

October 6, 2021

Via e-mail

Samuel Levine, Acting Director
Bureau of Consumer Protection
Federal Trade Commission
[REDACTED]

Re: Complaint requesting action to enjoin false or deceptive advertising by Plainville Farms, LLC

Dear Acting Director Levine,

On behalf of People for the Ethical Treatment of Animals (PETA), I am writing to request that the Federal Trade Commission (FTC) investigate and enjoin Plainville Farms, LLC (Plainville) from using false or misleading claims in advertising its turkey products in apparent violation of the Federal Trade Commission Act, 15 U.S.C. §§ 45–58.

As explained in further detail in the attached complaint, Plainville falsely and misleadingly asserts on its product packaging that turkeys on its farms are “humanely raised” in a “stress-free environment,” and makes similar statements on its website. Consumers consider such claims material, and understand them to mean that animals are raised under a higher standard of care than industry norms. Plainville’s standards fail to support these claims, as they allow birds to undergo physical mutilation and to be raised indoors in small and barren sheds.

Further, a recent PETA investigation revealed a pattern of physical abuse on Plainville suppliers’ farms, including workers viciously kicking and stomping on turkeys; striking them in the head with a metal rod; throwing them by their necks or fragile wings; and attempting to break birds’ necks for apparent amusement. In addition to this affirmative abuse, turkeys were documented regularly dying without treatment for their illnesses or injuries. No consumer would consider turkeys raised pursuant to Plainville’s standards to have been “humanely raised” in a “stress-free environment.”

PETA respectfully requests that the FTC aid consumers by enjoining Plainville from making these deceptive claims regarding its turkey products.

Very truly yours,

[REDACTED]
Jared Goodman
Vice President and Deputy General Counsel for Animal Law
[REDACTED]

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- PETA Germany
- PETA Netherlands
- PETA Foundation (U.K.)

BEFORE THE UNITED STATES
FEDERAL TRADE COMMISSION

PEOPLE FOR THE ETHICAL TREATMENT OF ANIMALS,

Petitioner,

v.

PLAINVILLE FARMS, LLC,

Respondent.

COMPLAINT AND REQUEST FOR INVESTIGATION,
INJUNCTION, AND OTHER RELIEF

Jared Goodman
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2154 W. Sunset Blvd.
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I. INTRODUCTION

Pursuant to Federal Trade Commission (FTC) regulations, 16 C.F.R. §§ 2.1–2.2, People for the Ethical Treatment of Animals (PETA) hereby requests that the FTC investigate and commence an enforcement action against Plainville Farms, LLC (Plainville) for engaging in false or misleading advertising in violation of the Federal Trade Commission Act, 15 U.S.C. §§ 45–58 (FTC Act). Specifically, Plainville deceives consumers about conditions on its farms for animals raised for food.

Plainville markets turkey products to consumers directly through its website and sells in stores through grocers such as Harris Teeter, Publix, and Wegmans.¹ Plainville labels indicate that the animals were “humanely raised,” which is defined on the label to mean “[m]eets Plainville Farms humane policy for raising turkeys on family farms in a stress-free environment.”² Plainville’s website provides more detail on its “humane policy”:

All animals are raised in accordance with Plainville Farms humane policy of raising poultry and pork on family farms in a stress-free environment to our highest standards. We strictly maintain our animal welfare program which is designed to enforce humane and responsible treatment of all.

From farm to harvest, humane treatment is the heart of our business. We use globally-recognized animal welfare practices to assure humane and responsible treatment of all turkey ... to our highest standards. We work every day to promote the wellness of our flocks and animals, raising them in a stress-free environment....

