

November 1, 2017

Via mail and email

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Dear Director Pahl and Commissioner Pecman:

On behalf of People for the Ethical Treatment of Animals, Inc. (PETA) and its 6.5 million members and supporters, including more than 314,000 in Canada, I submit the enclosed request to investigate and commence appropriate enforcement action against Canada Goose Inc. (“Canada Goose”) for apparent violations of the U.S. Federal Trade Commission Act and Canada Competition Act for deceiving consumers regarding the welfare of geese used for down in the company’s products.

On its website, Canada Goose has published several unfounded claims regarding the “humane” conditions under which the geese whose feathers are used to manufacture its products are raised. A recent [PETA eyewitness investigation](#) revealed that, contrary to these claims, the birds suffer from distress, are often injured, and sometimes die while being rounded-up, crushed in pile-ups as they panic in an attempt to flee, are grabbed and carried by their necks, and are crammed into small metal transport crates in which they cannot stand or even sit up fully, often bruising their limbs, for nearly a full day before being offloaded for slaughter.

Accordingly, Canada Goose’s false and misleading published statements appear to be nothing more than a deceptive attempt to dispel the concerns of well-meaning consumers who otherwise would choose not to purchase its products, and they must be removed and corrected.

We appreciate your prompt attention to this matter.

Very truly yours,



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CANADA GOOSE'S FALSE AND MISLEADING CLAIMS

People for the Ethical Treatment of Animals, Inc. ("PETA"), an animal protection charity and non-stock corporation under the laws of the Commonwealth of Virginia, with offices at 2164 W. Sunset Blvd., Los Angeles, CA 90026, submits this citizens' complaint pursuant to the Federal Trade Commission Act (the "FTC Act"), 15 U.S.C. § 45, and the Competition Act, R.S., 1985, c. C-34, s. 10, to request that the Federal Trade Commission (the "Commission") and Competition Bureau ("Bureau") investigate and commence enforcement action against Canada Goose Inc. ("Canada Goose" or the "Company") for deceiving consumers about the conditions for animals used in the production of its apparel.

Canada Goose is an apparel company, headquartered at 250 Bowie Ave., Toronto, Ontario, Canada, M6E 4Y2, with flagship stores in Toronto, New York, and Chicago, and whose products are sold at authorized retailers internationally, including nearly at nearly 250 retailers in the United States. Canada Goose's stock is traded through Canada Goose Holdings, Inc., on the New York and Toronto Stock Exchanges.

EXECUTIVE SUMMARY

The FTC Act and Competition Act broadly prohibit advertisements and representations that are false or misleading in a material respect. The National Advertising Division of the Better Business Bureau has stated time and again that consumers rely on advertising claims about the treatment of animals when they are making their purchasing decisions about products made using animals. The Commission has acknowledged the importance that many consumers place on a company's claim of humane treatment of animals and the impact of that claim on purchasing decisions.

Repeatedly, Canada Goose has made unfounded claims regarding the conditions under which its down was sourced, including its alleged commitment to "humane treatment," that the geese used for its down "have not been subjected to any ... inhumane treatment or undue harm" and that the Company "adheres to the Five Freedoms policy," which includes freedom from fear, distress, pain, injury, and physical discomfort.

These and the other false and misleading claims described below were exposed through PETA's recent eyewitness investigation of a Canada Goose supplier, which revealed that geese are distressed, regularly injured, and sometimes die while being rounded-up and shoved into small metal transport crates in which they could not even stand or sit up fully for nearly a full day before being

offloaded for slaughter.¹ These conditions and practices are inconsistent with even accepted industry standards, and experts agree that handling geese in this manner causes distress, injury, and can lead to death.

Because the many consumers whose decisions are influenced by animal-welfare concerns are likely to purchase a Canada Goose product specifically because of the Company's claims of humane treatment, the deception is material. It is plain that Canada Goose is actively trying to gain consumers' attention to its claims—the Company has a webpage linked front and center on its website that is dedicated entirely to its down and fur sourcing, which it has also written about in its Frequently Asked Questions, and embeds a video that it apparently produced of a supplier similarly making false welfare claims. Further, FTC and Bureau intervention carries particular importance in this instance because of the lack of market restraints on these misleading claims.

Accordingly, PETA respectfully requests that the Commission and Bureau cooperate to investigate these deceptive marketing practices and take prompt action to stop Canada Goose from deceiving consumers with false or misleading representations relating to animal care.²

I. Legal Standards

a. *FTC Act*

The FTC Act declares unfair or deceptive acts or practices unlawful.³ A false oral or written representation or omission, if material, is deceptive within the meaning of the Act.⁴ “The statutory ban against false and misleading advertisements and representations applies to that which is suggested as well as that which is asserted.”⁵ “It is a long-established principle that words and sentences may be literally and technically true and yet framed in such a setting as to mislead or deceive.”⁶ Indeed, “[a] deceptive impression may be created by

¹ PETA, Canada Goose Down Supplier and Slaughterhouse: A 2017 PETA Eyewitness Exposé, http://www.petapreview.com/4preview/permanent/goose_farm_and_slaughter_footage_for_la_w_enforcement_review_preview.asp [Ex. 1].

