

FTC Organic Claims Roundtable
October 20, 2016
Segment 1
Transcript

JESSICA RICH: Everybody has a preference for how they want to do their remarks, and that podium is too high for me. So I'm going to sit right here and just talk to you, just for a few minutes, to welcome you.

So welcome to the Federal Trade Commission in our joint roundtable with USDA. I want to especially thank Betsy Rakola who's sitting right there, who is the USDA Organic Policy Adviser of the National Organic Program. And of course, I want to welcome all of the distinguished panelists and all of you as well.

So for some of you, today's roundtable may be your first exposure to the FTC. So let me briefly explain who we are and what we do. And bear with me if you know all of this. The FTC is a relatively small agency with an enormous range of responsibilities.

Our jurisdiction stretches from spam and spyware to media violence and mobile marketing, and to privacy and subprime lending, for just examples. And of course, we also run the famous national Do Not Call Registry, what we're best known, for better or worse.

To understand the FTC's role in environmental marketing, it's helpful to understand the scope of our consumer protection authority. At its core, our mission is to protect consumers from deceptive advertising or deceptive claims, including claims related to environmental attributes of a product or service.

Our principal tool to accomplish this goal is Section 5 of the FTC Act, which allows us to take action against marketers making deceptive claims. In determining whether claims are deceptive, the commission focuses on how reasonable consumers interpret claims, not necessarily how experts or industry members understand them.

Thus, the commission doesn't establish environmental standards or encourage particular claims or behavior based on environmental or agricultural policy concerns. Our sole responsibility is to ensure that marketers don't deceive consumers.

The commission issues guidance to help marketers avoid deception, where consumer interpretation isn't obvious, and it's difficult for consumers to gauge the veracity of the claims. Environmental claims have both problems. Consumers often understand these claims in a variety of different ways, and it's nearly impossible for a consumer to confirm them.

For example, consumers can't generally determine whether a product's components come from recycled or virgin materials. To address these problems, the commission issued its Environmental Marketing Guides, or we call them Green Guides, in the early 1990s. The guides clarify how consumers are likely to interpret commonly used claims such as recyclable and biodegradable.

In 2012, we completed a comprehensive review of the guides to keep paces with changes in the marketplace and consumer perception. As part of that review, we examined thousands of public comments, held three public workshops, and conducted consumer perception and research.

While extensive, our study didn't address every possible environmental claim. Notably, for example, it didn't include the term organic when used for non agricultural products. We therefore were hopeful that commenters would submit evidence about these claims. But unfortunately, that didn't happen.

Therefore, when the Commission issued its guides, it concluded that it lacked sufficient basis upon which to provide guidance for organic claims. Additionally, the commission expressed concern about adopting advice duplicative or inconsistent with the USDA's National Organic Program.

However, even though the guides don't address organic claims specifically, these claims are still subject to the FTC Act, and marketers could still be liable if their claims are false or unsubstantiated. Therefore, to ease the burden on marketers and to help consumers protect themselves from deceptive organic claims, the FTC and the USDA jointly conducted a consumer perception study of more than 8,000 consumers.

Because the National Organic Program already provides comprehensive regulation of organic claims for agricultural products, we studied items consisting either partially or entirely of non-agricultural components, such as mattresses and organic dry cleaning. The study produced some interesting results, which we're going to discuss today.

Today's round table brings together industry, environmental, academic, consumer, and government agency representatives. Hopefully, at the end of the day, we'll all have a better understanding about how consumers understand organic claims and whether additional research is necessary.

This discussion may help the FTC, the USDA, and other stakeholders identify measures, such as consumer and business education, that can prevent deception and encourage competition using non-deceptive claims. Before beginning our discussion, I want to thank everybody who worked to bring us together today.

From the FTC, this includes staff from both my Bureau of Consumer Protection and from the Bureau of Economics, sitting down there. Thanks also to our event planning and web teams, our press office, and honors paralegals who greeted you today.

From USDA, I would also like to thank our counterpoint parts in the Agricultural Marketing Service for their work on the National Organic Program, NOP. We're also happy to have Lisa-- is it Brines? Brines, there you are, hi. National List Manager, on our discussion panel today. And I also want to specifically thank Matthew Michael, Director of NOP's Compliance and Enforcement Division.

Now, I have the privilege of introducing our featured speaker, Betsy Rakola. She's, as I mentioned, USDA's Organic Policy Adviser. In this role, Betsy coordinates organic activities across various USDA agencies, including the Agricultural Marketing Services, a service which houses the NOP program. Betsy also chairs USDA's Organic Working Group, which is charged with implementing the secretary's priority to integrate organic into all agencies at USDA. Take it away, Betsy. And thank you for coming.

BETSY RAKOLA: Thank you, Jessica, for that welcome and that thorough overview. I appreciate you setting the stage for what it is that we're doing here today. If those of you on the web or in the audience are looking at your agenda, you will notice I am not Miles McEvoy. I will resist the urge for an impersonation. Miles sends his apologies. He was unavoidably pulled away, and wishes he could be here. So I will be giving an overview of the National Organic Program's perspective and work in this area, and try to further set the stage for what brings us here today.

So first of all, thank you all for taking the time to join us, whether you're in person or online. We really appreciate you all being here. We are public servants. We only do our jobs well if we hear from you, so we appreciate your engagement. I also want to thank the Federal Trade Commission for partnering with us on this project and for hosting us here today.

The Federal Trade Commission and AMS have been working together closely on this project as the National Organic Program has been exploring ways to have greater oversight and consistent labeling for personal care products for years.

FTC has been a great partner in this endeavor. As was said, my name is Betsy Rakola. I am the Organic Policy Advisor for the USDA. And that means that our job is to serve the organic community, which is an honor for us. We work to protect the integrity of the USDA organic seal and of the USDA organic standards, both here in the United States and around the world.

Our motto is "Organic integrity from farm to table, consumers trust the organic label." So I think it's both that integrity and that trust that we're here to discuss today, and trying to figure out how we can further both of those goals.

So let me start by describing just a little bit about the National Organic Program. The NOP is a regulatory program that is responsible for overseeing a \$43 billion dollar industry in terms of retail sales here in the United States. . This incorporates over 31,000 USDA organic certified operations, again, in the US and worldwide.

They exist in over 100 countries, and when we look at our database of certified organic operations, our organic integrity database, we see over 175,000 certified organic products. So clearly, it is a very broad scope.

The NOP and our organic certifiers take this very, very seriously. We ensure that organic standards are met at the farm level. We make sure that any inputs used in the production of a product are allowed. We make sure that handlers and processors are audited, that we are ensuring that there are audits for what we call in/out balances to make sure that all product that was sold as organic could legitimately have been produced as organic, and we make sure that there are

sufficient paper trails, sufficient practices, in place to meet the integrity of that organic seal, and to ensure that those organic standards are being met.

It is a remarkable and comprehensive control system that covers the full supply chain. Certification work is very important to ensure a level playing field for farmers, and to protect consumers through truthful and trustworthy standards and labeling.

Having a thorough and complete organic control system is essential to maintaining the viability of the organic sector. The regulatory work of the National Organic Program supports the ability of all farmers and handlers to prosper in the organic marketplace to ensure a level playing field, fair competition, and achievable standards through a reasonable, and rational, and practical certification process, so that everyone who complies with the requirements of the organic rules can succeed in the organic marketplace.

During its history, the NPO has clarified that the scope of agricultural products that may be certified as organic extends beyond food products. While most agricultural products that are sold, labeled, or represented as organic are food, some, such as personal care products and textiles, obviously are not.

Which brings me to the scope of the USDA organic regulations. So for just the 30,000 foot overview here. Congress granted the National Organic Program our authority under the Organic Foods Production Act. The Act covers agricultural products, and it defines those as any agricultural commodity or product, whether raw or processed, including any commodity or product derived from livestock that is marketed in the US for human or livestock consumption.

We have what we call four scopes, which include crops, livestock, wild crops, and handling. So as you may have heard from that definition, this mostly covers human and animal food, but it can also encompass two very broad other categories, as I previously mentioned, personal care products and textiles.

So let's talk a little bit about those to define what it is that we mean. So if a personal care product, such as a cosmetic, contains or is made up of agricultural products and can meet the production handling and labeling requirements of the USDA organic regulations, may be eligible to be certified as USDA organic, and then sold as organic here in the US.

For those who aren't familiar with our requirements, anything that is labeled as organic or USDA organic contains at least 95% organic content. Anything that is labeled Made with Organic Products has at least 70% or more organic content.

Now that being said, there are obviously a lot of personal care products out there that contain nonagricultural products or ingredients. AMS this has very clear authority over agricultural products and ingredients. However, we do not have clear authority over non-agricultural products that are making organic claims.

So let's move to textiles. Textiles can be certified organic. Obviously, raw natural fibers, such as cotton and wool, are clearly agricultural products. So they can make organic claims, and then would be governed by the usda organic regulations.

Fibers that are certified organic can be processed and manufactured into textile and other products that meet the USDA organic standards. The National Organic Program does not restrict the use of the term organic in the labeling of textile products that are certified under third party certification bodies, as long as all of the fibers identified as organic in those textile products are produced and certified under the USDA organic regulations.

And textile products that are produced in accordance with the Global Organic Textile Standards, or GOTS, may be sold as organic in the US, but they may not refer to the National Organic Program, certification, or display the USDA Organic Seal. So where does that leave us?

The organic certification of non-food agricultural products, as you just heard, can be a little complicated. And the National Organic Program does receive numerous questions about this area, again, from throughout the supply chain, from producers, from manufacturers, and from consumers alike.

Further, a primary part of the National Organic Program's Mission is to ensure that consumers are confident in the meaning and the consistency of the USDA organic seal. So we want to make sure that consumers and manufacturers understand the USDA organic requirements as they apply to these non-food, agricultural products.

To this end, the NOP partnered with the Federal Trade Commission to conduct an internet-based study to examine consumer understanding of organic claims on non-food products, including personal care products and textiles. At this round table today, our panelists will be discussing consumer perceptions of organic claims on such nonfood products in light of the results of this survey.

With the FTC, the National Organic Program will use the study results, today's discussion, and the comments we receive to inform improvements to consumer and manufacturer education, as well as improvements to our efforts to prevent and address consumer confusion and deception. Thank you for being here today, and we look forward to today's discussion. And with that, I would like to invite our first panelists to come up and take a seat on the stage.

[APPLAUSE]

HAMPTON NEWSOME: OK. Good morning. Let's get started with the first session. I'm Hampton Newsome, an attorney in the Bureau of Consumer Protection here at the FTC. And this morning, we have our panel, and we're going to break it up into three hour long sessions. And in this first session, we're going to talk a little bit about framing the issues here, talking about the products that are involved here, getting some background on it. And then we're going to dive into the research.

And most of the people at the table here have done some sort of research in this area. And so we really look forward to the opportunity to hear from them about that. Before we get going, though, let's go ahead and do some short introductions. And I'll just give everybody the chance to introduce themselves. And let's start at that end with Lisa.

LISA BRINES: Good morning. My name is Lisa Brines. I'm the national manager for the USDA National Organic Program I've been with the program since about 2010, working on standards, development, which includes rule making, as well as working closely with our 15 member Federal Advisory Committee, which advises USDA on the development of new amendments to the organic regulations. Thank you.

ANGELA JAGIELLO: I'm Angela Jagiello. I work at the Organic Trade Association, and my role there includes coordinating OTA's consumer and industry data products, and some other educational products as well.

