

BEFORE THE UNITED STATES FEDERAL TRADE COMMISSION

CITIZENS' COMPLAINT SEEKING
ACTION AGAINST GROUPON, INC.
FOR DECEPTIVE ACTS AND
PRACTICES, INCLUDING DECEPTIVE
ADVERTISING

Docket No. _____

Submitted to:

Federal Trade Commission
The Bureau of Consumer Protection
The Division of Advertising Practices
600 Pennsylvania Ave. N.W.
Washington, DC 20580
Attn.: Jessica Rich
Attn.: Mary K. Engle

On: May 19, 2014

Submitted by:

People for the Ethical Treatment of Animals, Inc.

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CITIZENS' COMPLAINT

Petitioner People for the Ethical Treatment of Animals, Inc. (“PETA”), an animal protection charity and non-stock corporation under the laws of the Commonwealth of Virginia, with offices at 1536 16th Street, N.W., Washington, D.C. 20036, submits this citizens’ complaint pursuant to Section 5 of the Federal Trade Commission Act (the “FTC Act”), 15 U.S.C. § 45, to request that the Federal Trade Commission (the “Commission”) stop Groupon, Inc. (“Groupon”), from deceiving consumers about promoting animal exhibitors that Groupon claims have clean United States Department of Agriculture (“USDA”) inspection reports for the past two years, when in fact they do not.

Respondent Groupon is a publicly-traded corporation, headquartered at 600 West Chicago Avenue, Suite 620, Chicago, IL 60654, and is, according to Groupon’s website, “a local e-commerce marketplace and the leading daily deal site worldwide,” which connects “millions of subscribers around the world with merchants by offering goods and services at a discount.”

I. Summary of Groupon’s False and Deceptive Advertising Campaign

Groupon has engaged in an intentional, several-years-long deceptive advertising campaign to conceal from the public that it promotes circuses and other animal exhibitors with citations for violations of the Animal Welfare Act (“AWA”). The company represents that Groupon-promoted animal exhibitors must have a USDA license and clean USDA inspection reports for animal welfare issues for at least two years prior to being featured on its website, www.groupon.com. Furthermore, Groupon represents that when it learns of noncompliance with animal welfare laws by promoted exhibitors, it removes the offers from its site.

These representations are materially false and misleading. Several animal exhibitors recently promoted on Groupon’s website have, within the two years prior to Groupon’s offers, received numerous citations for AWA violations. Groupon-promoted exhibitors have been cited during the two-year time period for endangering animals and the public, failing to provide adequate veterinary care, and handling animals dangerously, among other AWA violations. Despite being made aware of these violations, Groupon has repeatedly failed to remove offers promoting these exhibitors from its website and in some instances has made new offers to the public featuring the same exhibitors.

For the last several years, Groupon has repeatedly offered for sale discounted tickets to events featuring AWA-violating animal exhibitors. For example, Groupon is currently promoting Universoul Circus, The Garold Wayne Interactive Zoological Park (G.W. Exotic), Bailiwick Ranch and Discovery Zoo, and Animal World & Snake Farm Zoo, *all* of which have received several USDA citations in the past two years. Universoul Circus also is operating with an apparently cancelled AWA license, contrary to Groupon’s claims. And within the last month, Groupon offered deals for additional animal exhibitors, including Suncoast Primate Sanctuary and Piccadilly Circus, both of which have been cited in the last two years for violating the AWA. Additionally, Groupon has promoted circuses—such as the Lulu Shrine Circus, El Jebel Shrine Circus, the Austin, Texas-based Ben Hur Shrine Circus, the New Orleans-based Shrine Circus, and Jordan World Circus—who contract with often publicly unnamed animal exhibitors with

numerous citations for AWA violations. Because these circuses contract with other entities to provide animal entertainment, it is even harder for the public to find truthful information about AWA violations committed by these vendors.

This Commission has acknowledged that, “for many consumers, a company’s claim that its products are humane is important to their decision whether or not to purchase products from that company.”¹ “Irrespective of the view on how to balance human and animal interests, there seems to be a consensus that animals should not be made to suffer unnecessarily.”² Groupon’s deceptive advertising deflects attention from the animal abuse and neglect committed by the animal exhibitors it promotes and falsely reassures the buying public that these exhibitors have not committed violations of animal welfare laws.

Groupon depends on its misleading and deceptive advertising to conceal from the public that the animal exhibitors it promotes in fact routinely abuse and neglect the animals they hold captive and have the AWA citations to prove it. Consumers depend on the Commission to protect them from Groupon’s lies and stop it from violating the FTC Act with impunity.

That Groupon-promoted animal exhibitors have racked up so many USDA citations for violations of the Animal Welfare Act is clearly “likely to affect a consumer’s choice of or conduct regarding” whether or not to patronize the promoted events and facilities.