We do everything we can to ensure our flocks are comfortable, whether they’re at the family farm or in transport. We raise our flocks on family farms in a stress-free environment and maintain the same level of care during their stress-free transportation.³

Plainville, through explicit statements and omissions in its advertising, deceives customers by creating the impression that it humanely raises turkeys on its farms. Consumers perceive the claim “humanely raised” to mean that those animals are raised to a standard of care that is higher than general industry practices. Consumers have, and must be able to maintain, a reasonable expectation that when Plainville advertises turkey products from animals who were “humanely raised ... in a stress-free environment,” that such a description is truthful. However, this assertion is not true for the turkeys raised by Plainville.

Plainville’s “humane” policy allows for confining turkeys indoors in crowded barren environments, subjecting turkeys to low-level lighting, and physically mutilating their beaks. Consumers do not believe these conditions and practices are consistent with the claim “humanely raised.” If consumers were aware of the minimal standards underlying Plainville’s policy, many would choose not to purchase the product in favor of another. The harm to consumers is further

¹ See HARRIS TEETER, <https://www.harristeeter.com/shop/store/348/product/00089991602325/details/selected/description> (last visited Sept. 23, 2021); PUBLIX, <https://www.publix.com/pd/plainville-farms-organic-turkey-breast-oven-roasted/RIO-PCI-530791> (last visited Sept. 14, 2021); WEGMANS, <https://shop.wegmans.com/product/15131/plainville-farms-hickory-smoked-turkey-breast> (last visited Sept. 23, 2021).

² E.g., *Organic Turkey Drumsticks*, PLAINVILLE FARMS, <https://www.plainvillefarms.com/organic-parts-drumsticks> (last visited Sept. 16, 2021).

³ *Animal Welfare*, PLAINVILLE FARMS, <https://www.plainvillefarms.com/animalwelfare> (last visited Sept. 13, 2021).

highlighted by a recent PETA investigation revealing that, despite Plainville’s promises of humane treatment, its workers—including supervisors—engaged in a pattern of gratuitous physical abuse of turkeys on Plainville suppliers’ farms.

This deception is likely to continue without intervention by the FTC. Consumers cannot determine firsthand the level of care provided to animals used to create food products because they do not have access to farms and production practices are not apparent in the final product. Accordingly, PETA submits this citizens’ complaint, pursuant to Section 5 of the FTC Act, 15 U.S.C. § 45, requesting that the Commission take action to stop Plainville from deceiving consumers with false and misleading claims regarding its turkey products.

II. PARTIES

A. Petitioner

Petitioner People for the Ethical Treatment of Animals, Inc. is a Virginia non-stock corporation and animal protection charity pursuant to Section 501(c)(3) of the Internal Revenue Code. Dedicated to protecting animals from abuse, neglect, and cruelty, PETA engages in activities such as cruelty investigations, research, newsgathering, investigative reporting, and protest campaigns to further its mission. PETA strives to educate consumers about the true meaning of animal care claims encountered in the marketplace and to ensure meaningful and transparent definitions for terms that appear on food labels.

B. Respondent

Respondent Plainville Farms, LLC, headquartered at 304 South Water Street, New Oxford, PA 17350, markets meat and poultry products to consumers directly through its website and sells in stores throughout the United States.⁴ In 2020, Plainville ranked fifteenth among the largest turkey processors in the United States.⁵ According to its website, “[t]he Plainville Farms legacy has been built on more than 100 years of commitment to the highest standards in animal welfare.”⁶

III. STATEMENT OF FACTS

The National Advertising Division (NAD) of the Better Business Bureau has acknowledged time and again that consumers rely on advertising claims about the treatment of farmed animals when they are making their purchasing decisions.⁷ This Commission has also acknowledged the importance that many consumers place on a company’s claim of humane treatment of animals and such a claim’s influence on buying decisions.⁸

⁴ *Our Products*, PLAINVILLE FARMS, <https://www.plainvillefarms.com/deli-meat> (last visited Sept. 13, 2021); *see* examples cited *supra* note 1; *see also* PLAINVILLE FARMS, <http://35.162.148.20/en/animal-welfare/#happy-travels> (last visited Sept. 14, 2021) (listing sixty-six Plainville turkey vendors).