JOHN BERNARD: My name's John Bernard. I'm a Professor in the Department of Applied Economics and Statistics at the University of Delaware. Most of my research looks at willingness to pay for organic products, local, sustainable, natural products. Most of the work I do is with food, but I've also done some stuff with willingness to pay with textiles as well.

LAURA KOSS: My name is Laura Koss. I'm an Assistant Director in the Division of Enforcement of the Bureau of Consumer Protection of the FTC. And I was extensively involved in the comprehensive review of the Green Guides that Jessica mentioned earlier.

LAURA MACCLEERY: Hi. Laura MacCleery. I'm Vice President for Policy and Mobilization at Consumers Union, Consumer Reports. We run the Greener Choices website, which ranks labels by the level of information that they provide to consumers, and the consistency of their standards. We also regularly publish materials, magazine and online, to assist consumers in navigating the marketplace of labeling and consumer products.

GWENDOLYN HUSTVEDT: My name is Gwendolyn Hustvedt. I'm an Associate Professor of Textiles in the School of Family and Consumer Sciences at Texas State University in San Marcus. My area of research focuses on product development for lifestyle of health and sustainability consumers, and as you might expect, includes textiles.

SCOTT FABER: Good morning. My name's Scott Faber. I'm the Vice President for Government Affairs for the Environmental Working Group. EWG publishes two online databases that score personal care products and cleaner products. You may know one of them is Skin Deep.

Prior to being at EWG, I worked for the Consumer Product Goods Industry. EWG also manages a campaign to help educate consumers about the meaning of terms like organic.

MATTHEW JONES: Matthew Jones from the FTC Bureau of Economics in the Division of Consumer Protection. I'm an economist. I worked on the study that we're going to talk about here today, the FTC USDA study.

HAMPTON NEWSOME: OK. Well, so this will be a fairly open discussion among the panelists. As we go along the topics, if anyone at the table has a specific thing they want to say, go ahead and just take your name card and turn it on in, and that way we can keep a queue, and we can make sure that everybody has an opportunity to talk.

What I'd like to do here at the beginning is talk about defining the universe of the products that are involved here, the products that fall outside the NPO. Betsy talked a little bit about that. And I just wanted to start with Lisa, and Lisa give you an opportunity, if you had anything to add to what Betsy said about the scope of the program, the limits of authority, the process that works now for products that can participate kind of voluntarily in the program, just to give us a overview of what's going on out there.

LISA BRINES: Sure. Yeah, I'm happy to. I think you gave a pretty good overview in terms of our authority. In general, our enabling legislation is set by the Organic Foods Production Act, so that does give clear authority to USDA to establish the National Organic Program to regulate organic claims on agricultural products.

So agricultural products includes things you commonly think about, like fruits and vegetables, eggs, milk. It includes a lot of processed agricultural products as well. So processed agricultural product could be something like bread that mostly contains organic ingredients, but also might have some non-agricultural components that are essential or necessary to producing that product - so things like baking soda, leavening agents, other things.

So some products, you just need those materials to be able to produce an organic product. But those clearly fall under the scope of our authority. But in general, because of the value that's associated with the organic claim, there is certainly some incentive to produce other types of organic products that might be eligible for the USDA organic logo.

So again, in general, if those products are composed of agricultural ingredients, if they can meet the USDA labeling requirements for organic, if they can be processed in a way that's permitted under the USDA organic regulations, generally those products have been eligible for those claims. Those that certification process is administered by third party certifying agents that are accredited by USDA, so everything from the ingredients to the processing, to on-site inspections, has government oversight provided by USDA accredited certifying agents.

But in general, you do see products on the market that aren't necessarily food products that are still eligible for the USDA organic claim. And if those products use the logo, and they are able to meet our current standards, they have been eligible to be certified. We haven't gone so far as to develop particularly processing standards that are specific to say, personal care products or fiber processing standards, so that's not something that USDA has taken on at this point. But again, if those products can meet our current existing guidelines, they might be eligible to be certified.

I will mention briefly, Betsy had mentioned the fiber processing standards that are established by the Global Organic Textile Standard, or GOTS. So that's an area where NOP has published a policy memo recognizing that if those products have been certified to that third party GOT standard, that those products can be marketed in the US.

Again, they can't use the USDA organic logo unless they've been certified to the NOP standards. But if they are comprised of USDA certified fibers and then processed according to GOTS standards, that's something that has been allowed and would not be a violation. And I think I'll maybe pause there and see if there's questions.

HAMPTON NEWSOME: OK. Thanks. So just Angela, just in your work with OTA, I was wondering if you could talk to the general issues about how frequently these items that we're talking about involve organic claims, and kind of context. Like, what percentage of the organic claims involve products that are not covered by NOP versus food products that are clearly covered.

Also, I'm curious whether there are particular-- yeah, I'll just give you a list here. If these claims, are they clustered with particular products, do you see--

HAMPTON NEWSOME: Do you see patterns like that? And also whether are these products generally involve a mix of agricultural and non-agricultural ingredients, or whether it's more common for them to have in just the agricultural gradients, and happen not to be covered by the program. That's a lot of questions, but just if you could give us some background on that.

ANGELA JAGIELLO: Sure. It's hard to say in terms of the universe of products the percentage making a claim that aren't covered by USDA. But what I can talk to you about is OTA's reporting on the marketplace. So we conduct annually and have for about the past 20 years an organic industry survey that attempts to capture, really, all companies using certified organic ingredients.

So this would be folks who actually are covered within the current scope. Either they're using certified organic ingredients, and presumably properly labeling those products, or whether they have gone through the voluntary certification process for non-foods.

The non-food sector in 2015 was about \$3.5 billion of the \$43.3 billion dollar industry. That's about 12.8%. And that included three top categories-- fiber, supplements, and personal care. And then a smaller percentage, fiber, sups, and personal care make up about 80%, 90% of the industry.

A much smaller percentage, pet food, household cleaners, and flowers are the remainder. And in terms of agricultural versus non-agricultural, I honestly do not have a sense of that. I mean, that's a pretty big basket of items there, so that covers quite a lot, I would say.

HAMPTON NEWSOME: Would something like a personal care product be more likely to fall into the situation where it's a mix?

ANGELA JAGIELLO: Absolutely.

HAMPTON NEWSOME: Whereas textiles or something like that, you have a different situation.

ANGELA JAGIELLO: Right. Household cleaners, personal care. There's definitely a lot of gray area, and a lot of room for consumer confusion within those categories.

HAMPTON NEWSOME: Yeah.

ANGELA JAGIELLO: And consumers-- we'll get obviously into the research on what they've told us. But they do tell us that when they see the word organic, they expect it to mean a certain thing, and with some reasonable certification expectations. So these categories in particular, where there is room for a good deal of the compilation to have non-agricultural ingredients, do pose a risk of confusion.

HAMPTON NEWSOME: For the products that are eligible for voluntary certification, do you have any idea of what percentage of those do participate? Even like a ballpark? A general idea?

ANGELA JAGIELLO: I don't. I'm sorry. Probably is available, and could be gotten. But I don't have that off the top of my head. I'm sorry.

HAMPTON NEWSOME: Lisa, do know are there-- do you have an idea of the voluntary participation of products that are available?

LISA BRINES: Yeah, we don't track that kind of data. Certainly, there is value in the organic label. So in terms of a way to differentiate a product on a store shelf, there is certainly a value there in terms of if a product is eligible, there's incentive to seek out that certification process. The value of certification generally outweighs any cost associated with that.

HAMPTON NEWSOME: OK. Scott, I wanted to turn to you. Your organization has some databases that you mentioned earlier. And given this discussion we're having, I was wondering if you could talk a little bit about what you collect and what you find that is relevant to this discussion.

SCOTT FABER: Sure. I'm happy to. And thank you to the FTC and USDA for doing the research and holding this forum. Just to set a baseline, how many people here used a personal care product today?

[LAUGHING]

I always look for the people who don't-- see, there are a few people who did not raise their hands. But the point I'm making is that these are products we use every day. On average, women use 12 different personal care products a day. [INAUDIBLE] the counting as you can see. Men use on average about six personal care products a day. So there's a lot of consumer interest in this question, because these are things we put on our bodies every day of our lives.

So in order to help consumers make better choices, EWG developed Skin Deep, which is a database of 62,000 different personal care products. We rank those products on a 1 to 10 score based on the toxicity of the ingredients to help consumers make better choices.

Frankly, we've never looked to see how many of those 62,000 products make some sort of organic disclosure of some kind. And we were surprised to find-- and you can find this on our website, EWG.org, as well as on the website for this forum-- we were surprised to find that more than 5,000 of the products that are in Skin Deep right now make some sort of organic disclosure, either in the brand name, the product name, some sort of claim on the product label, or a mention of organic in the ingredient line.

More narrowly, we found that 5,000 of the 25,000 current formulations-- because we include both current formulations and older formulations that are no longer in the store, but may be in your home. 5,000 of the 25,000 current formulations, or 20% of the current formulations that are in skin deep right now, use the word organic in some way, either on the front or the back of the package.

And not surprisingly, many consumers-- and we know that from the research that FTC and USDA sponsored-- are misunderstanding those words and thinking that organic in the brand name, or the product name, or in a claim, or even in the ingredient line, implies in some way that everything in the product is indeed organic, or free of dangerous chemicals. Clearly, that's not the case.

HAMPTON NEWSOME: OK. So we'll move on to research in a minute. But before we do, I wanted to open it up to the panel to see if anyone had anything else to add on what they see out there in terms of claims for these types of products. Any research, any database, that they may have looked at that give us an idea of the scope of what's happening, how these claims are made, what products are involved. Laura?

LAURA MACCLEERY: Well, just to make the point that in the absence of USDA or other kinds of leadership on the question, there are a number of private certifying labels that have stepped into the breach. And these create even greater forms of confusion for consumers. I think with the broader food marketplace, you have a similar problem.

You have the proliferation of all these little insignias that live on the front of packages. And then when consumers go to look at them, what they mean, their claims, are that they're providing the organic standard. So [INAUDIBLE] International says, quote, "that they are the first and only American national standard that allows labeling and marketing requirements for personal care products containing organic ingredients."

There's other ones. It's not to single them. Ecocert is one. Oasis is another. You have all of these groups essentially competing in the public eye to claim that they are the only, or best, or most meaningful organic standard. And some of these schemes are pay to play, and some of them are limited to certain aspects of organic production, or certain ingredients.

And those kinds of variations and what they mean are just not going to be clear to consumers. And I think we're at the point-- we asked the FTC in a petition with the Organic Consumers Association in 2010 to look at this area. There was a vote by the National Organic Standards Board to take on the issue of personal care products in 2009.

We're really overdue to see some activity here that provides a lot greater clarity for consumers who are looking for this label for very legitimate reasons. I think on a number of levels, some of which were addressed in the FTC's own survey work in terms of what consumers reported, they want organic standards because they are concerned about chemicals of concern. They want organic standards because they are affiliated with more natural means of production, and they want to express with their marketplace dollars of value the values that they hold for sustainability, or for a more natural lifestyle.

These are legitimate objectives. And I think the marketplace recognizes that they're legitimate, but the express choice of consumers is to go in the direction of these products. That's what the marketplace is demonstrating. And so we just have a situation where the regulatory infrastructure has not caught up to what consumers would like to see in terms of transparency and clarity on these products.

And in the meantime, they're paying more for products that may or may not actually provide the actual value that they're seeking with that labeling scheme. So correcting that disparity is a really important job for the Organic Standards Program. I think it discredits the organic label in general if consumers have the sneaking suspicion that in this application or that application, dry cleaning or mattresses, it doesn't mean what they think it means, and they're not sure what it actually means.

