July 2, 2020

Richard Quaresima  
Acting Associate Director, Division of Advertising Practices  
Bureau of Consumer Protection  
Federal Trade Commission  
600 Pennsylvania Avenue N.W.  
Washington, D.C. 20580

VIA ELECTRONIC MAIL AND U.S. POSTAL SERVICE

Re: Complaint requesting action to enjoin the dissemination of false or deceptive advertising by Tyson Foods, Inc.

Dear Acting Associate Director Quaresima:

The attached complaint is submitted by Richman Law Group on behalf of three non-profit organizations: Animal Equality, Organic Consumers Association ("OCA"), and Food & Water Watch ("FWW").

On behalf of these organizations, we write to request that the Federal Trade Commission investigate and take action to enjoin Tyson Foods, Inc. ("Tyson") from making false and misleading claims about its chicken products and the conditions under which they are produced. As set forth in the complaint, Tyson is egregiously misleading consumers with marketing and advertising representations that falsely suggest its chicken products are produced in a natural, environmentally responsible, and humane way.

Such representations, which are widely disseminated via Tyson’s website and on certain product labels, as well as via myriad other media, indicate to consumers that Tyson’s chickens were raised under natural and humane conditions on bucolic family farms by farmers utilizing environmentally sustainable practices and adhering to standards that exceed those of the average chicken producer. These representations are untrue. In reality, the practices used by Tyson suppliers, at the direction of Tyson, fall far below the level of animal care and environmental sustainability that a reasonable consumer would expect based on the company’s representations. Tyson utilizes the same unnatural, unsustainable, and inhumane National Chicken Council ("NCC") standards that apply to the overwhelming majority of chickens raised in the United States, but it knowingly leads consumers to believe otherwise. In fact, knowing that other companies have profited off of such misleading representations, Tyson itself has repeatedly sought to prevent chicken producers that utilize NCC standards from "tout[ing] [their] raising practices as though they are unique from and superior to the practices of [their] competitors."
Nevertheless, Tyson currently makes representations that are virtually identical to those that it has consistently maintained are misleading to consumers.

These baseless “all natural,” animal-welfare, and environmental claims are part of a sophisticated marketing strategy launched by Tyson at a time when a large and growing number of consumers are keenly interested in avoiding purchasing products that are the result of unnatural, unsustainable, and inhumane industrial animal agriculture practices. However, it is virtually impossible for consumers to gauge for themselves whether a sustainability or animal welfare claim is accurate, because consumers do not have access to the producers’ facilities, nor do they have the technical knowledge necessary to assess these claims via the information available to them. Thus, FTC oversight and enforcement are consumers’ best hope for avoiding deception regarding these production practices.

Claims regarding “all natural” products, environmental sustainability, and animal welfare are material to consumers, a majority of whom wish to avoid products that are produced in unnatural and environmentally harmful ways or derived from inhumanely treated animals. Tyson misrepresents its products as “all natural,” sustainable, and humane and takes advantage of this consumer concern. As the attached complaint explains in detail, these representations amount to unlawful consumer deception in violation of the FTC Act. In the spirit of the FTC Commissioner’s recent public commitment to combat such “greenwashing,” we ask the Commission to provide oversight and enforcement to assist consumers in avoiding deceptive marketing that seeks to unlawfully influence their purchasing behavior.

We appreciate your prompt attention to this matter and are available to assist your office in any review of this complaint.

Very Truly Yours,

____________________
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BEFORE THE UNITED STATES FEDERAL TRADE COMMISSION

ANIMAL EQUALITY, ORGANIC CONSUMERS ASSOCIATION, &
FOOD & WATER WATCH,
Petitioners,

TYSON FOODS, INC.,
Proposed Respondent.

COMPLAINT FOR ACTION TO STOP
FALSE OR DECEPTIVE ADVERTISING

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EXECUTIVE SUMMARY

Animal Equality, Organic Consumers Association, and Food & Water Watch (collectively, “Petitioners”) submit this complaint requesting that the Federal Trade Commission (“FTC”) investigate false and misleading representations made by Tyson Foods, Inc. (“Tyson”) relating to the environmental sustainability of its production methods and the health and humane treatment of the chickens used in its products. Relatedly, Petitioners request FTC action be taken against Tyson’s misrepresentation of its products as “all natural.” Consumers regularly rely on these material misrepresentations, which directly affect their purchasing decisions with respect to Tyson products.

As a large and growing number of consumers become keenly interested in avoiding purchasing products that are produced using unnatural, environmentally unsustainable methods that involve the inhumane treatment of animals, producers like Tyson have sat up and taken note. Tyson has set out to capitalize on these consumer values by deceptively marketing its products as all-natural, sustainable, and humane. However, as several consumer surveys indicate, Tyson’s actual practices are inconsistent with how reasonable consumers understand its claims regarding the “all natural” characterization of its products and its environmental sustainability and animal welfare policies. Because it is virtually impossible for consumers to determine for themselves whether such claims are accurate as to a given product, FTC oversight and enforcement are consumers’ best hope to avoid falling prey to this deception regarding Tyson’s production practices.

For example, Tyson advertises and labels its chicken products as “100% all natural” and falsely claims the birds raised for these products can “easily move” “freely within the barn” and
“express normal behavior.”¹ In reality, however, Tyson raises unnaturally fast-growing breeds of chickens in highly crowded warehouses. The birds’ unnatural size and growth rate often result in debilitating pain and immense trouble walking.² These crowded conditions lead Tyson to routinely administer anti-microbial drugs and contribute to the spread of multi-drug resistant pathogens, which have been repeatedly detected in Tyson facilities. Tyson likewise claims its business model is “aligned with environmental conservation” and that it is committed to “protecting and respecting natural resources,”³ while being consistently ranked as one of the largest polluters of air and waterways in the country.⁴

In addition to these misrepresentations, Tyson makes patently false claims such as “100% of chickens we harvest in the United States . . . are in transport to a processing facility [for] less than eight-hours” and characterizes its transport methods as “safe and responsible.”⁵ But investigations and federal inspections show Tyson chickens are, as a matter of course, crammed together on overcrowded transport trucks, sometimes for as long as 12 to 24 hours.⁶ Indeed, Tyson’s animal welfare claims are in stark contrast with reality, including ample evidence of ineffective and improper slaughter practices resulting in the scalding or crushing to death of some still-conscious animals.

⁶ USDA Agric. Marketing Serv., Livestock, Poultry, and Seed Program, Poultry Grading Branch, Audit Programs, Quality System Audit Report for Tyson Foods, Inc., Wilkesboro, NC Complex (Sept. 6, 2012) (on file with Complainant); Memorandums of Interview in Response to FOIA 2017-00274 Regarding Tyson Foods Facility in Glen Allen, VA (July 14, 2017) (on file with Complainant).
Petitioners’ Complaint details the false and deceptive statements made by Tyson and contrasts them with the industrialized practices Tyson actually employs. Tyson’s marketing paints a pastoral picture of happy chickens raised in natural, environmentally sustainable conditions when, in reality, Tyson products are the result of a highly industrialized system that pollutes the environment and treats its chickens as mere units of production. Petitioners have included descriptions and images obtained through undercover investigations and official USDA inspection reports that demonstrate Tyson’s routinely egregious conduct and the need for FTC action.

In light of the foregoing, Petitioners request that the FTC investigate Tyson’s claims, described in detail below, and take appropriate action to enjoin the company from continuing to make misleading “all natural” claims and other claims pertaining to environmental responsibility and animal welfare.
I. INTRODUCTION


The Petitioners bringing this FTC Complaint are also involved as plaintiffs and/or co-counsel in a false advertising action filed against Tyson in the Superior Court of the District of Columbia. However, that litigation solely addresses misleading non-label marketing claims regarding environmental sustainability and humane animal treatment, and exclusively addresses products marketed under the Tyson brand name (the “brand name products”). This Complaint addresses the misleading claims made in the marketing and labeling of Tyson’s NatureRaised product line, in addition to Tyson’s brand name products. Furthermore, this Complaint additionally addresses the “natural” representations that Tyson makes regarding its products.

As detailed below, Tyson unlawfully makes false and/or misleading representations about the nature of the Products, the environmental responsibility of its production practices, and the health and humane treatment of the birds used in those products. In marketing and advertising materials on Tyson’s labels, websites, and social media accounts, as well as through its non-digital marketing media such as television advertising, Tyson represents to consumers that its

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products are “all natural,” that its production practices are environmentally responsible, and that the animals raised for these products are healthy and treated humanely.

Contrary to these claims, however, Tyson’s actual production practices fall far below the standards represented in its marketing materials and far below reasonable consumer expectations based on those claims. Tyson’s unsustainable, unnatural, and inhumane practices include the routine use of anti-microbial drugs and toxic chemicals; the egregious pollution of air and waterways; and the utilization of National Chicken Council (“NCC”) animal welfare standards—which merely codify standard inhumane factory farming practices (see infra Part IV.B.3.a)—and systemic violations of even its own low standards. Reasonable consumers do not consider these practices to be natural, environmentally responsible, and humane.

Likewise, Tyson’s claimed commitment to environmental sustainability does not comport with its long history of noncompliance with environmental laws or its continued pollution of air and waterways at staggering levels. A plethora of public records show undeniable evidence of Tyson’s systemic violation of environmental statutes.\(^8\) Simply put, Tyson’s chicken operations take a tremendous toll on the environment, a fact the company has attempted to obfuscate through misleading marketing.

Consumers want to avoid products that are harmful to the environment and animals but lack technical knowledge regarding poultry industry practices and the enforcement of environmental laws and animal welfare standards. Tyson capitalizes on this knowledge gap by misrepresenting its environmental practices and the treatment of the chickens in its supply chain to the detriment of their consumers and competitors.

Several undercover investigations show that the products which Tyson advertises as humane came from conditions that were anything but. The investigations showed chickens raised

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\(^8\) See, e.g., infra Part IV.B.2.
in unnatural and cruel conditions, cramped together, and abused in the process leading to their slaughter. The “natural” and animal-welfare representations Tyson makes on its websites, product labels, social media pages, YouTube channels, advertisements, and other marketing media cannot be reconciled with the company’s welfare standards, let alone Tyson’s actual practices, which routinely fail to meet its already low standards.

The NCC animal welfare standards utilized by Tyson are designed to serve as industry-wide minimum standards. The majority of companies in the chicken industry set NCC standards in place. A recently issued NAD case report notes that Tyson has historically alleged that Perdue Farm Inc.’s (“Perdue”) use of phrases like “humanely raised” to describe chickens raised pursuant to NCC standards misleads consumers to believe that Perdue’s chickens “are raised in a manner that is more humane than the standard practices within the poultry industry.”

Nevertheless, Tyson utilizes these same standards and represents that it raises chickens “in a humane way” and “as humanely as possible.” Thus, Tyson is aware that its representations are misleading, but continues to make them—and profit off of them—anyway.

Thus far, regulatory action and false advertising litigation (set forth in Exhibit 1) have been insufficient to curb this proliferation of consumer deception. However, FTC Commissioner Rohit Chopra emphasized a renewed commitment to combat “greenwashing,” which can help break the cycle of impunity for industrial agribusinesses that profit off of consumer deception.

In the spirit of that statement, we respectfully request that the Commission “exercis[e] its full authority to protect consumers and honest businesses” and take prompt action to hold Tyson

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10 See, e.g., infra Part IV.A.1.c.
accountable for deceiving consumers with false claims of natural, environmentally sustainable, and humane production practices.\textsuperscript{12}

\section*{II. PARTIES}

\subsection*{A. Animal Equality}

Animal Equality is an international non-profit organization based in California that works with society, governments, and companies to end cruelty to farmed animals.

\subsection*{B. Organic Consumers Association}

OCA is a national non-profit, public-interest organization that deals with crucial issues of truth in advertising, accurate food labeling, food safety, children’s health, corporate accountability, and environmental sustainability.

\subsection*{C. Food & Water Watch}

FWW is a national non-profit, public-interest organization based in Washington, D.C. that champions healthy food and clean water for all by standing up to corporations that put profits before people and advocating for a democracy that improves people’s lives and protects the environment.

\subsection*{D. Tyson Foods, Inc.}

Tyson is the largest producer of chicken products in the United States.\textsuperscript{13} Tyson is incorporated in Delaware and has its principal executive office in Springdale, Arkansas. Tyson

\textsuperscript{12} \textit{Id.}

\textsuperscript{13}
produces, processes, markets, and distributes fresh, frozen, and value-added chicken products, as well as several lines of pre-packaged chicken products. Tyson’s chicken products are available in a wide variety of national supermarket chains, regional stores, and other retail outlets.

Tyson markets these products under its own name (including, but not limited to, “Tyson,” “Tyson Naturals,” and “Tyson Premium Selects”) as well as under various other brand names, including “NatureRaised Farms.”

III. STANDARD OF REVIEW

The FTC is the primary federal agency charged with thwarting unfair and deceptive trade practices. Under Section 5 of the FTC Act, unlawful deception will be found “if there is a representation, omission or practice that is likely to mislead the consumer acting reasonably in the circumstances, to the consumer’s detriment.” A representation is thus unlawfully deceptive if it is (1) material to a consumer’s decision-making; and (2) likely to mislead the consumer.

To ensure that their advertisements are not deceptive, marketers must identify all express and implied claims that the advertisement reasonably conveys. A claim that is literally true but nonetheless deceives or misleads consumers by its implications can be considered a deceptive practice under the FTC Act. Marketers must ensure that all reasonable interpretations of their claims are truthful, not misleading, and supported by a reasonable basis before they make the

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14 See 15 U.S.C. § 45(a)(2) (“The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations . . . from using unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce.”).
16 Id.
17 See Kraft, Inc. v. F.T.C., 970 F.2d 311, 322 (7th Cir. 1992) (“[E]ven literally true statements can have misleading implications.”).
claims. If a particular consumer group is targeted, or likely to be affected by the advertisement, the advertisement should be examined from the perspective of a reasonable member of that group. Moreover, the advertisement should be evaluated as a whole, including its visual elements, to account for “crafty advertisers whose deceptive messages were conveyed by means other than, or in addition to, spoken words.”