⁵ *Top Turkey Companies*, WATT POULTRY USA 58–59 (Mar. 2020), <https://www.wattpoultryusa-digital.com/wattpoultryusa/march2020/MobilePagedReplica.action?pm=2&folio=58#pg60>.

⁶ *Animal Welfare*, *supra* note 3.

⁷ *See, e.g., Clemens Food Group, LLC/Hatfield Pork Products*, Report No. 6305 NAD *Case Reports* (2019) (“NAD appreciates that advertising concerning animal welfare informs consumers as they make purchasing decisions that reflect their particular social and ethical concerns.”).

⁸ *See* E-mail from Mary Engle, Associate Director, Bureau of Consumer Protection, FTC, to PETA (Oct. 16, 2008) (on file with PETA).

The humane treatment of farmed animals is of particular concern to American consumers. In surveys conducted by various organizations, the majority of respondents report being concerned about the welfare of farmed animals.⁹ Studies also confirm that consumers are willing to spend more money on products carried by companies claiming to treat their animals humanely.¹⁰ Consumers rank a “humanely raised” label near the level of *absolute necessity* when considering its importance on their purchasing decisions.¹¹

Consumers have definite and reasonable expectations for companies that claim to treat their farmed animals humanely. They expect better treatment of those animals than the standard treatment within the industry.¹² For example, consumers expect that animals spend time outdoors¹³ and are not subjected to painful physical mutilation, like debeaking.¹⁴

As described herein, Plainville has issued, and continues to issue, unlawfully false and misleading representations about the treatment of animals used to produce its products. Text on Plainville labels state that turkeys are “humanely raised,” meaning that the turkeys are raised in a “stress-free environment.” The Earthwise Seal, which Plainville affixes to its products, represents the company’s “highest standards in certified organic and natural poultry,” including that turkeys on its farms are humanely raised.¹⁵ Plainville’s website expressly states in unequivocal terms that birds “always have plenty of room to roam in comfortable barns,” are transported stress-free, and are raised in stress-free environments pursuant to an “animal welfare program” featuring “globally-recognized welfare practices” that it “strictly maintain[s]” in order “to ensure our flocks are comfortable.”¹⁶ Consumers rely on these untrue and misleading statements to inform their purchasing decisions.¹⁷

Plainville advertises that it uses “globally recognized animal welfare practices.”¹⁸ Until recently, the individual farms that supplied Plainville had been certified as either Step 1 or Step 2 operations

⁹ See, e.g., *Survey of Consumer Attitudes about Animal Raising Claims on Food (Part I)*, ANIMAL WELFARE INST. (Oct. 2018), <https://awionline.org/sites/default/files/uploads/documents/FA-AWI-survey-on-animal-raising-claims-Sept-2018.pdf>.

¹⁰ See *Humane Heartland Farm Animal Welfare Survey*, AM. HUMANE ASS’N 7 (2013), <https://www.americanhumane.org/app/uploads/2013/08/humane-heartland-farm-animals-survey-results.pdf> (reporting that seventy-four percent of respondents were very willing to pay more for humanely raised meat); *Consumer Perceptions of Farm Animal Welfare*, ANIMAL WELFARE INST. (Feb. 2019), http://awionline.org/sites/default/files/uploads/documents/fa-consumer_perceptionsoffarmwelfare_-112511.pdf (documenting a number of survey results regarding consumers’ concern for the welfare of farmed animals and their willingness to pay more for “humanely raised” food).

¹¹ *Humane Heartland Farm Animal Welfare Survey*, *supra* note 10, at 3, 6 (reporting that survey respondents ranked “humanely raised” labels as 95% necessary, surpassing other labels, including organic, natural, and antibiotic free, in importance on their purchasing decisions).

