

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

<p>BEYOND PESTICIDES, a non-profit corporation, 701 E Street, SE, Suite 200, Washington, DC 20003,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>ORGANIC TOUCH LLC, 930 New Hope Road Suite #11-608, Lawrenceville, GA, 30045, USA, and MY CBD ORGANICS LLC, 930 New Hope Road, Lawrenceville, GA, 30045,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. _____</p> <p><u>COMPLAINT</u></p> <p><u>DEMAND FOR JURY TRIAL</u></p>
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COMPLAINT

Plaintiff Beyond Pesticides brings this action against Defendants Organic Touch LLC (“Organic Touch”) and My CBD Organics LLC (“My CBD Organics”) (collectively, “Defendants”) regarding the deceptive marketing and sale of Defendants’ cannabinoid products as organic products when they are not. Beyond Pesticides alleges the following based upon personal knowledge, information, belief, and research conducted by its investigative arm, OrganicEye. This Complaint is on behalf of the general public of the District of Columbia and in the interests of consumers.

INTRODUCTION

1. This is a consumer protection case concerning the deceptive marketing of dietary supplements, foods, and personal care items that contain cannabinoids. The case is brought by Beyond Pesticides, a nonprofit, public interest organization dedicated to protecting consumers and

ensuring organic integrity, including through its investigative arm, OrganicEye.¹ Beyond Pesticides seeks no monetary damages, only declaratory relief and an end to the deceptive marketing and advertising at issue.

2. More and more consumers are considering where the products they buy come from and how they are grown and produced due to concerns about the effects of their actions and purchases on their own health, the health of their family, and the environment.

3. Because of these concerns, there is a growing desire among consumers to purchase organic products that are made from organic substances.

4. Since the 2018 Farm Bill legalized the production of industrial hemp as an agricultural commodity, the demand for products made from CBD and other substances extracted from industrial hemp, generally called cannabinoids, has exploded.

5. The global market for cannabinoids is expected to expand to over \$23.6 billion annually by 2024.²

6. The cannabinoid products made from industrial hemp are not marijuana. While both plants are *Cannabis sativa*, marijuana refers to strains of *Cannabis sativa* that contain more than 0.3% of the psychoactive component tetrahydrocannabinol (“THC”). Plaintiff does not allege that any product produced or sold by Defendants contains more than 0.3% THC.

7. Products made with CBD or other cannabinoids may include food items (such as candies or beverages), concentrated oils, dietary supplement capsules, beauty creams, and pet care items.

¹ OrganicEye recently published a comprehensive review of organic claims made by a cross section of manufacturers of cannabinoid products. See OrganicEye, *Spotting the Hackers of the Hemp: The Value of Authentic Certified Organic CBD Products* (Aug. 2020), <https://organiceye.org/organic-cbd-labeling-fraud-investigation/>.

² Iris Dorian, *CBD Market Could Reach \$20 Billion By 2024, Says New Study*, *Forbes* (May 20, 2019), <https://www.forbes.com/sites/irisdorian/2019/05/20/cbd-market-could-reach-20-billion-by-2024-says-new-study/#640bcda349d0>.

8. Consumers believe that these cannabinoid products may help regulate sleep, relieve anxiety, depression, or pain, and lead to better overall health.

9. Due to consumers' desires for better health and the fact that many of these products may ultimately be absorbed into the body, consumers' desire for organically grown and processed cannabinoid products has seen similar growth.

10. Defendants know that consumers seek out and wish to buy organic cannabinoid products. Defendants also know that consumers will pay more for such products than they will for non-organic products.

11. To capture this growing market, Defendants have included the word "organic" in their brand names and otherwise represent the products they sell as organic.

12. Defendants produce and market numerous products that are identified as organic:

- a. Tinctures (in several formulations and flavors)
- b. Gummy Candies (in several formulations and flavors)
- c. Hemp Flowers (various strains)
- d. Vape Cartridges (in CBD and DELTA 8 formulations and various flavors)
- e. CBD Gel Capsules (in 25 and 50 mg strength)
- f. Salves (in 500 and 1000 mg strength)
- g. Lotion (in 250 and 500 mg strength)
- h. CBD Infused Honey Sticks
- i. Skin Ointment; and
- j. Anti-aging Eye Cream (collectively, the "Products")





13. However, there is no indication that the Products are actually made entirely (or even mostly) out of certified organic ingredients. In fact, Defendant Organic Touch has confirmed, in response to an inquiry on behalf of OrganicEye, that its products are not certified organic.