² Agreement Between the Gov't of the U.S. and the Gov't of Can. Regarding the Application of Their Competition and Deceptive Marketing Practices Laws, Art. VII, *available at* https://www.ftc.gov/sites/default/files/attachments/international-antitrust-and-consumer-protection-cooperation-agreements/agree_canada.pdf.

³ 15 U.S.C. § 45(a).

⁴ FTC Policy Statement on Deception § I (Oct. 14, 1983), *appended to Cliffdale Assocs., Inc.*, 103 FTC 110, 174 (1984).

⁵ *The Raymond Lee Org., Inc.*, 92 FTC 489, 1978 WL 206103, at *140 (1978).

⁶ *Horizon Corp.*, 97 FTC 464, 1981 WL 389410, at *255 (May 15, 1981) (quoting *Bockenstette v. FTC*, 134 F.2d 369, 371 (10th Cir. 1943)).

implication and innuendo without affirmative misrepresentation or misstating a single fact.”⁷

The Act also applies to deceptive omissions. “In consumer protection cases under Section 5 of the FTC Act, it can be deceptive to tell only half the truth, and to omit the rest.”⁸ An advertiser is required “to disclose qualifying information necessary to prevent” a statement “from creating a misleading impression.”⁹ For example, in *Horizon, Inc.*,¹⁰ the Commission held that Horizon violated the FTC Act, in part because many of its representations “consisted of partial truths, or literal or technical truths, framed in a setting to mislead or deceive.”¹¹ “In several respects,” the Commission found, “Horizon’s sales techniques left material issues vague. The record [t]herein reveal[ed] widespread confusion and a lack of understanding about critical elements of Horizon’s property and Horizon’s obligations, all conducive to Horizon’s objectives.”¹²

“The tendency of . . . advertising to deceive must be judged by viewing it as a whole.”¹³ The Commission is “required to look at the complete advertisement and formulate [its] opinions on the basis of the net general impression conveyed by them and not on isolated excerpts.”¹⁴ “To tell less than the whole truth is a well known method of deception,”¹⁵ and “the Commission repeatedly has held that deceptive non-disclosure of material facts is a violation of Section 5.”¹⁶ The focus is “the entire mosaic, rather than each tile separately.”¹⁷

The Commission’s ultimate “concern” is the “message conveyed or the implication created in the mind of the ordinary purchaser”:¹⁸ “that vast multitude . . . who, in making purchases, do not stop to analyze, but are governed by appearances and general impressions.”¹⁹ Whether advertising “is

⁷ *MacMillan, Inc.*, 96 FTC 208, 1980 WL 338975, at *120 (1980).

⁸ Compl. Counsel’s Post-Trial Br., *Union Oil Co. of Cal.*, No. 9305, 2005 WL 906397 (FTC Mar. 9, 2005) (quoting *Int’l Harvester Co.*, 104 FTC 949, 1057 (1984)).

⁹ *Id.*

¹⁰ 97 FTC 464, 1981 WL 389410 (1981).

¹¹ *Id.* at *216.

¹² *Id.*

¹³ *Beneficial Corp. v. FTC*, 542 F.2d 611, 617 (3d Cir. 1976), *cert denied*, 430 U.S. 983 (1977); accord *Horizon Corp.*, 1981 WL 389410, at *269 (in determining whether a representation is deceptive, the Commission is “not confined to analyzing isolated words and phrases”).

¹⁴ *Standard Oil of Cal.*, 84 FTC 1401, 1471 (1974), *aff’d as modified*, 577 F.2d 633 (9th Cir. 1978), reissued, 96 FTC 380 (1980).

¹⁵ *P. Lorillard Co. v. FTC*, 186 F.2d 52, 58 (4th Cir. 1950).

¹⁶ Complaint Counsel’s Post-Trial Br., *Union Oil Co. of Cal.*, 2005 WL 906397 (quoting *Int’l Harvester Co.*, 104 FTC at 1057).

¹⁷ *FTC v. Sterling Drug*, 317 F.2d 669, 674 (2d Cir. 1963).

¹⁸ *Id.* at *263.