¹² See *Consumer Reports Aims to Ban “Natural” Label*, MEAT+POULTRY (June 16, 2014), http://www.meatpoultry.com/articles/news_home/Trends/2014/06/Consumer_Reports_aims_to_ban_n.aspx?ID=%7BC49A9FD4-0039-4C4A-B9F3-F45492ECE987%7D.

¹³ *Consumer Reports Aims to Ban “Natural” Label*, *supra* note 12.

¹⁴ See *United Egg Producers*, Report No. 122, NARB Case Reports (May 10, 2004).

¹⁵ *Earthwise*, PLAINVILLE FARMS, <https://www.plainvillefarms.com/earthwise> (last visited Sept. 13, 2021).

¹⁶ *Animal Welfare*, *supra* note 3; *Our Values*, PLAINVILLE FARMS, <https://www.plainvillefarms.com/new-page-4> (last visited Sept. 13, 2021).

¹⁷ This complaint focuses on the turkey standards to highlight the misleading nature of the Plainville program in general; the exclusion of Plainville’s standards for other species of animals raised for food should not be perceived as a suggestion that the other standards are not also deceptive.

¹⁸ *Animal Welfare*, *supra* note 3.

on the Global Animal Partnership (G.A.P.) 5-Step system.¹⁹ (Following a 2021 preliminary investigation by a G.A.P. third party certifier, G.A.P. suspended Plainville from the G.A.P. program.²⁰) Step 1 represents entry level certification; many of the entry level standards are comparable to general industry standards.²¹ For example:

- They do not require turkeys to have any access to the outdoors.²²
- They require only minimum space, as the “stocking density” requirements ensure only a single square foot per ten pounds of bird; high stocking densities are linked to hip and foot-pad dermatitis.²³
- They do not require providing turkeys any environmental enrichment—materials that encourage the expression of natural behavior and decrease the expression of abnormal and harmful behavior, like feather pecking.²⁴
- They require only artificial light of at least twenty lux (two foot-candles), which may cause eye damage.²⁵
- They permit turkey debeaking,²⁶ a practice that causes birds acute and/or chronic pain, can reduce sensory functions, and disturbs instinctive foregoing behaviors.
- They allow lameness sums to total twenty, meaning twenty out of 100 turkeys may suffer from conditions that render them unable to use one or more limbs in a normal manner.²⁷
- They permit annual flock mortality rates of twelve percent.²⁸
- They permit turkeys to be transported for eight hours, subjecting turkeys to extended periods of stress due to noise, vibration, extremes of heat and cold, and confinement conditions.²⁹

¹⁹ On August 30, 2021, G.A.P.’s website listed Plainville as a G.A.P. Turkey Partner; Plainville has subsequently been removed. *See generally Turkey Standards*, GLOB. ANIMAL P’SHP, <https://globalanimalpartnership.org/standards/turkey/> (last visited on Sept. 13, 2021). The Global Animal Partnership program is an auditing and labeling program administered by Global Animal Partnership, a nonprofit organization. Producers are certified according to a multi-tiered scale, where a Step 5+ certification signifies that the producer has met the program’s highest standards. The program administers standards for beef cows, bison, goats, sheep, pigs, meat chickens, laying hens, and turkeys. *See generally 5-Step Animal Welfare Standards for Turkeys v2.1*, GLOB. ANIMAL P’SHP (May, 1, 2020), <https://globalanimalpartnership.org/wp-content/uploads/2020/05/G.A.P.s-Animal-Welfare-Standards-for-Turkeys-v2.1.pdf>.

²⁰ *Statement on Plainville Farms*, GLOB. ANIMAL P’SHP, <https://globalanimalpartnership.org/statement-on-plainville-farms/> (last visited Sept. 13, 2021).

²¹ Plainville suppliers that raise turkeys in Step 2 systems adhere to these same standards as Step 1 with the exception that stocking density must not exceed 7.5 pounds per square foot and one type of enrichment is required. *5-Step Animal Welfare Standards for Turkeys v2.1*, *supra* note 19, at 2, 9, 18, 19, 27. Thus, Step 2 standards only marginally differ, if at all, from standard industry practices.