If Groupon explained to customers that its promoted animal exhibitors routinely are cited for animal welfare violations, most would choose not to spend money to attend these events. This is the very definition of materiality, and Groupon’s false and misleading representations are thus in clear violation of the FTC Act.

PETA has repeatedly contacted Groupon to inform it that several promoted animal exhibitors have numerous USDA citations within the two years prior to being promoted by Groupon, in clear violation of both Groupon’s representations to consumers and its alleged policy.³ Despite these communications, and contrary to its representations to the public, Groupon continues to promote animal exhibitors who have violated the AWA within the past two years.

II. Legal Standard

The FTC Act declares unfair or deceptive acts or practices unlawful.⁴ A false oral or written representation or omission is deceptive, if material.⁵ “The statutory ban against false and misleading advertisements and representations applies to that which is suggested as well as that which is asserted.”⁶ “It is a long-established principle that words and sentences may be literally and technically true and yet framed in such a setting as to mislead or deceive.”⁷

The Act also applies to deceptive omissions. “In consumer protection cases under Section 5 of the FTC Act, it can be deceptive to tell only half the truth, and to omit the rest.”⁸ An advertiser is required “to disclose qualifying information necessary to prevent” a statement “from creating a misleading impression.”⁹ For example, in *Horizon, Inc.*,¹⁰ the Commission held that Horizon violated the FTC Act, in part because many of its representations “consisted of partial truths, or literal or technical truths, framed in a setting to mislead or deceive.”¹¹ “In several

respects,” the Commission found, “Horizon’s sales techniques left material issues vague. The record [t]herein reveal[ed] widespread confusion and a lack of understanding about critical elements of Horizon’s property and Horizon’s obligations, all conducive to Horizon’s objectives.”¹²

The Commission’s ultimate “concern” is the “message conveyed or the implication created in the mind of the ordinary purchaser”:¹³ “that vast multitude . . . who, in making purchases, do not stop to analyze, but are governed by appearances and general impressions.”¹⁴ As long as an advertisement “reasonably can be interpreted in a misleading way,” it is “deceptive, even though other, non-misleading interpretations may be equally possible.”¹⁵ Indeed, “[a] deceptive impression may be created by implication and innuendo without affirmative misrepresentation or misstating a single fact.”¹⁶

“The tendency of . . . advertising to deceive must be judged by viewing it as a whole.”¹⁷ The Commission is “required to look at the complete advertisement and formulate [its] opinions on the basis of the net general impression conveyed by them and not on isolated excerpts.”¹⁸ “To tell less than the whole truth is a well known method of deception,”¹⁹ and “the Commission repeatedly has held that deceptive non-disclosure of material facts is a violation of Section 5.”²⁰ The focus is “the entire mosaic, rather than each tile separately.”²¹

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

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

III. Groupon Has Repeatedly Promoted Events Featuring Animal Exhibitors That Have Citations for Animal Welfare Act Violations Within Two Years of the Promotions, Despite Making Representations to the Contrary

According to Groupon spokesman Bill Roberts, “[Groupon] require[s] animal-focused events and experiences to have clear inspection reports for animal cruelty from the U.S. Department of Agriculture for at least two years prior to their feature on our site. When we receive reports of potential violations, we check the merchant against our policies and—when warranted—remove the offer from our site.”²⁷ Additionally, in a statement posted to its Facebook page, Groupon claims:

In addition to the already thorough vetting we do against all businesses before they appear on our site, any circus deal we feature must reach an additional threshold. They must have proof of an active USDA license required for a circus owner and must have

clean USDA and public record inspection reports from at least the past 2 years, without reported incidences of animal cruelty or animal control-related drugs.²⁸

These claims are false and misleading.

USDA inspection reports irrefutably establish that Groupon-promoted animal exhibitors received citations for violations of the AWA within two years prior to being promoted on groupon.com. Enclosed with this Complaint and summarized below are USDA inspection reports documenting citations for the following animal exhibitors, many of which Groupon has promoted as recently as May, 2014, from within the past two years.

a. G.W. Exotic

Groupon is currently promoting Garold Wayne Interactive Zoological Park, also known as G.W. Exotic, a roadside zoo in Wynnewood, Oklahoma. Groupon's offer reads, "Guided Tour and Playtime with a Baby Tiger at The Garold Wayne Interactive Zoological Park (50% Off)."²⁹

On March 10, 2014—just weeks before Groupon launched its promotion—the USDA cited G.W. Exotic for insufficient veterinary care. At least four juvenile black bears had repeated episodes of scratching and significant hair loss and had not received any treatment for two months. G.W. Exotic was also cited for a failure to maintain the enclosure of a solitary snow macaque, which had an area of rust that created a hole with sharp edges, and an enclosure containing two tigers, which had an exposed screw point and a missing plank on a walkway, both of which could injure the captive animals.³⁰