So there is a cost to inaction in this area. And I would just say that our research, which we'll get into, shows that consumers have these expectations, and we just need to figure out how to make them real.

HAMPTON NEWSOME: OK. Great. Thanks. In the third session, we'll have more of an opportunity to discuss policy approaches. Gwendolyn?

GWENDOLYN HUSTVEDT: Sure. Sitting here between Scott and Laura, I had a reaction. My first study related to organic was my dissertation study. I looked at consumers of organic cotton. And it was the first study of its type.

And one of the things I measured were what we call behavioral beliefs. So people were asked what they believe would happen when they bought an organic product-- in this case, the organic cotton product. And then we multiply that times the importance of that particular outcome in order to predict their purchase of the product.

And the largest or greatest thing that they believed would happen when they bought an organic product would be that they were protecting their health or the health of their family. The beliefs related to supporting agriculture, or supporting retailers who wanted to sell organic products, or other types of outcomes were valued at a lower level.

And so when Scott says that when people see the word organic, that it implies that it's certified, I would say based on my research, it implies a whole heck of a lot more than that, and that consumers are seeing the word organic and extrapolating an entire universe, really. And so obviously, certification is very important to protect the value of the-- I guess it's not up behind us

anymore, but the big logo. But consumers have other expectations that, of course, as a textile scientist, may or may not be actually reasonable based on my understanding of the product.

HAMPTON NEWSOME: OK. Thanks. Well, let's go ahead and start talking about some of the research here. And I'd like to start with Matt. And I'd like to ask him to briefly describe the FTC study and also focus in on-- let's start with a particular aspect of it, which is the question of whether consumers view the term organic to mean something different when it's applied to food versus when it's applied to some of these products we're talking about.

MATT JONES: Sure. So just quickly by way of introduction, this was a study of a sample of over 8,000 US consumers that was drawn from internet panels. So it's not a probability sample. It's not nationally representative. So keep that in mind as you look at the results.

But the sample was constructed to match census targets on a number of demographic variables, including age, race, gender, education, and state of residence. So while it's not nationally representative, it does at least offer a cross-section of national demographics, at least based on those variables.

And the study included two parts. The first part was about certain recycled content claims, which we're not going to discuss today. But the second part was about organic claims for non-agricultural products.

So to follow up on what Anthony suggested, one of the first questions we asked in that part of the survey, if we could go the next slide, was we presented three example products, which were shampoo, mattress, or dry cleaning service. And each respondent was presented with only one of those.

And we asked them simply, does an organic claim for this product mean the same thing as it would mean for an apple. And what you see here is the first bar is just an average across the three products. And you see that 33% say yes, 37% say no, with the remainder not sure.

And there is some variation across the different products, slightly more yes's than no's for shampoo, a ratio about 4 to 3, and the opposite for dry cleaning, more no's than yes's, with a ratio about 4 to 3, mattresses in the middle. But for all of them, you see fairly heterogeneous beliefs. And we're far from a consensus. So I think that's the takeaway here.

HAMPTON NEWSOME: OK. Angela, OTA did research very recently. And you looked at this question exactly. And I was wondering if you could give an overview of the research you did, just generally the approach, and then discuss the results for this particular question, which is, well, do consumers view organic to mean something different in these different contexts, food versus other products?

ANGELA JAGIELLO: Happy to. While I discuss the construction of the research, maybe we could go to organic availability by category. So OTA worked with its consumer research partner, Kiwi Magazine, to sample 1,300 parents who are self-identified as having an interest in healthy lifestyle, organic, and natural products.

So this, again, is not representative of a national audience, but I would say that the findings of the survey are actually, in my view, underlined by that fact, because these are people who have come forward as saying they have an interest and a deeper level of understanding and knowledge about organic than one would expect in the general population.

So I'm just going to talk briefly about a few of the findings of that work. We asked them specifically-- we've been speaking with consumers for years about their views on and understanding of the organic seal. But we asked some questions this time that were very specific to non-food products.

So for starters, we asked which of the following items do you believe are available for purchase as organic? And that slide, in my mind, is interesting, because a number of reasons. First of all, I want to talk to the three people who disagree about food and beverages, or the 3%.

But also, when I look down the line at these products, 51% agree that they can have lawn care, dry cleaning, or carpet cleaning that is organic. That's obviously a challenge for us. We can look at the next slide.

We can actually breeze right through it, actually. This is just showing that these folks purchase with some frequency. But then by category, we ask during the past six months, how many of the following products or services purchased by you were labeled as organic.

And one thing that I found interesting there is that 35% of people said most or all of their household cleaners were certified organic. Now we know from our work in the organic industry survey that we sold \$80 million in some type of organic cleaners in 2015. That could be largely non-agricultural product with some organic ingredients, but \$80 million worth of sales would certainly not indicate that 35% of maybe even this very involved consumer's household cleaning purchases could be organic in any way.

Then we get to the beliefs concerning organic labeling for food and non-food. Some interesting findings there, but I want to highlight for you that 60% of people felt that it was probably true or definitely true that a non-food product or service that is labeled organic must be certified by the USDA or of their government agency.

So there are a number of findings on this slide, but that's the one that I think is probably--

HAMPTON NEWSOME: That's an issue that we've looked at, and we can talk about that.

ANGELA JAGIELLO: Right. Level of trust in organic labeling practices. We have been looking for years at a question that looks at three areas of trust in the inorganic labeling, trust that on farm practices are being approached as they should, and that the required behaviors and practices are enforced, trust in certification and inspection requirements, and trust that the exclusive use of organic ingredients is enforced.

And there again, we see that 61% of consumers feel that manufacturers and processors are adhering to certification and inspection requirements. And then we asked an opinion question.

How strongly do you agree or disagree with the following statement? A certification process such as the USDA uses to oversee and enforce the labeling of organic foods should also be used to oversee and enforce the labeling of organic non-food, and products and services, such as shampoo, mattresses, and dry cleaning. 60% agreed strongly, 28% agreed somewhat. That's a pretty strong indication that folks are looking for that confidence in the claims that are being made.

HAMPTON NEWSOME: Now with the question about how people interpret organic in these different contexts, what's interesting to me is that your numbers are almost identical to ours. Now granted, your study involves a different group, because you're looking at people that are particularly interested in these types of claims, and the FTC study was looking at more of the general population.

But both of them showed that there was kind of a real split, that there were a lot of people that felt that it meant something different in these different contexts. And I'm curious what you think, what Matt thinks, or the other people on the panel think what's going on there. Why is there this split? Is there some particular expectation people have, or maybe they just see it as different contexts, so they think it should mean something different? I'm just curious if you have any thoughts about that result.

ANGELA JAGIELLO: Well, I mean food and non-food products are different. So i mean, I think some of it is that. I think that the numbers indicate that there is confusion. But I do think that at the end of the day, a majority of people in both studies across all categories felt that there should be rigorous standards and certification, and that there's a level of trust implicit in organic that brings with it an understanding of agricultural product practices, certification practices, and manufacturing practices that are verified, whether you're looking at your shampoo, or your sheets, or your cereal.

HAMPTON NEWSOME: Matt, do you have any thoughts? Any guesses? If you don't, that's OK. But--

MATT JONES: No, I agree with what Angela said. I mean, it's hard to know whether it's just because of the nature of the product, or if it's because people actually think that there's a different standard or no standard for non-agricultural. But this is a question for future research, I think.

HAMPTON NEWSOME: Mm-hm. Gwendolyn?

GWENDOLYN HUSTVEDT: Well, I had noted in the beginning your use of the comparison of agricultural and non-agricultural, and our use of the food versus non-food. Of course, as my students point out, in the cosmetics category, there are now cosmetic products that are basically being marketed as food products. Right? So the bite lip stick is so pure, you can eat it, and all of the naming of the product is- and when you use a beauty oil, they're using oils that we might recognize from cooking, an avocado oil, maybe.

And so there is this sort of blurring between food and personal care products. I don't think it's necessarily to blame for the confusion. Are they taking advantage of the confusion, or does it

signal some deeper underlying desire on the part of the consumer to use products that are good for them inside and out at the same level as their food would be?

HAMPTON NEWSOME: Scott?

SCOTT FABER: While I think there's always a benefit to having more research, more data, the fact that a third of consumers or thereabouts, based on the work that FTC and USDA have done, assume that an apple and a product like this one that also has organic in the brand name-- sorry, in the product name-- are subject to the same standards, really demonstrates that there's already a significant amount of consumer confusion in the marketplace.

And I think just to add just another data point, we also commissioned a poll by American Viewpoint in the Mellman Group earlier this year and found that consumers overwhelmingly believe, more than 2/3 of consumers already believe, that the government reviews and approves all of the chemicals in a product like this one, when of course, under the Food, Drug, and Cosmetics Act, FDA has very little authority to review and regulate, or ban if needed, any of the chemicals that might be included in a product like this one. And since 1938, they've only banned nine chemicals for safety basis, because they were adulterated.

And this is just one product. Obviously, we found more than 5,000. This is a perfect example of why consumers are confused. Organic's on the front. A reasonable consumer would think that means everything in this bottle meets the USDA or similar government organic standard. But many of the ingredients in this particular product have actually been banned or restricted elsewhere in the world, including Canada, the EU, and elsewhere.

So no reasonable consumer would think that a product called Phyto Organics would include a chemical like MI or MCI, chemicals that are very potent allergens-- and that because they have been banned or restricted elsewhere around the world. So just for folks who want to see it, the American Viewpoint Mellman Poll's also on our website. And I apologize for not sharing that with you beforehand. I just thought of it yesterday.

HAMPTON NEWSOME: OK. Any other thoughts on this particular issue? Angela?

ANGELA JAGIELLO: I have a couple of things. One, I think that the USDA has been educating that organic means something since 2002. And there hasn't been a comma and a qualifying statement about which aisles it means something in and which aisles it doesn't.

And then the other thing that both Gwendolyn and Scott remind me of is that like how agricultural does something need to be in order for it to be considered a non-agricultural product? It's a big area of confusion, I think, for folks.

HAMPTON NEWSOME: OK. Well, let's move on. John, you've done lots of research. And one of your studies was on organic wool socks, looking at consumer perceptions there. And I was wondering if you could share your results, particular results that are relevant to what we're discussing today?

JOHN BERNARD: OK. So we got to be interested in like-- Laura said earlier about some concern about food versus non-food items, and there are people getting confused by seeing it on food and then seeing it on other products, and maybe losing some trust.

So I wanted to mention that quickly. But then with our research, a lot of them different labels are showing up. Again, like Laura mentioned, there's a lot of different labels on products. And for the wool socks, we wanted kind of to compare a few different labels, and how this affected people's willingness to pay, not just like asking them, are you willing to pay more for this or something like that. We do actual economic experiments.

So we present people with a number of different products with different labels on them, and we run auctions. And we get an actual willingness to pay from them for what their willing o pay. So somebody's actually going to buy some of them, depending on how the auction comes out.

So we have the incentives for them to actually tell us how much you're willing to pay for some of these labels. So the different wool socks we used and the labels we tried were organic, eco-friendly, natural, and sustainable. And so we auction off these four-- is that four? One, two, three, four. And first, with a conventional base as well.

So we collected bids on those different varieties. And that was just like, here's a label, here's the socks. They could see the socks, and then tell us what you're willing pay for each one. And then after that, we gave them definitions to go along with them, which is something Gwendolyn and I spent a long time coming up with the definitions. Actually, sustainable took us a long time to come up with the definition.

