

FILED
Superior Court of California
County of San Francisco

18 2008

LONDON PARK-LI, Clerk

BY: _____ Deputy Clerk

1 THOMAS H. CLARKE, JR. (SBN 47592)
2 TIMOTHY A. DOLAN (SBN 209674)
3 ROPERS, MAJESKI, KOHN & BENTLEY
4 201 Spear Street, Suite 1000
5 San Francisco, CA 94105
6 Telephone: (415) 543-4800
7 Facsimile: (415) 972-6301
8 Email: telarke@rmkb.com
9 tdolan@rmkb.com

10 Attorneys for Plaintiff
11 ECOCERT FRANCE (SAS) & ECOCERT, INC.

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SAN FRANCISCO

14 ECOCERT FRANCE (SAS) & ECOCERT, INC.

15 Plaintiffs,

16 v.

17 ALL ONE GOD FAITH, INC. (dba Dr. Bronner's
18 Magic Soaps); ORGANIC CONSUMERS
19 ASSOCIATION,

20 Defendants.

21 CASE NO. 08C-08-474413

22 COMPLAINT FOR
23 DECLARATORY RELIEF

24 C.C.P. § 1060

25 Plaintiffs ECOCERT FRANCE (SAS) and ECOCERT, INC., allege as follows:

26 **THE PARTIES**

27 1. Ecocert companies affiliated with plaintiffs have 17 years of experience, having
28 been founded in 1991, in the certification of a wide variety of products and services. Among
these activities are:

a. Certification of organic foods according to the European Union standard (known
as EU 2092/91), the U.S. standard (commonly known as the National Organic Program, or
"NOP," which is administered by the U.S. Department of Agriculture ["USDA"]), the Japanese
standard (known as JAS), a wide variety of other national and regional standards (for example,
India, China, Quebec, and Costa Rica), and a wide variety of private standards (for example,
BioSuisse and Naturland). Among numerous qualifications as an officially recognized certifier

Ropers Majeski Kohn & Bentley
A Professional Corporation
San Francisco

1 pursuant to the above programs, ECOCERT has been approved as a certifier by both COFRAC
2 (Comité Français d'Accréditation [the Committee for Accreditation of the government of France])
3 and by the USDA. The COFRAC certification also requires an assessment of whether and
4 conclusion that ECOCERT complies with ISO 65, the General Requirements For Bodies
5 Operating Product Certification Systems. USDA has adopted portions of the ISO 65 process into
6 its NOP, and thus its certification of ECOCERT under the NOP includes a like accreditation.
7 ECOCERT is also accredited by MAFF (the Japanese Ministry of Agriculture, Forestry and
8 Fisheries) for the JAS certification.

9 b. Certification of organic nonfood items, such as cosmetics and textiles.

10 c. Certification of quality and food safety standards (for example, the European
11 EUREPGAP© standard, the International Food Standard, and the British Retail Consortium
12 standards [sometimes jointly referred to as IFS/BRC]).

13 d. Certification of “Fair Trade” qualification.

14 e. Certification of the quality of Management Systems (for example, ISO 9001
15 [quality], ISO 14001 [environment], ISO 22000 [food safety], OHSAS 18001 [safety and
16 security], EMAS [environment], Greenhouse Gas Emissions, and Forestry [PEFC, the sustainable
17 forest management standard]).

18 2. The affiliated companies include subsidiaries located in 15 countries and a
19 business certification presence in 85 countries worldwide. All of ECOCERT’s standards are
20 transparent, and freely available on the internet in several languages, including English.

21 3. Plaintiff ECOCERT FRANCE (SAS) is a French corporation that certifies, among
22 other things, cosmetic products as “organic”.

23 a. Under French law, the creation of a standard, such as those created by ECOCERT,
24 requires an entity to engage in a process that is defined in law. ECOCERT FRANCE (SAS)
25 undertook said process when it developed its organic cosmetic standard.

26 b. Among other requirements, the development of a standard requires consultation
27 with and review by various interested parties, including but not limited to relevant professionals
28 in the field, associations representing consumers and the users of the product(s), and government

1 agencies. ECOCERT engaged in such consultation and review processes over the two-year
2 period that it took to develop the organic cosmetic standard.

3 c. The government of France approved of the consultative process that was
4 undertaken by ECOCERT in its development of an organic cosmetic standard.

5 d. The standard was thereafter published in the government “Journal officiel de la
6 République française,” a publication akin to the Federal Register in the United States, by the
7 Industry Directorate of France.

8 e. The standard is currently available in several languages, including English, on the
9 ECOCERT web site.