On June 11, 2013, the USDA noted on an inspection report that it was reviewing an incident that involved the transportation of two tiger cubs and their subsequent death on or around May 10, 2013.³¹

On March 20, 2013, the USDA cited G.W. Exotic for inadequate facilities. A gate and a fence for an enclosure containing four wolves were beginning to lean and sag, leaving a gap between the two. In addition, a large chunk of stone had broken off the roof of the shelter in a female tiger's pen, and two connected lion enclosures didn't have adequate shade.³²

On May 21, 2012, the USDA cited G.W. Exotic for improper handling of animals. The report stated that the inspection focused on the handling of tiger cubs at the facilities and that the handling techniques were currently under review.³³

b. Universoul Circus

Groupon is currently promoting Universoul Circus, whose exhibitors have been cited numerous times in the past two years.³⁴

On December 10, 2013, the USDA cited exhibitors Jorge and Louann Barreda, performing with UniverSoul Circus, for failing to provide an elephant named Lou, whose face was swollen and secreting discharge at the time of the inspection, with veterinary care.³⁵

On November 13, 2013 and October 29, 2013, the USDA cited Pascale Freeman, licensed under UniverSoul Circus, for failing to have an adult available for an inspection of animals and records and for failing to submit an itinerary.³⁶

On July 25, 2013, the USDA cited Mitchel Kalmanson, while he was performing with UniverSoul, for failing to provide sufficient distance and/or a barrier between tigers and the public. He was also cited for keeping big cats in their transport cages without any exercise. The cages were not large enough for the cats to make postural adjustments, and a handler admitted to the USDA inspector that the animals were kept in the cages twenty-four hours a day, seven days a week for the entire four to seven weeks that they were on the road and sometimes longer if they were not switched out with other animals.³⁷

On April 11, 2013, the USDA cited Freeman for exhibiting animals without a valid AWA license. According to the inspection report, Freeman “was found to be exhibiting animals” without a valid license.³⁸

On April 10, 2013, the USDA cited Kalmanson, performing with UniverSoul, for failing to provide a tiger, whom the inspectors, including the agency's big-cat expert, observed limping, with veterinary care. Kalmanson was also cited for handling the same tiger improperly by caging her with a chain fastened around her neck and with a section of links dangling from the cage, thereby risking serious injury or strangulation if the chain caught on something in the enclosure. The USDA also cited Kalmanson for failing to provide two tigers with adequate space as they were being housed in transport cages that did not give them an opportunity to make normal postural adjustments. In addition, they were never let out for exercise.³⁹

On August 14, 2012, the USDA cited Kalmanson for providing an inadequate diet to tigers used by UniverSoul Circus. According to the inspection report, the tigers were being fed in deviation from their diet plan, which “could lead to nutritional deficiency and health problems in the animals.”⁴⁰

c. Animal World & Snake Farm Zoo

Groupon is currently promoting Animal World & Snake Farm Zoo, which Groupon claims keeps more than 500 exotic animals.⁴¹

On February 10, 2014, the USDA cited this facility for keeping numerous outdated medications in its drug cabinet, noting that outdated medications may not be effective in treating disease conditions and some may be harmful to the animal. The USDA also issued a citation for deteriorating housing conditions because the outside perch of a capuchin monkey was deteriorating and no longer securely attached to the side of the enclosure. Additionally, the facility was cited for moving a fennec fox to an enclosure which had a “build up” of body oil and dirt on the walls and ceiling from another animal who had previously been housed there. The USDA noted that routine cleaning of all surfaces in an enclosure is necessary to reduce the chance of disease and prevent odors. *See Exhibit 4.*

On July 3, 2013, the USDA cited Animal World & Snake Farm Zoo for failing to maintain structural strength, noting that there was a hole in the front of the wooden shelter housing two wolves, increasing the risk of injury to the animals. *See* Exhibit 4.

On October 2, 2013, the USDA cited the facility for standing water in the hyena enclosure, warthog and cougar cub exhibits. The facility failed to provide a suitable method for draining excess water from the enclosures to provide proper husbandry for the animals. *See* Exhibit 4.

d. Bailiwick Ranch & Discovery Zoo

Groupon is currently promoting Bailiwick Ranch & Discovery Zoo,⁴² which has received several AWA citations in the past two years.⁴³

On April 3, 2014, the USDA cited Bailiwick Ranch for improper handling of an arctic fox, who was being housed in a dog run style of enclosure. The barrier fence, which consisted of only one strand of rope, was within three feet of the primary enclosure and could be easily manipulated, giving the public direct access to the fox and putting the public and the fox at risk. Additionally, ring tailed lemurs were housed in an enclosure with a roof of wire mesh, which had become loose, presenting jagged edges that could harm the animals and possible escape routes for the animals, in violation of the AWA. The facility was also cited for failing to have complete a Program of Veterinary Care form from its veterinarians.⁴⁴