Also, under Section 5 of the FTC Act, the Commission will find that a practice is unfair if the practice causes a substantial “unjustified consumer injury,” which is an injury not outweighed by any offsetting consumer or competitive benefits, and that could not reasonably have been avoided. 15 U.S.C. § 45(n). While unjustified consumer injury alone “can be sufficient to warrant a finding of unfairness,” the Commission may also consider whether the practice “violates established public policy” and “whether it is unethical or unscrupulous.”

In the context of product endorsements or certifications, there must also be disclosure of unexpected material connections related to the product endorsements. An “unexpected material connection” is defined as “any relationship that might materially affect the weight or credibility” of the certification and that would not reasonably be expected by consumers, such as a self-certification or excessive fee. Failure to disclose adequately the material information

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20 FTC Policy Statement on Deception, supra note 15 (citing Am. Home Products Corp. v. FTC, 695 F.2d 681, 688 (3d Cir. 1982)).
22 Id. (citing FTC v. Sperry & Hutchinson Co., 405 U.S. 223, 244-45 n.5 (1972)).
24 Moonlight Slumber, LLC, No. C-4634 at 6 (FTC Dec. 11, 2017); see also 16 C.F.R. § 255.5.
constitutes a deceptive act or practice, in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

As set forth in the FTC’s Enforcement Policy Statement on Food Advertising, the FTC “has assumed primary responsibility for regulating food advertising” while FDA has taken primary responsibility for regulating food labeling.\(^\text{25}\) While this statement noted that the FTC “intends to apply similar principles to consideration of claims for products regulated by USDA,” the FTC and the National Advertising Division of the Better Business Bureau (“NAD”) (which applies similar jurisdictional principles as the FTC) have identified several circumstances where the regulation of labeling claims is appropriate.

The FTC has made clear that agency approval of a label claim will not preclude FTC enforcement regarding advertisements that use the same or similar language that appears on approved labels. In fact, the FTC has specifically recognized that “[s]ome claims that would technically comply with [an agency’s] labeling regulations might be deceptive in advertising if the context of the ad renders the express message of the claim misleading.”\(^\text{26}\)

The Commission has indicated that where a claim is subject to the joint jurisdiction of the FTC and the FDA, such as a food label, it will afford “deference” to the FDA’s standards. The FTC’s basis for this deference is that the FDA has “primary responsibility” for food labels and “multiple governmental definitions for the same terms would have the potential to mislead consumers.”\(^\text{27}\) However, while deference to FDA labeling regulations may have some merit, similar deference to meat and poultry labels approved by the USDA is not justified by this rationale. Public health experts have repeatedly noted that the USDA—which is first, and


\(^{26}\) Id.

\(^{27}\) Id.
foremost, responsible for promoting and marketing agricultural products—has a fundamental conflict of interest that impedes the agency’s ability to protect consumers from misleading label claims.28

An August 2019 decision from the National Advertising Division of the Better Business Bureau (“NAD”) emphasized that the NAD will “not automatically defer to regulatory determinations” regarding label claims.29 It further noted that where the “NARB has found that where the record did not show whether the FSIS staff considered the impact of the claim on consumers or explained its reasoning as to whether the challenged claim was false and misleading to consumers, the panel did not believe that the FSIS determination should be dispositive of the outcome in the underlying NAD/NARB proceeding.” The decision, which ultimately recommended that the advertiser discontinue the claim “Ethically Raised by Family Farmers Committed to a Higher Standard of Care, Governed by Third Party Animal Welfare Audits,” demonstrates the USDA’s continual failure to apply even the most minimal requirements to prevent consumer deception. Specifically, the NAD found that “the record here did not demonstrate that FSIS considered consumer impact or that it explained its reasoning with respect to its determination on the ‘ethically raised’ claim. Nor did FSIS consider the consumer perception evidence . . . submitted by the challenger to clarify the consumer takeaways reasonably conveyed by the claim.”

In another NAD decision issued in August 2019, Tyson itself successfully persuaded the NAD to review the product labels of one of its competitors.30 There the NAD held that “case-by-case review of claims by agency staff” is not the sort of government action that should defeat

30 Perdue NAD, supra note 9.
NAD jurisdiction” and that the “existence of a legal or regulatory framework that requires FSIS staff review of labeling . . . does not divest NAD of jurisdiction over a challenge.” In that decision the NAD further noted that the “NAD is not required to defer to FSIS regulatory rulings where the relevant label was not mandated and was approved not by regulation but rather by FSIS staff as part of an administrative review.” (internal citation omitted). The NAD explained that “[w]hile NAD endeavors to harmonize its decisions with applicable federal regulations and rulings, it must examine each case and weigh the intent behind the regulations and rulings and balance those against the reasonable expectations of consumers.”

Thus, although there is legitimate concern that “multiple governmental definitions for the same terms would have the potential to mislead consumers,”31 the FTC’s rationale for deferring to label approvals by other agencies does not apply in the context of the USDA meat and poultry labeling. Because the NAD has determined that USDA continues to approve labels that are unequivocally misleading to consumers, “deference” to such label approvals, when “balance[d] . . . against the reasonable expectations of consumers” would be inconsistent with FTC’s commitment “to exercising its full authority to protect consumers and honest businesses.”32

IV. FALSE OR MISLEADING CLAIMS

A. Representations at Issue

At issue in this Complaint are representations on Tyson’s product labels and in advertisements on its websites and other media, in the form of attention-grabbing text and

31 Id.
32 FTC, Statement of Commissioner Rohit Chopra, supra note 11.
depictions regarding the natural quality of its products, the sustainability of its environmental practices, and the treatment of chickens.

Tyson markets and advertises its chicken products throughout the U.S. and seeks to reach an extensive consumer base through its digital marketing media, including company websites. Such marketing targets consumers concerned with animal suffering and environmental degradation, imparting promises of high animal welfare, environmentally sustainable production practices, and “all natural” products.

1. Tyson’s name-brand chicken products

   a. Natural claims

Tyson produces chicken products under various name-brand varieties, such as “Tyson,” “Tyson Naturals,” and “Tyson Premium Selects,” among others. Tyson advertises and markets the products sold under these brand names as “100% all natural,” produced from chickens raised in accordance with high animal-welfare standards, using environmentally “sustainable” methods. Each of these claims is unlawfully deceptive.

Examples of Tyson’s “natural” advertising and marketing include descriptions such as:

- “100% all natural”; 33
- “perfectly all natural”; 34
- “natural foods fresh from the farm”; 35

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These “natural” representations appear on the product labels, on Tyson’s websites, on social media, and even in several television commercials that aired on national television networks. Many of these “natural” representations are made without the accompanying disclaimer that is required on USDA-approved labels that make similar “natural” claims. Other Tyson ads that make “natural” representations include disclaimers that are hard to read and/or otherwise unclear.

Figure 1. Image of product on Tyson product page with “100% all natural” language, without disclaimer (screenshot taken Nov. 12, 2019).

2020-06-24-12-00-00-00 (last visited June 24, 2020) (“NATURAL: A product containing no artificial ingredient or added color and is only minimally processed. Minimal processing means that the product was processed in a manner that does not fundamentally alter the product. The label must include a statement explaining the meaning of the term natural (such as ‘no artificial ingredients; minimally processed’).”
39 See e.g., Tyson Crispy Chicken Strips TV Commercial, ‘Family Critics’, supra, note 36.
By advertising these products as “natural,” Tyson’s marketing scheme suggests that its process and resulting products meet reasonable consumer expectations for “natural” poultry, described in Part V.A.1 below.

b. Environmental sustainability

Throughout its advertising and marketing materials, Tyson makes representations regarding its commitment to environmental stewardship and sustainability. For example, in a video posted on its Tyson brand website and YouTube channel, a Tyson spokesperson emphasizes the importance of Tyson being “stewards of the land.”

41 While this representation in this image includes an asterisk next to the phrase “All Natural,” there is no corresponding disclaimer on the webpage. Tyson, Fresh Chicken, https://www.tyson.com/products/fresh-chicken (last visited Nov. 12, 2019); see Friends of the Earth v. Sanderson Farms, Inc., No. 17-cv-03592-RS, 2018 U.S. Dist. LEXIS 220547, at *10 (N.D. Cal. Dec. 3, 2018) (“Review, to the contrary, is limited to the four corners of a specific webpage at issue. No authority suggests a reasonable consumer is expected to search a company’s entire website (or certainly all of a company’s statements across all forms of advertisements) to find all possible disclaimers.”).

42 Tyson® Brand, Raising Healthy Chickens [Extended], YouTube (May 17, 2017), https://www.youtube.com/watch?v=j2x5tfP7Xig.
also touts Tyson’s purported “commitment to environmental excellence,”\textsuperscript{43} and other marketing materials highlight the company’s “dedication to environmental leadership.”\textsuperscript{44}

The “Tyson Foods Environmental Policy,” published in December 2018, states:

Environmental stewardship is a core value of Tyson Foods’ business philosophy and commitment to sustainability. We believe protecting the environment and conserving natural resources is essential for maintaining clean air, water and land in our world. We serve as stewards of the animals, land and environment entrusted to us and we set goals to achieve environmental excellence in all company operations.\textsuperscript{45}

Among the “Guiding Principles”\textsuperscript{46} in its Environmental Policy, Tyson states:

- “We strive to operate our business in an environmentally sustainable manner by recognizing our environmental footprint and finding feasible ways to reduce its impact.”
- “We are committed to compliance with environmental laws, set ambitious standards for managing identified environmental risks and are in pursuit of setting industry leading standards.”

Tyson makes numerous environmental responsibility claims in its annual “sustainability reports” as well. For example, in its 2018 Sustainability Report, Tyson published the patent falsehood that “[w]ater that is released [from Tyson facilities] meets EPA’s Effluent Guidelines Program and is safe for the environment.”\textsuperscript{47} Yet this style of misrepresentation is simply a continuation from previous years. Tyson’s 2017 Sustainability Report makes numerous misleading claims as well, such as:

- “Reducing our environmental impact is key to our mission of raising expectations for how much good food can do.”\textsuperscript{48}

\textsuperscript{44} 2017 Sustainability Report, supra note 3.
\textsuperscript{46} Id.
\textsuperscript{48} 2017 Sustainability Report, supra note 3, at 40.
• “Delivering on our mission requires protecting and respecting natural resources as we grow our business.”\textsuperscript{49}
• “[O]perating our business aligned with environmental conservation is fundamental to our Core Values, one of which states that we will ‘serve as stewards of the animals, land and environment entrusted to us’.”\textsuperscript{50}
• “Sustainably feeding the world means reducing our carbon footprint.”\textsuperscript{51}

One natural resource Tyson specifically claims to be “[a]lways keeping . . . safe” is water.\textsuperscript{52} The 2017 Sustainability Report states, “Water is a precious, finite resource that must be used and managed responsibly from farm to finished product. . . . We aim to balance responsible water stewardship with protecting the quality and safety of our products.”\textsuperscript{53}

There are many more examples of similar environmental representations throughout Tyson’s advertising and marketing materials. For example, on Facebook, Tyson has touted its purported commitment to “protecting the planet.”\textsuperscript{54}

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{Tyson-Foods-Facebook-post.png}
\caption{Tyson Foods Facebook post touting their supposed commitment to the environment “in honor of Earth Day.”}
\end{figure}

Tyson also uses Instagram to lead consumers to believe its production practices are environmentally sustainable:

\begin{itemize}
\item Id.
\item Id.
\item Id. at 44.
\item Tyson Foods, Inc., supra note 43.
\item 2017 Sustainability Report, supra note 3, at 42.
\end{itemize}
Tyson Foods Instagram post highlighting their claimed commitment to “#sustainability” for “Animals, communities, workplace, the environment.” Includes video graphic.\(^{55}\)

Tyson has made its environmental sustainability claims across all forms of marketing available to the company despite tremendous evidence to the contrary.

\textit{c. Animal welfare representations}

Throughout its advertising and marketing materials, Tyson makes representations regarding the well-being, treatment, care, handling, and living conditions of the chickens used in the Products.

On its Tyson brand website and YouTube channel Tyson invites consumers to “[f]ind out how we keep our chickens healthy”\(^{56}\) and provides videos to consumers who are “[c]urious about how Tyson® chickens are raised[.]”\(^{57}\) In a video titled “Raising Healthy Chickens,” which has

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\(^{57}\) \textit{Raising Healthy Chickens [Extended]}, supra note 42.
been viewed more than four million times, a narrator comments that the birds appear “happy” and picks up one bird to demonstrate to the viewer that she is free of “breaks or bruises” and has a healthy beak, legs, and feathers. The narrator points this out to illustrate that Tyson likes its birds “to be able to get around and still be a chicken.”

Figure 5. Tyson website information making animal welfare claims, with video on “Raising Healthy Chickens.”

In that same video, Tyson Foods Chairman John Tyson states he “care[s] about the animal” and that Tyson is “responsible for doing the best we can in a humane way.”

A Tyson spokesperson in that same video also speaks of Tyson’s responsibility and commitment “to give these birds the highest quality of life while they’re entrusted with us.”

In another video linked on the Tyson brand website and available on its YouTube channel, a Tyson spokesperson asserts: “We’re stewards of the animals that we raise. It’s our

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58 Id.
59 Id.
60 Our Practices – The Truth About Tyson® Chicken, supra note 56.
61 Raising Healthy Chickens [Extended], supra note 42.
62 Id.
responsibility to take care of them as humanely as possible. It’s the right thing to do.”

This video has been viewed approximately 1.2 million times.

Numerous pages within Tyson’s company website make similar claims related to the raising and treatment of the chickens that become the Products. The “Animal Welfare” pages make animal welfare representations such as:

- “No cages are used and birds can move freely within the barn. Stocking density, the number of birds within the available space in the barn, is carefully calculated to comply with national standards and to ensure that all birds can easily move to access feed and water and to express normal behavior.”