And we gave them a definition. Of course, the only that's definition we had the wool socks that did qualify for the USDA organic seal, so we mentioned that being that the socks, the wool socks, and organic ones were actually USDA organic. And the other ones, of course, they found out then were not certified by any government agency.

And when we look at those results then, we see after people find out the socks were USDA organic, then we have an increase in their willingness to pay. It significantly increases from just saying the word organic to knowing that it's certified organic. So we have an increase there.

For the other ones, what we have is a decrease in their willingness to pay for them. And I think part of that is then maybe some people are assuming that some of these things have certification, or somehow some of these terms are being backed by government. Like they see natural, maybe they think, well, maybe natural is a government claim too, or something that we have approval to use.

And then when they find that out, then we've got a change in direction of their willingness to pay. They're no longer willing to pay as much. And as far as natural and eco-friendly versions had larger premiums than sustainable, I think maybe those, especially natural being one of them a little bit more people see more often, maybe think has some certification to it, and all those differences disappear, basically. You don't get much more of a premium when they realize they're not-- the certification behind them.

HAMPTON NEWSOME: And do you have any thoughts about why people, for instance, seem to value organic a little bit more than sustainable, or anything behind those results?

JOHN BERNARD: Organic, like Angela said, just been promoted for quite a while. [INAUDIBLE] quite a while, and they spent a lot of effort into promoting that food could be organic now. And yeah, I think with all the effort and work behind it, people do see organic as something that they want to have, and they're willing to pay more for.

That said, I still have also a lot of research that showed there's still some trust issues with even the USDA organic label. We have a study we're working on right now where we asked people willingness to pay. And some people aren't willing to pay as much as others. So we did some follow-up questions like, what things are important to you? And we gave them like, a list of things that organic means. And it rated the importance of those.

And then I asked them, how much do you trust for each one of these things that the products you're buying really meet those standards? And I get agreement, but I don't get level agreement, that they agree that everything that the organic products say they are actually are.

And the other one we recently did is we asked them about organic products depending on where they buy it. You know, if they buy it at like, a supermarket, versus they buy something that says organic at the farmer's market, or something like a supercenter. And again, I get different willingnesses to pay, and I get different impressions of what organic means, or how much they trust organic from different locations.

There's a lot of different things going on here in terms of how people view organic, and what things matter for their willingness to pay for it.

HAMPTON NEWSOME: OK. Gwendolyn, you have your card up. But I'd also like you, after we talk about this⁰⁰ and maybe why don't you respond to this, and Scott, you respond. But then, Gwendolyn, I'd like you talk about your research on the organic apparel.

GWENDOLYN HUSTVEDT: I was just going to jump in, bouncing off of Scott and John. John's research into things like milk and some of the work that we've done suggests that consumers are using the word organic as a proxy for another concern. So our study into locally produced cotton in Texas, we then went ahead and said, oh, but these are GMO-free as well and found the willingness to pay was actually the same, suggesting that consumers were using the organic labeling as a proxy to get to the GMO-free.

And in John's other research with milk, he found that-- we call this nesting of the attributes, so that the antibiotic-free was nested inside organic. And if you pull that attribute out and label it separately, the willingness to pay-- we can get into the details, but the willingness to pay is pretty much the same.

So for some products, the consumers are, in the case of this product right here, potentially the organic is a proxy for no dangerous chemicals. Right? And so that's partly why we did this study, because we realized that there may be cases where consumers are looking for a proxy. And if

legally the producer can't use the word organic because they can't, couldn't they just provide the thing the organic was a proxy for instead?

HAMPTON NEWSOME: OK. Scott, let's-

SCOTT FABER: Well, I'll just add I think there are two really important issues here why this roundtable is so important. One is obviously consumer deception. You know, I worked for the food industry, and the consumer products good industry for many years. I worked for the Environmental Working Group. I teach an agricultural law class, just across the mall here at a local law school.

But it wasn't until I really sat with Seven CFR that I began to really understand what this means, and all its applications, and all its limitations. And you can't expect consumers to walk around in their heads with a deep understanding of 100% organic, organic, made with, et cetera. That's why we need a regulator to step in and police these sorts of claims, so that people are able to use their food dollar or their shampoo dollar to reflect their values. So the deception's certainly one big part of this.

But John and Laura mentioned this earlier, that this question around eroding the trust in the organic seal. And that's also, I think, equally important here. The statute and the rules implementing the statute are a government guarantee that a product has been made to specified standards. And those standards have been enforced.

And there really isn't a standard like it in this consumer product space. And it is constantly under assault. It's under assault by, frankly, producers of conventional food products who don't want to see their marketshare eroded. But it's also under assault by misleading claims like this. And when consumers begin to ask, well, gee, doesn't organic mean what I think it means, as Laura said earlier, it really undermines their trust in the organic seal.

And of course, again, the seal is the only guarantee that something has been produced without dangerous chemicals, without antibiotics, without GMOs, without growth hormones. And so when these sorts of disclosures are allowed to be in the marketplace, they sow a lot of doubt about what that seal actually means. And that's why it's so important that we really police these sorts of claims.

HAMPTON NEWSOME: OK. Thanks. Gwendolyn, could you talk a little bit about the study that you did on organic cotton apparel and the key takeaways from that?

GWENDOLYN HUSTVEDT: Sure. We had to select one paper to include, and this has been the focus of most of my research agenda for quite a while. And so actually, I could have picked any number of papers, but I thought that this one was-- it's highly cited at any rate. And so, it's a good one to start with.

This is a reanalysis of my dissertation data, the study that I included. So it was done in 2006. And it was of health and natural food consumers. And so, it is that sort of more targeted market.

But at the time, organic labeling for textiles was very new. And so we wanted to make sure we had enough respondents who actually were familiar with the topic.

I think that probably one of the big takeaways, the motive for this study, was this lack of education about textile processing. And so while cotton is an agricultural product and part of it can be used for food ala Crisco, there are many chemicals and processes that are used to take that raw fiber and turn it into the product that we buy in a store or online that a typical consumer would not consider environmentally healthy-- for example, formaldehyde, which actually does have health concerns if the residue is left in the textile.

Many other chemicals are used are washed out of the textile as part of the process, leading to pollution concerns, which consumers have a legitimate right with their consumer sovereignty to express displeasure about.

GOTS was designed to address this issue, but I was concerned that consumers wouldn't understand the difference between something that was labeled as made with 70% organic cotton and something that was processed using an organic standard. And I feel that not much has been done since then in order to kind of illuminate this difference.

And I promise I won't get started on [INAUDIBLE] from Bamboo, but you could ask me about it later. I have a whole opinion about that, just the lack of education that allows for really egregious deception. So I think that's pretty much what I mainly wanted to say. If there was a specific result you wanted me to highlight?

HAMPTON NEWSOME: Well, I guess you mentioned you've done several other papers, and this one was the one you're highlighting here. Are there other kind of key takeaways from the work you've done that would be relevant to this discussion?

GWENDOLYN HUSTVEDT: I think that simply the large education gap, that consumers are making a purchase based on things that they believe about the product. But if you brought me a pair of organic socks and a pair of non-organic socks today, conventional socks, I would be hard-pressed to be able to determine the difference between the two in terms of any kind of chemical residue or any kind of trace on the product.

And so when consumers believe that they're protecting their health or health of their families, it concerns me. I would rather consumers were expressing an interest in the health of the farm family, or in the local economy, or other things. I mean, I know that the organic standard is grown and changed over time, and that consumers need time to sort of catch up with what the new iterations of the use of the term mean.

But the reason I focused on wool was in part because the US produces very little to no organic wool. Australia produces most of the organic wool. And so it's a challenge for consumers who want to buy US products, but can't find US-produced organic wool. And so they have these competing interests. They are looking to buy local, they're looking to support the environment, they're looking to support their health, and they're trying to figure out how to balance all of these

things. So I think that that's been quite a lot of the focus of my research. Also, trying to provide illumination for producers, to help them understand how they can navigate this market.

HAMPTON NEWSOME: Great. Thank you. Laura, could you touch on some of the work that Consumer Report has done on these issues? I know a lot of it has been on food, but in terms of what you learned and how it applies here, we'd be interested in hearing that.

LAURA MACCLEERY: Yeah, so we've done a number of surveys over the years on organic standards, and we generally find that consumers are quite supportive that they're very meaningful for consumers. And I think we need to unpack sort of the sophisticated-- I think consumers are actually fairly sophisticated in these responses. And so, they might understand that with regard to food, organic is a kind of legal term, that it has weight.

And we do pretty detailed surveys about distinctions that they have expectations for with regard to organic, we find they are quite insistent on a high bar for organic. So it's consistent with FTC's work. They think the organic standard should be representative of when the product is all or almost all virtually 100% of organic ingredients. And we found seven out of 10 consumers with regard to food think that USD should not permit the use of non-organic ingredients in organic food production if they are not deemed essential.

Which has a pretty good tracking with the law. It doesn't quite track the 95% standard, but it comes pretty close. And so that's consistent with the FTC's findings about the expectations of consumers being that something should sort of be all or nothing. It either meets the criteria or it doesn't. They also had very strong feelings about fish farming and the label for fish in organic.

And down to the level of means of production kinds of concerns, like 100% organic feed was 87% of consumers, no antibiotics or other drugs used was 82%, no added colors was 80%. Those kinds of concerns that speak to the means of production and the integrity of the process, and are the kinds of things that are evaluated by the National Organics Standards Board when it goes to set out organic standards in an area.

You know, it's looking at that level of granularity with regard to production processes. And I think it shows consumers have a kind of sense that this is a meaningful term, and that it's regulated. And I think also John's research that shows they're not as trusting in the use of organic labels at the farmer's market versus at a retailer, because they assume that the retailer has some kind of legal accountability to that process, and the farmers market provider may not have as much accountability, because they're not occupying a space within a corporate store that has all of the inspectors and all of that.

So that reflects a level of sophistication that there's an apparatus here, that people are going out to production facilities and checking to make sure that the standards are maintained, that the certification is meaningful. And I think with the apple versus the mattress versus the shampoo, you also see an interesting kind of distinction. That is, the closer it gets to food, the more consumers assume it's something that's visceral, that with the shampoo, you're putting it on your body, it's a personal care product.

That's sort of more comparable, they think, in terms of the regulatory apparatus that should apply to an apple. And they assume with mattresses, well, it might or may not be meaningful we're not quite sure, because there's a little more doubt about that, because it's not probably checking the same boxes in terms of the legal infrastructure.

It's textiles, it's plastics. What are the rules anyway? Right. So I think when you look at the research, you see a sort of pretty rational set of consumer understandings and questions about the extent to which these standards apply to products and the way that they map visa vie what they understand about food. It all sort of hangs together.

And it creates, for me, a powerful sense that consumers are not being well-served by these gaps in the regulatory reach with regard to the big things. And I'll just mention one other thing. I think the distinction between agriculture and non-agricultural inputs to personal care products would be nonsensical. For consumers, it maps perfectly in terms of how we understand the law and the way that the program is developed. I'm not sure it maps perfectly under the statute.

But we can talk about that another time. But you know I think the authority here is very clear. But to tell a consumer oh, you know, this brand name product that has organic in the brand name or in the product name, but is really full of synthetics, that's a non-agricultural product, and so that's outside the scope, I don't think that would make any kind of logical sense to a consumer, because they're looking at the same shelf. It's not even a different aisle. It's the same shelf, and it's one product next to another product that would have agricultural inputs versus another that wouldn't. Right?

And so I think that's a key place where we don't have the research ourselves, but that could be a place where we really document that consumers are confused.