14. Reasonable consumers, seeing Defendants’ representations, would expect that the Products are entirely made from certified organic ingredients.

15. Thus, Defendants’ representations deceive D.C. consumers about the true nature and quality of its Products, which are not entirely certified organic.

STATUTORY FRAMEWORK

16. This action is brought under the District of Columbia Consumer Protection Procedures Act (“CPPA”), D.C. Code § 28-3901, *et seq.*

17. The CPPA makes it a violation for “any person” to, *inter alia*:

Represent that goods or services have a source, sponsorship, approval, certification, accessories, characteristics, ingredients, uses, benefits, or quantities that they do not have;

Represent that goods or services are of a particular standard, quality, grade, style, or model, if in fact they are of another;

Misrepresent as to a material fact which has a tendency to mislead;

Fail to state a material fact if such failure tends to mislead;

Use innuendo or ambiguity as to a material fact, which has a tendency to mislead; or

Advertise or offer goods or services without the intent to sell them or without the intent to sell them as advertised or offered.

D.C. Code § 28-3904(a), (d), (e), (f), (f-1), (h).

18. A violation of the CPPA may occur regardless of “whether or not any consumer is in fact misled, deceived or damaged thereby.” *Id.* § 28-3904.

19. The CPPA “establishes an enforceable right to truthful information from merchants about consumer goods and services that are or would be purchased, leased, or received in the District of Columbia.” *Id.* § 28-3901(c). The statute “shall be construed and applied liberally to promote its purpose.” *Id.*

20. Because Beyond Pesticides is a nonprofit and public interest organization, it may act on behalf of the general public and bring any action that an individual consumer would be entitled to bring:

[A] public interest organization may, on behalf of the interests of a consumer or a class of consumers, bring an action seeking relief from the use by any person of a trade practice in violation of a law of the District if the consumer or class could bring an action under subparagraph (A) of this paragraph for relief from such use by such person of such trade practice.

Id. § 28-3905(k)(1)(D)(i). Subparagraph (A) provides: “A consumer may bring an action seeking relief from the use of a trade practice in violation of a law of the District.”

21. A public interest organization may act on behalf of consumers, *i.e.*, the general public of the District of Columbia, so long as the organization has “sufficient nexus to the interests involved of the consumer or class to adequately represent those interests.” *Id.* § 28-3905(k)(1)(D)(ii). As set forth in this Complaint, *see infra* ¶¶ 31-35, part of Plaintiff Beyond Pesticides’ mission is to advocate for and educate consumers, which it has long done within the District of Columbia. Beyond Pesticides has previously represented D.C. consumers in similar

actions under the CPPA. Beyond Pesticides thus has a sufficient nexus to D.C. consumers to adequately represent their interests.

22. This is not a class action, or an action brought on behalf of any specific consumer, but an action brought by Beyond Pesticides on behalf of the general public, *i.e.*, D.C. consumers generally. No class certification will be requested.

23. This action does not seek damages. Instead, Beyond Pesticides seeks declaratory relief and an end the unlawful conduct directed at D.C. consumers. Remedies available under the CPPA include “[a]n injunction against the use of the unlawful trade practice.” *Id.* § 28-3905(k)(2)(D).

PARTIES

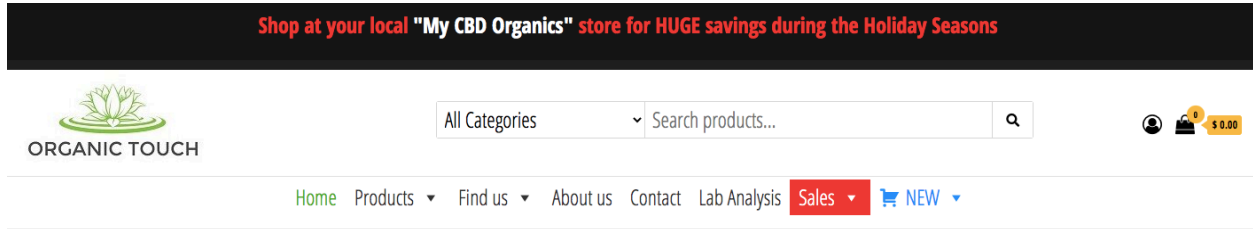
24. Defendant Organic Touch, LLC is a Georgia limited liability company that maintains its principal place of business in Lawrenceville, Georgia.