- “In addition to numerous well-being benefits, careful and quiet animal handling during loading, transport, and unloading can produce meat quality benefits as well.”

- “[We] ensure safe and responsible transportation of the chicken . . . we process for our food products.”

- “100% of chickens we harvest in the United States . . . are in transport to a processing facility less than eight-hours.”

In Tyson’s “Commitment to Animal Well-Being,” the company declares its “commitment to serve as stewards of the animals entrusted to us” and guarantees its suppliers’ utilization of “the principles of the ‘5 Freedoms’,,” which include:

- “Freedom from hunger and thirst”;
- “Freedom from discomfort”;
- “Freedom from pain, injury or disease”;
- “Freedom to express normal behavior”; and

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63 Tyson® Brand, No Antibiotics Ever [Extended], YouTube (May 21, 2017), https://www.youtube.com/watch?v=z57ofm4f628.
66 Transportation, supra note 5.
67 Id.
68 Id.
• “Freedom from fear and distress.”

In recent years, Tyson has begun including Animal Welfare Representations in its annual Sustainability Reports. The recently released 2018 Sustainability Report declares a commitment to “deploy the most transparent welfare practices in food,” and lists animal welfare as a primary area of focus among customers and consumers. In fact, the 2018 Report identifies “Animal Well-Being and Management” as one of the most important issues to external stakeholders and consumers, as well as to Tyson’s business.

The 2018 Sustainability Report devotes an entire section to animal welfare representations. Therein, Tyson makes such Representations as:

• “We’re committed to offering consumers the most humanely raised food possible”;
• “We’ve built an internal culture of caring about animals”;
• “[D]elivering excellence in animal welfare is inherent to who we are as an organization”;
• “[Animal Welfare] Specialists are embedded in the day-to-day operations at each facility, acting as a liaison between our operation teams and plant managers, as well as serving as advocates for the animals themselves.”
• “Through a robust animal welfare auditing strategy, we’re committed to ensuring that our expectations on responsible and humane care and handling of livestock and poultry are met throughout our operations and supply chains.”

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69 Our Commitment to Animal Well-Being, Tyson Foods (Jan. 28, 2016), https://www.tysonfoods.com/sites/default/files/2018-10/Our%20Commitment%20to%20Animal%20Well%20Being%283244eafb-2df0-4e75-b3f2-3c340ce8f731%29.pdf. This document is made available to consumers through multiple Tyson webpages and other resources; 2018 Sustainability Report, supra note 47, at 40 (linking to same); see also 2017 Sustainability Report, supra note 3, at 29 (boasting of Tyson’s “commitment to delivering excellence in animal welfare,” including adherence to the “Five Freedoms”).

70 2018 Sustainability Report, supra note 47, at 11.
71 Id. at 16.
74 2018 Sustainability Report, supra note 47, at 14.
75 2018 Sustainability Report, supra note 47, at 38–52.
76 Id. at 40 (emphasis added).
The 2018 Report also includes links to Tyson’s “Animal Well-Being Mission Statement” and its “Animal Well-Being Policy and Commitment.”

Tyson’s official Mission Statement on Animal Well-Being assures consumers and other stakeholders that it “is committed to the well-being, proper handling and humane harvesting of all the animals” used in its products, calling it “an important moral and ethical obligation we owe our suppliers, customers, ourselves and, most of all, the animals we depend on for our livelihood.”

It avers that “[a]ll Tyson Foods Team Members, as well as the independent poultry, cattle and hog farmers who supply us, are expected to respect and serve as stewards of the animals we work with every day, treating them in a proper manner at all times.”

The 2018 Report also contains links to a series of pages specifically devoted to raising, housing, handling, transporting, and harvesting animals. Each of these pages makes distinct allegations regarding Tyson’s commitment to animal welfare, including:

- “The standard animal husbandry practice that’s been used for centuries is called selective breeding, where chickens have been bred for certain performance attributes, including . . . health, skeletons, strength of legs, appropriate growth rate and the way they walk.”

- “Procedures for [physical alterations] . . . are performed in accordance with the best animal welfare practices . . . . These procedures are closely monitored and performed by trained personnel using specialized equipment in the hatchery on day-old poultry.”

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77 Id.
78 Id. (emphasis added).
79 Id. (emphasis added).
80 2018 Sustainability Report, supra note 47, at 43.
82 Id.
• “We work with thousands of independent farmers every day to ensure they are treating the animals responsibly and with respect, starting with where and how they are housed.”

• “Barns are equipped with specially designed equipment to deliver a balanced feed portion and fresh water to ensure the birds receive the correct nutritional requirements to meet growth and production needs throughout their lives.”

• “Proper animal handling is a moral and ethical obligation. Team members who work with live animals in our plants are trained in humane animal handling practices and instructed to report anything they believe is inappropriate to their supervisor or our compliance and ethics hotline.”

• “We’re committed to safe and proper handling of animals during the loading, transport and unloading process. This includes minimizing stocking densities, travel times, ensuring proper ventilation and protecting the animals from harsh weather conditions.”

• “Our team members are required to follow a rigorous set of guidelines that govern our transportation activities aimed at protecting animals and ensuring food quality and safety.”

• “In our chicken . . . plants, we use the CARE risk analysis program to manage humane handling policies and procedures. CARE provides a system for continuous improvement in these areas and has three main components. We begin by documenting each step in the animal handling process from live animal receiving through harvest. We then evaluate each step to identify potential incidents that could result in excessive excitement, discomfort or accidental injury to the animal. If an opportunity for a potential risk or incident exists, we implement changes to mitigate or minimize those risks.”

• “Our chicken . . . specialists were certified by the U.S. Poultry and Egg Association’s Poultry Handling and Transportation Certification Program (PHT). This training is aimed at teaching poultry transportation and catch crews best
practices and methods in . . . the safe and humane handling of birds before, during, and after transport."\(^89\)

Tyson’s 2018 Sustainability Report devotes an entire section to issues related to animal care and well-being (as did its sustainability reports from previous years). The 2018 Report promises the “best animal welfare practices” and declares Tyson’s commitment to “offering consumers the most humanely raised food possible.”

In myriad ways, the message Tyson conveys to consumers is clear: that “there is a very strong commitment to animal welfare at Tyson Foods” and that the birds raised for the Products are healthy and treated humanely.\(^90\)

Tyson’s Sustainability Report from the previous year, 2017, similarly makes representations about how Tyson cares for the chickens it slaughters and sells.\(^91\) The 2017 Report asserts that “specialists monitor animal well-being at U.S. farms where our chickens are raised. In this role, specialists help farmers comply with animal welfare policies and regulations and support adherence to the Five Freedoms principles.”\(^92\)

More generally, the 2017 Report boasts, “Quality care of the animals in our supply chain is a top priority to ensure we offer consumers the most humanely raised food possible.”\(^93\)

The 2017 Report also states, “Team members in positions that require live animal handling also must complete rigorous animal welfare training before working with live animals. Our animal well-being specialists ensure that this training is delivered, updated and customized

\(^89\) Id.
\(^90\) Karen Christensen, Our Commitment to Animal Care, Tyson—The Feed Blog (April 12, 2018), https://www.tysonfoods.com/the-feed-blog/our-commitment-animal-care; see also 2017 Sustainability Report, supra note 3, at 29.
\(^91\) 2017 Sustainability Report, supra note 3.
\(^92\) Id. at 30.
\(^93\) Id. at 29.
to each position — from catch crews and livestock haulers to team members in breeding houses and those who handle live animals at plants.”

Finally, one of Tyson’s websites assures consumers that its chicken plants “comply with the United States Department of Agriculture’s Food Safety and Inspection Service Poultry Products Inspection Act [and] the National Chicken Council Animal Welfare Guidelines . . . which, similar to the Humane Slaughter Act, are designed to ensure the humane harvest of poultry . . . ”

There are many more examples of similar Animal Welfare Representations throughout Tyson’s advertising and marketing materials.

2. Tyson’s “NatureRaised Farms” brand chicken products
   a. “All Natural”

The name of Tyson’s NatureRaised Farms line itself implies that the products are produced in a natural way and that there is a connection between their natural quality and the animal raising practices involved. Tyson represents these products as “all natural,” as well. The company makes this representation in numerous places on its website. For instance, under “Our Story,” the website reads: “At NatureRaised Farms, we stand by our commitment to ‘Doing What’s Right, Right from the Start.’ That’s why all of our products and the raising of our animals meet strict standards: [including] . . . ALL NATURAL.”

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94 Id.
96 The allegations of this Complaint are intended to encompass all such representations, past and present, in all their verbal and visual iterations.
Tyson further emphasizes its “all natural” message by including it in its NatureRaised Farms social media marketing.\textsuperscript{100}
Figure 7. Image appearing on NatureRaised Farms Facebook and Instagram accounts.\textsuperscript{101}

None of these marketing materials disclose Tyson’s use of toxic chemicals and anti-parasitic drugs; its regular emission of large amounts of pollutants into local waterways and airsheds; its crowding of birds into massive industrial warehouses with no access to the outdoors; its use of artificially selected, fast-growing chicken breeds that have chronic, painful, and debilitating health conditions; or the pervasive abuse and neglect of chickens by contract growers and slaughterhouse workers. Yet by advertising its NatureRaised Farms product line as “100% all natural,” Tyson’s marketing scheme falsely suggests that the production process and resulting products meet reasonable consumer expectations for “natural” poultry, described in Part V.A.1 below.

\footnote{\textsuperscript{101} NatureRaised Farms (@NatureRaisedFarms), Facebook (Dec. 24, 2015 at 1:00 PM), https://www.facebook.com/NatureRaisedFarms/photos/a.261976527273218/721974161273450/?type=3&permPage=1.}
b. Environmental sustainability

Tyson also falsely and misleadingly markets and advertises its NatureRaised Products as “good for the world”\textsuperscript{102} and “environmental[ly] . . . sustainab[le].”\textsuperscript{103} For instance, under the heading “Sustainability” on the Frequently Asked Questions page of NatureRaised Farms’ brand website, Tyson boasts: “Economic, environmental and social sustainability are simply the way we do business at NatureRaised Farms. We believe in conserving and protecting natural resources and supporting local communities.”\textsuperscript{104} Through social media, Tyson claims that “[e]conomic, environmental, and social sustainability are simply the way we do business at NatureRaised Farms. We believe in conserving and protecting natural resources.”\textsuperscript{105}

c. Animal welfare

Throughout its advertising and marketing materials, Tyson makes representations regarding the well-being, treatment, care, handling, and living conditions of the chickens used in the NatureRaised Farms products. The company falsely and misleadingly markets and advertises these products as humane and even “good for chicken.”\textsuperscript{106}

On the NatureRaised Farms brand website, the Frequently Asked Questions page boasts of the “great living environment and care” its chickens receive, including “fresh air,” “barn enrichments,” and “comfort year-round.”\textsuperscript{107} It states the chickens live in “comfortable” environments where they are “unobstructed” with “room to move freely” and “the space they

\footnotesize{\textsuperscript{102} NatureRaised Farms, supra note 98.  
\textsuperscript{104} Id.  
\textsuperscript{105} Id.  
\textsuperscript{107} NatureRaised Farms, supra note 98.  
\textsuperscript{108} NatureRaised Farms, supra note 103.}
need to exhibit natural behavior.” The website further represents that it requires its farmers and employees to “follow strict protocols to ensure animal welfare and quality living conditions for the chickens.”

The Facebook page Tyson maintains to market its NatureRaised products further leads consumers to believe that birds used for these products are treated humanely and raised in comfortable conditions where they can express natural behaviors. For example, the NatureRaised Farms Facebook page has repeatedly posted images of “mother hens” and “baby chickens” living together outdoors. These images have been shared tens of thousands of times on social media:

![Figure 8. Graphics posted by NatureRaised Farms on its Facebook page.](image)


109 *Id.*
These representations paint a picture of spacious, bucolic, outdoor living conditions, where chickens are raised with their babies and allowed to engage in natural social behaviors. This is quite opposite the actual experience of the chickens raised for Tyson’s NatureRaised Farms products.

B. The Reality of Tyson’s Practices

Contrary to Tyson’s representations, the chickens that become its products are, as a matter of standard business practices, raised and handled in disease-ridden and inhumane conditions, from hatching through slaughter. Also contrary to its representations, Tyson regularly fails to comply with environmental laws and is the second-largest polluter in the United States. In these ways, Tyson is the epitome of large-scale industrial chicken production—as far from “natural” as a company could be. Put simply, Tyson’s practices related to environmental stewardship and animal welfare are contrary to how a reasonable consumer would understand Tyson’s marketing and advertising regarding such issues.

1. Contrary to its advertising and marketing, Tyson’s products are not “natural.”

Tyson’s operations look nothing like the bucolic farms of old. Instead, the company relies almost exclusively on industrialized factory-style operations for the production of its chicken products. These unnatural industrial production practices include:

- the raising and slaughter of birds in facilities contaminated with antibiotic-resistant pathogens;
- the use of toxic chemicals and the regular emission of large amounts of hazardous and nonhazardous pollutants into local waterways and airsheds;\(^{110}\)

\(^{110}\) See infra Part IV.B.2.
• the routine use of anti-parasitic drugs, the injection of chicken eggs with formaldehyde, and the washing of the products with hazardous chemical disinfectants;¹¹¹

• the crowding of birds by the tens of thousands into massive corporate-controlled farms with no access to the outdoors;¹¹² and

• the use of artificially selected, fast-growing, breast-heavy chicken breeds that have chronic, painful, and debilitating health conditions.¹¹³

Tyson’s inhumane and unsanitary industrial production practices necessitate the use of antimicrobial drugs and other chemicals to prevent infections common to factory-farm conditions.¹¹⁴ The routine use of hazardous chemicals and antimicrobial drugs is necessary in order for factory-farming companies like Tyson to raise chickens in extreme conditions of confinement—densely populated flocks, in large warehouses, with limited fresh air and no access to sunlight. Chickens raised in healthy conditions with plenty of room to roam and dustbathe according to their natural instincts do not require the routine administration of antimicrobial drugs.