10 4. ECOCERT, INC. is a Delaware corporation qualified to do business in California.
11 It is an affiliate of ECOCERT FRANCE (SAS). ECOCERT, INC. is headquartered in the City
12 and County of San Francisco, and performs certification activities in the United States on behalf
13 of ECOCERT affiliated companies.

14 5. USDA has established a program for the certification of agricultural products as
15 “organic” pursuant to 7 U.S.C. §§ 6501 et seq. (the National Organic Certification Program). The
16 USDA program is authorized to certify as “organic” qualifying “agricultural products,” as that
17 term is defined in 7 U.S.C. § 6502(1): “The term ‘agriculture product’ means any agricultural
18 commodity or product, whether raw or processed, including any commodity or product derived
19 from livestock that is marketed in the United States for human or livestock consumption.”

20 6. The ECOCERT affiliated companies are not associated with, were not founded by,
21 and do not receive financial support from commercial food or cosmetic enterprises, or any other
22 entity that it reviews and assesses for compliance with various standards, other than in the form of
23 fees which it charges for the assessment and review process and the determination if the products
24 or services meet the applicable standards.

25 7. ECOCERT FRANCE (SAS) is currently working jointly with the European
26 Commission and other interested parties to develop a uniform organic cosmetic standard for the
27 European Union. Among these other entities are EcoGarantie of Belgium, AIAB of Italy, BDIH
28 of Germany, and SOIL of the United Kingdom.

1 8. Defendant ALL ONE GOD FAITH, INC. (“BRONNER”) is a California
2 corporation fka DR. BRONNER'S ALL-ONE PRODUCTS COMPANY fka ALL ONE FAITH
3 IN ONE GOD STATE UNIVERSAL LIFE CHURCH, INC. The President of BRONNER is Mr.
4 David Bronner. BRONNER is located in Escondido, California, County of San Diego.
5 BRONNER provides financial support to Defendant ORGANIC CONSUMERS ASSOCIATION.
6 On information and belief, plaintiffs allege that the entity “Dr. Bronner’s Magic Soaps,” referred
7 to in the correspondences of Sandler, Reiff & Young, P.C. and of Cummins & Bronner, described
8 more fully below, is one and the same entity as ALL ONE GOD FAITH, INC. fka DR.
9 BRONNER'S ALL-ONE PRODUCTS COMPANY fka ALL ONE FAITH IN ONE GOD
10 STATE UNIVERSAL LIFE CHURCH, INC.

11 9. Defendant ORGANIC CONSUMERS ASSOCIATION (“OCA”) is a 501(c)(3)
12 entity and a Minnesota nonprofit corporation; its Executive Director is Ronnie Cummins. OCA is
13 located in Finland, Minnesota, and receives financial support from BRONNER, among others.
14 On information and belief, plaintiffs allege that the entity “Organic Consumers Association of
15 Little Marais, Minnesota,” referred to in the correspondence of Sandler, Reiff & Young, P.C.,
16 described more fully below, is one and the same entity as OCA.

17 **BACKGROUND INFORMATION**

18 10. On or about March 14, 2008, the law firm of Sandler, Reiff & Young, P.C., of
19 Washington, D.C., stating that they were representing BRONNER and OCA, wrote to ECOCERT
20 FRANCE (SAS) , to complain about the labels used by two brands. The correspondence alleged
21 that ECOCERT has misapplied its own standards and permitted misleading claims to be made on
22 the labels of the products of these two brands.

23 11. The correspondence from Sandler, Reiff & Young, P.C., lacks specificity as to
24 which products of the two brands are being questioned. On information and belief, plaintiffs
25 allege that approximately 26 products sold under these two brands bear an Ecocert seal; to put
26 this allegation in perspective, plaintiffs note that to date over six thousand, five hundred (6,500+)
27 cosmetic products have been certified by ECOCERT FRANCE (SAS). Further, the
28 correspondence referenced “cleansing products”; on information and belief plaintiffs allege that

1 one of the referenced brands, Stella McCartney, sells skin-care products, such as creams and
2 lotions, and does not sell cleansing products. The correspondence further alleged that the
3 cleansing products of the two brands were not properly “organic”. The correspondence also
4 makes a claim that the allegedly analogous “soap” products of BRONNER (and BRONNER
5 alone) are properly “organic”.

6 12. The correspondence from Sandler, Reiff & Young, P.C. further alleged that the
7 offending product labels violated the USDA National Organic Certification Program (even
8 though the NOP applies only to agricultural products), and additionally asserted that the NOP was
9 the applicable standard for ascertaining what is an “organic” cosmetic.