Also on April 3, 2014, the USDA cited Bailiwick Ranch for a poorly maintained chain link fence to a goat pen, which bowed outwards, presenting an opportunity for the animals to escape. Another goat pen also had a poorly maintained fence. The black bear enclosure's fence presented jagged edges, presenting a risk of injury to a bear with direct access to the damaged enclosure. Another enclosure, holding goats and llamas, had a fence that had begun detaching from its posts, presenting a possible route of escape. The enclosure housing the dromedary camels presented several wooden planks that had become detached from the walls and were lying on the ground, presenting a risk of injury to the animals. The brown bear enclosure had two to three inches of standing water, and the bears had no access to a dry area in the den. The USDA inspector noted that due to cold temperatures at night, the bears needed access to the den. The chain link fence between the black and brown bear enclosures had begun to detach from its posts and was sagging and bowing. The brown bear enclosure had an accumulation of strands of rope and "soiled enrichment items."⁴⁵

On July 11, 2013, the USDA cited Bailiwick Ranch for several unsound and potentially dangerous facilities. Two pine tree limbs were hanging over the front fence line of the tiger enclosure, potentially damaging the fence or giving the tigers an opportunity to escape. The fence around the black bear pen had detached from its support posts and was loose. Similarly, the post on one side of the gate to the camel enclosure had come loose, creating a large gap. In the kinkajou pen, the dirt and woodchips covering the floor had eroded, exposing the wire mesh below, posing a risk of injury to the animals. The gate to the pig pen was damaged and being held in place with twine. Bailiwick also was cited for failing to provide potable water, because

several animals had access only to dirty water receptacles, filled with substances such as algae, dirt, mud and grain.⁴⁶

On May 29, 2013, the USDA cited Bailiwick Ranch for inadequate veterinary care. The inspector noted an injured ring tailed lemur, who could not bear weight on his rear left leg. Additionally, the lemur had a wound to his right thigh, which appeared to be new as evidenced by fresh blood. While conducting the inspection, the USDA learned that an elderly female chimpanzee had died in April. The chimpanzee had been showing behavioral changes for several days prior to Bailiwick staff contacting the veterinarian, and the chimpanzee died before the veterinarian could reach her. The inspector wrote, “Frequent communication is required so that timely and accurate information on problems of animal health and behavior is conveyed to the attending veterinarian. Should other animals show behavioral changes the attending veterinarian will need to be called in a more timely manner.”⁴⁷

The USDA issued Bailiwick Ranch several additional citations on August 30, 2012 and April 3, 2012.⁴⁸

e. Piccadilly Circus

Groupon recently promoted Piccadilly Circus.⁴⁹ Piccadilly Circus was apparently operating on a canceled AWA license during much of the time of the promotion—despite Groupon’s claim that “any circus deal we feature . . . must have proof of an active USDA license.” From March 12 through April 16, 2014, Piccadilly Circus general manager and animal exhibitor Zachary Garden did not have a valid AWA license, and may have been exhibiting animals with Piccadilly Circus, which had events scheduled during that time. The USDA cited Garden for lack of a valid AWA license on March 27, 2014.⁵⁰

Also, on March 27, 2014, the USDA cited Garden for inadequate veterinary care, having observed a female camel with dried blood on the back and inner surfaces of both rear limbs, and what appeared to be puncture wounds in two locations on the back of her rear left limb. No treatment had been given, and there was no indication that any employee was aware of the injury.⁵¹

On January 21, 2014, the USDA cited Garden for failing to have a responsible adult available to facilitate the inspection. Garden was previously cited for the same violation on July 22, 2013.⁵² Such citations are serious because they completely prevent the USDA from checking on the conditions of the animals.

On July 15, 2013, the USDA cited Garden for irresponsible animal handling. More than 25 people were observed at the petting zoo without an attendant present.⁵³

On June 24, 2013, the USDA cited Garden for failing to update the program of veterinary care for more than a year.⁵⁴

On May 4, 2013, the USDA issued Garden a repeat citation for failing to maintain a regular log of the primates' diet, enrichment, and training.⁵⁵

On April 15, 2013, the USDA cited Garden for failing to seek prompt treatment for a ewe's fractured leg and, according to the inspector, "leaving her to suffer." Garden was also cited for the repeat escapes of a goat kid from the petting zoo enclosure, feeding unrefrigerated meat to a tiger, outdated and incomplete recordkeeping, and severely crowding animals during transport.⁵⁶