¹⁹ *P. Lorillard Co.*, 186 F.2d at 58; see FTC Policy Statement on Deception § III; see also *Warner-Lambert*, 86 FTC 1398, 1415 n.4 (1975), *aff’d*, 562 F.2d 749 (D.C. Cir. 1977) (evaluating

false or misleading is determined based on the objective ‘reasonable consumer’ standard.”²⁰ As long as an advertisement “reasonably can be interpreted in a misleading way,” it is “deceptive, even though other, non-misleading interpretations may be equally possible.”²¹

A deceptive representation, omission, or practice is actionable under the FTC Act if it is “material.” A “material” misrepresentation is “one which is likely to affect a consumer’s choice of or conduct regarding a product. In other words, it is information that is important to consumers.”²² This is a subjective standard. “[I]f consumers prefer one product to another, the Commission [does] not determine whether that preference is objectively justified.”²³

“[T]he Commission presumes that express claims are material,”²⁴ since “the willingness of a business to promote its products reflects a belief that consumers are interested in the advertising.”²⁵ “[T]he Commission will [also] infer materiality” when “evidence exists that a seller intended to make an implied claim.”²⁶

b. Competition Act

Like the FTC Act, the Competition Act prohibits “knowingly or recklessly making a representation to the public that is false or misleading in a material respect” for the purpose of promoting, directly or indirectly, a product.²⁷ This prohibition specifically includes representations that are in any way transmitted or made available to the public,²⁸ including specifically in an electronic message,²⁹ and representations made online that influence off-line purchasing decisions.³⁰

A representation is material “if it is so pertinent, germane or essential that it could affect the decision to purchase.”³¹

the claim from the perspective of the “average listener”); *Grolier*, 91 FTC 315, 430 (1978) (considering the “net impression” made on the “general populace”).

²⁰ *Ortega v. Natural Balance, Inc.*, 300 F.R.D. 422, 428-29 (C.D. Cal. 2014) (citations omitted).

²¹ *Telebrands Corp.*, 2004 WL 3155567, at § III.B.1 (FTC Sept. 15, 2004) (citing *Kraft, Inc.*, 114 FTC 40, 120 n.8 (1991), *aff’d*, 970 F.2d 311 (7th Cir. 1992)).

²² FTC Policy on Deception § IV.

²³ *Id.* § IV n.46.

²⁴ *Id.* § IV.

²⁵ *Cent. Hudson Gas & Elec. Co. v. PSC*, 447 U.S. 557, 567 (1980).

²⁶ FTC Policy on Deception § IV.

²⁷ R.S.C., 1985, c. C-34, s. 52(1).

²⁸ R.S.C., 1985, c. C-34, s. 52(2)(e).

²⁹ R.S.C., 1985, c. C-34, s. 52.01.

³⁰ Competition Bureau, Application of the *Competition Act* to Representations on the Internet: Enforcement Guidelines (Oct. 16, 2009), <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03134.html>.

³¹ *Apotex Inc. v. Hoffmann La-Roche Limited*, 2000 CanLII 16984 (ON CA).

In determining whether a representation is false or misleading, the Bureau must consider “the general impression conveyed by a representation as well as its literal meaning.”³² An impression is considered to be materially false or misleading if it “readily conveys an impression” to a reasonable person— “a fictional cross-section of the public lacking any relevant expertise”— which is false or misleading and that reasonable person “would likely be influenced by that impression in deciding whether or not he would purchase the product being offered.”³³

II. Canada Goose Misleads Consumers Regarding the Treatment of Animals Used for Down Clothing.

Canada Goose has made several claims on its website regarding its down production specifically targeted to consumers whose decisions are influenced by animal-welfare concerns. The Company stresses its focus on and the importance of humane animal treatment. However, these claims are undermined by the objective and irrefutable evidence from its suppliers, and they deceive well-meaning consumers into making the ill-informed choice to buy its products.

a. Canada Goose’s Claims to Consumers Regarding the Treatment of Animals Used for its Products.

On the “Fur and Down Policy” page of its website, and in its Frequently Asked Questions, Canada Goose highlights a commitment to animal welfare and ethical sourcing. Specifically in response to concerns about the use of animals in its products, the Company stresses that it is “committed to providing full transparency about how [it] make[s] [its] products, including the ethical sourcing and responsible use of animal products.”³⁴

The Company professes that “[e]thically sourced down ... [is] an important part of [its] story,” its belief that “all animals are entitled to humane treatment in life and death,” that it is “deeply committed to the responsible use and ethical sourcing of all animal materials in [its] products,” and that it “do[es] not condone any willful mistreatment and neglect of animals or acts that maliciously cause undue pain, injury or suffering.”³⁵

To attempt to allay consumer concerns regarding the use of down from cruelly treated geese, Canada Goose “implemented comprehensive traceability programs for ... Down to ensure [it is] sourced from animals that have not been

³² R.S.C., 1985, c. C-34, s. 52(4).

³³ *Commissioner of Competition v. Gestion Lebski Inc.*, 2006 CACT 32 (CanLII) (quoting *Commissioner of Competition v. Sears Canada Inc.*, 2005 Comp. Trib. 2)

³⁴ Canada Goose, Fur and Down Policy, <https://www.canadagoose.com/us/en/fur-and-down-policy/fur-and-down-policy.html> (last visited Oct. 18, 2017) [Ex. 2].