HAMPTON NEWSOME: Mm-hm. OK. Let's circle back to the FTC research. And we talked about one of the questions that FTC looked at was this issue about understanding consumer expectation about who was regulating this. And we've talked about this. Several people have brought this up.

Matt, I was wondering if you can walk through what was asked and the results on that issue. And Angela, you mentioned it also, that it's something that you all looked at, and you mentioned that. But maybe you could walk us back through that. But first, let's go with Matt.

MATT JONES: Sure. I think there's an interesting contrast between what we found and what has been found in some of the other studies. So we asked the question-- I apologize, I don't have a slide for this. But under the same product framings, we asked our respondents whether they think the claim organic suggests or implies that the product is certified as organic by the USDA. And we found that 29% think yes, and 36% think no, with the remainder not sure. For a mattress and for a shampoo, 30% think yes and 40% think no.

So in other words, a minority saying yes, I think it's certified by the USDA. We asked a different version the question to another group of respondents, which asked whether they think an organic claim implies that the product meets some government standard, without mentioning specifically

the USDA. And there percentage who think yes increased slightly to 34% for the mattress and 37% for shampoo.

Now to put this in perspective, we also asked a control question, where the claim was not organic, but something much more innocuous, like a puff reclaim. For the mattress, that was soft and comfortable, and for the shampoo, it was refreshing scent. And when we asked the same question about those claims, do you think the claim implies that the product meets some government standard, for the mattress, we found 12% think yes, and for the shampoo 11% think yes.

So if you look at the difference the net between the USDA question yeses and the control is less than 20 percentage points in both cases. And for the more general government standard question, the net is less than 30 percentage points. And I think this presents an interesting contrast between the results of some of the other studies, where a majority say yes, I think this is certified by the USDA.

If you were to ask me why, I think one potential reason is the sample of consumers that was surveyed, which varied across the different studies. I'll leave it at that.

HAMPTON NEWSOME: OK. Angela?

ANGELA JAGIELLO: So many things. 67%-- no, sorry. 59% of people told us that they did agree that certification was necessary. USDA and a lot of brands have been in the marketplace building an organic label. And that label has meaning, and it has transparent standards, and that means something to consumers.

And they tell us that, and the market continues to grow year after year, for as long as we've been measuring. When they see that claim taken out of context in another area, if the product isn't certified, we can be nearly sure that they are being misled, because whatever they attribute to the word organic, there's no guarantee for them in the marketplace without certification.

HAMPTON NEWSOME: Now on this particular question, as Matt mentioned, the FTC and OTA results were fairly different . The OTA, it was something like 59% said, well, this means that it's certified by USA. And Matt suggested that that's because the sample's different. Do you agree with him? Do you think there are other factors that might be something to consider?

ANGELA JAGIELLO: I think the sample could be one thing. The phrasing of the questions, the number of options presented. I mean, I think without getting deeply into the weeds of the particular methodologies and studies, it's hard to say. But in every consumer study we've done as an organization, whether it's food, non-food, or products, consumers tell us that certification is important. And it's a tenet of the organic label.

HAMPTON NEWSOME: OK.

ANGELA JAGIELLO: About the differing results, it's difficult to say. Two different organizations conducting different studies of different consumers.

HAMPTON NEWSOME: Yeah. OK.

SCOTT FABER: I just have one quick thing.

HAMPTON NEWSOME: Sure.

SCOTT FABER: And for those following along, it's page 37 in the study that Matt conducted. I mean, what's fascinating about these results isn't just that 60% of consumers think this product is certified by USDA, but that a significant percentage are just not sure, if I'm reading this right.

MATT JONES: Well, don't find that 60% think it is. We find that around 30% think it is.

SCOTT FABER: So beliefs about organic is certified by-- so why don't you to unpack that a little bit for us? Because I know I was looking at it, and read it differently than you have.

MATT JONES: Oh, I'm sorry. So if you're looking at the figure-- and I apologize I don't have a slide prepared. The way the figure is constructed is there's a bar for each category of responses, and the bars are colored. The red indicates that they said no. The multicolored portion indicates that they said yes. The reason it was multi-colored is that there was a follow-up question.

And so that section is broken down to indicate which answer they chosen in the follow up question. But the sum of those is the yeses. And they amount to 30%. So you have a 30% yes, 40% no, and the light in the middle is not sure. My apologies if that was that cumbersome.

HAMPTON NEWSOME: OK. Well, we're winding down here. We will be talking in the next session about research as well. So we'll be continuing this discussion. And we'll be focusing on some of the-- Laura mentioned the percentage question about how do consumers, when they see the term organic, what do they think that means outside of the USDA context? And so we'll be getting into that and other issues. Brad we have a 15-minute break. OK. So everybody should be back at 10:45. And I just want to thank everybody, and we'll see in a bit.

[APPLAUSE]

[MUSIC PLAYING]

BRAD WINTER: It's 10:45, so we're resuming.

[SIDE CONVERSATION]

My name is Brad Winter, the moderator of this second panel. I'm going to begin by giving some procedural announcements to catch us up, particularly those participating online by listening into the webcast. Then we're going to turn to the panel and continue the discussion, this panel's continued assessment of the evidence.

So far today, here's a recap. We began this morning a few minutes behind due to some technical issues, where Jim Kohm gave housekeeping announcements here in the well of the auditorium to

those present. Those announcements don't relate to the substance of the workshop. They were tips like where to find the restroom.

So for those of you listening in online, you didn't miss a substantive discussion of the meaning of organic. But I know that's been a frequent query that we've received, so I wanted to respond to that concern. We are webcasting this to the extent of our ability. When we cut to a break, you may see an interruption in the webcasting audio feed, but that is one reason why we run on schedule, so that you folks listening in online are able to hear what's going on with us today.

A couple of other procedural announcements. We have comment cards here. Amber Howe, who's been wonderful in coordinating this entire event, is able to collect them. The cards are available for pick up outside the door where you came in, or you can see Amber on a break. You're invited to fill those out.

I doubt, given the limited time we have today, that we'll have the opportunity to ask any of those questions or comments, but we might. And certainly, if we don't what we plan to do is submit them to the public record. You're also invited to do that yourself. You can do it electronically or by mail by following the online instructions on the same web page you used to find this event.

If you fill out a comment card, you're welcome to submit it anonymously. But we ask if you want to make it a formal comment that you provide your name and affiliation. That helps us understand your comment. Personal information may be redacted from the card before it's posted online. That's how we handle comment cards.

As a moderator, I want to pass on to the participants that I thought the first panel was productive. I want to encourage this kind of dialogue, where we talk with each other, giving the audience the opportunity to lean in. But as we do that, and it's tricky, please remember to stay in front of the microphone. Because if you're not in front of the mic, it means even some in this audience have fed back to me that we're not hearing you, and certainly the folks listening in online won't catch us. So we're all going to make an effort to both try to continue the informal conversation, but have it captured on the microphones.

All right. We turn now to the second panel discussion. The topic is Approaches to Improving Organic Claims. It's a further discussion of the evidence, both its conclusions and its limitations. In the first panel, I think we got to get a solid background moderated by Hampton about the marketplace. . We heard a set up to that from the speakers about some of the regulation that occurs.

What I wanted to do was focus on one particular issue, which emerged in that discussion, which I am nicknaming the percentage problem. . Several of you speakers raised it in a variety of forms. The percentage problem I see, and a notable finding in our study, is that many of our respondents thought that organic meant something was 100% organic, or that it had some content percentage that differed from the NOP thresholds.

This was illustrated, for instance vividly, by Scott's example, with the bottle that he brought. Laura, I think you talked about this. And several others of you did as well. I know that this was a

topic in our study, so I'm going to start by asking Matt to talk about what our study demonstrated about that. Then, we'll talk about the limitations of that evidence.

MATT JONES: Thanks, Brad. So the main question that we asked, kind of the meat of the organic part of our study, presented various product content scenarios to respondents, and then asked for a given product with an organic claim that fits that description. Would an organic claim accurately describe the product?

And each respondent saw only one scenario, only one version of this question, so we can compare the responses across groups of respondents who saw different versions. And so if we go to the next slide or two slides up, I think.

So here's an example of one of the scenarios that we tested. And we call this the 5% to 10% non-organic scenario. So this is the simple description. The first bullet says that 90% to 95% of the product, in this case the shampoo, is obtained from plants or animals which were grown or raised without any substances that do not occur in nature. So that was our description of the organic contents of the product.

And the second bullet says that the rest of the ingredients were made by a man-made chemical process. So we refer to that as the 5% to 10% non-organic content. Although no part of this question identifies either of those things as organic or not organic. They're just described in some other way.

And then we asked, would you agree or disagree that a shampoo labeled organic, a label that would accurately describe this product? Now, different scenarios varied. So keep keeping all the language the same, except for the percentage varied that percentage.

So another version of this would have shown 95% to 99%. Another would have shown greater than 99%, but not all. We also included a control scenario, where it said 100% plant or animal and no other ingredients. And we refer to this as a control, because we didn't expect many folks to disagree that an organic claim would accurately describe that product.

And so this structure allows us to compare between different versions and how the responses vary with the benefit of a control. And again, we tried this with three different product examples, the same that we had earlier-- mattress, shampoo, dry cleaning service. And we found remarkably consistent results across those three products, such that it isn't even really worth showing you how they vary. I'm just going to show you the average.

And you're welcome to look in the report. At the very end, it shows how they vary across products. And you'll see they're very similar. So if we could show the next slide.

So here, you see results from the nine scenarios. And across the bottom, there's a shorthand label for each of them. The fourth bar is the 5% to 10% non-organic scenario, the example that I just showed you. And this shows that the red is the percent who disagreed that the claim accurately described their product, and it's 35%. The blue is the percentage who agreed. But I want you to focus on the disagreement for now. The second and third bars show the results from questions

that had the same language, but just a different percentage of non-organic content. And the first bar is the results of the control, where it was 100% organic content.

And gain, these results are not projectable to the general population. But I think we have a meaningful result here, in that if you look at the percent disagreeing between the three scenarios, where there's a small amount of non-organic material, you see very similar percentages disagreeing, between 29% when it's less than 1% of the product that's non-organic, and 35% when it's 5% to 10% of the product that's not organic.

And if you compare that to the control, where the product was described as 100% plant or animal material, there only 6% disagreed. So there's, I think, a substantial difference between the three scenarios with the small amount of non-organic, and the scenario with no non-organic content, the difference being between 22 and 29 percentage points.

So at least among our sample, there's a substantial group of consumers who would disagree that an organic claim accurately describes a product, a non-agricultural product that is, with a small amount of non-organic content.

BRAD WINTER: Thank you. I want to see if other panelists want to weigh in on the conclusion, just based on the FTC USDA research alone, and then in a few minutes, we'll talk to the extent to which your own research contributes to this conclusion.

All right. Let's turn to, now that we've established what this study shows, some of the limitations of that evidence. The FTC study is fairly explicit about its limitations in a way that not all of the studies on this panel have been, perhaps because we're trying to accomplish some different purposes. But what I want to do is tick through some of the survey challenges that we addressed, and just get a sense, given that all of you here are representing your own study that you've conducted. When I say all, I mean all of you except for those that are joining us from another government agency.

Some of the study challenges that we had, these are all detailed in the report itself. You've talked already, Matt, about how, because it's an internet survey, it's not what I would say is perfectly projectable to the US population. But it does take effort to take census data into account.

We talked about, you did in the study authorship, of the potential about non-response buyers, some possibilities for measurement error. We had to ask the question to the respondents about whether they agreed with what we were positing, which might measure what they thought the organic should be, as opposed to what it is. That's one of the question variations.