On April 1, 2013, the USDA cited Garden for failing to provide documentation of a veterinary evaluation of a white tiger with facial wounds. The inspector issued a second citation for incomplete and inaccurate animal records.⁵⁷

On March 26, 2013, the USDA cited Garden for failing to attend properly to injuries to three zebras. The inspector observed that one zebra's hoof was wrapped with duct tape. Garden was also cited for inaccurate animal recordkeeping and for the insecure state of the zebra enclosure.⁵⁸

On December 5, 2012, the USDA issued an official warning to Garden for violating the AWA while traveling with Piccadilly Circus by failing to handle animals properly, resulting in the death of a zebra (see October 4, below); failing to maintain the tiger enclosure, which had exposed underground wire mesh, risking injury to the tiger; and failing to notify the USDA of a change of address.⁵⁹

On November 27, 2012, the USDA cited Garden for exposed underground wire mesh in the tiger enclosure, risking injury to the tiger. Garden was also cited for failure to notify the department that he had moved his home site.⁶⁰

On October 4, 2012, while responding to PETA's concerns, the USDA discovered that a young zebra had died. According to the animal trainer, the zebra's jaw was caught in another zebra's halter as they were playing. The zebra panicked and then caught his foot in the halter. Staffers were unable to separate the zebras in time to prevent the zebra's ultimate death.⁶¹

On October 2, 2012, the USDA issued an official warning for a violation of federal regulations to Franzen Bros. Circus for the citations that it was issued on August 8 (see below)—the beating of an elephant named Kosti and having an insufficient number of adequately trained employees—while traveling with Piccadilly.⁶²

On August 8, 2012, the USDA cited Franzen Bros., which was traveling with Piccadilly as the elephant exhibitor for the circus, for striking the elephant Kosti forcefully with a bullhook at least five times about the eyes and ears to "teach" her not to take another elephant's hay. Franzen was also cited for not providing the elephants with enough water and for not having a sufficient number of qualified elephant handlers.⁶³

On this same day, the USDA cited Garden for not having a program of veterinary care for the ring-tailed lemurs and for having incomplete animal inventories—10 animals were not listed. He was also cited for allowing two young camels with multiple circular skin lesions (ringworm) to have access to other animals used in a "petting zoo," risking public exposure to a zoonotic

disease. In addition, Garden was cited for insufficient barriers around a zebra who was being petted by the public through his enclosure while there were no readily available attendants to protect the animal and the public. Other citations during this inspection included failure to provide primates with an updated environmental enrichment plan and failure to provide several animals with water and shade.⁶⁴

f. Loomis Bros. Circus/Franzen Bros. Circus

Groupon recently promoted Loomis Bros. Circus, which uses elephants and tigers,⁶⁵ trained and handled by “animal behaviorist” Brian Franzen. The USDA has cited Franzen Bros. Circus for failing to provide veterinary care, failing to meet the animals’ nutritional requirements, failing to provide sanitary conditions, and repeatedly failing to maintain transport trailers. A tiger attacked and killed Wayne Franzen during a performance. Brian Franzen was convicted of cruelty to animals when several emaciated ponies were confiscated from a filthy trailer.

On May 23, 2013, the USDA cited Franzen Bros. Circus for failing to provide seven tigers with adequate shelter. Tigers were held in traveling pens outside the travel truck. It was raining and below sixty degrees Fahrenheit during the inspection. The floor of the pens was wet, and the tigers did not have a dry space to lie on. Franzen was also cited for not providing the tigers with sufficient space to make normal postural movements. The inspector noted that an exercise pen was available but that it had not been set up or used since Franzen had arrived at that site three days earlier.⁶⁶

On November 27, 2012, the USDA cited Franzen Bros. for not properly maintaining a tiger enclosure that had rust at the bottom. A few vertical rods also were detached and corroded at the bottom.⁶⁷

On October 2, 2012, the USDA issued an official warning for the citations it had previously issued on August 8, 2012 (see below)—for the beating of an elephant named Kosti and for having an insufficient number of adequately trained employees—while traveling with Piccadilly Circus.⁶⁸

On August 8, 2012, the USDA cited Franzen Bros., which was then the elephant exhibitor traveling with Piccadilly Circus, for striking Kosti the elephant forcefully with a bullhook, a sharp-tip prod that resembles a fireplace poker, at least five times about the eyes and ears to “teach” her not to take another elephant’s hay. The USDA also cited Franzen Bros. for not providing the elephants with a sufficient amount of water and for not having a sufficient number of qualified elephant handlers.⁶⁹

On January 25, 2012, the USDA cited Franzen Bros. for unsafe primary transport enclosures—the roof of the enclosure had a piece of hanging metal that could injure an elephant.⁷⁰

g. Suncoast Primate Sanctuary

Groupon also recently promoted Suncoast Primate Sanctuary, a pseudosanctuary that confines primates such as chimpanzees, orangutans, and others.⁷¹