³⁵ *Id.*

subjected to any unfair practices, willfull mistreatment or undue harm, and materials are fully traceable throughout the supply chain.”³⁶ The Company further explains this program:

The Canada Goose Down Transparency Standard™ is our commitment to tracking the source of all of our down, from farm to factory. Through a third-party audit program conducted by International Down & Feather Industries, we can certify that our down only comes as a by-product from the poultry industry and has not come from live-plucked or force-fed birds. It also ensures that all down we source adheres to the Five Freedoms policy set out by the World Organisation for Animal Health (OIE) and European Convention for the Protection of Animals Kept for Farming Purposes. As of January 2017, all down insulation used to manufacture new Canada Goose products is fully traceable.³⁷

The “Five Freedoms policy” referenced by the Company includes: (1) freedom from hunger, malnutrition and thirst; (2) freedom from fear and distress; (3) freedom from physical and thermal discomfort; (4) freedom from pain, injury and disease; and (5) freedom to express normal patterns of behavior.³⁸ Canada Goose also embeds a [promotional video](#), titled “Our Commitment to Traceable Down,” which features a supplier stating, “We treat our geese very special. It is definitely a job where you have to show lots of tender love and care.... Looking after the welfare of the animal is the top priority—there’s no doubt about it.”³⁹

Likewise, in its Frequently Asked Questions, Canada Goose further states that the *Down Transparency Standard* “ensures that as of January 2017, all down insulation used in new Canada Goose Products is ... compliant with our strict requirements which *ensure that all animals have not been subjected to any unfair practices, inhumane treatment or undue harm.*”⁴⁰

The Company also specifically responds to concerns regarding their down sourcing, stating that “PETA and other animal rights activist groups have sought to mislead consumers through a series of attacks that ignore strict government regulation as well as Canada Goose’s commitment to ethical sourcing practices and responsible use of fur.” Ironically, while the Company provides no additional information to consumers regarding the source of its

³⁶ *Id.*

³⁷ *Id.*

³⁸ World Organisation for Animal Health, Animal Welfare at a Glance, <http://www.oie.int/en/animal-welfare/animal-welfare-at-a-glance/> (last visited Oct. 18, 2017).

³⁹ Canada Goose, Fur and Down Policy; *see also* CanadaGoose, Our Commitment to Traceable Down, YOUTUBE (Dec. 2, 2016), <https://www.youtube.com/watch?v=hFMvzZbRoCk>.

⁴⁰ Canada Goose, FAQ’s: Why Do We Use Down?, <http://www.canadagoose.com/us/en/faq/faq.html> (emphasis added) (last visited Oct. 18, 2017) [Ex. 3].

down, the limits of government regulation, or the conditions in which particular geese were raised under its *Down Transparency Standard*, it states that it “respect[s] the personal choice that consumers make in what to wear and hope that PETA and other animal rights activists would offer the same respect to consumers who choose to wear fur and down-filled garments.” The problem, however, is that well-meaning purchasers whose decisions are influenced by animal-welfare concerns cannot make informed choices because Canada Goose misleads the public into making the choice to its products.

b. *Canada Goose’s Claims to Consumers Regarding the Treatment of Geese Used for its Down Products are Refuted by Facts, Industry Standards, and Expert Opinion.*

Canada Goose’s promotional video, referenced above, features supplier James Valley Colony Farms (JVC) in Elie, Manitoba, Canada. JVC, which breeds 130,000 geese per year, sends its geese to Schiltz Foods in Sisseton, South Dakota for slaughter.⁴¹ Schiltz is the largest goose slaughterhouse in North America,⁴² and processes about ninety per cent of all domestic geese in the U.S.⁴³ In fall 2017, PETA conducted an investigation of JVC and Schiltz and documented the geese from JVC before, during, and after slaughter.

At JVC, the observers documented workers herding geese into small wire pens for catching. When the geese were in the pens, workers grabbed them by the neck, sometimes grasping two in each hand, and carried their whole body weight (which can be up to nearly 20 pounds) in this manner to nearby transport crates. Many of the geese frantically flapped their wings and called out loudly when subjected to this handling.

The geese who were not yet grabbed by the workers were so panicked by the catching process that dozens of birds piled high onto each other in the corners of the wire pens trying to flee, many of their bodies, heads, and necks pressed firmly against the wire cage and some stepped on by workers. One goose appeared to die from being crushed or suffocated at the bottom of the pile. A worker tossed that goose over the fence and told our observers, “Sometimes it happens where one dies.” When asked how the goose died, he responded, “I don’t know, maybe a heart attack”—suggesting recognition of how stressful the herding and catching process is for the geese.

⁴¹ Chris Nuttall-Smith, *This Christmas Bird is Making a Comeback*, THE GLOBE AND MAIL (Dec. 13, 2011), available at <https://beta.theglobeandmail.com/life/holiday-guide/this-christmas-bird-is-making-a-comeback/article4180888>.

⁴² *Id.*

⁴³ Mikkel Pates, *S.D. is Home to Largest Goose Producer in the U.S.*, AGWEEK (Sept. 14, 2015), <http://www.agweek.com/livestock/poultry/3838506-south-dakota-home-largest-geese-producer-us>.