As further evidence of the unsanitary and inhumane conditions at Tyson chicken facilities, letters from USDA to Tyson show that the Food Safety Inspection Service has, on multiple occasions, detected pathogens such as Salmonella and Campylobacter resistant to multiple critical and highly important antibiotics on Tyson chicken meat samples.¹¹⁵ A 2016 study focused on Salmonella determined that the “presence of multiresistant Salmonella strains

¹¹¹ See infra Part V.B.2.b.
¹¹² See infra Part IV.B.3.c.
¹¹³ See infra Part IV.B.3.c.
¹¹⁵ These USDA reports indicate several of these multidrug-resistant pathogens are commonly associated with human illness.
in wastewater” was linked to a poultry slaughter plant and found that these strains “usually end up in the marine environment and may have a significant risk on the public health.”\textsuperscript{116}

Although Tyson leads consumers to believe that it uses “No Antibiotics Ever,” the truth is that the use of antibiotics, including those used in human medicine, is an essential feature of Tyson’s production process.\textsuperscript{117} It is true that Tyson birds are supposed to be removed from “no antibiotics ever” \textit{product lines} if they are treated with antibiotics, but the use of antibiotics on Tyson farms throughout the country means that resistant pathogens can spread throughout its supply chain, into the environment, and to consumers of the Products.

In short, Tyson’s actual animal-rearing and environmental practices represent the epitome of industrial animal agriculture and bear no resemblance to the natural conditions of bygone times, when animals were raised in natural conditions with access to the outdoors and without highly toxic chemical pollutants.

2. \textbf{Tyson chicken production is highly pollutive and environmentally unsustainable.}

Contrary to Tyson’s representations, Tyson chicken operations take a tremendous toll on the environment. What’s worse, the company regularly fails to comply with environmental laws and is in fact the second largest polluter in the United States. Tyson’s long history of noncompliance with environmental laws and continued pollution of air and waterways boggle the mind when compared to its messaging around environmental sustainability.

According to a 2017 report from Mighty Earth, an international environmental NGO, the U.S. Environmental Protection Agency’s Toxic Release Inventory (TRI) catalogues 104 million


\textsuperscript{117} Gustin, \textit{supra} note 114.
pounds of pollutants released directly into waterways by Tyson between 2010 and 2014, making Tyson the second-largest polluter in the United States.\footnote{118} In 2017 for instance, Tyson’s Sedalia, Missouri slaughter plant emitted more than 920,000 pounds of air and water pollutants.\footnote{119} In fact, among agribusinesses, Tyson is \textit{the} largest water polluter in the country.\footnote{120}

According to a 2016 report by Environment America, a federation of state-based environmental advocacy groups, in 2014 alone Tyson dumped more than 20 million pounds of toxic pollutants directly into our nation’s waterways:\footnote{121}

\begin{table}[h]
\centering
\begin{tabular}{|l|l|l|l|}
\hline
Facility & City & State & Toxic discharge pounds \\
\hline
Tyson Fresh Meats Inc WWTP & Dakota City & NE & 4,426,970 \\
Tyson Fresh Meats Inc - Jostlin II & Hillside & IL & 2,065,975 \\
Tyson Farms Inc - Carthage MS Processing Plant & Carthage & MS & 1,923,808 \\
Tyson Fresh Meats Inc & Columbus Junction & IA & 1,611,690 \\
Tyson Fresh Meats Inc & Lexington & NE & 1,539,622 \\
Tyson Poultry Inc-Broken Bow Processing Plant & Broken Bow & OK & 1,218,685 \\
Tyson Farms Inc - Blountsville Processing Plant & Blountsville & AL & 1,183,681 \\
Tyson Chicken Inc - Hope Processing Plant & Hope & AK & 901,899 \\
Tyson Poultry Inc - Processing Plant & Sedalia & MO & 898,632 \\
Tyson Farms Inc & Buena Vista & GA & 834,389 \\
Tyson Poultry Inc - Nashville Processing Plant & Nashville & AK & 679,239 \\
Tyson Foods Inc Center TX Processing & Center & TX & 615,811 \\
\hline
\end{tabular}
\end{table}

\begin{table}[h]
\centering
\begin{tabular}{|l|l|l|l|}
\hline
Facility & City & State & Toxic discharge pounds \\
\hline
Tyson Farms Inc & Forest & MS & 482,791 \\
Tyson Chicken Inc - Noel Complex & Noel & MO & 321,694 \\
Tyson Poultry Inc & Dardanelle & AR & 279,366 \\
Tyson Poultry Inc-New Holland Complex & New Holland & PA & 266,189 \\
Tyson Farms Inc-Processing & Shelbyville & TN & 206,084 \\
Tyson Farms Inc - Union City Processing & Union City & TN & 197,862 \\
Tyson Farms Inc & Harmony & NC & 151,310 \\
Tyson Poultry Inc & Waldron & AR & 145,259 \\
Tyson Poultry Inc & Scranton & PA & 131,809 \\
Tyson Poultry Inc-Processing Plant & Cumming & GA & 125,280 \\
Tyson Fresh Meats Inc & Perry & IA & 107,025 \\
Tyson Poultry Inc & Texarkana & AK & 93,503 \\
Tyson Poultry Inc - Gannis Processing Plant & Gannis & AK & 88,429 \\
Tyson Farms Inc - Processing Facility & Glen Allen & VA & 58,478 \\
Tyson Farms Inc- Temperanceville & Temperanceville & VA & 44,066 \\
\hline
\end{tabular}
\end{table}

\textbf{Figure 9. Tyson facilities’ direct pollution into waterways in 2014, reported in TRI.}\footnote{122}

\footnote{118} von Reusner, \textit{supra} note 4 at 9.
\footnote{120} John Rumpler, \textit{Corporate Agribusiness and the Fouling of America’s Waterways}, Environment America 16 (June 2016), https://environmentamerica.org/sites/environment/files/reports/CorpAgFoulingWaterways2016-web.pdf (“Table 3. Tyson Facilities’ Direct Pollution into Waterways Reported in TRI” (pollution data from 2014)).
\footnote{121} \textit{Id.}
Tyson is the only meat company with major meat processing facilities in every state identified by the United States Geological Survey (USGS) as a major source of pollution to the Gulf of Mexico.\textsuperscript{123}

Tyson’s slaughter plant in Sedalia, Missouri—which produces a huge percentage of the products at issue in this Complaint—has a particularly long history of recurrent noncompliance with the Clean Water Act, including “significant” violations as recent as February 2019.\textsuperscript{124} In recent years, Tyson’s Sedalia plant has exceeded effluent limits for chlorine (by as much as 606\%) and fecal coliform (by as much as 8,800\%), year after year.\textsuperscript{125}

The Sedalia plant also has very high air-emissions numbers. For example, in 2017 it released 39,837 pounds of ammonia (more than triple its ammonia emissions the previous year).\textsuperscript{126} That same year the facility emitted 5,493 pounds of hydrogen sulfide and 876,323 pounds of nitrate compounds (up from 729,221 pounds in 2016). The slaughterhouse’s aggregate greenhouse-gas emissions total was 58,391 metric tons of carbon dioxide in 2017. This is the equivalent of driving more than 12,600 vehicles for one year, or driving 144.5 million miles.\textsuperscript{127} This facility has also repeatedly failed to submit environmental reports required by law under the Clean Water Act. The failure to submit a report is, in and of itself, a violation of the Act. Those reports include Discharge Monitoring Reports, Biosolids Monitoring Reports, Operation & Maintenance Reports, and Status/Progress Reports—all essential documentation to allow the

\textsuperscript{122} Id.
\textsuperscript{123} von Reusner, supra note 4 at 11.
\textsuperscript{124} Detailed Facility Report: Tyson–Sedalia, supra note 119.
\textsuperscript{125} Id.
\textsuperscript{126} Id.
Environmental Protection Agency to monitor the facility’s compliance with federal laws, which, when actually documented, has been abysmal.\textsuperscript{128}

The company’s Sedalia facility is not an outlier. Another Tyson facility that slaughters chickens for the Products released 10,976 pounds of ammonia in 2014 (the year of most recent reporting data available on EPA’s ECHO website).\textsuperscript{129} Ammonia (NH\textsubscript{3}) is a common toxicant derived from wastes and fertilizers.\textsuperscript{130} It can enter the aquatic environment via direct means such as effluent discharges and the excretion of nitrogenous wastes from animals, and indirect means such as nitrogen fixation, air deposition, and runoff from agricultural lands.\textsuperscript{131} It causes direct toxic effects on aquatic life and is responsible for large-scale fish kills.\textsuperscript{132}

What’s more, Tyson’s River Valley Ingredients plant in Cullman, Alabama, recently released up to 800,000 gallons of \textit{E. coli}-contaminated wastewater into a local river, causing “countless” number of fish kills.\textsuperscript{133} The article also notes that this same plant killed 40,000 fish in a 2016 acid spill.\textsuperscript{134} Then, just four days later, a chemical spill outside of Tyson’s Springdale, Arkansas plant resulted in respiratory and burn injuries requiring the hospitalization of five workers, one of whom was reported to be in critical condition following the spill.\textsuperscript{135} The chemical involved, OxypHresh22, is a liquid peroxyacetic acid “wash” used to remove harmful

\textsuperscript{128} Detailed Facility Report: Tyson–Sedalia, supra note 119.
\textsuperscript{132} Id.
\textsuperscript{134} Id.
\textsuperscript{135} Five Injured After Cleaning Agent Spill at Tyson Foods Plant in Springdale, KFSM 5News (June 18, 2019, 10:38 AM), https://5newsonline.com/2019/06/18/emergency-responders-answering-hazmat-call-at-tyson-in-springdale/.
pathogens from meat and poultry during processing. It is known to be toxic to aquatic animals with long-lasting effects, and can cause severe skin burns and eye damage in humans.

The list of environmental violations by Tyson is ongoing and prevalent. From 2013 to 2015 the company was guilty of more than 300 wastewater Clean Water Act permit exceedances at its US processing plants according to its own reporting.

![Table](image.png)

**Figure 10. Tyson’s self-reported environmental compliance.**

In 2017, Tyson pleaded guilty in federal court to two criminal charges of violating the Clean Water Act. The crimes stemmed from discharges at its chicken slaughter and processing facility in Monett, Missouri. A highly acidic substance known as Alimet was released from the feed mill and made it into the local municipal wastewater treatment plant, where it killed bacteria the city used to reduce ammonia in discharges into Clear Creek from the plant. As a result, approximately 108,000 fish were killed by high ammonia levels. The federal judge fined Tyson $2 million and sentenced the company to two years of probation.


\footnote{Rumpler, *supra* note 120, at 15 (“Table 2: Tyson’s Self-Reported Environmental Compliance”).}


\footnote{Id.}
As recently as January 2019, Tyson’s Wilkesboro establishment was issued a notice of violation under the Clean Water Act. The plant dumped untreated wastewater into the surrounding environment. According to the area’s riverkeeper, “[t]hree-quarters of that waste is coming from Tyson Foods Inc., which is the town’s largest employer…. The company is also the largest producer of wastewater in the town.” At the Wilkesboro facility supplying NatureRaised Products, the USDA has repeatedly detected pathogens such as *Salmonella* and *Campylobacter* that are resistant to multiple critical and highly important antibiotics.

Tyson’s environmentally degrading practices do not end there. Tyson is a regular emitter of peracetic acid, a chemical that USDA whistleblowers have alleged is extremely harmful to workers and can cause lung damage, emotional disturbances, and even death. In concentrated form, peracetic acid is an environmental hazard capable of killing plant and animal life on the ground and in waterways. Such chemical disinfectants are used to sanitize Tyson’s meat products, which are routinely contaminated with pathogens like *Salmonella* and *Campylobacter*.

Multiple studies have found that antibiotic resistant pathogens are not neutralized by the treatment of waste/wastewater from poultry slaughter plants and that these pathogens pose threats to the environment. The study published in the Journal of Environmental Health found

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that “wastewater treatment processes are unable to inactivate [antibiotic resistant] bacteria and thus will result in dissemination of resistant E. coli into the environment.”\textsuperscript{145}

In sum, Tyson’s chicken operations have a profound negative impact on the environment. As the second-largest polluter in the entire United States, the company’s representations regarding environmental sustainability are egregiously deceptive.

3. Contrary to its advertising and marketing, Tyson’s products are not “humane.”

   a. The NCC standards used by Tyson authorize inhumane raising and slaughter practices.

Contrary to Tyson’s advertising and marketing, most if not all of the chickens used in its name-brand and NatureRaised Farms products are raised and killed using a process optimized for cost-efficiency and maximum output. The standards for this process are set by the National Chicken Council (“NCC”). The NCC’s guidelines are set by industry members, of which Tyson is one. These guidelines serve as the bare minimum welfare requirements for broiler chickens. The NCC’s standards merely codify industry standards for factory farming and do not meet consumer expectations set by Tyson’s animal welfare representations. Moreover, the NCC guidelines—with which Tyson utilizes\textsuperscript{146}—explicitly allow for practices that no reasonable consumer would consider humane. NCC standards are severely deficient for protecting animal welfare. For instance, NCC standards allow the use of beak-trimming,\textsuperscript{147} maceration of live


\textsuperscript{146} Humane Handling, supra note 95.

chicks, and other inhumane practices, including genetically manipulating the growth rate of the birds to grow unnaturally and painfully large, and keeping birds awake for 20 hours a day.

Tyson has a program called FarmCheck, which it advertises as an “industry-leading third-party audit program that helps to ensure that independent livestock and poultry farmers are monitored for proper animal welfare practices.” Yet Tyson does not explain that the FarmCheck audit criteria are based on guidelines set by an industry trade group (NCC), which represents the vast majority of factory farming poultry producers. According to Tyson’s sustainability website, the “FarmCheck” program “ensure[s] [its poultry suppliers] meet a variety of animal welfare criteria.” The FarmCheck criteria for Tyson’s broiler chicken production is based on welfare guidelines established by the NCC, even though the NCC is an industry trade group, not an independent animal welfare organization.