10 13. In fact, the USDA National Organic Program itself notes that “USDA has no
11 authority over the production and labeling of cosmetics, body care products, and personal care
12 products” except to the extent that the cosmetic product contains an “agricultural product”. Thus,
13 USDA notes that the NOP is applicable only to the extent **an ingredient** in a cosmetic product is
14 an agricultural product and also claims to be organic; in all other respects, the NOP is irrelevant
15 to whether or not a cosmetic is “organic”. As noted by USDA in April, 2008: “Cosmetics, body
16 care products, and personal care products may be certified to other private standards and be
17 marketed to those private standards in the United States. These standards might include foreign
18 organic standards [such as that of ECOCERT], eco-labels, earth friendly, etc. USDA’s NOP does
19 not regulate these labels at this time.”

20 14. The correspondence from Sandler, Reiff & Young, P.C. further claimed that the
21 products of the two brands failed to comply with Section 110839 H.&S.C., which addresses
22 certain labeling issues.

23 15. The correspondence also complained about the OASIS standard, which in no
24 manner is associated with ECOCERT, and how OASIS may differ from the “emerging” NSF
25 standard [meaning the so-called NSF standard is not even finalized] supported by BRONNER and
26 OCA. None of these assertions and posturing has anything to do with the ECOCERT standards,
27 which have been long established.

28 16. Finally, the Sandler, Reiff & Young, P.C. letter states that “Our clients

1 [BRONNER and OCA] contend that your company's labeling and advertising practices constitute
2 false and deceptive advertising and an unfair and unlawful business practice under California
3 law." The correspondence alleged that consumers have been misled by the ECOCERT
4 FRANCE (SAS) certification. The correspondence then demanded that ECOCERT FRANCE
5 (SAS), among others, commit in writing by no later than April 20, 2008 to the elimination of all
6 certification as "Organic" of any and all cosmetic products sold in California on or after
7 September 1, 2008.

8 17. On or about March 26, 2008, Messrs. Cummins and Bronner themselves wrote to
9 ECOCERT FRANCE (SAS), among others. They noted that "Our intention remains to clean the
10 situation up, and not to drag culprit brands through the mud longer than necessary." Like the
11 correspondence of Sandler, Reiff & Young, P.C., their counsel, they asserted that the USDA
12 program is applicable to cosmetics (even though the enabling law and USDA specifically make
13 clear that the NOP applies only to agricultural products, and the USDA itself disclaims the
14 application of NOP to cosmetic products).

15 18. Bronner and Cummins also claimed that "After five years of frustration, we have
16 created the only situation we realize will effectively incentivize the necessary changes, and are
17 fully prepared to litigate and publicize each step of such litigation." They then provided a so-
18 called "settlement agreement" which they demanded be executed. The terms of the settlement
19 agreement for standards that define "organic" products differ from the standards applied by
20 ECOCERT FRANCE (SAS) through its long established and widely publicized standard, as
21 described hereinabove.

22 19. There are in the United States today multiple standards for "organic cosmetics"
23 that have been developed or are in the process of being developed. OCA and BRONNER have
24 participated and currently participate in a private, non-governmental process for developing a
25 standard for organic cosmetics that is currently being written, but which is not yet final; this
26 process is sometimes referred to as the "NSF" standard. ECOCERT FRANCE (SAS) has
27 already developed a standard for cosmetic products, pursuant to French law, which is widely
28 publicized and well established, as noted above. [As noted previously, the European Union is

1 seeking to develop a standard to be applied within its territories, an activity in which ECOCERT
2 FRANCE (SAS) is participating.] A number of cosmetic companies have also developed their
3 own standard known as OASIS. These standards differ one from another.

4 20. The correspondence of Messrs. Cummins and Bronner, the Executive Director of
5 OCA and President of BRONNER, respectively, as well as the correspondence of their counsel,
6 make abundantly clear that defendants intend to file suit against the plaintiffs herein if the
7 plaintiffs do not concede to the demands of OCA, BRONNER, and their counsel, and that they
8 intend, in their own words, to drag plaintiffs and their reputation through the proverbial mud and
9 to engage in widespread and negative publicity aimed at sullyng the reputation of plaintiffs if
10 plaintiffs have the audacity to refuse to surrender to the demands of OCA and BRONNER.

11 21. On information and belief ECOCERT FRANCE (SAS) and ECOCERT, INC.
12 assert that the sole motive behind the threats and attempted intimidation noted herein by
13 defendants is, through litigation, to seek to impose the private, non-governmental standard they
14 are seeking with others to develop (known as NSF) upon other entities that have developed
15 alternative standards for organic cosmetic certification, including that of ECOCERT. This
16 conclusion is further supported by the fact that the certifying entity known by QAI is owned by
17 the nongovernmental entity developing the NSF standard, and that QAI is a competitor of the
18 ECOCERT affiliated companies.