Workers crammed the geese into four-level metal transport crates that were so shallow the geese could not stand up or even sit up fully, or extend their wings. The crates were stacked two-high by a forklift, and later were stacked onto a semi-trailer by a larger forklift. According to the observer, the geese were loaded into the crates between 8:00 a.m. and 9:30 a.m., and for virtually all shipments it appears that they were not unloaded from these crates until slaughter the next morning—around 24 hours, or longer.

At Schiltz, after a more than 300-mile and at least five-hour trip from JVC, not including any delay at the U.S.-Canada border, many geese were left in the crates, which had become filthy with feces and feathers. After they had been brought into the slaughterhouse, workers picked up these live geese by their necks, pressed their bodies against a metal plate and touched the underside of their beaks to a stunning device, and then shackled them by their feet. A slaughterer slit the geese's throats to bleed them out.

The investigation revealed the processing of goose carcasses, including visibly bruised wings and wings with broken bones or dislocations. About *fifty percent* of the geese from JVC had bruises that a supervisor said were caused by being kept in the transport crates. Approximately *one percent* of birds transported from Schiltz's local farm in trailers without crates had such injuries, further supporting that the injuries were caused by rough handling and/or inadequate caging during transport from JVC and the subsequent holding period. Since bruises are exclusively an antemortem phenomenon, it is clear that these geese were injured while they were still living.⁴⁴

These conditions and practices are inconsistent with even accepted industry standards for other farmed bird species. Agriculture Canada acknowledges that “[p]iling of birds in corners can cause injury or mortality” and that “[s]teps must be taken to prevent this from occurring,” such as moving them in small groups.⁴⁵ The National Farm Animal Care Council acknowledges that “[c]areful handling of birds during catching, loading, and unloading will reduce fear and minimize injuries to birds,” and accordingly requires that birds be “handled in such a manner that minimizes stress and/or injury” and they specifically “must not be carried solely by the head, neck, one wing, or tail feathers.”⁴⁶ The Council also recommends that heavy turkeys be moved “in

⁴⁴ While certain postmortem appearances may appear similar to bruising, the prevalence and commonality of the discoloration of the geese's skin strongly indicates that these are in fact bruises. Peter Vanezis, *Interpreting Bruises at Necropsy*, 54 J. OF CLINICAL PATHOLOGY 348 (2001).

⁴⁵ AGRIC. CANADA, RECOMMENDED CODE OF PRACTICE FOR THE CARE AND HANDLING OF POULTRY FROM HATCHERY TO PROCESSING PLANT 5.3.4 (1989), <http://www.agr.gc.ca/misb/aisd/poultry/pub1757e.pdf>

⁴⁶ NAT'L FARM ANIMAL CARE COUNCIL, CODE OF PRACTICE FOR THE CARE AND HANDLING OF HATCHING EGGS, BREEDERS, CHICKEN AND TURKEYS 7.3 (2016), http://www.nfacc.ca/pdfs/codes/poultry_code_EN.pdf.

small groups to help prevent piling and exhaustion.”⁴⁷ The Ontario government and industry groups similarly direct, “Do NOT carry birds by wings or neck,”⁴⁸ and the Poultry Industry Council warns that rough handling and “birds piling into corners” can cause suffocation or injury.⁴⁹ Specifically with regard to geese, the Humane Slaughter Association provides that “[g]eese should be handled by placing one arm around the body and lifting the bird under the armpit, whilst the other hand carefully holds onto the neck,” and they “must **never** be lifted or carried by the head, wing, tail or leg,” or by the neck “unless, at the same time, the breast of the bird is fully supported as well.”⁵⁰

These industry standards are consistent with expert agreement that handling geese in this manner causes distress, injury, and can lead to death. Emeritus Professor Donald Broom of the Department of Veterinary Medicine at the University of Cambridge has studied and published on the effects of housing, management procedures, transport, handling and slaughter on domestic animal welfare, including specifically geese, for more than five decades. Professor Broom reviewed footage from PETA’s investigation and advised that “[t]his method of catching, lifting and moving the geese causes pain and fear to the goose and might damage or dislocate the neck at the cervical vertebrae.”⁵¹ During the pile-ups caused by the workers entering the goose pen, “[t]he birds at the bottom will have difficulty in breathing and will be subject to forces that could break their bones,” and “[t]hese birds have been caused extreme stress as well as fear and pain.” Birds who were stepped on were caused pain and suffering, and the bruised bodies of the slaughtered geese are “consistent with having been roughly handled,” which “would have caused pain to living birds as such bruises do not develop after death.” Professor Broom concluded:

The men catching, carrying and otherwise interacting with the geese in these videos acted in ways that resulted in poor welfare, involving pain, fear and other suffering.... The recommended methods for catching, lifting and carrying geese were not used, even though information about such methods is easy to obtain. In

⁴⁷ *Id.*

⁴⁸ ONTARIO MINISTRY OF AGRIC. AND FOOD ET AL., HUMANE BROILER CATCHING (Feb. 2013), <http://www.poultryindustrycouncil.ca/wp-content/uploads/2017/03/Humane-Broiler-Catching-Course-English.pdf>; *see also* ONTARIO MINISTRY OF AGRIC. FOOD AND RURAL AFFAIRS ET AL., SHOULD THIS BIRD BE LOADED?, <http://www.poultryindustrycouncil.ca/wp-content/uploads/2017/03/DT-Handbook-final.compressed.pdf>.

