltd. (Pro) for reinstatement of its handling certification.
3. On August 17, 2022, Pro issued a Notice of Noncompliance to Everlaan citing to numerous noncompliances regarding recordkeeping and labels.
4. On November 29, 2022, Pro issued a Notice of Noncompliance to Everlaan citing to continued noncompliances regarding incorrect and unapproved labels, claiming uncertified product as organic on its website, and failing to confirm its co-packer is certified.
5. On March 20, 2023, Pro issued a Notice of Noncompliance to Everlaan citing to continued recordkeeping and labelling noncompliances.
6. On June 6, 2023, Pro wrote NOP’s Accreditation Division, recommending that Everlaan’s certification not be reinstated due to several noncompliances remaining unresolved.
7. On August 17, 2023, NOP issued a Notice of Denial of Reinstatement of Certification to Everlaan, stating that numerous noncompliances previously cited by OTCO and the subject of noncompliance notices issued by Pro remain unresolved.

8. On September 7, 2023, Everlaan filed an Appeal.

REGULATORY CITATIONS

The USDA organic regulations at 7 C.F.R. §205.103, Recordkeeping by certified operations, state that, “(a) A certified operation must maintain records concerning the production, harvesting, and handling of agricultural products that are or that are intended to be sold, labeled, or represented as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s)).” (b) Such records must: (1) Be adapted to the particular business that the certified operation is conducting; (2) Fully disclose all activities and transactions of the certified operation in sufficient detail as to be readily understood and audited; (3) Be maintained for not less than 5 years beyond their creation; and (4) Be sufficient to demonstrate compliance with the Act and the regulations in this part.”

The organic regulations at §205.201, Organic production and handling system plan, state that, “(a) The producer or handler of a production or handling operation ... must develop an organic production or handling system plan that is agreed to by the producer or handler and an accredited certifying agent ... An organic production or handling system plan must include: (1) A description of practices and procedures to be performed and maintained, including the frequency with which they will be performed; ... (3) A description of the monitoring practices and procedures to be performed and maintained ... (4) A description of the recordkeeping system implemented to comply with the requirements ... (6) Additional information deemed necessary by the certifying agent to evaluate compliance with the regulations ...”

The organic regulations at §205.300, Use of the term, “organic,” state that, “(a) The term, “organic,” may only be used on labels and in labeling of raw or processed agricultural products,

including ingredients, that have been produced and handled in accordance with the regulations in this part. The term, “organic,” may not be used in a product name to modify a nonorganic ingredient in the product.” Additionally, the organic regulations at §205.301, Product composition, state that, “...(b) *Products sold, labeled, or represented as “organic.”* A raw or processed agricultural product sold, labeled, or represented as “organic” must contain ... not less than 95 percent organically produced raw or processed agricultural products.” Further, the organic regulations at §205.303, Packaged products labeled “100 percent organic” or “organic,” state that, “(a) Agricultural products in packages described in §205.301(a) and (b) may display, on the principal display panel, information panel, and any other panel of the package and on any labeling or market information concerning the product, the following: ... (2) For products labeled “organic,” the percentage of organic ingredients in the product ...”

The organic regulations at §205.311, USDA Seal, state that, “(a) The USDA seal described in paragraphs (b) and (c) of this section may be used only for raw or processed agricultural products described in paragraphs (a), (b), (e)(1), and (e)(2) of §205.301. (b) The USDA seal must replicate the form and design of the example in figure 1 ...”

The organic regulations at §205.400, General requirements for certification, state that, “A person seeking to receive or maintain organic certification under the regulations in this part must: (a) Comply with the Act and applicable organic production and handling regulations in this part; (b) Establish, implement, and update annually an organic production or handling system plan that is submitted to an accredited certifying agent ... (d) Maintain all records applicable to the organic operation for not less than 5 years beyond their creation and allow authorized representatives of the Secretary ... and the certifying agent access to such records ... (e) Submit the applicable fees charged by the certifying agent; and (f) Immediately notify the certifying

agent concerning any: (1) Application, including drift, of a prohibited substance to any field, production unit, site, facility, livestock, or product that is part of an operation; and (2) Change in a certified operation or any portion of a certified operation that may affect its compliance with the Act and the regulations in this part.”

The organic regulations at §205.401, Application for certification, state that, “A person seeking certification of a production or handling operation under this subpart must submit an application for certification to a certifying agent. The application must include the following information: (a) An organic production or handling system plan, as required in §205.200; ... (d) Other information necessary to determine compliance with the Act and the regulations in this part.”