²² *Id.* at 2–3.

²³ *Id.* at 19; *An HSUS Report: The Welfare of Animals in the Turkey Industry*, THE HUMANE SOC’Y 1–2, <https://www.humanesociety.org/sites/default/files/docs/hsus-report-turkey-welfare.pdf> (last visited Sept. 24, 2021) (“high stocking densities lead to deterioration in litter quality, which is associated with leg problems and resultant difficulty in walking, and hip and foot-pad dermatitis”).

²⁴ *5-Step Animal Welfare Standards for Turkeys v2.1*, *supra* note 19, at 2, 19.

²⁵ *Id.* at 18; *see* Chris M. Sherwin, *Light Intensity Preferences of Domestic Male Turkeys*, 58 APPLIED ANIMAL BEHAVIOUR SCIENCE, 121, 121–30 (1998).

²⁶ *See 5-Step Animal Welfare Standards for Turkeys v2.1*, *supra* note 19, at 2.

²⁷ *See id.* at 15, 36, 44.

²⁸ *Id.* at 15.

²⁹ *Id.* at 27.

A 2021 PETA undercover investigation revealed workers viciously and repeatedly abusing birds at several of Plainville suppliers' farms, apparently to instill fear, to vent their frustration, or to relieve their boredom.³⁰ The video documented workers kicking and stomping on the turkeys; throwing birds through the air by the wing, neck, head, and snood; tying birds' snoods together and laughing; hitting them with an iron bar; standing on their heads; choking and throttling them; wringing and breaking their necks; and using the turkeys' bodies to mimic sex acts.³¹ Plainville subsequently pledged to make meaningful enhancements while maintaining that "we have had stringent animal welfare protocols in place"³² and continuing to represent its products as "humanely raised."

Plainville's "humanely raised" label gives consumers a false assurance that they are supporting a company that provides better treatment to its animals than do other companies within the industry and, based on Plainville's own words, that the animals are raised in a stress-free environment. Many consumers undoubtedly have and will continue to purchase Plainville's "humanely raised" labeled products specifically because of what Plainville's representations led them to believe that label signifies. The misleading label provides important information to consumers and is, thus, material and actionable under the Commission's policy.³³ FTC intervention carries particular importance in this instance because of the lack of market restraints on these misleading claims.

Accordingly, PETA requests that the Commission take prompt action to stop Plainville from deceiving consumers with false or misleading representations relating to animal care. The National Turkey Federation (NTF) reports that eighty-eight percent of Americans consume turkey at Thanksgiving³⁴ and estimates that sixty-eight million turkeys are consumed at Thanksgiving and Christmas.³⁵ Because of the high number of consumers who could be deceived by Plainville's "humanely raised" advertising over the remainder of this calendar year, prompt action by the Commission is critical. PETA respectfully requests that the Commission act with urgency.

IV. LEGAL STANDARD

The FTC Act declares unfair or deceptive acts or practices unlawful.³⁶ The elements of deception include: (1) an oral or written representation, omission, or practice, (2) that is likely to mislead a reasonable consumer, and (3) that is material.³⁷

The FTC Act's "ban against false and misleading advertisements and representations applies to that which is suggested as well as that which is asserted."³⁸ Although "words and sentences may be literally and technically true [they may be] framed in such a setting as to mislead or deceive."³⁹

³⁰ See *Turkeys Stomped on, Punched, and Left to Die at 'Humane' Farms Supplying Top Grocers: A PETA Undercover Investigation*, PETA (Aug. 19, 2021), <https://investigations.peta.org/turkey-abuse-humane-farms/>.

³¹ *Id.*

³² *Animal Welfare*, *supra* note 3.

³³ See *FTC Policy Statement on Deception*, FED. TRADE COMM'N § IV (Oct. 14, 1983).