19 FIRST CAUSE OF ACTION

20 (Declaratory Relief Against BRONNER And OCA)

21 Section 1060 C.C.P.

22 22. Plaintiffs incorporate herein Paragraphs 1 through 21, as though fully set forth
23 herein.

24 23. An actual controversy has arisen and now exists between plaintiffs and defendants
25 concerning their respective rights and duties in the plaintiffs contend that their certification of
26 cosmetic products as "organic," if a product meets the ECOCERT standards, is not false and
27 misleading pursuant to Section 17500 B.&P.C., and defendants dispute this contention and
28 contend that the certification is false and misleading pursuant to Section 17500 B.&P.C.

1 24. As a separate and independent basis for this cause of action, plaintiffs note that an
2 actual controversy has arisen and now exists between plaintiffs and defendants concerning their
3 respective rights and duties in that plaintiffs contend that their certification of cosmetic products
4 as “organic,” if a product meets the ECOCERT standards, is not a violation of Section 17200
5 B.&P.C., and defendants dispute this contention and contend that the certification is a violation of
6 Section 17200 B.&P.C.

7 25. Additionally, an actual controversy has arisen and now exists between plaintiffs
8 and defendants concerning their respective rights and duties in that plaintiffs contend that the
9 defendants lack standing to bring any allegations against plaintiffs based on Sections 17200 or
10 17500 B.&P.C. because defendants cannot meet the requirements for standing as set forth in
11 Proposition 64, and defendants dispute this and contend that a claim pursuant to Section 17200
12 and/or 17500 B.&P.C. can be stated against plaintiffs notwithstanding the requirements of
13 Proposition 64. The standing requirements mandate that BRONNER and OCA be able to
14 demonstrate that they have suffered injury in fact from the acts or omissions of plaintiffs and have
15 paid or given money or property to the plaintiffs as a result of the unfair competition and/or false
16 advertising. Plaintiffs deny that any act or omission of theirs has resulted in an injury in fact to
17 defendants, and further contend that the defendants have not paid or given money or property to
18 plaintiffs as a result thereby.

19 26. Plaintiffs desire a judicial determination of their rights and duties, and a
20 declaration as to which interpretation of the Court’s jurisdiction (based on the standing
21 requirement imposed by Proposition 64) is correct. Plaintiffs further desire a judicial
22 determination of their rights and duties, and a declaration as to which interpretation of Sections
23 17200 and 17500 B.&P.C. is correct. Such a declaration is necessary and appropriate because
24 defendants have threatened to file litigation on these issues if plaintiffs do not sign their proffered
25 “settlement agreement” by April 20, 2008. Defendants have further stated their intent to continue
26 to smear and denigrate plaintiffs’ name, reputation, and certification process if plaintiffs do not
27 sign defendants’ so-called settlement agreement.

28 27. A judicial declaration is also necessary and appropriate at this time under the

1 circumstances in order that plaintiffs may ascertain their rights and duties under applicable
2 California law. Further, plaintiffs are being burdened both financially and by the unsettled state
3 of affairs in that defendants, as noted, have sought to smear, sully, and denigrate and have
4 threatened to continue to smear, sully, and denigrate the reputation of plaintiffs and to place a
5 negative image upon their long established and highly regarded certification process.

6
7 WHEREFORE, plaintiffs pray judgment as follows:

8 1. For a declaration that this Court is without jurisdiction to entertain a complaint by
9 defendants alleging violation of Section 17200 B.&P.C. and/or Section 17500 B.&P.C. because
10 of a lack of Proposition 64 mandated standing by the defendants.

11 2. For a declaration that the certification process of plaintiffs does not violate
12 Sections 17500 and/or 17200 B.&P.C.

13 3. For issuance of a permanent injunction restraining and enjoining defendants from
14 filing any suit against plaintiffs which alleges violations of Sections 17200 and/or Section 17500
15 B.&P.C.

16 4. For costs of suit herein incurred.

17 5. For such other and further relief as the Court may deem proper.

18
19 Dated: April 18, 2008

ROPERS, MAJESKI, KOHN & BENTLEY

20
21 By: 

22 THOMAS H. CLARKE, JR.
23 TIMOTHY A. DOLAN
24 Attorneys for Plaintiffs
25 ECOCERT FRANCE (SAS) &
26 ECOCERT, INC.
27
28