On July 23, 2013, the USDA cited Suncoast Primate Sanctuary for failure to provide safe housing facilities. The vervet monkey enclosure had rusted areas with jagged and crusted edges, posing a risk for these animals.⁷² The USDA previously had cited Suncoast Primate Sanctuary for the *same* violation on March 14, 2013.⁷³

IV. The Commission Should Enforce the FTC Act Against Groupon, Because Its Deception Is Difficult for Consumers to Detect

In determining which deceptive advertising claims to challenge, the Commission prioritizes “those claims [that] are expensive for consumers . . . , or are beyond the competence or expertise of ordinary consumers to verify.”⁷⁴ “Because of their lack of susceptibility to consumer assessment,” Groupon’s claims about its promoted animal exhibitors’ USDA inspection reports are of exactly the type “subject to more intense scrutiny by the FTC.”⁷⁵

“[P]rocess attributes” that “are important to consumers for ethical reasons, such as the use of child labour, or harvesting techniques that threaten an endangered species,” are often “difficult for consumers to detect.”⁷⁶ For example, Commissioner Julie Brill recently explained that “ensuring” that environmental marketing claims “are truthful is particularly important,” because “[c]onsumers often cannot determine for themselves whether a product, package, or service is, in fact, ‘recyclable,’ ‘made with renewable energy,’ or possesses another environmental attribute that is being promoted.”⁷⁷

The same is true of humane marketing claims like Groupon’s. Consumers can easily tell how much a circus ticket costs, or whether a trick is performed well, but they cannot see the suffering that an elephant or other exotic animal experiences in being trained and forced to perform. The Commission should adhere to its announced policies and prioritize enforcement of the FTC Act against Groupon. An average consumer responding to Groupon’s advertisements would have great difficulty vetting Groupon’s claims against USDA inspection reports, especially where promoted businesses use animals provided by other entities—as in the case of the Shrine circuses noted above. Even PETA, which professionally monitors AWA compliance by animal exhibitors, often has difficulty finding truthful information about vendors because of the web of contractors—and at times, subcontractors—used by such businesses.

V. Requested Relief

Groupon’s intentional, years-long deceptive advertising campaign to conceal the animal welfare violations of its promoted animal exhibitors clearly violates Section 5 of the FTC Act. PETA urges the Commission to take action to stop Groupon from deceiving consumers about its promoted exhibitors. Contrary to Groupon’s advertisements, which represent that it only promotes animal exhibitors with clean USDA inspection reports for the two years prior to the promotion, the record amply demonstrates that such exhibitors have routinely been cited for AWA violations—in *direct contravention of its advertising claims*.

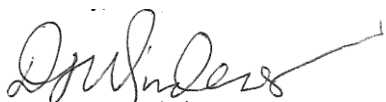
Many consumers would shun these exhibitors if they knew the truth: that they routinely have been cited for providing inadequate care to the animals they force to perform or to interact with humans. These consumers depend on the Commission to protect them from Groupon's deception. This Complaint demands that Groupon be held accountable for misleading consumers into believing that it carefully reviews the USDA inspection records of its promoted animal exhibitors and makes a conscious effort to market only those businesses that are compliant with animal welfare law.

Accordingly, the undersigned petitioner respectfully requests that the Commission:

- (1) require Groupon to remove the misleading statements concerning the clean USDA inspection reports of its promoted animal exhibitors from its advertising, website, Facebook page, and all other media;
- (2) enjoin Groupon from making such misleading statements in the future;
- (3) require Groupon to disseminate corrective statements in all media in which the deceptive statements were previously disseminated;
- (4) require Groupon to disclose the actual USDA inspection reports, replete with violations of animal welfare law, of its promoted animal exhibitors; and
- (5) impose all other penalties as are just and proper.

DATED May 19, 2014.

People for the Ethical Treatment of Animals (PETA)

By: 
Deputy General Counsel, Captive Animal Law
Enforcement
PETA Foundation

END NOTES

¹ E-mail from Mary Engle, Associate Director, Bureau of Consumer Protection, FTC, to PETA (Oct. 16, 2008) (on file with PETA); *see also* E-mail from Mary Engle to Bonnie Robson, Counsel for PETA (Apr. 14, 2009) (on file with PETA) (“animal treatment is an important issue for many consumers”).

² THE ENCYCLOPEDIA OF APPLIED ANIMAL BEHAVIOUR AND WELFARE 465 (Daniel S. Mills ed., 2010).

³ Letter from Julia Gallucci, Senior Corporate Liaison, People for the Ethical Treatment of Animals, Inc., to Eric Lefkofsky, CEO, Groupon, Inc. (May 5, 2014); *accord* Letter from Delcianna Winders, Director, Captive Animal Law Enforcement, People for the Ethical Treatment of Animals Foundation, to Andrew Mason, CEO, Groupon, Inc. (August 20, 2012). Correspondence enclosed as Exhibit 1.