³⁴ Chelsea Wills-Barrett, *Turkeys Are Estimated to Cost Americans \$1.1 Billion for Thanksgiving 2020*, FINDER (Oct. 26, 2020), <https://www.finder.com/american-thanksgiving-turkey-spend>.

³⁵ Rohan Patil, *How Many Turkeys are Eaten on Thanksgiving Day?*, REPUBLICWORLD.COM (Nov. 26, 2020), <https://www.republicworld.com/lifestyle/festivals/how-many-turkeys-are-eaten-on-thanksgiving-day-see-details-here.html>.

³⁶ 15 U.S.C. § 45(a).

³⁷ See *FTC Policy Statement on Deception*, *supra* note 33, § I.

³⁸ *Raymond Lee Org., Inc.*, 92 F.T.C. 489, 591 (1978).

³⁹ *Horizon Corp.*, 97 F.T.C. 464, 732 (1981) (quoting *Bockenstette v. F.T.C.*, 134 F.2d 369, 371 (10th Cir. 1943)).

Indeed, “[a] deceptive impression may be created by implication and innuendo without affirmative misrepresentation or misstating a single fact.”⁴⁰

The FTC Act applies to deceptive omissions, including telling a half truth and omitting the rest. The Act requires an advertiser “to disclose qualifying information necessary to prevent one of his affirmative statements from creating a misleading impression.”⁴¹ For example, in *Horizon Corp.*, the Commission held that Horizon violated the FTC Act in part because many of Horizon’s representations “consisted of partial truths, or literal or technical truths, framed in a setting to mislead or deceive.”⁴² The Commission found that, “[i]n several respects, 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.”⁴³

Deceptive advertising “must be judged by viewing it as a whole.”⁴⁴ 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.”⁴⁵ The focus is the “entire mosaic . . . rather than each tile separately.”⁴⁶

The Commission’s concern focuses on the “message conveyed or the implication created in the mind of the *ordinary* purchaser.”⁴⁷ The law is made to protect the public—“that vast multitude . . . who, in making purchases, do not stop to analyze, but are governed by appearances and general impressions.”⁴⁸ An objective reasonable standard determines whether advertising is false or misleading.⁴⁹ 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.”⁵⁰

A deceptive representation, omission, or practice is actionable under the FTC Act if it is “material.”⁵¹ 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.”⁵² This is a subjective standard.⁵³ “[I]f consumers prefer one product to another, the Commission [does] not determine whether that preference is objectively justified.”⁵⁴

⁴⁰ *MacMillan, Inc.*, 96 F.T.C. 208, 301 (1980).

⁴¹ *Int’l Harvester Co.*, 104 F.T.C. 949, 1057 (1984).

⁴² 97 F.T.C. 464, 741 (1981).

⁴³ *Id.* at 741–42.

⁴⁴ *Beneficial Corp. v. FTC*, 542 F.2d 611, 617 (3d Cir. 1976).

⁴⁵ *Standard Oil of Cal.*, 84 F.T.C. 1401, 1471 (1974), *modified*, 96 F.T.C. 380 (1980).

⁴⁶ *FTC v. Sterling Drug, Inc.*, 317 F.2d 669, 674 (2d Cir. 1963).

⁴⁷ *Horizon Corp.*, 97 F.T.C. 464, 741(1981) (emphasis added).

⁴⁸ *P. Lorillard Co.*, 186 F.2d at 58; see FTC POLICY STATEMENT ON DECEPTION, *supra* note 33, § III; see also *Warner-Lambert Co.*, 86 F.T.C. 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, Inc.*, 91 F.T.C. 315, 430 (1978) (considering the “net impression” made on the “general populace”).

⁴⁹ See *Ortega v. Natural Balance, Inc.*, 300 F.R.D. 422, 428–29 (C.D. Cal. 2014).