DISCUSSION

Everlaan was originally certified organic for handling by OTCO; and processes numerous personal healthcare/skincare products including oils, balms, and rubs. Everlaan was suspended on July 16, 2021 for 30 days. Subsequently, on July 14, 2022, Everlaan submitted an application and a request for reinstatement of its handling certification to Pro. Pro informed NOP that it reviewed Everlaan’s application and request, which included Everlaan’s response to noncompliances previously cited by OTCO. However, finding numerous noncompliances still exist, Pro issued a Notice of Noncompliance to Everlaan on August 17, 2022. Specifically, Pro stated that Everlaan’s records didn’t identify the organic status of products, namely if said products are organic or not; and the Organic System Plan (OSP), Master Ingredient List, and Master Product List are incomplete. Pro also stated that labels of received ingredients used in processing do not all identify if the ingredients are organic or not; and Everlaan didn’t maintain the current organic certificates of all suppliers. Pro also found that Everlaan has used labels that

weren't approved by a certifier; and represented, labeled, and sold products as organic prior to said products being approved and added to Everlaan's certificate. However, it is noted that no documentation supporting said sales was submitted.

On November 29, 2022, Pro issued a second Notice of Noncompliance, stating that although Everlaan had submitted a response to the prior noncompliance notice, unresolved noncompliances remained. Pro cited to revised labels still being noncompliant; that label proofs ingredient panels don't match the ingredients listed on the respective product profiles; and that no co-packer certificate(s) were submitted to show where product was being processed prior to and during Everlaan's application process. While Everlaan had previously indicated the identity of a co-packer, no confirmation of such was provided.

On February 2, 2023, Pro conducted an inspection of Everlaan, and found continued noncompliances. These included non-complaint labels; sales documents that didn't indicate the organic status of sold goods; the inability to verify direct customer transactions; and products on its website marked as organic, which weren't certified as organic. Pro then issued a third Notice of Noncompliance to Everlaan on March 20, 2023, citing to the noncompliances found at the inspection. Further, Pro stated that Everlaan needed to submit proof that its co-packer is certified organic; a traceability exercise failed due to the documentation not stating the organic status of products; inconsistencies in documentation, i.e., documentation stating a product is 100% organic, but conflicting documentation stating 75 – 95% organic; and Everlaan failed to maintain records for 5 years from date of creation.

Everlaan submitted a response to the March 20, 2023 noncompliance notice on April 6, 2023. Everlaan stated that it would remove all unapproved products from its website and remove the organic seal from unapproved products; maintain records for 5 years; update its invoices,

shipping documents, and other records to reflect the organic status of products; and separate approved labels from those not yet approved, to ensure unapproved labels aren't used.

However, after reviewing Everlaan's responses to cited noncompliances, Pro wrote NOP's Accreditation Division recommending that Everlaan's certification not be reinstated. Pro stated that it had obtained the Notice of Suspension issued by OTCO on July 16, 2021, and that none of the noncompliances cited by OTCO had been resolved. OTCO had cited to numerous recordkeeping noncompliances; products weren't identified as organic in purchase documents; labels on incoming ingredients didn't reference 'organic' anywhere on the labels; mass balance exercises were unsuccessful; and the Master Ingredient List, Master Product List, and Product Formulation Sheet don't accurately list products, suppliers, or formulations. Further, OTCO had found that Everlaan hadn't updated labels found to be noncompliant; certificates of ingredient suppliers weren't maintained; and hadn't submitted an OSP approved by its certifier. Pro also stated that Everlaan hadn't submitted a Standard Operating Procedure (SOP) per OTCO's request to show how Everlaan's recordkeeping system maintained numerous documents, how products were developed and submitted for approval, and how supplier certificates would be maintained. Pro cited to the noncompliance notices it issued to Everlaan and stated that they weren't fully resolved either. Pro also stated that at a tradeshow in September 2022, Everlaan maintained a booth which displayed the NOP organic seal and showed labels citing to OTCO in the certifier statement, after Everlaan had been suspended by OTCO. Lastly, Pro noted that it had conducted an unannounced inspection of an Everlaan co-packer on June 22, 2023, and found that the co-packer had cancelled its contract with Everlaan on April 12, 2023. The co-packer stated to Pro that Everlaan had kept changing formulas without proper follow up.