25. Defendant My CBD Organics is a Georgia limited liability company that maintains its principal place of business in Lawrenceville, Georgia.

26. Upon information and belief, Organic Touch and My CBD Organics are operated as a unified venture to produce and market the Organic Touch products.

27. According to filings with Georgia’s Secretary of State, both companies were organized by an individual named Giovanni Paul, both companies’ official addresses are post office boxes located at the same business service center in Lawrenceville, Georgia, and the “Contact Us” page of the My CBD Organics website lists its address as “930 New Hope Road, Suite 11-608, Lawrenceville GA, USA” which is the address for Organic Touch’s principal office as listed in its certificate of organization.

28. In addition, the My CBD Organics website advertises for sale exclusively Organic Touch branded products and links to Organic Touch’s website to complete the sales. Meanwhile, as late as December 2020, Organic Touch’s website suggested that the consumers “Shop at your local My CBD Organics store” and lists the address of each My CBD Organics store location (but no other retailers) under the “Find Us” tab.



29. Defendant Organic Touch manufactures and/or causes the manufacture of the Products and distributes the Products in the District of Columbia. Defendants Organic Touch and My CBD Organics jointly advertise and market the Products in the District of Columbia. Defendants Organic Touch and My CBD Organics created and/or authorized the false and deceptive labeling and advertising of the Products.

30. The Products are available for purchase in the District of Columbia via the Organic Touch website.

31. Plaintiff Beyond Pesticides is a 501(c)(3) non-profit, public-interest organization whose mission is to protect the environment and to educate consumers and businesses about the harms that humans have on the environment, *see supra* ¶¶ 20, 21.

32. Beyond Pesticides was formed in 1981 as a non-profit organization meant to inform the public of the dangers of toxic pesticides, advocate on behalf of the public against their use, and to educate the public on the benefits and requirements of organic agriculture through its website,

publications, public education, research, network building events, and mobilization activities.³ Also, Beyond Pesticides' co-founder Jay Feldman, previously served on the National Organic Standards Board ("NOSB").⁴

33. Beyond Pesticides is also a member of the National Organic Coalition, a national alliance of organizations working to provide a voice for farmers, ranchers, environmentalists, consumers and industry members involved in organic agriculture by providing up-to-date information on organic agriculture policy in the United States.

34. The investigatory arm of Beyond Pesticides, OrganicEye, leverages the extensive experience of its staff to act as corporate and governmental watchdogs, to educate the public and prevent the erosion of the foundational precepts that the organic movement was founded upon, and to protect the interests of organic farmers, ethical businesses, and consumers.⁵ Also, Organic Eye's co-founder, Mark Kastel, has been personally involved in federal regulation of organic farming, including frequent testimonies before the NOSB.

35. Plaintiff Beyond Pesticides has an interest in truth-in-advertising regarding organic claims. The organization diligently works to promote ecological systems that are clean, accessible, and free of contamination. To that end, Plaintiff Beyond Pesticides educates consumers, increasing their awareness and knowledge of the effects of pesticide usage and the benefits of purchasing

³ Keeping Organic Strong, *Health Benefits of Organic Agriculture*, Beyond Pesticides, <https://www.beyondpesticides.org/programs/organic-agriculture/why-organic/health-benefits> (last visited Feb. 26, 2021); Keeping Organic Strong, *National Organic Standards*, Beyond Pesticides, <https://www.beyondpesticides.org/programs/organic-agriculture/keeping-organic-strong-2020/national-organic-standards> (last visited Feb. 26, 2021); *Buying Organic Products (on a budget!)*, Beyond Pesticides, <https://www.beyondpesticides.org/programs/organic-agriculture/buying-organic-products> (last visited Feb. 26, 2021).

⁴ Established by the Organic Foods Production Act, the NOSB considers and makes recommendations on a wide range of issues involving the production, handling, and processing of organic products.

⁵ See OrganicEye, *supra* note 1 (investigation which identified Organic Touch and My CBD Organics as companies that claim organic status without going through the rigorous third-party inspection and auditing process expected of such products).

organic products. Consequently, Beyond Pesticides has a sufficient nexus to consumers of the Products to adequately represent those interests.

FACT ALLEGATIONS

36. Defendants' marketing of the Products is false and deceptive because the Products are not "organic." The Products are not certified entirely organic, nor are they made of entirely certified organic ingredients.