We also had to define what it was to be a man-made process. You just illustrated that in the last slide. And that resulted in what we have colloquially called the lavender shampoo example, in talking about that.

These are limitations that the FTC has identified in its own study. I wanted to ask the panel if anyone else has identified other limitations in the FTC USDA study that haven't been previously described. Great. Lisa?

LISA BRINES: Thank you. I guess just from a regulatory perspective, I wanted to speak a little bit between the differentiation between the organic claims and 100% organic claims, in that you do have organic products that are on the market that might be comprised of 100% agricultural ingredients, and yet those products may not be eligible for the 100% organic claims, in part, because there might be the use of processing aids that are not certified organic.

So just as an example, if you have juice that's comprised 100% of an agricultural juice, but if it is filtered through a filtering aid that is not organic, that product could still be labeled as organic, be eligible for the USDA seal, but it wouldn't be eligible for the 100% organic claim on the label under the USDA organic standards, because of the use of that non-organic processing aid.

So it seems like the study was limited, really, in terms of content claims to ingredients, those things that would appear in the ingredients statement on the label, but doesn't necessarily reflect some of the nuance with respect to processing aids.

The other thing that I wanted to mention--

BRAD WINTER: Lisa, before you get to that next point, let me respond to that, and also check in with the panelists on that, I think, valuable point, and useful to proceed by example. So two levels of response. The first is, of course, the study that we conducted was on organic, not on USDA organic, which is an important limitation. It helps focus our discussion on that.

But second, to touch on your example, you've mentioned one where something was 100% organic, but filtered. Do you have offhand an example of something where it would be organic in nature, the juice perhaps, but then became disqualified because of how it was processed? So does that same problem occur with products that would be within the ambit of our study? It seems to me conceptually that it could, but does an example come to mind?

LISA BRINES: In terms of something that would be making organic claims at the end of the process?

BRAD WINTER: Yes.

LISA BRINES: I don't think so, because I think at the beginning, it would still be an agricultural product. So if you had, for example, 100% organic herb, and then it was treated with ionizing radiation, which is prohibited under the regulation, it would lose its eligibility for the organic claim. And if the product did continue to make an organic claim, we would have clear enforcement authority to take action against that operation for violating the standards.

BRAD WINTER: Right. So there are examples of products that are organic as grown. But because of how they were processed, they are no longer organic under the NOP program?

LISA BRINES: If the production was organic, but the handling didn't comply with the standards, it wouldn't be eligible.

BRAD WINTER: Right. And that seems to me a variation on the study question that we posed. Because the way in which we define organic, which I can flip back to, may not have captured all of that nuance.

ANGELA JAGIELLO: Those products, if I may, wouldn't be labeled organic, right, if that were the case.

BRAD WINTER: Or shouldn't be labeled, is what we're saying. Right? They could be mislabeled.

ANGELA JAGIELLO: [INAUDIBLE] in your herbs with ionizing radiation, that would not be called organic.

LISA BRINES: Right. If that existed in the marketplace, we would have clear enforcement authority to get that product off the market. So yes, you shouldn't see it in the market in the case that there was a product out there. USDA clearly could take action on that product.

BRAD WINTER: Right. And in terms of the limitations of our study, because we defined based on a man-made chemical process, it's not clear to me that man-made chemical process perfectly captures your example of ionizing radiation. Do Matt or any others have a further?

ANGELA JAGIELLO: I wanted to address that I think there could have been some respondent confusion baked in by the fact that people are familiar with the USDA organic label. It's actually, I think, in the marketplace hard to divorce USDA from organic. And the content claims don't align. Maybe Lisa might want to address that.

LISA BRINES: In terms of the content claim requirements for organic products?

ANGELA JAGIELLO: Right.

LISA BRINES: Yes, certainly, we do allow a made with claim on organic products for products that contain a minimum of 70% agricultural ingredients. And in general, for the organic requirements, the 95% is really a minimum threshold. So many organic products on the market do certainly contain more than 95% organic ingredients.

And typically, all of the agricultural ingredients often in a product are organic, with small exceptions for a certain number of agricultural products that just aren't available in organic form. But I think the standards were designed, and it's reflected in the Organic Foods Production Act, a recognition that certain processed food products, there are certain essential requirements or essential ingredients in processing aids that are necessary.

So while that 95% provides a minimum baseline, you'll often find organic products with more than that, and again, a small number of processing aids that might be necessary for that particular product category.

SCOTT FABER: Another source of confusion would be that even though you're making a made or organic claim under the NOP, the balance of the products has to be on, those ingredients, have to be on the approved national list that's developed by USDA, whereas if you were making a made with or some sort of qualify claim for a product like this, and you're not complying with one of the private seals that Laura mentioned, then the balance of the product can be pretty much anything. Because as I mentioned earlier, there are virtually no rules, with some state exceptions, for what the balance of the product can include, which is why a product like this can contain chemicals that have been restricted in other countries.

So that might be part of the confusion as well, that some consumers might assume that a percentage claim includes with it a restriction on what the balance of the ingredients may be, because you can't just put anything in a product that carries the seal when you're adding non-organic ingredients. There is a list of ingredients that you can add, and then there are ingredients that are prohibited, and processes that are prohibited. So that might also be adding to a little bit to the confusion here.

BRAD WINTER: Laura?

LAURA MACCLEERY: I guess I wanted to just kind of take a step back and think about what it means for consumers to have some kind of mental categorization exercise where this amount of these practices would add up to organic, and something less than that should be flagged.

I think in general, consumers may not have, despite the findings of our survey on their very specific concerns about fish and organic labeling, they might not have such a-- if you don't pose specific questions to them about this production process or that production process, they may not have a kind of full category sense of what are the inputs to an organic label. I think what they do have is a general sense that it must be meaningful, that it's a validated program, that it's substantially better by some specific measures that someone is checking on than a non-organic product.

And so it's in the weeds that we can make judgment calls about, well, it's going to weaken the standard too much to lower this or that input, or have it be 94% or 96%. But I think that the core consumer value in the label is preserved if the label satisfies a higher standard that consumers generally think addresses several levels of concern, first being their immediate concern for their health and safety around chemicals, and second being a more general concern for the health of the system, whether that's sustainability, or the health of workers, and their exposure to chemicals. Those sort of values.

And so I think that's where you see people saying they want organic to be meaningful. And that's why it's about sort of 100%, or virtually all, or almost all. What they're really saying is, we want this to be a substantial upgrade to existing practices, and we want that to be based on the judgment of experts, and based on science, and all of that.

And I think respecting that impulse is really important, because this is a rational decision, that consumers are entitled to make, which is that they would prefer to be exposed to fewer chemicals. And I think that's a perfectly rational position to take with regard to exposures and the

sort of lack of scientific understanding and the lack of research we have, particularly with regard to compounded chemicals and compounded exposures of the same chemical over multiple products.

And when you look across the cosmetics aisle, you see very similar kinds of chemicals, especially preservatives, colorings, perfumes, and fragrances, you see a set of classic chemicals that extend across a number of different exposure vectors for consumers, and they might show up in your makeup, and your lotion, and your shampoo, and your body wash, and some of your cleaning products.

And so I think consumers are responding to the fact that we don't have a level of scientific certainty about what those compounded exposures add up to in terms of human health effects.

BRAD WINTER: So let me step in--

LAURA MACCLEERY: And so therefore, it's rational for them to basically have a precautionary approach, and to say that this standard should be meaningful in providing them some guide in the marketplace.

BRAD WINTER: Right. And so in our discussion today about how to make it meaningful, let me try to separate these two things out. We want to start this discussion by talking about the percentages, or the composition, because that's one way in which at least some consumers can find it meaningful.

I think Matt's evidence illustrates that. It is also the case, we've heard from you and other panelists, that consumers may take away other implied claims about other environmental benefits. I'd like to try to separate these out, so that we can focus on the percentage, which does, I think, also embrace your chemicals comment. Because if you're a consumer concerned about how many chemicals I'm exposed to, you might want to know what the composition of the ingredient is. Gwendolyn, I see you're wanting to jump in here.

GWENDOLYN HUSTVEDT: Sure, just with regard to the percentage issue. I'm wearing a sweater that is 45% viscos and 50%--

BRAD WINTER: We're not going to hold you to the precise percentage. We are agency looking for deception.

GWENDOLYN HUSTVEDT: You'll at least hold me that it adds up to 100. There's some nylon too.

BRAD WINTER: It doesn't add up to 100, Matt's going to have problems with your math.

GWENDOLYN HUSTVEDT: The gist is, the gist is, no percentages. Loaf of bread, no percentages. So you're talking about percentages, and yet only a very specific category of products are consumers ever informed of the percent of the contents. And so when you focus on

the percentages, I just wanted to point out one limitation of the percentages is that consumers actually don't know what percent of the things are in their product except for textiles products.

Which is why I was able to ask them, like if we made this with 50% viscos, or 60%, because we can actually make a mock label that informs them of the percentages.

BRAD WINTER: That's a surprising point for me to hear you make, because earlier you were arguing that organic operated as a proxy, right? If it was marked organic, consumers would trust that to indicate something indirectly. The same could clearly happen with percentages.

In fact, the NOP system is designed so that if it's marked organic, at least as to the loaf of bread, there's an indication as to the percentage of that bread which is organic.

LISA BRINES: There's not a required percent content claim that's required. The 100% claim is optional. Very few organic products actually qualify for that claim, so most products more fall into the organic or made with organic labeling category.

BRAD WINTER: Right. I'm not asserting that they have to qualify. They have to put the percentage on the label. But if they used the word organic, then that's a proxy for percentage content, right?

LISA BRINES: Yeah, depending on if it's a made with claim. That implies that it be under the standard. There's a minimum 70%. But that's not a required declaration on the label.

BRAD WINTER: Because consumers can rely on the fact that it's made with organic to mean that it has 70% or more.

LISA BRINES: The minimum, yeah.

SCOTT FABER: But let's not lose sight of the fact that the balance, whether it's 5% or 30% can't be formaldehyde. That's not true for this.

BRAD WINTER: Right.

SCOTT FABER: So that's part of the guarantee that you get with the seal, not just that 100%, or 95%, or 70% of the ingredients are organic, but that the balance also meets certain standards for the ingredients as well as how they've been produced and processed. So that's something that certainly educated consumers know. But I'd be interested in what percentage of consumers know.

BRAD WINTER: Would be very interesting. Because that, I think, is now a third implied claim made by the presence of the word organic, which is it implies the absence of other ingredients, such as your formaldehyde example.

ANGELA JAGIELLO: So I would just like to say that in USDA organic, there is no hydrocarbons scenario.

BRAD WINTER: Right.

LAURA MACCLEERY: Yes, and to the extent to which that regulation determines some kind of substantial compliance with the 95%, we've seen products with organic waters listed as an input that's an organic ingredient. Water is explicitly excluded from the 95% calculation. So you see a lot of gamesmanship around the edges of the products that are falling outside the regulatory space. I don't even know what organic waters are. How would you have non-organic waters?

LISA BRINES: I suspect you could probably distill water from an agricultural product.

[LAUGHING]

Yes, you're welcome to submit those complaints to our compliance department for follow-up as needed.

LAURA MACCLEERY: Duly noted.

LISA BRINES: I did just want to make one comment on some of the health and safety claims. I know some of the concerns expressed by the other panelists have to do with these chemicals that in the balance of the products. From USDA's perspective, we don't treat organic as a health and safety claim. Certainly, it's in the interest of the US government to make sure that all products that are marketed to consumers meet health and safety standards.