Tyson’s auditing welfare scheme is very lax. Tyson leads consumers to believe that its chicken welfare practices have been endorsed or certified by an independent third party—the Professional Animal Auditor Certification Organization (“PAACO”)—when in fact most of Tyson’s welfare auditing is performed by Tyson employees themselves, and PAACO is

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148 Id.
149 Id. at 12; see also supra Part IV.B.1.a.2.
150 See ASPCA, supra note 2 and accompanying text.
151 NCC Guidelines, supra, note 147 at 12.
152 2018 Sustainability Report, supra note 47 at 47.
associated with the NCC.¹⁵⁶ NCC’s producer-friendly audit system allows producers to commit a number of egregious violations without the risk of censure.¹⁵⁷ In fact, a 2014 USDA audit report noted that “Tyson internal animal wellbeing auditors did not have thorough enough training/understanding to immediately recognize deviations to NCC guidelines (the basis of Tyson’s animal wellbeing program).”

The raising and slaughter of chickens used by Tyson can be divided into ten stages: (1) breeding; (2) hatching; (3) growing; (4) catching at the contract growing facility; (5) transportation to the slaughterhouse; and (6) pre-slaughter handling, (7) stunning, (8) neck cutting, (9) scalding, and (10) picking at the slaughterhouse.

During the first phase, breeder chickens are raised to lay eggs that will become the chickens ultimately harvested for meat. While the chickens used in Tyson’s products are slaughtered at just a few weeks old, most breeder chickens are kept much longer—until egg production declines around 65-70 weeks of age.¹⁵⁸ To mitigate the mating problems, diminished egg production, illness, injuries, and premature death caused by fast-growing breeds’ genetic predisposition to rapid obesity, breeder birds are kept in a state of perpetual starvation for much of this time.¹⁵⁹ Typically, this semi-starvation is accomplished by providing a significantly

¹⁵⁶ 2018 Sustainability Report: Animal Welfare Monitoring, supra note 154; PAACO has certified Tyson’s “Animal Welfare Specialists” as internal auditors.
¹⁵⁷ NCC Guidelines, supra note 147 at 19.
reduced amount (25-50% of the birds’ normal diet) of feed or by restricting feed access to once every two days.\textsuperscript{160} 

The practice of extremely restricting food intake in chickens causes aggressive behavior, stress, frustration, and chronic hunger.\textsuperscript{161} To prevent aggressive pecking and scratching, the birds’ toes and beaks are trimmed.\textsuperscript{162} The eXtension Foundation, an educational non-profit organization funded by the USDA, describes toe trimming as a painful “amputation of the ends of a bird’s toes.”\textsuperscript{163} Academic research of toe trimming suggests that the procedure causes lifelong negative impacts on animal welfare.\textsuperscript{164} 

During stage two, the eggs produced by the breeder chickens are transported to a hatchery and placed in an incubator.\textsuperscript{165} Much of this process is automated.\textsuperscript{166} Before the chicks hatch, the eggs are injected with a solution containing formaldehyde and menthol, for sanitation purposes.\textsuperscript{167} 

Tyson hatcheries supply chicks to the company’s broiler breeder farms in addition to its broiler farms. Tyson uses rotating grinders, called macerators, to grind up unwanted day-old

\textsuperscript{161} De Jong & van Krimpen, \textit{supra} note 159.
\textsuperscript{162} \textit{Humane Handling}, \textit{supra} note 95; Cobb-Vantress, \textit{supra} note 160; see also Tyson Foods, \textit{Cobb Poultry Farm Worker}, LinkedIn, https://www.linkedin.com/jobs/view/1544688442/ (last visited June 25, 2020) (listing beak-treatment and toe-trimming among job duties).
\textsuperscript{164} J. Fournier et al., \textit{The Effect of Toe Trimming on Behavior, Mobility, Toe Length and Other Indicators of Welfare in Tom Turkeys}, 94 Poultry Sci. 1446, 1446 (2015), https://academic.oup.com/ps/article/94/7/1446/1552824 (“[T]urkey behavior both early and late in the production cycle were suggestive of pain and balance effects; both indicators of reduced welfare as a result of toe trimming”).
chicks at the hatchery.\textsuperscript{168} Within 24 hours of hatching, chicks are packed into plastic pallets and transported to Tyson broiler farms where they are dumped or thrown, often with force, from several feet in the air onto the floor below. Videos of this process show chicks slamming onto the ground, into each other, and into hard metal and plastic feeding apparatuses.\textsuperscript{169}

These grow houses are generally large, windowless, rectangular buildings, hundreds of feet long, with dirt floors covered in excrement. Each house holds approximately 20,000–25,000 birds at a time,\textsuperscript{170} resulting in a approximately 0.8 square feet of space per bird. The chickens never step foot outside.

In these facilities, the animals are so numerous and disease is so prevalent that, once a day, the grower walks through the house to “euthanize” birds that are sick, injured, or growing too slowly, and to remove dead birds. Tyson uses the “cervical dislocation” method of “euthaniz[ing]” sick, weak, and/or small birds.\textsuperscript{171} This risky and inhumane method entails pulling a bird’s head and yanking the neck to cause extensive damage to the spinal cord and brainstem, and to cut off blood flow to the brain. Studies suggest that because of the manual nature of the process, there is a “high variability” in the welfare outcomes of this procedure and “animals may be conscious for a significant period post-application.” Furthermore, “accidental decapitation” is a common outcome of this inhumane procedure.\textsuperscript{172}


\textsuperscript{171} Austin Alonzo, \textit{Best practices for poultry handling regarding welfare}, WATTAgNet.com (April 10, 2019), https://www.wattagnet.com/articles/36841-best-practices-for-poultry-handling-regarding-welfare.

\textsuperscript{172} Jessica Martin et al., \textit{On Farm Evaluation of a Novel Mechanical Cervical Dislocation Device for Poultry}, 8 Animals 10, 11 (2018).
Tyson uses breeds of chicken called the “Cobb 500” and “Cobb 700.”173 The “Cobb 500”—which is bred at the Wilkesboro, NC complex that produces NatureRaised products174—is marketed as having the “lowest cost” among commercially available chicken breeds.175 The Cobb 700 is marketed as having the “[h]ighest meat yield” and the “highest eviscerated and breast meat yield with the best live production efficiency” among commercially available chicken breeds.

Many broiler chickens, including those who end up as Tyson chicken products, have been selectively bred for rapid growth to market weight. An average broiler chicken in 1920 reached 2.2 pounds in 16 weeks. In 2017, Tyson broilers could reach “6 to 8 pounds” at “less than 10 weeks old.”176 The faster growth is a severe welfare problem, causing leg disorders, ruptured tendons, weakened immune systems, and other painful conditions. Several studies have shown, for example, that the fast-growing Cobb breeds used by Tyson are prone to skeletal deformities and associated health conditions.177 According to University of Bristol professor emeritus John Webster, fast-growing “broiler” chickens spend the last 20% of their lives in chronic pain.178 They do not move around much, because movement of their joints is simply too painful.179

Once Tyson determines that the chickens have reached the size it wants for slaughter, it sends human “catching crews” or mechanized “catchers” into the grow houses to grab the chickens and put them into pallets of cages, which are also called “drawers.” The human catchers

174 See Shane, supra, note 173.
179 Id.
grab the birds by the legs and carry them upside down by their ankles—multiple birds in each
hand—and push them into the cages. The transport cages are not tall enough for the birds to
stand upright, and the birds are packed into the cages so densely they cannot spread their wings
or move around.

This process is extraordinarily frightening for the birds, who scramble desperately to get
away from the catchers. A forklift driver transports the pallets of cages into the grow houses for
loading and then out to the transport trucks. Due to the dense stocking capacity of the grow
houses, birds are regularly run over by the forklift, causing severe injuries that do not always
result in immediate death.

After loading the chickens onto the overcrowded transport trucks, the trucks transport to
the slaughterhouse. The caged birds are fully exposed to the ambient weather—sometimes
including extreme heat, extreme cold, rain, snow, or gusting winds. Death during transportation
is a common occurrence, and FSIS refers to birds who die during transportation as “dead-on-
arrivals,” or “DOAs.”

Tyson slaughterhouses use the following slaughter process. First, workers use a forklift to
remove the chickens and their cages from the transportation trucks and move them to a slaughter
line. Workers dump the chickens onto a conveyor belt and segregate DOAs from live birds,
tossing the DOAs into bins.

After segregation, workers strap the birds into metal shackles attached to an overhead
line, leaving the live birds to hang upside down by their legs. Once the chickens are shackled, the
mechanized line drags them through an electrified vat of water, which is supposed to “stun” the
birds, i.e., render them unconscious. Multiple animal welfare scientists have concluded that the
stunning process merely paralyzes the birds but does not render them “insensible to pain,” which has been considered a hallmark of humane slaughter.\textsuperscript{180}

According to one former Tyson slaughterhouse worker, the birds “try everything in their power to get away from the killing machine and to get away from you. They have been stunned, so their muscles don’t work, but their eyes do, and you can tell by them looking at you, they’re scared to death.”\textsuperscript{181}

The line continues on to “cutting,” via the “kill blade.” If the process works correctly, the sharp blade cuts open each chicken’s neck and blood drains out. If the kill blade misses a chicken, at least one “back-up killer” employee works the line to cut that bird’s neck. Physical death is meant to occur from exsanguination (bleeding out), also called “bleeding” for short.

The chickens then proceed down the line to the “scald,” a scalding-hot tank of water used to loosen feathers from carcasses.

FSIS regulations require that the slaughter “will result in thorough bleeding of the carcasses and ensure that breathing has stopped prior to scalding.” 9 C.F.R. § 381.65(b). In reality, chickens regularly miss the neck blade and enter the scald tank fully conscious, where they boil alive. The USDA calls these birds “cadavers.” In industry vernacular, they are “red birds,” because their still-beating hearts pump blood to the surface of their scalded flesh.

Slaughterhouses are generally subject to a maximum line speed limitation of 140 birds per minute, or over two birds per second. Yet some slaughterhouses, including numerous Tyson plants, have waivers that allow for increased speeds of up to 175 birds per minute. These fast line


speeds lead to handling errors along the slaughter line, as well as an inability to observe and correct instances where birds miss the stun bath and/or neck blade and continue to the scalder still alive.

b. **Undercover investigations at Tyson facilities reveal inhumane treatment of chickens.**

Nearly a dozen undercover investigations in as many years have uncovered tremendous and systematic cruelty inflicted intentionally upon chickens raised for Tyson products. In 2017, the nonprofit organization Compassion Over Killing (“COK”) conducted an investigation at a Tyson contract broiler growing facility. During that investigation, a COK undercover investigator worked inside Tyson contractor “Atlantic Farm,” a Temperanceville, Virginia facility with more than 225,000 birds inside filthy warehouses.

The COK investigator witnessed and contemporaneously video-recorded workers at the facility violently kicking, slamming, and throwing live birds. The video shows one worker impaling live chicks with a metal nail at the end of a pipe, as well as workers killing sick or injured birds by stepping on them. Birds were run over and crushed to death by forklifts, and workers pile sick or injured birds on top of each other in buckets, often with dead birds, and left them to suffer and die. The investigator also observed and recorded birds unable to walk because of painful leg injuries or deformities related to rapid growth.

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182 New COK Video Uncovers Chicken Industry Horrors, supra note 169.
183 Id.
184 Id.
185 Id.
Figure 11. Dead chickens sit in feces and blood at a Tyson facility.

Figure 12. Dead chicken body sits among live birds in feces at a Tyson facility.
Figure 13. Farmer steps on live bird at Tyson facility.

Figure 14. Dead chicken with hock burns and missing feathers sits in feces at Tyson facility.
In 2016, COK investigated four Tyson broiler breeder facilities. The investigator observed and video-recorded Tyson workers punching and kicking live birds, shoving and slamming birds into transport cages, and swinging birds by their wings and throwing them across the sheds. Videos also reveal birds crushed to death by transport crates and run over by forklifts, and a Tyson supervisor suffocating animals by standing on their heads and instructing workers to do the same.

Figure 15. Tyson worker steps on a chicken’s head to cause death by suffocation.

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187 Id.
Also in 2016, the nonprofit organization Mercy For Animals (“MFA”) conducted a separate undercover investigation of Tyson contractor Palmetto Farms in Lewisburg, Tennessee.\textsuperscript{188} That investigation revealed thousands of chickens suffering from untreated injuries, illnesses, and debilitating leg deformities.\textsuperscript{189}

\begin{flushright}
\textit{Figure 16. Tyson worker beats a chicken at a Tyson facility.}
\end{flushright}

\textsuperscript{188} Mercy For Animals, \textit{Tyson Tortures Animals}, http://www.tyson torturesanimals.com/ (last visited June 25, 2020).

\textsuperscript{189} Id.
Figure 17. Dead and diseased baby bird found at Tyson facility.

Figure 18. Dead and diseased baby bird found at Tyson facility with eyes that have been rotted away.
Figure 19. Deformed baby chicken with missing feathers and eyes that have been rotted away, found at Tyson facility.

Figure 20. Diseased baby chickens with missing feathers found at Tyson facility.
In 2015, another MFA investigation documented extreme cruelty at a Tyson chicken slaughterhouse in Carthage, Mississippi.\textsuperscript{190} In the video, birds are shackled upside-down and have their throats slit open and their heads ripped off, all while still alive and fully conscious. The workers repeatedly throw birds against the shackles and against birds already hung up; when the thrown birds tumble back down to the conveyor belt, the workers pick them up and do it again.\textsuperscript{191}

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{image.png}
\caption{Worker mistreating chickens on the slaughter line at a Tyson facility.}
\end{figure}

According to MFA’s website, “Each time our investigators go behind the scenes at a randomly selected Tyson Foods chicken factory farm or slaughterhouse they emerge with horrific images of animal abuse.”\textsuperscript{192}

These abuses extend as far back as 2005 and 2007, when investigations by the nonprofit organization People for the Ethical Treatment of Animals (“PETA”) of Tyson chicken slaughter

\begin{itemize}
\item \textsuperscript{190} Mercy For Animals, \textit{Watch: Tyson Caught on Hidden Camera Ripping Heads Off Live Animals}, YouTube (Oct. 27, 2015), https://www.youtube.com/watch?v=0L2mGC4sezM.
\item \textsuperscript{191} \textit{Id.}
\item \textsuperscript{192} \textit{Tyson Tortures Animals}, supra note 188.
\end{itemize}
plants revealed sickening cruelty to the birds. Supervisors at multiple facilities either were directly involved in the abuse or were made aware of it by the investigator, but they did not stop it.