37. The Products do not meet consumers' expectations of products that are represented generally as "organic."

I. Defendants Represent the Products as "Organic."

38. Defendants market and advertise the Products in the District of Columbia. They seek to reach the District's consumers online through its company websites, social media, and other media.

39. First and foremost, Defendant Organic Touch represents that the Products it produces are organic with its brand name and website URL (OrganicTouchRx.com).

40. The Organic Touch brand name and logo is reproduced on each of the Products. Representative examples are reproduced below.

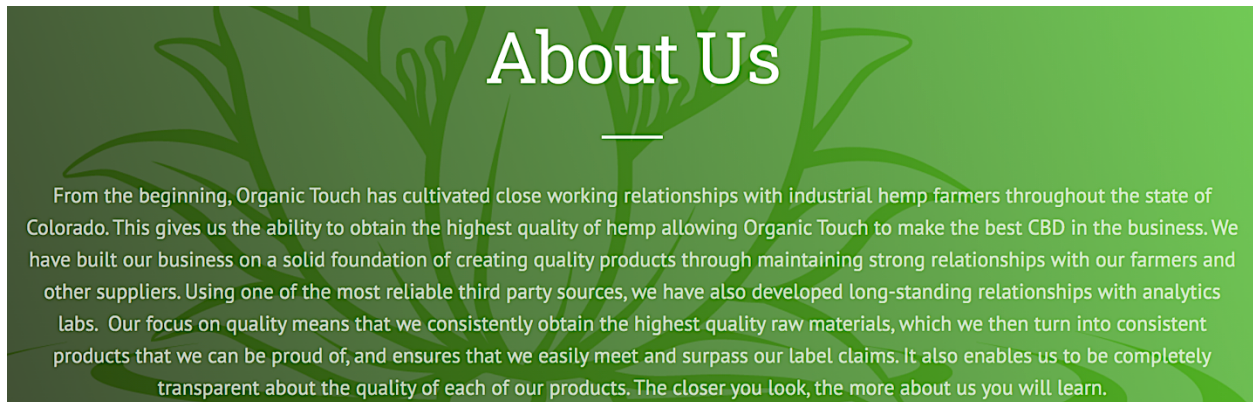




41. In addition to the general, brand-level organic representations, explicit organic representations are also made about individual products themselves. For example:

- a. The CBD Gummies are described as being “vegan, non-THC, organic and non-GMO”;⁶
- b. The CBD Gel Capsules purportedly “have the extracts from organic hemp and are made of the finest quality”;⁷ and
- c. According to Organic Touch its Honey Sticks are “infused with 10mg of pure CBD hemp oil harvested from organic industrial hemp plants.”⁸

42. Defendant My CBD Organics sells exclusively Organic Touch-brand products. The My CBD Organics website details the benefits of cannabinoids, specifically Organic CBD, and funnels consumers to the Organic Touch website to complete the purchase of the Products.



43. In addition to also representing the Products as organic in the brand name and logo (reproduced below), My CBD Organics states that the Products are organic because “Pure organic

⁶ *CBD Gummies*, Organic Touch, <https://organictouchrx.com/product/gummies/> (last visited Feb. 26, 2021).

⁷ *1500 mg Gel Capsules*, Organic Touch, <https://organictouchrx.com/product/50mg-cbd-capsules/> (last visited Feb. 26, 2021).

⁸ *Honey Sticks*, Organic Touch, <https://organictouchrx.com/product/cbd-honey-sticks/> (last visited Feb. 26, 2021).

hemp makes pure organic products”⁹ and that it sells “premiere, luxury grade CBD items that are fine crafted, organic, non-GMO and grown with precision.”¹⁰



44. To announce the opening of its Lawrenceville, Georgia store, Defendant My CBD Organics issued a press release announcing that the My CBD Organics franchise was expanding nationwide and stating that the Organic Touch products it sells are both “organic” and “certified.”¹¹

45. In January of 2020, Giovanni Paul, a founder of both Defendant Organic Touch and Defendant My CBD Organics, gave an interview to Black Cannabis Magazine touting the nature of Defendants’ purportedly organic Products:

What makes our CBD product stand out is the quality that we put out is unmatched and that’s what makes us the best. The is quality in everything we do and how we do it when we’re producing the end product. Quality of the product, it’s organically grown, it’s non-GMO, the quality of how it’s grown.¹²

⁹ My CBD Organics Homepage, <https://mycbdorganics.com/> (last visited Feb. 26, 2021).