⁴ 15 U.S.C. § 45(a).

⁵ FTC Policy Statement on Deception § I (Oct. 14, 1983), *appended to Cliffdale Assocs., Inc.*, 103 FTC 110, 174 (1984).

⁶ *The Raymond Lee Org., Inc.*, 92 FTC 489, 1978 WL 206103, at *140 (1978).

⁷ *Horizon Corp.*, 97 FTC 464, 1981 WL 389410, at *255 (May 15, 1981) (quoting *Bockenstette v. FTC*, 134 F.2d 369, 371 (10th Cir. 1943)).

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

⁹ *Id.*

¹⁰ 97 FTC 464, 1981 WL 389410 (1981).

¹¹ *Id.* at *216.

¹² *Id.*

¹³ *Id.* at *263.

¹⁴ *P. Lorillard Co. v. FTC*, 186 F.2d 52, 58 (4th Cir. 1950); *see* FTC Policy Statement on Deception § III; *see also Warner-Lambert*, 86 FTC 1398, 1415 n.4 (1975), *aff’d*, 562 F.2d 749 (D.C. Cir. 1977) (evaluating the claim from the perspective of the “average listener”); *Grolier*, 91 FTC 315, 430 (1978) (considering the “net impression” made on the “general populace”).

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

¹⁶ *MacMillan, Inc.*, 96 FTC 208, 1980 WL 338975, at *120 (1980).

¹⁷ *Beneficial Corp. v. FTC*, 542 F.2d 611, 617 (3d Cir. 1976), *cert denied*, 430 U.S. 983 (1977); *accord Horizon Corp.*, 1981 WL 389410, at *269 (in determining whether a representation is deceptive, the Commission is “not confined to analyzing isolated words and phrases”).

¹⁸ *Standard Oil of Cal.*, 84 FTC 1401, 1471 (1974), *aff’d as modified*, 577 F.2d 633 (9th Cir. 1978), *reissued*, 96 FTC 380 (1980).

¹⁹ *P. Lorillard*, 186 F.2d at 58.

²⁰ Complaint Counsel’s Post-Trial Br., *Union Oil Co. of Cal.*, 2005 WL 906397 (quoting *Int’l Harvester Co.*, 104 FTC at 1057).

²¹ *FTC v. Sterling Drug*, 317 F.2d 669, 674 (2d Cir. 1963).

²² FTC Policy on Deception § IV.

²³ *Id.* § IV n.46.

²⁴ *Id.* § IV.

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

²⁶ FTC Policy on Deception § IV.

²⁷ Marcus Riley, “PETA Buys Groupon Shares Too Late to Address Animal Circus Deals,” NBC Chicago (April 22, 2014), *available at* <http://www.nbcchicago.com/blogs/inc-well/PETA-Buys-Groupon-Shares-Too-Late-to-Address-Animal-Circus-Deals-256244601.html>; *accord* Ellen Jean Hirst, “PETA vows to attend Groupon annual meeting,” CHICAGO TRIBUNE (April 22, 2014), *available at* http://articles.chicagotribune.com/2014-04-22/business/chi-peta-buys-groupon-shares-20140421_1_daily-deals-site-groupon-peta. Articles enclosed as Exhibit 2.

²⁸ <http://www.facebook.com/groupon> (last visited August 16, 2012).

²⁹ *Guided Tour and Playtime with a Baby Tiger at the Garold Wayne Interactive Zoological Park (50% Off)*, GROUPON.COM, <http://www.groupon.com/deals/the-garold-wayne-interactive-zoological-park-1> (last visited May 16, 2014). Enclosed as Exhibit 3.