In addition to the cuts and broken limbs inflicted upon live chickens at nearly every slaughterhouse, the PETA investigators documented workers—sometimes standing 4 to 6 feet away from the conveyor belt—violently throwing birds at the shackles. Some animals slammed into the shackles and fell onto birds on the conveyor belt below, at which point workers sometimes repeated the abuse:

Other realities PETA caught on film included birds dying when their heads and legs became trapped under a door at the end of the conveyor belt that transported live birds to be hung. One PETA investigator filmed a Tyson supervisor telling him that it was acceptable to rip the heads off live birds who had been improperly shackled by the head. Other footage shows the killing-machine blade regularly cutting birds’ bodies instead of their throats, thus failing to render them unconscious before being dunked into scalding hot water. In every case, Tyson supervisors were aware of these problems but did nothing to stop it.

In response to the 2007 investigation, a Tyson spokesperson said the company was conducting an ongoing internal investigation and stated some of the conduct shown in the PETA video “warranted corrective action.” Notwithstanding Tyson’s verbal condemnation of animal

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195 Id.
196 Id.
197 Id.
198 Joey Berlin, PETA on Tyson, Emporia Gazette (Feb. 20, 2008), http://www.emporiagazette.com/business/article_ae2bc3a5-f888-541d-8ea6-a8d473cbb7ab.html.
c. Federal inspections confirm systemic mistreatment of Tyson’s chickens.

In addition to the undercover investigations, federal inspections in the past several years have identified cruel and abusive practices at Tyson slaughter plants. FSIS inspectors “are to issue an NR”—a Noncompliance Record—“when an ongoing pattern or trend develops where birds are not being slaughtered in a manner that results in thorough bleeding of the carcasses, that results in birds entering the scalder before their breathing has stopped, or that otherwise involves their being handled in a way that results in their dying otherwise than by slaughter.” FSIS Notice 44-16, at 1 (Jun. 27, 2016). In addition, mistreatment MOIs—i.e., Memoranda of Interview—“are primarily issued when, based on findings by the [inspector], the establishment is mistreating birds before or during shackling or elsewhere in the slaughter operation, up until the kill step, but the mistreatment does not demonstrate that the establishment’s process is out of control.”

As documented by federal inspections, inhumane handling and operation of slaughterhouse machinery causes immense suffering at Tyson facilities. For example, in January 2017 at Tyson’s Broken Bow plant, an auditor observed dead birds with broken backs, pelvises, and/or thigh joints and severe bruising, raising concern that the birds were being handled so violently that their broken bones were severing blood vessels and causing them to bleed to death.

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199 See also Jennifer L. Schally, Legitimizing Corporate Harm: The Discourse of Contemporary Agribusiness 27–64 (“utilizing critical discourse analysis to illuminate how Tyson presents itself as a good corporate citizen by drawing on and aligning with larger cultural discourses while continuing the same harmful practices it pretends to condemn”).

200 Id. at 3.
prior to slaughter. After a number of similar instances were documented the same week, auditors expressed concern that “the aggressive mishandling of live chickens is still occurring.”

The MOI corresponding to that inspection noted “this type of handling is reflective of failing to follow the National Chicken Council’s Guidelines for Good Commercial Practices [GCPs] as well as Tyson’s policies for properly handling of live chickens.” This demonstrates that—contrary to its representations—Tyson fails even to comply with the bare minimum requirements set by federal regulations, national industry standards, and its own company policies.

In two incidents during March 2016 at the company’s New Holland plant in Pennsylvania, an auditor documented five severely bruised chicken carcasses, with one bird’s hip joint completely dislocated and another with injuries indicating significant blunt trauma to the breast area. The inspector noted that these, too, were repeat incidents.

Another common occurrence at Tyson slaughter plants is the presence of live birds among piles of DOAs. As one inspector noted after observing numerous live chickens amongst a dead pile at Tyson’s Pine Bluff, Arkansas, plant, “The accumulation of the DOAs on the live chickens is an animal welfare issue” and is “[i]nconsistent with good commercial practices.” It was the second time in less than a month that inspectors documented such an occurrence at the Pine Bluff plant, where it had been the subject of MOIs numerous times before. This impermissible co-mingling of living and dead birds is not unique to Pine Bluff; it is systemic, with numerous documented incidents at Tyson facilities in Sedalia, Wilkesboro, Corydon, Clarksville, and elsewhere.

Inspectors have also observed and issued NRs for chickens entering scald tanks alive and conscious. In January 2017 at Tyson’s Carthage, Texas plant, an auditor observed a number of
dead birds, with heads intact and insufficient neck cuts, who were bright red in color, indicating they had been alive when entering the scalding tank.

Similarly, in August 2017, an inspector documented “problems with the stunner” at Tyson’s slaughter facility in Pine Bluff, Arkansas, resulting in numerous birds entering the scalding tank while still fully conscious. When the inspector requested a reduction in line speed for both kill lines (to allow the backup killers sufficient time to do the work of the inoperative stunner), the request to slow down the line was refused.

The Pine Bluff plant is not an anomaly. The scalding of live, fully conscious birds is rampant at Tyson facilities, as indicated in various USDA records. In November 2018, after observing evidence of numerous chickens being scalded alive at Tyson’s slaughterhouse in Nashville, Arkansas, a USDA inspector inquired with the plant manager as to how equipment was being monitored for proper operation. The plant manager replied that “the operation of the equipment is monitored through evaluation of number of cadavers [birds who had not properly bled-out]” noticed by plant personnel. In other words, this plant permitted some scalding of live birds, and only felt that “equipment adjustment” was necessary upon observing a substantial number of birds becoming “cadavers” after going through the scalding tank.

In November 2018, an inspector documented Tyson slaughterhouse workers in Center, Texas using dull knives to cut birds’ throats, often requiring multiple cuts to induce bleed-out. This, the investigator noted, leads to “needless injury and suffering.” Earlier that same month, at a Tyson plant in Monett, Missouri, an inspector documented 30 chickens killed by “a combination of drowning and/or electrocution.” Neither constitutes “proper slaughter processing and humane handling.”
On multiple occasions in November 2018, an inspector at Tyson’s Robards, Kentucky slaughter plant documented numerous birds “cut across the face” rather than across the neck, causing improper and incomplete exsanguination. The inspector called this a “mistreatment of live birds” and noted, “Without the intervention of USDA personnel, this unacceptable cutting of the birds’ faces may have continued the rest of each night.” Prior attempts to get Tyson workers to correct the problem were ineffective.

Conditions were so egregious at Tyson’s Corydon, Indiana slaughter plant that a USDA inspector issued a Noncompliance Record (NR). “[C]hickens with no knife cut on the neck [were] entering the scalding tank” in part because “smaller birds were actually missing the stunner and the kill machine,” and “the 2 back-up killers were not able to keep up with the number of birds that had missed the kill machine.” The NR concluded “the slaughter process was out of control.”

Similar mistreatment was the subject of multiple NRs issued at the Tyson slaughterhouse in Center, Texas. One NR noted “that 5 birds with intact head and neck entered the evisceration floor and therefore entered the scalding vat still breathing (cadavers) within approximately 1 hour, which represents a process out of control.” Another documented dozens of birds—“to[o] many to count”—that had entered the scalding without being properly rendered unconscious. Yet two other NRs at this same plant noted birds with “uncut necks and no other signs of bleeding out,” which “indicate[s] the birds entered the scalding vat still breathing.”

An NR issued at Tyson’s slaughter plant in Monett, Missouri, likewise documented “high percentages” of birds being scalded alive. This NR describes two such birds “breathing rhythmically” and “flapping their wings” as they entered the scalding tank to boil alive.
In addition to violent handling and scald tank violations, inspection records demonstrate that the transportation and unloading of chickens at Tyson facilities often results in immense pain and suffering. In June 2016, an auditor witnessed thousands of dead birds throughout the Monroe, North Carolina facility’s live-hang area, stating, “it appeared many had dermatitis and the stress of catching and transport combined with the warm morning may have led to this situation.” Throughout the rest of the month and into July, several similar incidents were documented at this location, indicating “a concerning pattern” to auditors.

Similar violations by Tyson personnel have been documented elsewhere, such as an ongoing pattern of dead birds at Tyson’s Glen Allen plant in April 2017, apparently the result of the chickens having been left over from the night shift and exposed to the elements “for approximately 12-24 hours” with no food or water. The MOI described the birds as “very depressed and cold looking” and noted, “[T]his seems to be a constant finding when there are chickens left over from the night shift that did not get slaughtered.”

Similarly, at the company’s New Holland plant in January 2017, an inspector witnessed 742 DOA birds during a single shift. Upon closer examination, the inspector concluded that the birds had been suffering from “severe air sacculitis pathology,” a respiratory disease often caused by E. coli infection in chickens, and had died after being held overnight in contravention of established management practices.

The pattern continues. In November 2018, an inspector at Tyson’s Springdale, Arkansas, slaughter plant “observed that up to approximately 25% of the birds on the trailers were DOA, apparently due [to] hypothermia.” Inspection records have also documented birds packed too densely into cages at Tyson facilities, causing many to suffocate and die. In August 2017, approximately 335 dead birds arrived at Tyson’s Clarksville plant, among “several other birds
with purple colored combs and waddles that were struggling to breathe . . . or had skin abrasions and were bleeding because they were pressed against the sides and side of the cage.”

The suffering caused by the sheer densities at which Tyson chickens are transported and processed cannot be overstated. At Tyson’s Pine Bluff plant, an inspector observed a pile of co-mingled live and dead birds that reached approximately three feet high. In the resulting GCP MOI, the inspector noted, “These birds are large birds and average a weight of 7.36 pounds . . . . A pile of this size can kill a bird caught underneath, and birds who are having trouble breathing would be easily killed from the weight or unable to breath[e]. . . . This is not a good commercial practice.” At the company’s Center, TX plant in April 2018, several birds were packed together, multiple layers deep, on the live hang table, while others struggled to breathe underneath piles of dead birds, feathers, and dirt.

Violations of Tyson’s own animal welfare policies have been specifically identified at Tyson’s Wilkesboro, NC complex, which raises and slaughters chickens for the NatureRaised products. For example, a 2014 USDA audit report of the Wilkesboro complex “found 56 instances during the last 6 months where broiler housing densities were exceeded” and further noted that “[p]reventative measures did not prevent reoccurrences.” Another 2014 audit report notes that “Tyson internal animal wellbeing auditors did not have thorough enough training/understanding to immediately recognize deviations to NCC guidelines (the basis of Tyson’s animal wellbeing program).”
V. ANALYSIS UNDER THE FEDERAL TRADE COMMISSION ACT

For a representation to be unlawfully deceptive under Section 5 of the FTC Act, it must be both “material” and “deceptive.”\textsuperscript{201} As described below, Tyson’s representations about the chicken products it sells satisfy both elements.

A. Tyson’s Representations Are Material

Materiality is established when a representation “is likely to affect the consumer’s conduct or decision with regard to a product or service.”\textsuperscript{202} Here, Tyson directs its “all natural,” environmental, and animal-welfare claims at those consumers most likely to find these representations material and be misled by them: conscientious consumers inclined to purchase products that were sustainably produced, from chickens raised in humane and natural conditions. It is beyond dispute that consumers care deeply about the welfare of animals raised for food and the environmental impact of food production; it is also undisputable that consumers rely on representations like those made by Tyson to identify animal products that they consider to be ethically produced. The FTC, the Better Business Bureau, and even the poultry industry have each firmly recognized that social issues, including environmental impact and the treatment of animals, are of significant concern to consumers and have an important bearing on consumer purchasing decisions.\textsuperscript{203} In fact, FTC Commissioner Rohit Chopra recently issued the following

\textsuperscript{201} FTC Policy Statement on Deception, supra note 15.
\textsuperscript{202} Id.
\textsuperscript{203} Starbucks Corporation (Free Trade Certified Coffee), Report #4592, NAD Case Reports, at 1 (Nov. 8, 2006) ("Advertising claims which tout that the advertiser is addressing particular social or ethical concerns can provide consumers with important information about their purchasing choices."); see also Context Mkgs., Ethical Food: A Research Report on the Ethical Claims That Matter Most to Food Shoppers and How Ethical Concerns Influence Food Purchases 4, 6 (2010), https://web.archive.org/web/20130928195843/http://contextmarketing.com/sources/feb28-2010/ethicalfoodreport.pdf (reporting 69% of consumers will pay more for “food produced to higher ethical standards,” and 91% of consumers include animal welfare in their criteria for whether something is ethically produced).
statement acknowledging the materiality of sustainability claims to consumers and the importance of preserving the integrity of the market for sustainable agricultural products:

I commend Commission staff for investigating fraudulent greenwashing…. This conduct distorted competition for organic products, inflicting harm on honest producers…. In cases involving such conduct, no-money settlements are inadequate, and the Commission should commit itself to exercising its full authority to protect consumers and honest businesses.204

1. Materiality of “natural” representations

Multiple consumer surveys demonstrate that marketing a product as “natural” significantly influences consumers’ purchasing decisions. A 2015 Consumer Reports National Research Center survey of about 1,000 U.S. food shoppers found that 62% purchase “natural” products and that 87% of those “natural” purchasers are willing to pay more for “natural” products that meet the purchasers’ expectations as to what “natural” means.205 In 2016, the number of consumers who purchased “natural” products was found to be as high as 73%.206 The term “natural” is significantly material to consumers.