⁴⁹ Poultry Industry Council, Humane Turkey Loading for Processing, <http://www.poultryindustrycouncil.ca/wp-content/uploads/2017/03/Humane-Turkey-Loading-Course-English.pdf>.

⁵⁰ Humane Slaughter Ass’n, Poultry Catching and Handling, <https://www.hsa.org.uk/downloads/technical-notes/TN15-poultry-catching-handling.pdf> (emphasis in original).

⁵¹ Expert Report of Donald Maurice Broom, Emeritus Professor, Department of Veterinary Medicine, University of Cambridge [Ex. 4].

addition to the poor welfare caused by the catching and carrying methods, the procedures led to avoidable stress and injury because of pile-ups of geese.... All of this cruel treatment was avoidable. It may be that the people had not received the training in methods of animal handling that is basic for all who work collecting and slaughtering geese.

Likewise, Emeritus Professor Lesley Rogers of the University of New England, who specializes in neuroscience and animal behavior, opined after reviewing this footage that:

Without question it is very stressful to carry geese by their necks. Although it is obviously the easiest and fastest way of moving them into the cages, it is definitely a cruel way to do so. The behavior of the geese in the video and their vocalisations show clearly that they are highly stressed not only by being captured and carried in this manner but, probably more so, by being herded into a corner and piling up on top of each other.... The weight bearing down on the birds closer to the ground, or on the ground, must be well above any weight that they can tolerate. I would not be surprised to find that the birds at the bottom of the pile suffer crushing injuries or even death due to asphyxiation.... Their suffering is not acceptable on any terms.

Professor Rogers further stated that the transport cages result in “severe overcrowding,” and the antemortem bruises to the bodies of the birds “definitely show evidence of abusive treatment” and “could have been sustained during the pile-ups at the fence or during packing into or transport in the over-crowded cages.”

Veterinarian Christine Capaldo, DVM, explained that being carried in this manner “causes an immensely uncomfortable sensation, is painful, and could cause damage to the fragile cartilaginous structure,” which is only exacerbated by being held in the shallow transport crates, which also “would cause painful muscle cramping, unnecessary stress, and predispose anxious birds to injury.” When the geese ran frantically into a pile those at the bottom were trampled and crushed. Dr. Capaldo observed that many of the geese being herded, carried, and held in the overcrowded transport crates were exhibiting signs of extreme fear and distress, such as diarrhea, feather loss, and wing-flapping.

Similarly, veterinarian Ingrid Taylor, DVM, advised that carrying geese by their necks presents a risk of severe injury or death, and that the birds were “indicating stress and fear by vocalizing and wing flapping” and by feather loss. Dr. Taylor explained that the geese in the transport crates “are at high risk of

dehydration, suffocation, hypo- or hyperthermia, stress-induced illness, trauma and fractures due to overcrowding and packing into the crates.” She also opined that the goose who appeared to have died during the pile-up likely did so as a result of “positional traumatic asphyxia due to the compression of the neck or chest,” which “is a painful and distressing death,” and “is a direct result of this farm’s inhumane practices.”

Accordingly, the realities of industrial down production, the absence of any actual and enforceable Canada Goose welfare standards, and PETA’s investigation, which revealed geese who were distressed, injured, and died during the capture process, proves false Canada Goose’s statements that the geese used for its down “have not been subjected to any ... inhumane treatment or undue harm” and that the Company “adheres to the Five Freedoms policy,” which includes freedom from fear, distress, pain, injury, and physical discomfort. Nor are the geese who are held in transfer crates in which they cannot even sit up fully for up to more than 24 hours “free[] to express normal patterns of behavior.”

These findings also belie entirely the Company’s repeated pronouncements of “ethical sourcing” and “responsible use”; its expressed commitment to “humane treatment in life and death”, its publication of its supplier’s statements that the geese are treated “very special,” that they interact with “tender love and care” and that “the welfare of the animal is the top priority”; and the references to third-party audits and “strict government regulation” to give consumers a false sense of meaningful oversight of goose welfare on its suppliers’ farms and in slaughterhouses.

Canada Goose cannot escape liability by framing its claims regarding ethical and humane down production as a commitment, belief, aspiration, or “part of its story,” or by stating that it does “not condone” animal suffering, even if true. The FTC and Competition Acts both extend their prohibitions to claims that may be literally and technically true, but stated in such a way as to convey a misleading or deceptive impression to consumers.

c. Consumers are Concerned about the Humane Treatment of Animals, Rendering Canada Goose’s Deceptive Claims Material.