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- ³⁰ See Exhibit 4.
- ³¹ See *id.*
- ³² See *id.*
- ³³ See *id.*
- ³⁴ *Universoul Circus at Capital Plaza Mall on May 29-June 16 (Up to 34% Off)*, GROUPON.COM, <http://www.groupon.com/deals/gl-universoul-circus-7> (last visited May 16, 2014); see also *Universoul Circus on March 20-May 4 (Up to 31% Off). Four Seating Options Available*, GROUPON.COM, <http://www.groupon.com/deals/gl-universoul-circus-5> (last visited May 16, 2014); *Universoul Circus at Walnut Creek Amphitheatre on March 6 at 7:30 p.m. (Up to 31% Off)*, GROUPON.COM, <http://www.groupon.com/deals/gl-universoul-circus-3> (last visited May 16, 2014). Enclosed as Exhibit 5.
- ³⁵ See Exhibit 6.
- ³⁶ See *id.*
- ³⁷ See *id.*
- ³⁸ See *id.*
- ³⁹ See *id.*
- ⁴⁰ See *id.*
- ⁴¹ *Visit for Two or Four, or Party with Animal Show for Up to 20 at Animal World & Snake Farm Zoo (Up to 56% Off)*, GROUPON.COM, <http://www.groupon.com/deals/animal-world-snake-farm-zoo-12> (last visited May 16, 2014). Enclosed as Exhibit 7.
- ⁴² *Visit for Two or Four to Bailiwick Ranch & Discovery Zoo (Up to 50% Off)*, GROUPON.COM, <http://www.groupon.com/deals/bailiwick-animal-park> (last visited May 19, 2014). Enclosed as Exhibit 9.
- ⁴³ See Exhibit 10.
- ⁴⁴ See *id.*
- ⁴⁵ See *id.*
- ⁴⁶ See *id.*
- ⁴⁷ See *id.*
- ⁴⁸ See *id.*
- ⁴⁹ *Piccadilly Circus for Two Adults and Two Children at Central Florida Fairgrounds on December 4-5 (Up to 56% Off)*, GROUPON.COM, <http://www.groupon.com/deals/gl-piccadilly-circus-28> (last visited May 16, 2014); see also *Piccadilly Circus for Two Adults and Two Children on March 26 or 27 at 4:30 p.m. or 7:30 p.m. (Up to 52% Off)*, GROUPON.COM, <http://www.groupon.com/deals/gl-piccadilly-circus-32> (last visited May 16, 2014). Enclosed as Exhibit 11.
- ⁵⁰ See Exhibit 12.
- ⁵¹ See *id.*
- ⁵² See *id.*
- ⁵³ See *id.*
- ⁵⁴ See *id.*
- ⁵⁵ See *id.*
- ⁵⁶ See *id.*
- ⁵⁷ See *id.*
- ⁵⁸ See *id.*
- ⁵⁹ See *id.*
- ⁶⁰ See *id.*
- ⁶¹ See *id.*
- ⁶² See *id.*
- ⁶³ See *id.*
- ⁶⁴ See *id.*
- ⁶⁵ *Loomis Bros. Circus for One Adult, One Kid, or Two Adults and Four Kids on January 28 or 29 (Up to 65% Off)*, GROUPON.COM, <http://www.groupon.com/deals/gl-loomis-bros-circus-8> (last visited May 16, 2014). Enclosed as Exhibit 13.
- ⁶⁶ See Exhibit 14.
- ⁶⁷ See *id.*
- ⁶⁸ See *id.*
- ⁶⁹ See *id.*
- ⁷⁰ See *id.*

⁷¹ *Monkey-Feeding Experience for Four at Suncoast Primate Sanctuary*, GROUPON.COM, <http://www.groupon.com/deals/suncoast-primate-sanctuary-5> (last visited May 16, 2014). *See also Monkey-Feeding Experience for Two or Four at Suncoast Primate Sanctuary (Half Off)*, GROUPON.COM, <http://www.groupon.com/deals/suncoast-primate-sanctuary-7> (last visited May 16, 2014); *\$82 Off Family Membership to Suncoast Primate Sanctuary*, GROUPON.COM, <http://www.groupon.com/deals/suncoast-primate-sanctuary-8> (last visited May 16, 2014). Enclosed as Exhibit 15.

⁷² *See* Exhibit 16.

⁷³ *See id.*

⁷⁴ FTC Commissioner Mary L. Azcuenaga, *The Role of Advertising and Advertising Regulation in the Market*, before the Turkish Association of Advertising Agencies Conference on Advertising for Economy and Democracy, § IV.A. (Apr. 8, 1997), *available at* <http://www.ftc.gov/speeches/azcuenaga/turkey97.shtm>; *see also* FTC Commissioner Roscoe B. Starek, III, *The Consumer Protection Pyramid: Education, Self-Regulation, and Law Enforcement*, before the Korea Consumer Festival '97 (Dec. 2, 1997) (“Some of the most harmful violations that we pursue involve deceptive ‘credence claims’—that is, claims whose accuracy is extremely difficult for consumers to assess based on their own experiences.”), *available at* <http://www.ftc.gov/speeches/starek/koreaweb.shtm>.

⁷⁵ *Id.*

⁷⁶ Jill E. Hobbs, *Technical Barriers to Trade*, in *HANDBOOK ON INTERNATIONAL TRADE POLICY* 394, 395 (William A. Kerr & James D. Gaisford eds., 2011).

⁷⁷ Opening Keynote of FTC Commissioner Julie Brill, 2010 PMA Marketing Law Conference 1 (Nov. 18, 2010), *available at* <http://www.ftc.gov/speeches/brill/101118promomarketingspeech.pdf>.