2. Materiality of environmental representations

In warning letters to other companies, the FTC has acknowledged that the term “sustainable” can be “interpreted to imply certain specific environmental benefits.” The FTC has “admonished” companies for using unqualified claims such as “sustainable,” due to the FTC’s

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204 FTC, Statement of Commissioner Rohit Chopra, supra note 11.
determination that it is “highly unlikely that they can substantiate all reasonable interpretations of these claims.”

Research demonstrates that claims such as “sustainably produced” are perceived by consumers as “umbrella terms” that convey numerous materially beneficial attributes, such as “produced according to higher animal welfare standards.”

A study on consumer perception of the phrase “ecologically sustainable” found that, out of 235 responses, only 4% “expressed skepticism about the term ['ecologically sustainable’], stating that they felt it was primarily a marketing term without real meaning.” Accordingly, researchers have found that overall, consumers are willing to pay a substantial price premium ($14) for products labeled as “ecologically sustainable” because these representations are meaningful.

According to the 2015 Consumer Reports survey, “A range of environmental, safety and social responsibility objectives are key (very important or important) to most US consumers when shopping for food.” In fact, the “overwhelming majority” of food shoppers identified “protecting the environment from chemicals (88%)” and “reducing exposure to pesticides (89%)” as “key” objectives influencing their purchase decisions.

Similarly, a 2015 Nielsen global survey of 30,000 consumers found that 66% of respondents were willing to pay more for products from companies “committed to positive social

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209 Loren McClanahan et al., Fair trade fish: consumer support for broader seafood sustainability, 17 Fish & Fisheries 825 (Sept. 2016).
210 2015 Consumer Reports Survey, supra note 205 at 3 (emphases in original).
211 Id.
and environmental impact.”212 A 2017 international study by Unilever found that 33% of global consumers are “choosing to buy from brands they believe are doing social or environmental good.” The study further found that 78% of shoppers in the U.S. “say they feel better when they buy products that are sustainably produced.”213 A 2017 survey of U.S. consumers, based on approximately 25,000 in-person interviews, found that 56% of consumers were willing to pay more to use “environment-friendly (‘green’) products.”214

Tyson is well aware of the materiality of its environmental representations. In 2016, Tyson’s Director of Sustainable Food Strategy wrote that “consumers look to food manufacturers to provide transparency about policies, practices and performance for six key aspects of food production. These aspects [include] . . . environmental impact and business ethics.”215

3. Materiality of humane representations

As set forth above, Tyson’s own 2018 Sustainability Report identifies “Animal Well-Being and Management” as one of the most important issues to external stakeholders and consumers, as well as to Tyson’s business.216 Moreover, extensive survey evidence provides additional insight into the materiality of animal welfare representations. For instance, surveys show many consumers are willing to pay more for products that they believe come from

216 2018 Sustainability Report, supra note 47, at 14; Materiality, supra note 74.
humanely treated animals. A consumer survey conducted in June 2018 by NCC noted that “Consumers are significantly more concerned this year about chicken purchase considerations than in any other year” and “how chickens are raised” is among those considerations. Another recent consumer survey found that nearly 95% of consumers are very concerned about farm animals. That same survey found that about 76% of consumers were very willing to pay more for humanely raised animal food products. In fact, a 2018 study published in the journal Animals found that the weighted average of consumers’ marginal willingness to pay for products from humanely treated animals was $0.96 for one pound of chicken breast (a 48% premium).

The 2015 Consumer Reports survey similarly found that the overwhelming majority of consumers who purchase products marketed as “natural” were willing to pay more for such products on the belief that “natural” products meant “better living conditions for animals (84%).” When it comes to animals’ living conditions, half of respondents thought the “natural” label meant that the animals went outdoors. Likewise, a 2010 survey found that 57% of consumers were willing to pay more “for food that promises to be produced according to higher ethical standards.” Conversely, consumers avoid buying or would pay less for products that are produced in ways they believe are inhumane. Welfare representations are, therefore, material to consumers.

220 Id.
221 Id.
224 See Animal Welfare Institute, supra note 217.
B. Tyson’s Representations Are Likely to Mislead

Many consumers will find Tyson’s marketing and advertising representations misleading if the realities of the company’s production practices are illuminated. As a threshold matter, a company is responsible for all reasonable consumer interpretations of its advertisements, so it does not matter that the company’s representations may convey differing meanings to different consumers.225 “To be considered reasonable, the interpretation or reaction does not have to be the only one.”226 Instead, “[w]hen a seller’s representation conveys more than one meaning to reasonable consumers, one of which is false, the seller is liable for the misleading interpretation.”227 When a particular consumer group is targeted, or likely to be affected by the advertisement, the advertisement should be examined from the perspective of a reasonable member of that group.228

Here, Tyson’s labeling and advertising representations target consumers most likely to be misled: consumers who are concerned about the public health, environmental, and animal welfare impact of the foods they eat, and who look to companies’ advertising to identify goods that are produced in ways that comport with those values.

But Tyson’s actual practices do not match a reasonable consumer’s expectations for poultry products advertised and marketed as “all natural,” humane, and/or “sustainable.” Therefore, Tyson’s representations are unlawfully deceptive in violation of the FTC Act. Even Tyson understands that it makes confusing and materially misleading representations. The company has frequently sought to prevent chicken producers that utilize industry-wide NCC standards from “tout[ing] [their] raising practices as though they are unique from and superior to

226 Id. at 3.
227 Id.
228 Id. at 1–3.
the practices of [their] competitors.” Nevertheless, Tyson utilizes NCC standards while making nearly identical marketing representations to those that it has consistently maintained are misleading to consumers.

1. **Survey evidence demonstrates that Tyson’s practices are inconsistent with consumer expectations**

As described above, Tyson markets its name-brand and NatureRaised Farms products as “all natural,” environmentally responsible, and humane when, in reality, these products come from extremely unnatural, unsustainable, and inhumane industrialized factory operations. The reality of Tyson’s production methods cannot be reconciled with the reasonable consumer’s interpretation of these marketing claims, as shown by abundant survey evidence.

Multiple surveys demonstrate that consumers believe food products marketed as “natural” have a range of attributes that adds perceived value to the product. For example, a 2015 Consumer Reports survey found that at least 50% of respondents reported the following beliefs about meat and poultry products marketed as “natural”:

- no artificial materials or chemicals were used during processing (62%);
- the animals’ feed contained no artificial ingredients or colors (61%);
- the animals’ feed contained no GMOs (59%);
- no antibiotics or other drugs were used (57%);
- the animals went outdoors (50%).

Similarly, a 2007 Consumer Reports survey found that 83% of consumers expect “natural” meat and poultry means the animals were raised in a natural environment. And

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another study published in 2019 found “[t]wo-thirds or more of consumers thought ‘natural’ food is better for the environment, safer, and healthier.”

Senior executives at meat companies have acknowledged that their definitions of “natural” do not accord with consumer expectations, yet they continue to knowingly market their products with misleading representations.

As recent surveys confirm, overwhelming majorities of American consumers are very concerned about the treatment of the farm animals that become food. For instance, in a consumer survey, 80% of consumers said they would either “definitely not” or “probably not” consider chickens to be “Humanely Raised” if the chickens were bred for extremely fast growth, causing the chickens to have chronic health problems. As explained above, Tyson does just that yet still advertises its chicken as humane. In the same survey, 84% of consumers surveyed would either “definitely not” or “probably not” consider chickens to be “Humanely Raised” if a company kept its chickens in barns and subjected them to near continuous lighting, preventing natural rest and sleep behaviors. Again, as explained above, the NCC standards only require four hours of darkness in a 24-hour period, and Tyson very likely follows this standard across the board. What’s more, 84% percent of respondents in a more recent survey believe farms should raise animals with sufficient space and not confine animals so tightly that they can barely

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235 Id.

236 See supra Part IV.B.1.a.4; NCC Guidelines, supra note 147 at 12.
move—which, as described above, are hallmark conditions of industrial chicken operations like Tyson’s (see supra Part IV.B.3.a).^{238}

2. Tyson’s actual practices fall far below consumer expectations

When one compares the evidence of consumer expectations with the reality of Tyson’s practices, it is clear the company’s representations of its products as “all natural,” “sustainable,” and humane are unlawfully deceptive. Tyson’s comprehensive environmental and animal-welfare promises mislead consumers because consumers expect operations described in such lofty terms to comport with a level of care that far exceeds the notorious practices of industrial “factory-style” agriculture. Yet Tyson’s facilities, as discussed above, utilize typical factory farm conditions and slaughter practices that differ in no meaningful way from the other large-scale industrial chicken companies from whom Tyson is trying to falsely distinguish itself. (See supra Part IV.B)

a. The chickens raised to become Tyson products are raised and killed under conditions no reasonable consumer would consider “natural.”

As described above (see supra Part IV.B.1), Tyson’s production methods include routine use of chemicals, antibiotics and other drugs, and the chickens raised for its products never go outdoors; rather, the birds spend their entire lives in industrial warehouses with no sunshine, natural vegetation, or fresh air. The fact is, Tyson’s chicken products come from some of the largest, most pollutive, most overcrowded chicken operations in the country—quite the opposite of the consumer expectations reported in the studies described above.

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^{237} Spain, et al., supra note 221.

^{238} HSUS FTC, supra note 234.
The unnaturalness of the birds’ living conditions is further detailed below. These animals are bred to grow unnaturally fast to an unnatural size and are mutilated, starved, crushed, or boiled alive.239

b. Tyson’s industrial agriculture operations are harmful to the environment in ways no reasonable consumer would consider “sustainable.”

Tyson’s claims regarding environmental sustainability completely fail to represent the company’s egregious ongoing air and water pollution or its frequent violation of environmental regulations. Reasonable consumers who buy a chicken product marketed as environmentally sustainable would assume that its production did not involve the use of toxic chemicals, the emission of large amounts of pollutants into local waterways and airsheds, or the injection of eggs with formaldehyde—practices standard in an extremely unnatural, industrial agriculture operation like Tyson’s. Similarly, a consumer who reads a claim such as NatureRaised Farms products are “good for the world”240 and “environmental[ly] . . . sustainab[le]”241 would not reasonably assume the production of those chicken products involved the dumping of millions of pounds of toxic pollutants directly into waterways.242 Further, at an absolute minimum, a reasonable consumer would not expect that a company that makes such representations is one of the largest polluters in the country.243

For all the reasons discussed above, Tyson’s animal-welfare and environmental-sustainability claims are unlawfully deceptive under the FTC Act.244

239 See generally NCC Guidelines, supra note 147; FTC Policy Statement on Deception, supra note 15.
240 NatureRaised Farms: Our Story, supra note 98.
242 Rumpler, supra note 120.
243 von Reusner, supra note 4.
244 See generally FTC Policy Statement on Deception, supra note 15 at 2 (“a claim is unlawfully deceptive if it is important to a consumer’s purchasing decision and is likely to mislead consumers acting reasonably under the circumstances”).
c. The chickens raised to become Tyson products are raised and killed under conditions no reasonable consumer would consider humane.

No reasonable consumer who encounters Tyson’s animal-welfare claims would assume the company uniformly uses inherently cruel practices in the growing and slaughter of its chickens. Indeed, Tyson’s animal-welfare representations completely conflict with the inherently cruel practices the company uses from breeding through slaughter, and the cruel actions seen time and time again in undercover investigations and USDA inspections (see supra Parts IV.B.3). Nor would any reasonable consumer who reads Tyson’s “commit[ment] to offering consumers the most humanely raised food possible” assume the company produces chicken products that are no better (and in many cases are worse) from a welfare perspective than other available chicken products.

As discussed above (see supra Part IV.B.3), Tyson’s unquestionably inhumane practices include, but are not limited to: using birds bred to grow unnaturally fast to an unnatural size, sometimes leaving them unable to stand and often at severe risk of injury or death; overcrowding birds in grow houses and during transport such that many are crushed to death or suffocated; and failing to render chickens unconscious at the slaughterhouse, thus causing them to be cut or scalded while still conscious. No reasonable consumer would find that these practices comport with Tyson’s commitment to “the Five Freedoms”—including “freedom from hunger and thirst,” “freedom from pain, injury, or disease,” and “freedom from fear and distress.” Breeding chickens with physical traits that subject them to unrelenting, excruciating pain (see supra Part IV.B.1); overcrowding chickens in disease-ridden warehouses (see supra Part IV.B.3.a), depriving them of food and water for up to 12-24 hours during transport (see supra Part

245 See, e.g., 2018 Sustainability Report, supra note 47, at 38–52.
246 Id. at 40 (emphasis added).
247 See Our Commitment to Animal Well-Being, supra note 71.
IV.B.3.a), and scalding fully conscious birds alive (see supra Part IV.B.3.a) are just a few of Tyson’s practices that cause its chickens to suffer the hunger, thirst, pain, fear, distress, and disease that Tyson vigorously disclaims. Instead, the abundant evidence demonstrates the humane treatment of animals in its care is compromised (see supra Parts IV.B.3). Tyson is free to utilize cruel practices (so long as they are legal), but it is not free to utilize such practices in lieu of more humane alternatives (about which it is well aware) and then deceptively claim to operate in the “most humane[]” fashion possible.248

As detailed above, (see supra Part IV.B.3.a) the FarmCheck standards (based entirely on NCC standards) that Tyson advertises are meaningless differentiators and should not be used in product marketing to suggest that a product benefit is being conferred on consumers. Tyson fails to explain to consumers that the NCC “Animal Welfare” standards, on their face, allow inhumane treatment—a material omission.249 Because of the inherent problems associated with practices permitted under the NCC standards, Tyson’s chickens are regularly subjected to inhumane handling in grow houses, on trucks, and in slaughterhouses (see supra Part IV.B.3.a).