So we certainly have an interest in protecting the integrity of the seal and what that seal means. Organic production does have a definition under our regulations, which has to deal with, as a first process using mechanical, biological processes at the production level, fostering, cycling of resources, promoting ecological balance, conserving biodiversity.

So that's the core of organic. Certainly, the materials are a big part of the implementation of that. But from a National Organic Program perspective, we don't consider the organic claim to be a health claim.

SCOTT FABER: Could I just quickly add that I'm glad Laura raised this. Because, of course, people should get what they're paying for. So deception is certainly one of the most important issues we're talking about. And protecting the integrity of the seal is also important. And these misleading claims undermine the integrity of the seal, and there's now a \$40 billion industry that depends on the integrity of the seal.

But as Laura said, there are really serious health problems that have been linked to all the different ways that we're exposed to chemicals throughout the course of our lives. And don't take it from EWG, take it from the National Institute for Environmental Health Sciences, which has repeatedly shown that all the different ways that we're exposed to chemicals and these sorts of consumer products has serious health impacts, including links to cancer, reproductive problems, neurological problems.

In particular, many of these products contain chemicals that interfere with our hormone systems in certain ways that mimic hormones, or turn off hormones that ultimately have very serious impacts, especially on infants and young children.

So it's part of the deception question, because while the government is getting more tools and authorities to look at chemicals and how these aggregate exposures impact our health, consumers are using these kinds of disclosures to sort of shop around certain ingredients that parts of our government are telling us are dangerous.

So I understand USDA's role, but I think it's really important to understand probably the primary reason that consumers are looking for clarity around these sorts of disclosures is they are using it as a tool to shape not just the world around them, but their own health.

BRAD WINTER: So Scott, that raises-- and I do want to get back to my percentage problem, but I'm sensing that the movement of the panel into this area, started by Laura, about the health and safety impacts. And certainly, the USDA has been clear about the purpose of their organic standards being agricultural production, not the health and safety.

But I am hearing about a takeaway about that. This gets to us at the FTC about a difference between implied and expressed claims, and whether or not a product is free of something. Laura, can you talk to us about that?

LAURA KOSS: Right. I think I've been intentionally quiet because I want to learn from everybody. But I think I'm going to give a quick FTC ad-law 101, just so people can understand what the FTC's framework is. And essentially, as Jessica pointed out in the beginning, Jessica Rich, Bureau Director, we have authority to take action against deceptive claims. So that raises a question as a marketer, what is a claim, and how does FTC determine whether a claim is deceptive?

I'll talk more during when we talk in our last panel about how we determine how a claim is deceptive. We look at it from the perspective of a reasonable consumer. But the key issue is that marketers are on the hook for express claims that they make, but also for implied claims.

And a big chunk of what we're talking about today is that organic is a proxy for other claims. And the FTC has, for example, no chemicals, health of workers, safety claims, no antibiotics, what have you. The FTC has provided guidance in the green guides, essentially to tell marketers, you know, this is how reasonable consumers understand these claims, not just the express claim that you're making, like if you say something is free of, but also implied claims that reasonable consumers might take from that claim.

So if you say your product is free of something, it might literally be free of something. That's the express claim. But you're also have to be able to back up an implied claim, for example, that your competitors' products do have that particular ingredient that you claim your product is free of, or that your previous formulation of your product had that substance, and now it doesn't.

So essentially, the key here is that marketers don't often intend to make the implied claim, but under the FTC law, they're responsible for being able to back up those implied claims, regardless of whether they intended to make them.

BRAD WINTER: Great. So let's take the implied claim that an organic product means that it has a certain percentage content, which is consistent with the USDA framework, or even an express expectation that a product that is organic can't have either certain ingredients or a high percentage of inorganic ingredients, as all variations on this percentage problem that we're talking about.

We've had a chance now to talk about the FTC USDA study on that. I'm curious, each of you outside of government have done your own studies, the extent to which your studies bear on these conclusions about the percentage problem. Anybody want to chime in? Gwendolyn?

GWENDOLYN HUSTVEDT: Yeah. I popped this up in part because as someone with a chemistry background, I did just want to make sure and get on the record that this natural versus synthetic does not necessarily guarantee the protection of health. I am a textile scientist who's in the unfortunate position of being allergic to lanolin. And so, I read every cosmetic product that I purchase looking for the presence of lanolin, which has a very adverse impact on my skin.

In a study of the Italian consumers from 2013, they looked at consumers and found that actually about half of their sample had deep skepticism about the effectiveness of natural ingredients to actually accomplish what the product claimed that the natural ingredient would accomplish, and they were concerned about the quality control.

And I know that there are consumers out there who don't feel their view represented by stating that all synthetic chemicals are dangerous for their health. So I wanted to put that on the record as well, that it's not quite that simple. And I know we know that. But I wanted to state that.

BRAD WINTER: All right. And I'm going to come back to you, because I know you've also studied the percentage question. But we'll bounce it around, and then we'll come back. John?

JOHN BERNARD: Yeah, I've been curious for a while about when consumers see organic, are they just going to assume that means it is 100% organic? And that was kind of my suspicion that I had, and with a different cutoff levels and stuff. So in terms of willingness to pay, then, what I wanted to do is compare like a conventional version of product, and then look at the other versions by giving them a different possible cutoff level.

And so I didn't tell them what the official USDA were. I just gave them some that matched up, and then I added a-- I had 100% one. I had added in a 99% one. Then I had the 95%, and I did the 70% one as well. And I get some pretty dramatic differences in what consumers were willing to pay when they're given these different levels.

Obviously, 100 is the perfect one, obviously. And they have a nice good premium for that. And 99%, it's just a little bit less, but not much. And then even by the time we get to 95%, I'm starting

to see a real decrease in what they're willing to pay. And significantly less than for 100% or 90%. It's not much less, but it's a little bit down there.

And then when I go to 70%, it's really not much more than conventional. They don't consider that to be, from a willingness to pay perspective, maybe there is just no organic still, but they're not willing to put a lot of money into something that's just 70%. They don't see that it's much different, or giving them much benefit over what a conventional version would give them.

BRAD WINTER: So that's actually a measure of how much consumers are willing to pay for the difference in percentage content.

JOHN BERNARD: Yes.

BRAD WINTER: And that's fascinating for me, because part of the doctrine of FTC law is that a claim has to be material, that it has to impact consumers' willingness to, for instance, purchase the product. And so your evidence is actually evidence of how material it is. It's a quantification of that.

JOHN BERNARD: Right. Right. Right.

BRAD WINTER: Fascinating. Angela, OTA's study, does it corroborate, contradict, the findings of our research?

ANGELA JAGIELLO: I'll be honest that I'm struggling with the relevance of the percentage problem and the time that we're spending on it. Organic is a multi-benefit robust label. And as it pertains to agricultural products, there's clear guidance for marketers and consumers about what that means.

Absent that same type of guidance, there will be fraud, and confusion, and all sorts of problems. And no amount of consumer education can substitute for clear guidelines. So we don't ask consumers do you like 100% organic, better than 95%, better than made with organic ingredients, because we know that they can rest assured that all of those claims come with a very rich set of benefits, and it's not just about the percentage. It's about the entire composition of the product from seed to shelf.

BRAD WINTER: Right. That's an argument to label non-food products organic. But that begs the question of what percentage we should require in order for it to earn the label, which is why the percentage question is relevant.

ANGELA JAGIELLO: And I guess I feel like that's a tough question for consumers to have to answer.

BRAD WINTER: No, I'm trying to ask you that question, and everyone on this planet.

ANGELA JAGIELLO: I'm definitely not going to answer that. That seems like a great place for draft rule making and public comment. Right? So I guess what I'm saying is--

BRAD WINTER: And I'm inviting all of you in the public to comment on this question.

ANGELA JAGIELLO: Yeah.

BRAD WINTER: I'm sorry, I cut you off.

ANGELA JAGIELLO: No, no.

BRAD WINTER: No, it is a great question. And so I'm inviting anyone on this panel, as well as the public to comment on it. We've heard lots of arguments today based on the evidence that consumers are deceived. And so if at least some of us on the panel have that sense-- well, let me just check.

SCOTT FABER: Maybe I could just-- I think you're mischaracterizing the percentage problem, or maybe thinking about it differently than a regulator might think about it. In this context of non-food products, the percentage problem is that while there are strict rules for how percentages might apply to food products, organic food products, consumers might believe those same rules apply to nonfood products, whether it's personal care, cleaners, textiles, et cetera.

So to the extent that there's consumer confusion, it might be that the sorts of qualified claims that you can make on non-food products, which are subject to rules, are in the minds of consumers, that those same rules apply to similar claims on nonfood products, like the shampoo.

So that's where I think, to the extent that there's a problem here, it's not with [INAUDIBLE] the 100%, or organic, or made with claims that are now tightly regulated, and that are very familiar to organic food consumers, but how their understanding of those rules might mislead them when they're picking up the organic shampoo in the next aisle over.

And so I think that's part of the challenge here, is that because it's the Wild West for these sorts of claims, but that that's where that there might be confusion.

ANGELA JAGIELLO: Right. So let me go to Laura, and then we'll come back to Gwendolyn.

LAURA KOSS: Right. I'm just responding to something that Angela said, that consumers will be confused until there's guidance. Because people are noting there's a regulatory breach here. And again, we'll be talking about this more in the policy panel. But I just wanted to explain that in terms of FTC guidance, under Section 5 of the FTC Act, we have authority to prevent or to act upon deceptive claims based on how reasonable consumers understand claims now.

So our mandate is to ensure that marketers can substantiate all reasonable interpretations of claims, but not to change consumer perceptions. So I just wanted to get that across, because it's not that our goal is to change consumer perception. Of course, there's a role for consumer education. But in terms of providing guidance, we need to reflect how consumers understand claims at this point. And we're going to talk a little bit more about the Green Guides, but that's essentially what the Green Guides do.

ANGELA JAGIELLO: Gwendolyn.

GWENDOLYN HUSTVEDT: Sure. And just really quickly to look at the study that I conducted that did have percentages in it as well, since that was part of what you were asking. And so, it was a conjoint study, so not quite as robust as the experimental auctions that we do with actual cash.

But we presented them with several different percentages and different types of additional labeling, holding everything else constant, and only changing the percentage as we move from 5% organic cotton, so a product that has a label in the back that says 5% organic cotton, all the way up to one that said 70% organic cotton, which would have been sort of the bottom of the percentages.

We actually see a smooth line in the increase in their purchase likelihood for a third of the sample. So 2/3 of the sample, we would call them non-content users. Their purchase likelihood does not change as we change the content. But the content users, their purchase likelihood actually increases in a smooth line, going from 29% to 82% as the percentages increase.

So there was a segment of consumers that are using the percentage to determine their purchase likelihood, and are more willing to purchase it as the content goes up. And of course, textiles are in a little bit different category, because we already label specifically and separately for the percentage of the various fibers that are in the product.

BRAD WINTER: So let me follow-up, and then Laura. So that's a study when you talk about the smooth line going up of the consumer's value they attribute to the organic percentage, not necessarily what their expectation is on a product if it's just labeled.

GWENDOLYN HUSTVEDT: No, although this particular product, the situation that I just described was the situation when we told them that it had been also processed organically, which for textiles, because of GOTS is a separate label. And so that's the particular scenario that I outlined in the paper. .

Although the math is here. Anybody else could do any of the other scenarios if they wanted. And so in this case, we've assured them that the product has been processed organically. And then as the percentage of fiber content, organic fiber content, increases then purchase likelihood increases.