“Advertising claims which tout that the advertiser is addressing particular social or ethical concerns can provide consumers with important information about their purchasing choices.”⁵² This Commission has acknowledged that, “for many consumers, a company’s claim that its products are humane is

⁵² *Starbucks Corporation (Free Trade Certified Coffee)*, Report #4592, NAD Case Reports (Nov. 2006).

important to their decision whether or not to purchase products from that company.”⁵³

In considering the meaning of “humane,” one U.S. court stated “that a possible legal definition of ‘humane’ might reference treatment that does not cause undue pain to an animal.”⁵⁴ The National Advertising Division (NAD) of the Better Business Bureau has determined that the statement that a product is humane is objective and customers rely upon it in making their purchasing decisions. In a case brought against Foster Farms, NAD rejected Foster’s assertion that “humane” is a question of morality outside NAD’s jurisdiction.⁵⁵ NAD explained, “Specific claims of ‘humane’ treatment and representations made in advertising regarding the health of animals and the development of husbandry practices represent are [sic] statements that are relied on by certain consumers in making purchasing decisions regarding animal products.”⁵⁶ In a challenge to Perdue Farms’ advertising, NAD reiterated that “consumer perception and understanding of ‘humane’ treatment or ‘raised humanely’ is directly relevant to the issue of whether such claims are substantiated or misleading to consumers.”⁵⁷ In considering a challenge to a foie gras producer’s implied claims of humane production, NAD pronounced that it “appreciates that advertising messages concerning animal welfare convey information that may enable customers to make purchasing decisions that reflect their particular social and ethical concerns. Consumers cannot typically verify the accuracy of these claims for themselves. NAD, therefore, plays an important role in reviewing such claims to ensure they are truthful, nonmisleading and adequately substantiated.”⁵⁸ Congress and Parliament established that same role for the FTC and Competition Bureau, respectively.

Given the materiality inherent in Canada Goose’s claims, this matter requires intervention. Consumers are willing to change their purchasing practices to support companies they understand to be treating animals humanely. Consequently, Canada Goose’s deceptive representations regarding humane treatment, representations that influence consumers’ purchasing decisions, are material deceptions in violation of the FTC and Competition Acts.

⁵³ E-mail from Mary Engle, Associate Director, Bureau of Consumer Protection, FTC, to PETA (Oct. 16, 2008) (on file with PETA); *see also* E-mail from Mary Engle to Bonnie Robson, Counsel for PETA (Apr. 14, 2009) (on file with PETA) (“animal treatment is an important issue for many consumers”).

⁵⁴ *Animal Legal Def. Fund v. HVFG LLC*, 12-cv-05809 WHA, at *8 (N.D. Cal. Mar. 15, 2013).

⁵⁵ *Foster Poultry Farms, Inc. (Chicken and Poultry Products)*, Case #4495, NAD Case Reports (05/12/06).

⁵⁶ *Id.*

⁵⁷ *Perdue Farms Inc. (Perdue Poultry Food Products)*, Case #5295, at 6, NAD Case Reports (03/02/11).

⁵⁸ *D’Artagnan, Inc. (Foie Gras)*, Case #4959, NAD Case Reports (01/16/09).

III. Canada Goose’s False and Misleading Claims are Difficult for Consumers to Detect.

If a particular consumer group is targeted, or likely to be affected by an advertisement, the Commission will examine advertising from the perspective of a reasonable member of the targeted group.⁵⁹ In determining which advertising claims to challenge, the Commission prioritizes “those claims [that] are expensive for consumers ... , or are beyond the competence or expertise of ordinary consumers to verify.”⁶⁰ “Because of their lack of susceptibility to consumer assessment,” Canada Goose’s claims about the treatment of animals used in the production of its apparel are of exactly the type “subject to more intense scrutiny by the FTC.”⁶¹

“[P]rocess attributes” that “are important to consumers for ethical reasons, such as the use of child labour, or harvesting techniques that threaten an endangered species,” are often “difficult for consumers to detect.”⁶² For example, Commissioner Julie Brill explained that “ensuring” that environmental marketing claims “are truthful is particularly important,” because “[c]onsumers often cannot determine for themselves whether a product, package, or service is, in fact, ‘recyclable,’ ‘made with renewable energy,’ or possesses another environmental attribute that is being promoted.”⁶³ The same is true of humane marketing claims like Canada Goose’s. Consumers can easily tell how much a down jacket costs, or how it looks or feels, but they cannot observe or learn specifically of the treatment of the geese or ducks whose feathers were used in the production of that jacket. The Commission and Bureau should adhere to this policy and prioritize enforcement of the FTC and Competition Acts against Canada Goose.

If a product can be easily evaluated by the consumer, there is little likelihood of deception because the company would lose repeat business if the product does not match advertising claims. Such is not the case when there is

⁵⁹ FTC Policy on Deception, *supra* note 3.