Taking the above into consideration, NOP's Accreditation Division issued a Notice of Denial of Reinstatement of Certification on August 17, 2023. NOP stated that Everlaan hadn't submitted evidence that the previously cited noncompliances had been corrected. Everlaan submitted an Appeal on September 7, 2023, stating that it had taken corrective actions for all noncompliances, and submitted its April 6, 2023 response, discussed above, with its Appeal. As stated in the April 6, 2023 letter, Everlaan said it would remove all unapproved products from its website; remove the organic seal from unapproved labels and products; update its documentation to reflect the organic status of products and ingredients; and maintain records for 5 years. Everlaan submitted 27 documents with its Appeal to show its corrective actions. The documents are various SOPs, including those for receiving/holding, and cleaning and maintenance of production equipment; specifications for raw materials; procedures for process control; and templates for documents including an inventory list and cleaning log.

However, the majority of Everlaan's SOPs, policies, and procedures have effective dates after Pro's June 6, 2023 recommendation to NOP to deny reinstatement of Everlaan's certification. NOP contacted Pro, which confirmed they hadn't received and therefore, hadn't reviewed 20 of the 27 documents. Therefore, Pro wasn't able to determine if said SOPs, policies, and procedures correct cited noncompliances and would enable Everlaan to come into compliance. Further, NOP's Accreditation Division confirmed with Pro prior to issuing the denial notice, that Everlaan hadn't resolved all the noncompliances. Additionally, on December 4, 2023, Everlaan's website was reviewed and found to show products with the USDA organic seal on the labels. These include Lavender Skin Therapy, Cold & Flu Therapy, Joint Therapy, and Muscle Therapy. It is also noted that Pro and NOP found that Everlaan hadn't paid 2

invoices for certification fees from its prior certifier OTCO. It was confirmed on December 1, 2023, that the invoices totaling almost \$2,000 remain unpaid, and OTCO submitted the invoices.

CONCLUSION

Evidence substantiates that Everlaan has violated the organic regulations at 7 C.F.R. §205.103, Recordkeeping by certified operations; 7 C.F.R. §205.201, Organic production and handling system plan; 7 C.F.R. §205.300, Use of the term, “organic”; 7 C.F.R. §205.301, Product composition; 7 C.F.R. §205.303, Packaged products labeled “100 percent organic” or “organic;” 7 C.F.R. §205.311, USDA Seal; 7 C.F.R. §205.400, General requirements for certification; and 7 C.F.R. §205.401, Application for certification. Evidence substantiates that Everlaan has failed to maintain all records required under the organic regulations; ensure that the organic status of ingredients and finished products is noted on all documentation including incoming/receiving records, production records, and sales documentation; maintain and submit a complete OSP; maintain current and accurate Master Ingredient, Master Product, and Formulation documents; maintain records that enable a certifier to conduct successful mass balance and traceability exercises; and maintain records for 5 years from their date of creation. Further, Everlaan has failed to submit to Pro the requested procedures describing how it will maintain records and conduct oversight and monitoring to ensure compliance with the organic regulations.

Evidence also substantiates that Everlaan has used labels without having the labels submitted to a certifier for approval and has used the USDA organic seal on unapproved labels and for products which aren't certified. Everlaan has also failed to properly label and identify products as to their organic status/percentage of organic ingredients; and ensure that finished

products and their labels are consistent with Everlaan's Master Ingredient List, Master Product List, and Formulation Sheets. Evidence substantiates that Everlaan has failed to maintain the certificates of all suppliers of alleged organic ingredients and its co-packer; and has used the USDA organic seal to represent itself as being organically certified. Everlaan has also failed to pay its certification fees to its prior certifier. Further, although Everlaan submitted many SOPs, policies, and procedures with its Appeal, these must be reviewed for compliance with the regulations, and their implementation must be verified by a certifier to ensure that all cited noncompliances have been resolved. Therefore, Everlaan's suspended certification can't be reinstated at this time.

DECISION

Everlaan's September 9, 2023 Appeal of the August 17, 2023 Notice of Denial of Reinstatement of Certification is denied. Everleen is denied reinstatement of its certification, and the certification remains suspended. While its certification is suspended, Everlaan may not represent, label, or sell any product as organic, and may not represent itself as being organically certified. However, pursuant to 7 C.F.R. §205.662(f)(1), Everlaan may apply for reinstatement of its certification at any time with any certifying agent, though Everlaan must demonstrate that it has corrected all the cited noncompliances.

Additionally, attached to this formal Administrator's Decision denying Everlaan's Appeal is a Request for Hearing form. Should it wish to further appeal this decision, Everlaan has thirty (30) days to request an administrative hearing before an Administrative Law Judge.

Done at Washington, D.C., on this 6th
day of January, 2024.

BRUCE SUMMERS Digitally signed by BRUCE
SUMMERS
Date: 2024.01.06 17:19:47 -05'00'
Bruce Summers
Administrator
Agricultural Marketing Service