

DR. HAUSCHKA SKIN CARE, INC. V. DEMETER ASSOCIATION, INC.

Background:

- The term BIODYNAMIC is a registered United States Certification Mark held by the Demeter Association, Inc., a non-profit whose vision is to heal the planet through agriculture.
- Demeter obtained this certification mark in order to protect the integrity of BIODYNAMIC®-certified agriculture and the products that result, both for consumers and for farmers.
- The *Demeter Biodynamic® Farm Standard* is a comprehensive organic farming method that requires the creation and management of a closed system minimally dependent on imported materials, instead meeting its needs from the living dynamics of the farm itself. In order for a commercial farm or producer of agriculturally- based products to legally use the BIODYNAMIC® mark in commerce in reference to its farm or products, it must meet rigorous standards and be certified annually by Demeter. The certification requirements do not apply to agricultural production that is not intended for sale.
- The *Demeter Biodynamic® Processing Standard* (there are fourteen categories in all, including oil, wine, cosmetics and body care) ensures an unbroken chain of accountability from the farm to the finished product. The *Standard* protects against manipulation of the agricultural ingredients as much as possible to allow for their integrity to define the product. Products must contain significant and verifiable BIODYNAMIC®-certified ingredients to be allowed to use the certification mark BIODYNAMIC® on product packaging and labeling, in order to avoid misleading consumers as to the nature of the goods.

Lawsuit:

- Dr. Hauschka Skin Care, Inc. brought this lawsuit in federal court claiming that the term “biodynamic” should not be recognized as a certification mark, but instead should be available without restriction for use in the marketplace. Fundamentally this would mean that any company could market any product by referring to it, or its ingredients, as “biodynamic”, regardless of the farming methods, ingredients, or processing methods used to create it.
- Dr. Hauschka Skin Care, Inc. does not offer products in the United States that meet the *Standard*, and none of its products are BIODYNAMIC®-certified. However Dr. Hauschka Skin Care, Inc. claims “that under any circumstance” it should be entitled to label and sell its products- and present them at retail and to the consumer- as “biodynamic,” even if the individual products carry little or no verifiable biodynamic ingredients, and of course without the BIODYNAMIC® certification.
- Ironically, Dr. Hauschka Skin Care, Inc.’s position highlights the importance of the BIODYNAMIC® certification program. In the lawsuit, Dr. Hauschka Skin Care, Inc. states that the

requirement to utilize significant and verifiable BIODYNAMIC®-certified ingredients “would compromise the quality and/or effectiveness of these products.” At the same time, however, Dr. Hauschka chooses to invoke the purity and integrity of BIODYNAMIC®-certified agriculture as a reason to purchase its products.

- Dr. Hauschka Skin Care, Inc. further claims that creating a BIODYNAMIC® certification standard for skincare and cosmetics is “unrealistic and futile”, despite the fact that there are several international skin care companies meeting the Demeter standards: one whose entire line is Demeter-certified, and another that recently introduced Demeter-certified BIODYNAMIC® skin care products in the United States.

- Dr. Hauschka Skin Care, Inc. claims that Demeter US seeks to benefit monetarily through its enforcement of the certification mark. That is not true. Like any certification program- for example organic-certified, LEED’s-certified, fair-trade certified- Demeter US charges licensing fees. Demeter US cannot and does not make a “profit” on these fees because it is a not-for profit corporation; the licensing fees offset the costs of administering the certification program and ensure that consumers who purchase a product labeled “biodynamic” are actually getting a certified product that is, in fact, BIODYNAMIC®. Many small and medium-sized companies happily pay these fees because they understand the importance of certification. Unfortunately Dr. Hauschka Skin Care, Inc., a large international company, prefers to pay a significant sum of money to an army of lawyers rather than certifying its products to the US *Standard*. This is very inconsistent with their claims that they support Demeter certification and endeavor to protect the integrity of BIODYNAMIC® agriculture.

- Dr. Hauschka Skin Care, Inc. ignores the fact that there are more than 175 farms and processors that are meeting the BIODYNAMIC® standards in the United States, including more than 75 wineries and vineyards (second in the world). These companies reasonably expect to be able to rely on the protection of the certification standards that have been in place for more than twenty years, and they will not view kindly any company that wishes to assault the integrity of this certification, and hence their own products, for its own selfish ends.

- Demeter Association remains undeterred and will continue to defend and enforce the certification mark. Doing so protects the meaning of BIODYNAMIC®-certified agriculture and the significance of the BIODYNAMIC® certification mark as an indicator of high ecological standards and pure products, and as a shield that protects the public from being misled or deceived as to the nature and quality of the goods that it purchases.

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