Consumers do not find these practices humane, as further explained herein. Even if it were the case that consumers have varying understandings of “humane” treatment, unquestionably no reasonable consumer would see the way in which Tyson raises and slaughters chickens to be consistent with its animal welfare claims. For instance, no reasonable consumer would expect chicken products advertised as “the most humanely raised food possible”250 to come from birds subjected to the conditions and practices explained above (see supra Part IV.B.3); no reasonable consumer would assume a company that touts “the best animal welfare

248 2018 Sustainability Report, supra note 47, at 40.
249 See generally NCC Guidelines, supra note 147; FTC Policy Statement on Deception, supra note 15.
250 2018 Sustainability Report, supra note 47 at 40.
practices” in fact routinely overcrowds, mutilates, starves, crushes, or boils alive the animals who become its products.  

Additionally, consumers find it “important to know that animal-welfare assessments are conducted by an independent third party or the federal government (and not only the industry producer).” This is likely why Tyson leads consumers to believe that its chicken welfare practices have been endorsed or certified by PAACO (see supra Part IV.B.3.a).

Thus, because Tyson has adopted NCC standards and utilizes a PAACO-certified auditing system, its claim that it ensures “responsible and humane care and handling” “[t]hrough a robust animal welfare auditing strategy” is misleading. No reasonable consumer believes that tens of thousands of chickens packed into cramped, windowless warehouses with debilitating musculoskeletal deformities are being cared for under “criteria” that represent the “most humane[]” animal welfare standards “possible.” Tyson itself has pointed out that these very same standards are misleading to consumers when coupled with “humane” labeling and advertising. As mentioned previously, Tyson brought complaints about Perdue’s marketing to the NAD, FSIS, and Agricultural Marketing Service (“AMS”), stating that Perdue had been “tout[ing] [their] raising practices as though they are unique from and superior to the practices of [their] competitors.” Tyson specifically brought up the fact that Perdue follows NCC standards, pointing out that this means their practices are not more humane than those of any other industry player following the same rules.

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251 Id.
252 Spain, et al., supra note 221.
254 2018 Sustainability Report, supra note 47, at 40.
255 Tyson FSIS/AMS Complaint, supra note 229.
3. The FTC Should Exercise Its Full Authority to Protect Consumers and Honest Businesses from Tyson’s Greenwashing.

While the FTC necessarily endeavors to harmonize its decisions with other federal agencies, its commitment “to exercising its full authority to protect consumers and honest businesses”256 from fraudulent greenwashing calls for the Commission to examine each case and weigh the intent behind the regulations and rulings and balance those against the reasonable expectations of consumers. The overwhelming evidence that Tyson’s business practices are inconsistent with consumer perception of its labels and advertising—including its own assessments that nearly identical claims of its competitors are misleading—presents a strong case for enforcement. Moreover, Tyson’s repeated attempts to challenge the label claims of its competitors further weighs in favor of FTC action targeted towards Tyson’s own “natural” and “NatureRaised” product label claims, as the company has effectively conceded the need for additional regulation of meat product labels, notwithstanding their approval by USDA. Finally, the FTC has a compelling interest in enforcement action regarding Tyson’s non-label advertising, especially with regard to the advertisements that are substantially different than the product labels (e.g., “natural” claims without disclaimers, environmental claims, and animal welfare claims).

VI. Relief Requested

The actions described above constitute unlawful conduct, unfair methods of competition, and unfair and deceptive practices under the FTC Act, 15 U.S.C. § 41 et seq.

Accordingly, the undersigned respectfully request that the Commission:

1. require Tyson to remove the misleading representations;

256 FTC, Statement of Commissioner Rohit Chopra, supra note 11.
2. enjoin Tyson from making such misleading representations in the future;

3. require Tyson to disseminate corrective statements in all media in which the misleading representations were previously disseminated;

and

4. impose all other penalties as are just and proper.


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### Exhibit 1: Requests for FTC Enforcement of Misleading Humane Claims

<table>
<thead>
<tr>
<th>Date</th>
<th>Requestor</th>
<th>Respondent(s)</th>
<th>Request Summary</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>9/23/19</td>
<td>Animal Equality, Food and Water Watch, Organic Consumers Association</td>
<td>Canada Goose Holdings, Inc.</td>
<td>Alleging that Canada Goose misrepresents that the animals used for its fur products are trapped and killed under humane conditions, when, in reality, Canada Goose uses inhumane trapping and slaughter practices.</td>
<td>No known action</td>
</tr>
<tr>
<td>12/12/18</td>
<td>HSUS</td>
<td>Pilgrim’s Pride Corp.</td>
<td>Alleging that Pilgrim’s misrepresents that its broiler chickens used for its poultry products are raised and produced under humane conditions, when, instead, Pilgrim’s uses inhumane growing and slaughter practices.</td>
<td>FTC met with company, which stated it removed the claims at issue. FTC reminded company it must be able to adequately substantiate advertising claims and those claims must be true and not misleading.</td>
</tr>
<tr>
<td>11/01/17</td>
<td>PETA</td>
<td>Canada Goose Holdings Inc.</td>
<td>Alleging that Canada Goose misrepresents that the geese used for the down in its products are treated humanely.</td>
<td>FTC declined to take action</td>
</tr>
<tr>
<td>10/14/16</td>
<td>HSUS</td>
<td>Nat’il Pasteurized Eggs, Inc. dba Davidson’s Safest Choice</td>
<td>Alleging that images and words on certain “All-Natural” shell egg cartons, on the company’s website, and in its magazine advertisements indicate to consumers that such eggs were produced in cage-free operations or in conditions where hens have outdoor access.</td>
<td>FTC sent letter to respondent resulting in slight changes to imagery on packages and website</td>
</tr>
<tr>
<td>12/2/15</td>
<td>HSUS</td>
<td>Hillandale Farms,</td>
<td>Alleging that Hillandale’s</td>
<td>FTC contacted</td>
</tr>
<tr>
<td>Date</td>
<td>Organization</td>
<td>Allegations</td>
<td>Action Taken</td>
<td></td>
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<tr>
<td>7/2/15</td>
<td>MFA</td>
<td>Alleging Foster Poultry Farms, Inc. and American Humane Association's signage as misleading</td>
<td>FTC did not recommend action. Foster Farms installed video monitoring system</td>
<td></td>
</tr>
<tr>
<td>2/12/13</td>
<td>HSUS</td>
<td>Alleging Nat’l Pork Producers Council's statements regarding NPPC’s endorsements as misleading</td>
<td>FTC declined to take action</td>
<td></td>
</tr>
<tr>
<td>4/17/12</td>
<td>HSUS</td>
<td>Alleging Nat’l Pork Producers Council’s statements and omissions regarding its “We Care” initiative, ethical principles, and animal welfare certification program as misleading</td>
<td>No known action</td>
<td></td>
</tr>
<tr>
<td>1/31/12</td>
<td>HSUS</td>
<td>Alleging Seaboard Foods/Seaboard Corp. deceiving consumers about animal suffering</td>
<td>FTC contacted Seaboard and the company changed portions of claims</td>
<td></td>
</tr>
<tr>
<td>6/16/10</td>
<td>HSUS</td>
<td>Alleging Rose Acre Farms, Inc. issues unlawfully false and/or misleading</td>
<td>FTC declined to take action</td>
<td></td>
</tr>
<tr>
<td>Date</td>
<td>Company</td>
<td>Issue</td>
<td>Outcome</td>
<td></td>
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</tr>
<tr>
<td>1/19/10</td>
<td>PETA</td>
<td>Representations about the treatment of animals used to produce its products, including that chickens used to produce Rose Acre’s eggs are provided with a “humane and friendly environment,” have plenty of space to move around and socialize, that only chickens who are treated well and are “happy” will lay eggs, and similar misstatements</td>
<td>FTC declined to take action</td>
<td></td>
</tr>
<tr>
<td>10/14/09</td>
<td>HSUS</td>
<td>Alleging claims on Respondent’s website that hens are “happy” and “healthy” and live in a “comfortable environment” are deceptive</td>
<td>FTC, IW, VT AGs contacted company. DineEquity committed to cage-free policy.</td>
<td></td>
</tr>
<tr>
<td>9/27/06</td>
<td>COK</td>
<td>Request for rulemaking regarding the practice of misrepresenting egg production methods</td>
<td>FTC denied petitions stating individual enforcement actions may be appropriate approach. To date, no known related enforcement actions have been taken.</td>
<td></td>
</tr>
<tr>
<td>4/30/02</td>
<td>PETA</td>
<td>Complaint seeking action against Respondent for deceptive advertising in its “happy cows”</td>
<td>FTC declined to take action</td>
<td></td>
</tr>
</tbody>
</table>
# Sampling of Private Actions to Challenge Humane Claims

<table>
<thead>
<tr>
<th>Date</th>
<th>Plaintiff</th>
<th>Defendant(s)</th>
<th>Court</th>
<th>Request Summary</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>6/29/20</td>
<td>Animal Outlook</td>
<td>Cooke Aquaculture/True North Salmon</td>
<td>DC Sup.</td>
<td>Alleging claims of environmentally responsible production and humane treatment of fishes are misleading</td>
<td>Pending</td>
</tr>
<tr>
<td>07/10/19</td>
<td>FWW, OCA</td>
<td>Tyson Foods</td>
<td>DC Sup.</td>
<td>Alleging claims of environmentally responsible production and humane treatment of chickens are misleading</td>
<td>Pending</td>
</tr>
<tr>
<td>02/04/19</td>
<td>FWW, OCA</td>
<td>Pilgrim’s Pride</td>
<td>DC Sup.</td>
<td>Alleging claims of environmentally responsible production and humane treatment of chickens are misleading</td>
<td>Pending</td>
</tr>
<tr>
<td>11/14/18</td>
<td>AWI</td>
<td>USDA</td>
<td>DDC</td>
<td>Alleging USDA’s current policy surrounding the approval of animal raising claims on meat and poultry packages fails consumers</td>
<td>Pending</td>
</tr>
<tr>
<td>07/9/18</td>
<td>OCA</td>
<td>Ben &amp; Jerry’s Homemade, Inc.</td>
<td>DC Sup.</td>
<td>Alleging claims of “happy” and “healthy” cows are misleading</td>
<td>Pending</td>
</tr>
<tr>
<td>03/14/18</td>
<td>C. Claybaugh</td>
<td>Trader Joe’s Co.</td>
<td>Cal. Alameda Sup.</td>
<td>Alleging that cage-free egg carton imagery</td>
<td>Settled</td>
</tr>
<tr>
<td>Date</td>
<td>Plaintiff</td>
<td>Defendant</td>
<td>Court</td>
<td>Description</td>
<td>Status</td>
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<td>-----------------------------------------------------------------------------</td>
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</tr>
<tr>
<td>6/22/17</td>
<td>CFS</td>
<td>Sanderson Farms</td>
<td>NDCA</td>
<td>Alleging the company’s advertisements stating its chicken products are “100% Natural” are false and misleads consumers about how the animals are raised</td>
<td>Dismissed/Refiled</td>
</tr>
<tr>
<td>6/29/16</td>
<td>ALDF</td>
<td>Hormel Foods Corp.</td>
<td>DC Sup.</td>
<td>Alleging “Make the Natural Choice” slogan misleads consumers about the humane treatment of animals</td>
<td>On appeal</td>
</tr>
<tr>
<td>9/21/15</td>
<td>PETA</td>
<td>Whole Foods</td>
<td>N.D.Cal.</td>
<td>Alleging humane meat claims and humane certification program are misleading</td>
<td>Dismissed</td>
</tr>
<tr>
<td>7/14/15</td>
<td>C. Leining</td>
<td>Foster Farms</td>
<td>Cal. LA Sup.</td>
<td>Alleging chickens are mistreated in ways that contradict Foster Farms’ American Humane Association certification label.</td>
<td>On appeal</td>
</tr>
<tr>
<td>2/11/14</td>
<td>COK</td>
<td>Kroger</td>
<td>Cal. LA Sup.</td>
<td>Alleging Kroger’s “humane” claim re its Simple Truth chicken products are deceptive as the chickens are subject to inhumane</td>
<td>Settled</td>
</tr>
<tr>
<td>Date</td>
<td>Group</td>
<td>Company/Brand</td>
<td>Location</td>
<td>Description</td>
<td>Outcome</td>
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</tr>
<tr>
<td>10/24/13</td>
<td>HSUS</td>
<td>Perdue Farms, Inc.</td>
<td>D.NJ</td>
<td>Contended that the “humanely raised” claim on the packaging of Perdue’s Harvestland brand chicken was misleading.</td>
<td>Settled</td>
</tr>
<tr>
<td>11/13/12</td>
<td>ALDF</td>
<td>HVFG, LLC, d/b/a “Hudson Valley Foie Gras”</td>
<td>N.D.Cal.</td>
<td>Description of foie gras product as “the humane choice” gave rise to misrepresentation claim “because defendants’ ducks are raised inhumanely, and details are given from which a jury could well find the treatment is inhumane”</td>
<td>Settled</td>
</tr>
<tr>
<td>10/09/08</td>
<td>HSUS</td>
<td>Moark, LLC, R.W. Sauder, Inc., United Egg Producers, Inc.</td>
<td>DC Sup.</td>
<td>Alleging defendants mislead consumers and create the false impression that egg-laying hens are afforded a quality of care and husbandry that they are not</td>
<td>Dismissed</td>
</tr>
<tr>
<td>7/7/03</td>
<td>PETA</td>
<td>Kentucky Fried Chicken</td>
<td>Cal. LA Sup.</td>
<td>Alleging that the defendants were making grossly false representations regarding the treatment of their chickens</td>
<td>KFC removed the claims on its website and changed its consumer information telephone script</td>
</tr>
<tr>
<td>12/18/02</td>
<td>PCRM</td>
<td>Tyson Foods, Inc.</td>
<td>Cal. LA</td>
<td>Suit for injunctive</td>
<td>Closed</td>
</tr>
<tr>
<td>Inc.</td>
<td>Sup</td>
<td>relief against Tyson alleging that the company made false and deceptive representations about “all natural” chicken products</td>
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