¹⁰ *Id.*

¹¹ Press Release, *My CBD Organics, National CBD Franchise Opens in Metro Atlanta* (Sept. 29, 2019), <https://www.investorideas.com/news/2019/cannabis/09272CBDFranchise.asp>.

¹² Hazey Taughtme, ‘*My CBD Organics, SVP Of Strategic Partnerships, Giovanni Paul: The Benefits Of CBD Are Just Countless.*’ *BCM EXCLUSIVE*, Black Cannabis Magazine, (Jan. 19, 2020) <https://blackcannamag.com/my-cbd-organics-svp-of-strategic-partnerships-giovanni-paul-the-benefits-of-cbd-are-just-countless-bcm-exclusive/> [<https://web.archive.org/web/20210216153527/https://blackcannamag.com/my-cbd-organics-svp-of-strategic-partnerships-giovanni-paul-the-benefits-of-cbd-are-just-countless-bcm-exclusive/>].

46. Defendants' website representations, labels, and other advertising are intended to, and do, portray to consumers that the Products are Organic.

II. The Products Are Not “Organic.”

47. Congress passed the Organic Foods Production Act in 1990 to establish uniform processes and consistent standards for “organic” farming under the National Organic Program (“NOP”).

48. In order to claim that a product is organic, commercial producers must be certified by a United States Department of Agriculture-accredited certifying agent as following proper processes under the NOP. While the USDA does not presently regulate CBD products, the agency's requirements and processes reflect reasonable consumer expectations regarding organic products in general.¹³ The following requirements are therefore illustrative of the many ways in which Defendants' Products fail to meet reasonable consumer expectations for products marketed as “organic.”

49. In order for a grower to become certified under the NOP, the producer must submit a comprehensive plan that will govern the production of the organic organisms. The organic certifier then reviews the plan to verify that it complies with organic regulations and requires inspections on the farm to determine whether the plan is being followed. These steps are repeated each year.

50. In addition to being grown according to the organic standards, the way the product is handled can also affect whether reasonable consumers would consider it “organic.”

¹³ The USDA has not taken any action with regards to the Products and has stated that it does not intend to take enforcement action regarding “organic” CBD products generally, including in direct communication with Beyond Pesticides, though correspondence with OrganicEye.

51. For example, food-grade ethanol is frequently used to extract cannabinoids from hemp plants. Because trace amounts of the solvents may remain in the final product, it is required that if the final product is to be labeled organic, the extraction must be done with organic ethanol.

52. Therefore, any business that processes or repackages organic products must be certified as an organic handler.

53. An organic handler faces a similar review process as an organic farmer: an organic certifier reviews each organic product, each ingredient in the products, the recipe used to make them, and even the cleaners and sanitizers used on equipment—to ensure that organic crops are not contaminated by traces of disallowed substances.

54. The organic certifier also reviews the organic claims on the label to verify that it conforms to proper requirements.

55. Under these requirements, a product may be represented as “organic” on the front label if it contains at least 95% organic ingredients. The remaining ingredients must be organically produced unless they are not commercially available in organic form or included on the national list of allowed substances. *See* 7 CFR § 205.301.

56. If the word “organic” is used on the front of the label, the product is required to have the statement “Certified organic by... [certifier name]” on the information panel under the distributor’s name. *See* 7 CFR § 205.303.

57. These requirements are applied uniformly and constitute what consumers can expect when purchasing “organic” products.

58. Unfortunately, the Products do not meet this expectation.

59. No part of the Products is certified organic and, thus, the Products do not identify an organic certifier.

60. Defendant Organic Touch has stated to Beyond Pesticides through communications with OrganicEye that the hemp is grown by farmers who “use organic nutrients and farming practices.” However, even if these farms were certified organic, Defendant Organic Touch is not certified as an organic handler and, therefore, cannot produce products that meet consumers’ expectations for organic products.

61. Furthermore, in most of the Products, the hemp used constitutes far less than the 95% required in order to identify the Products as “organic” on the front label and Defendant Organic Touch has confirmed to Beyond Pesticides through communications with OrganicEye that the overall Products are not certified organic.

62. Organic Touch and My CBD Organics’ representations are not only false and deceptive, they are material to D.C. consumers.