⁶⁰ FTC Commissioner Mary L. Azcuenaga, The Role of Advertising and Advertising Regulation in the Market, before the Turkish Association of Advertising Agencies Conference on Advertising for Economy and Democracy, § IV.A. (Apr. 8, 1997), *available at* <http://www.ftc.gov/speeches/azcuenaga/turkey97.shtm>; *see also* FTC Commissioner Roscoe B. Starek, III, The Consumer Protection Pyramid: Education, Self-Regulation, and Law Enforcement, before the Korea Consumer Festival '97 (Dec. 2, 1997) (“Some of the most harmful violations that we pursue involve deceptive ‘credence claims’—that is, claims whose accuracy is extremely difficult for consumers to assess based on their own experiences.”), *available at* <http://www.ftc.gov/speeches/starek/koreaweb.shtm>.

⁶¹ *Id.*

⁶² Jill E. Hobbs, *Technical Barriers to Trade*, in HANDBOOK ON INTERNATIONAL TRADE POLICY 394, 395 (William A. Kerr & James D. Gaisford eds., 2011).

⁶³ Opening Keynote of FTC Comm’r Julie Brill, 2010 PMA Marketing Law Conference 1 (Nov. 18, 2010), *available at* <http://www.ftc.gov/speeches/brill/101118promomarketingspeech.pdf>.

asymmetric information regarding process attributes, which in this case concern the treatment of the birds used for down. While the consumer relies on Canada Goose's representations for information about production processes, Canada Goose has access to far more complete information about those processes.⁶⁴ The consumer's inability to discern the veracity of Canada Goose's humane claims makes her more likely to be deceived or misled about the very information that will influence her purchasing decision. As NAD has remarked and as noted in Section II.b, advertising messages regarding animal welfare can "enable customers to make purchasing decisions that reflect their particular social and ethical concerns. Consumers cannot typically verify the accuracy of these claims for themselves." It is the role of the agencies to ensure that consumers who wish to make purchasing choices reflecting their concerns are not duped by misleading messages.

The agencies' concern, as discussed in § I, is with the "ordinary purchaser" or "reasonable person" who does not stop and analyze a claim. The ordinary purchaser reading Canada Goose's well-publicized representations would have extreme difficulty vetting the claims that it ensures humane treatment of the geese used in the production of its apparel. Canada Goose's representations assure the buying public that its suppliers have treated the geese in a way that the Company does not, and likely cannot, guarantee. PETA's investigation was necessary to expose the suffering of birds used for down in Canada Goose's apparel. Consumers who are considering which garments to purchase are in a far less informed position about the veracity of Canada Goose's representations, and they have and will rely on the Company to provide truthful and not misleading information. If Canada Goose, a company who has attempted to carefully curate a brand identity of social responsibility, did not insist that the geese are humanely treated and none are subjected to "undue harm," many consumers likely would not choose to spend considerable sums of money on Canada Goose's products.

⁶⁴ As recognized by agricultural economists:

Where producers are willing to supply products conforming to animal welfare principles, but consumers are not able to distinguish between these and other goods, there is a dysfunction in the market. Many goods produced by the food industry are best qualified as credence type goods, since their quality cannot be discerned by consumers prior to or after purchase. By definition, a credence type good implies a market with imperfect information: asymmetric information between the buyer and seller, thus a specific type of market failure. Since consumers are not able to distinguish by quality (animal friendly), they may choose the lower quality good and this may drive the higher quality good from the market. Labeling is the standard prescription for dealing with different qualities while permitting consumer choice.

David Blandford & Linda Fulponi, *Emerging Public Concerns in Agriculture: Domestic Policies and International Trade Commitments*, EUR. REV. OF AGRIC. ECON., 1999, at 40.

Canada Goose has a strong incentive to place rose-colored glasses over its consumers' eyes in order to persuade the buying public to choose its down products over down or down-free products from other companies. It has misled consumers into thinking that animals used in the making of its goods were treated in a way that was diametrically opposed to the reality of their treatment. It is up to the agencies to prohibit these deceptive claims.

IV. Relief Requested

Canada Goose's deceptive and misleading advertising violates Section 5 of the FTC Act and Section 52 of the Competition Act. PETA urges the Commission and Bureau to take action to stop Canada Goose from deceiving consumers about the nature of its down products.

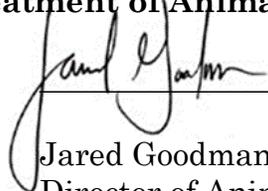
Accordingly, the undersigned respectfully requests that the agencies:

- (1) require Canada Goose to remove misleading claims from its website;
- (2) enjoin Canada Goose from making such misleading statements in the future;
- (3) require Canada Goose to disseminate corrective statements in all media in which the misleading statements were previously disseminated;
- (4) require Canada Goose to disclose the actual audit standards and reports of its suppliers; and
- (5) impose all other penalties as are just and proper.

November 1, 2017.

**For People for the Ethical
Treatment of Animals, Inc. (PETA)**

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