BRAD WINTER: Right. So with the assurance for a truthful claim, in this case it's express, it's easy for consumers to make the decision, I'm willing to pay more for that.

GWENDOLYN HUSTVEDT: It will. At least a third of the consumers were.

BRAD WINTER: Right. Which is a meaningful number of them, a significant number. The harder question is when consumers aren't given an express claim as to the percentage content, and it's just identified organic. What percentage do consumers expect? So let me ask you the same question that I asked Angela and others on the panels, which is based on that researcher, or

the many other studies that you've done, do you think your research contradicts or corroborates our findings that Matt laid out early in this panel about the percentage problem?

GWENDOLYN HUSTVEDT: I don't know, given that textiles are just different. I'm just not sure. I have a gut reaction. My students had a gut reaction. But I think that we were having that reaction as potentially reasonable consumers, rather than as scientists.

BRAD WINTER: Right. And so one of the concerns you flag is that it might be different for textiles. We've heard from USD and others about how they have a treatment for textiles versus others, and we had it early in this panel under Hampton's panel about using the apple as the example, about whether food versus non-food are assumed to be the same or assumed to be different. These might be areas of future research, and that might be a subject of something we'll talk about in the next panel.

I want to circle back, because I asked early on if there were other limitations identified in the FTC study. And a couple of you had multiple part answers, and I redirected us back. I want to see if anybody else has come up with any new limitations on the FTC study. And if not, then we can talk to Lisa.

I'm sorry. And before that, that's right Laura. I'm going to clean that part of the record up. But Laura, you did want to jump in, and I invite that.

LAURA MACCLEERY: Thank you. It was falling on Gwendolyn's point. I mean, I think there are differences in the way that consumers might have expectations for the expression of organic across different product categories. I think Scott's talked about something that would be an inconsistency that's sort of glaring, right, which is that something labeled organic in the personal care products aisle might contain non-organic ingredients, even chemicals of concern that consumers would think outside the scope of an organic label.

And so our research showed, as I mentioned earlier, 70% of consumers think USDA shouldn't permit use of non-organic ingredients in organic food production if they're not deemed essential. So that doesn't go to the percentage, but there's a rational regulatory infrastructure that's making decisions about what's essential and what's inessential, and is determining the meaning of the label.

And I would think that that same-- and then if you look at the FTC's results, on the unqualified organic claim, it was 52% of responses for shampoo and 40% for mattress that all ingredients or materials in the product were organic. So that says, OK, so for most consumers, the reasonable consumer with regard to shampoo and almost the most with regard to mattresses, consumers assume that that's all ingredients, or close to 100%, or that there's some I would think meaning to the term organic with regard to the contents of the object.

And I would think the goal would be to figure out whether or not 95% or some other kind of measure of inputs that map onto consumer expectations is appropriate for textiles or mattresses, and to do those as kind of specific regulatory inquiries into what's possible in the industry, what's the sort of state of the art with regard to industry practices and consumer expectations, and to set

a meaningful and substantial standard that creates a distinction in the marketplace that consumers would think maps onto their expectations, and not to get obsessed about 5%. Because 5% percent in the context of a mattress may not be a meaningful standard at all.

So the other thing I would note is that this FTC result really does speak to the question of what I think both on the level of an express and an implied claim what consumers expect, not just that there are some amount of organic ingredients in the product, and you could think of this as express or implied, I think, but the implied implication is that the other ingredients in the product that might not qualify for organic status are not harmful. Right? Or are on the national list, if you want to use the NOSB kind of frame.

So you know, I think both of those things you could read into these data, and those are consistent. And I think the difference between the findings we have on food and what you found with these other products is that consumers know, a broader number of consumers would know, that there's some kind of regulatory system that regulates the meaning of those terms with regard to food, and that may not be in place with regard to these other products.

BRAD WINTER: Right. There's a consumer expectation, and there is some evidence-- we talked in the prior panel that there is, I think as you put it, this rational regulatory system. The question, though, is whether or not that regulatory system is inherently implied by the word organic.

We have a long history of the USDA building that understanding when it comes to food. We've talked about the way in which that can overlap into non-foods. But you can achieve a lot of that rational regulatory system by having just a certification independent of the word organic.

GWENDOLYN HUSTVEDT: Right. But the word organic is what's being used on labels because of the freight that USDA has awarded it over the years. And so, it's being deliberately deployed. And at this point, it's more marketing than substance, because it doesn't actually key into a system of oversight and verification of claims.

And so, I think having a system that is developed through rule-making that applies reasonable standards, that creates substantial benefits the way that consumers expect for organic products and are tailored to the particular product categories, whether it's personal care products or mattresses, and develop that is really an imperative, given that this term is being bandied about.

BRAD WINTER: Right. So I think what you're identifying in FTC parlance is that the organic claim implies that it's USDA regulated, even though we well understand that the USDA has jurisdictional limits on what it is--

GWENDOLYN HUSTVEDT: Yes.

BRAD WINTER: --it can regulate. And so one question, then, is whether or not marketers are obliged to substantiate that implied claim.

LAURA KOSS: Right. And again, I think that would depend on-- for us, if we were going to give guidance that in every case, a marketer would need to, for example, qualify their claim to

say, we don't have USDA certification, then we would have to take a very close look at the research and make sure that we have solid evidence.

Basically, for the under FTC law, you can qualify a claim if it's otherwise true, but you need limited language to avoid a misleading impression. And so, that might be an instance where if there were solid research that consumers, that there was an implied claim that in every single case, an organic claim had USDA regulation, then that might be a place for a qualification.

BRAD WINTER: I'm glad you raised qualification. I need to get to that. Before I do, let me just wrap up the prior topics. Does anybody else have anything else they want to flag on the limitations of the FTC evidence, or whether or not their own research collaborates or contradicts our findings? Angela, you've had your tag up?

ANGELA JAGIELLO: Thanks. I would like to say that I think non-foods are very different than strictly agricultural products, and that it will therefore be very important to also talk about not just the percentages, but the process by which those products are created.

And you know, it's been alluded to, the 95%, but what's in the 5%, and what's explicitly not in the 5%. And then, again, I'm just going to say certification, because anyone can make a claim. But without some sort of validation, it really is meaningless.

So the study didn't really ask people, I don't think-- maybe I'm mistaken about process. So that that's limitation in my mind. We talk about content, but not process. And I'm just throwing in certification, because it's important. It's really pretty key.

BRAD WINTER: OK. Yes, John you also have your-- so thank you for those three points, Angela. John, you have your flag up.

JOHN BERNARD: Just a couple things. I don't know if it's really limitation, but just different ways different surveys can be done, as far as some of the phrasing you use, like I worry about the made by a man-made chemical process phrase. That inherently sounds negative to me, like it's going to draw a reaction, where people are going to be less favorable to that.

And then [INAUDIBLE] question 10.1, and later on 10.2, I think you just use the phrase not organic, which has less negative intentions towards it. And there's also but may pose no health or safety hazards to consumers. That seems like a pretty strong claim to say that it can't have any health or safety concerns. That's probably something Scott would touch on, right?

Usually, when we do studies like that, we've done things like say, it has some of these things that are not organic, but they're all within like, government standards and limitations. That's usually how we try and phrase about making like, an actual safety or health claim on it.

Again, that probably not really limits the study. Just might get slightly different results to slightly different phrasing on some of the questions. And then one other part I want to follow up with, from discussion of the USDA organic label versus just having an organic label. And of course, that was something I've been curious about as well.

So albeit, it's with food again. So many people see food, and they just assume when they see the word organic, it means USDA organic. But we auctioned off foods. [INAUDIBLE] everybody here is the seal. We put it on the big board up like, right? It said USDA organic. And then half the people saw that, and the other half of people just saw the word organic.

And we didn't have any differences in what was paid. It didn't make a difference. Again, it might be food context, where we're just assuming that USDA organic. But whether we had the seal and the USDA word or not, they were treating those things the same.

BRAD WINTER: All right.

LAURA MACCLEERY: John, we would like another study like that with the products, and then we'll have the evidence that we need.

JOHN BERNARD: I can do that.

[LAUGHING]

BRAD WINTER: That's encouraging to hear. Any new study in this area is encouraging to hear. I think Lisa had a further point on man-made chemicals, because I cut her off on that at the very top of this panel.

LISA BRINES: Yeah, since we came around to it, I might as well say it now. Yeah, we had I guess identified similar concerns about the use of that term. It seems to be used as a substitute in the study for conventional agricultural products, or conventional products, or synthetic products, as we define them under the regulations.

I don't know that a [INAUDIBLE] participant, I guess, would necessarily recognize that as a difference. Even the description of the ingredients in this question provided that the agricultural products are grown without any substances that do not occur in nature. It's not necessarily an accurate description of organic products. So certainly, you have some things that might be say, necessarily treated with soap sprays, or things that we would consider synthetic under our regulations, but certainly could be used in compliance with the organic regulations when other preventative measures are insufficient to control pests.

So that's sort of nuance in terms of the organic regulations. But I think certainly, certain products that consumers may not object to-- I'm thinking of like milk. Generally, with organic milk, that would contain vitamin D. So vitamin D would be considered synthetic under our regulations. And it's traditionally derived from a man-made chemical process, but not necessarily would be something that might be objectionable to most organic consumers.

BRAD WINTER: Difficult to capture the breadth of NOP regulatory framework in a single survey question.

LISA BRINES: I recognize the limitations. Thank you. And I was informed earlier, John, you talked about the time it took to define sustainability in one of your own studies. And so, it's a survey instrument challenge.

JOHN BERNARD: We did that with Gwendolyn. And Gwendolyn kept sending me definitions that had the word sustainability in it. So it's like, well, we have to find a way to get that word out of there.

BRAD WINTER: Right.

SCOTT FABER: I just wanted to follow up and acknowledge that these are all things that we consider in trying to write down an effective survey question. But of course to be completely comprehensive would be no longer an effective survey question.

MATT JONES: Right. Right. And we also struggle with the issue of how do you describe materials that may not be considered organic without actually saying that? Because I think you talk about possibly sensitizing the responses by using certain language. If we use the word non-organic, and then ask people, do you think that an organic claim accurately describes the product, that would sensitize them even more.

So you know, it's a difficult challenge to try and capture that without being too strong. So this was our attempt to do that. And we thought that the language we used was fairly general, and would apply to a wide range of scenarios, even though it won't apply to all of them.

BRAD WINTER: So let's--

ANGELA JAGIELLO: So, so quick.

BRAD WINTER: Yeah, we're almost out of time, so we're going to go to Angela, and I got a wrap up question.

ANGELA JAGIELLO: I'm curious why you didn't just say conventional?

MATT JONES: I didn't think about that. I'm curious about how exactly maybe the question would be structured differently. But we wanted to create somewhat of a contrast between things that folks would likely agree are organic and things that where it'd be more of a question. So I suppose conventional would be one.

BRAD WINTER: I've also gotten comments on this topic. And conventional is apparently a word that those with depth in the industry have a lot of familiarity. Conventional to someone less educated on this topic, audience member, might not have a standard meaning.

I'm not saying that played a role in the study design. But this particular question about whether or not to describe it as man-made chemical processes is one that has a history. I'm almost out of time so I'm going to do this by just raise of hands.

On the example of organic dry cleaning, which is the third example in our study, does anybody defend the proposition that dry cleaning is organic? Do you want to raise your hand? We can talk afterwards. I've got no votes and nine seconds left. So I want to thank each one of you for contributing both your research and your discussion to us today.

That's it for this panel. We're cutting to a break for 15 minutes. Remember, the internet feed may cut off, but we'll be back in 15 minutes, technology willing. Thank you.