63. Beyond Pesticides’ research on CBD, through its investigatory arm, OrganicEye, was initially commenced in response to multiple accounts of questionable organic claims sent to the project by organic stakeholders, including business leaders and concerned consumers.

64. Along with concerns about organic authenticity issues, there have been numerous consumer interest, media, and regulatory exposés highlighting CBD potency inaccuracies and contaminants.¹⁴

¹⁴ *What You Need to Know (And What We’re Working to Find Out) About Products Containing Cannabis or Cannabis-derived Compounds, Including CBD*, FDA (Mar. 5, 2020), <https://www.fda.gov/consumers/consumer-updates/what-you-need-know-and-what-were-working-find-out-about-products-containing-cannabis-or-cannabis> (FDA post regarding consumer concern over CBD products); Javier Hasse, *Goldilocks And The Three Bears: Report Shows CBD Products Often Have Too Much Or Too Little CBD*, Forbes (Nov. 19, 2019, 6:50 PM), <https://www.forbes.com/sites/javierhasse/2019/11/19/cbd-product-mislabeling/?sh=68f40d453420> (article on CBD product potency issues); Lisa Fletcher, *The Risk of Contaminants and False Labeling in the Exploding CBD Industry*, ABC7-WJLA (May 15, 2019) <https://wjla.com/features/7-on-your-side/the-risk-of-contaminants-and-false-labeling-in-the-exploding-cbd-industry> (article on concerns about contaminants in CBD products).

JURISDICTION

65. This Court has personal jurisdiction over the parties in this case. Beyond Pesticides has a presence in the District and consents to this Court having personal jurisdiction over the organization.

66. This Court has personal jurisdiction over Defendants Organic Touch and My CBD Organics because Organic Touch and My CBD Organics have purposefully directed their conduct to the District and has availed themselves of the benefits and protections of District of Columbia law. The Products can be purchased in the District by District consumers.

67. This Court has subject-matter jurisdiction over this action under the CPPA, D.C. Code § 28-3901, *et seq.*

CAUSE OF ACTION

Violations of the District of Columbia Consumer Protection Procedures Act

68. Beyond Pesticides incorporates by reference all the allegations of the preceding paragraphs of this Complaint.

69. Beyond Pesticides is a nonprofit, public interest organization that brings these claims on behalf of the general public of D.C. consumers. *See* D.C. Code § 28-3905(k)(1)(D)(i).

70. Through § 28-3905(k)(1)(D)(i), the CPPA explicitly allows a public interest organization to stand in the shoes of a consumer to seek relief from any violation of the CPPA.

71. Defendants Organic Touch and My CBD Organics are each a “person” that provides “either directly or indirectly, consumer goods or services, or a person who in the ordinary course of business does or would supply the goods or services which are or would be the subject matter of a trade practice” within the meaning of the CPPA. *See id.* § 28-3901(a)(1), (3), (7).

72. Defendants Organic Touch and My CBD Organics have falsely and deceptively labeled and marketed the Products as “organic” when, in fact, the Products fail to meet consumer expectations of “organic” products.

73. Thus, Defendants Organic Touch and My CBD Organics have violated, and continue to violate, the CPPA by “represent[ing] that goods . . . have a source . . . [or] characteristics . . . that they do not have”; “represent[ing] that goods . . . are of a particular standard, quality, grade, style, or model, if in fact they are of another”; “misrepresent[ing] as to a material fact which has a tendency to mislead”; “fail[ing] to state a material fact if such failure tends to mislead”; “us[ing] innuendo or ambiguity as to a material fact, which has a tendency to mislead”; and “advertis[ing] . . . goods . . . without the intent to sell them as advertised.” *See id.* § 28-3904(a), (d), (e), (f), (f-1), (h).

JURY TRIAL DEMAND

Plaintiff Beyond Pesticides hereby demands a trial by jury.

PRAYER FOR RELIEF

Wherefore, Plaintiff Beyond Pesticides prays for judgment against Organic Touch and My CBD Organics and requests the following relief:

- a. A declaration that Organic Touch and My CBD Organics’ conduct is in violation of the CPPA;
- b. An order enjoining Organic Touch and My CBD Organics’ conduct found to be in violation of the CPPA; and
- c. An order granting Plaintiff costs and disbursements, including reasonable attorneys’ fees and expert fees, and prejudgment interest at the maximum rate allowable by law.

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