⁵⁰ *Telebrands Corp.*, No. 9313, 2004 WL 3155567, at *32 (F.T.C. Sept. 15, 2004).

⁵¹ See FTC POLICY STATEMENT ON DECEPTION, *supra* note 33, § IV.

⁵² *Id.* (endnote omitted).

⁵³ See *id.* § IV n.46.

⁵⁴ *Id.*

An expressed claim is presumed material since “the willingness of a business to promote its products reflects a belief that consumers are interested in the advertising.”⁵⁵ The Commission will also infer materiality when “evidence exists that a seller intended to make an implied claim.”⁵⁶

V. CLAIMS

A. Plainville’s Advertising Statements Mislead Consumers Regarding the Treatment of Animals, Deceiving Consumers into Purchasing Plainville Products.

1. Plainville Represents That Its Turkeys are Humanely Raised.

The “entire mosaic” of Plainville’s advertising, including statements made on the product label, the Earthwise Seal displayed on the packaging, and statements Plainville makes on its website, provide a net general impression that Plainville humanely raises its turkeys. Plainville’s labels indicate that turkeys are “humanely raised,” which the label defines to mean that it “[m]eets Plainville Farms humane policy for raising turkeys on family farms in a stress-free environment.”⁵⁷



Fig. 1. Plainville’s Hickory Smoked Breast.



Fig. 2. Plainville’s Hickory Smoked Breast, Definition Panel

Plainville affixes the Earthwise Seal to its poultry products.⁵⁸ The company’s website states that “the Earthwise Seal represents our *highest standards* in certified organic and natural poultry.”⁵⁹

⁵⁵ *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm’n*, 447 U.S. 557, 568 (1980).

⁵⁶ FTC POLICY STATEMENT ON DECEPTION, *supra* note 33, § IV.

⁵⁷ E.g., *Natural Pre-Sliced Deli Meat*, PLAINVILLE FARMS, <https://www.plainvillefarms.com/natural-presliced-delimeat> (last visited Sept. 13, 2021).

⁵⁸ E.g., *Organic Turkey Drumsticks*, PLAINVILLE FARMS, <https://www.plainvillefarms.com/organic-parts-drumsticks> (last visited Sept. 16, 2021).

⁵⁹ *Earthwise*, *supra* note 15 (emphasis added).

The standards are divided into four categories; “humanely raised” represents one of these categories.⁶⁰

Concrete statements on Plainville’s website supplement and reinforce the product packaging’s “humanely raised” message:⁶¹

- 100 years of commitment to the *highest* standards in animal care.
- *All* animals are raised in accordance with Plainville Farms humane policy of raising poultry.
- We *strictly* maintain our animal welfare program which is designed to enforce humane and responsible treatment of *all*.
- We use *globally-recognized animal welfare practices* from farm to harvest.
- We raise our flocks on family farms in a *stress-free environment*.
- We do *everything* we can to ensure our flocks are comfortable, whether they’re at the family farm or in transport.
- [Birds] *always* have plenty of room to roam in comfortable barns.
- [We] maintain the same level of care during [the turkeys’] *stress-free transportation*.

In addition to “humane,” the company’s website highlights “trustworthy” as a core value. Plainville commits to “the highest standards for quality and transparency from farm to fork.”⁶² Plainville claims that “[c]ertified animal welfare specialists visit our farms regularly to ensure our high standards are being met.”⁶³ Thus, Plainville offers consumers third party assurance that their humanely raised turkeys meet the highest standards.

2. Consumers are Concerned About the Humane Treatment of Animals Raised for Food and that Concern Renders the Respondent’s Deceptive Claims Material.

Through its representations, Plainville targets poultry purchasers who are concerned about the welfare of animals raised for their food. 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.”⁶⁴ Survey responses support this conclusion.⁶⁵ For example, in a survey of 2,634 consumers, 74% of respondents were “very willing” to pay more for humanely raised meat; 34% of respondents were willing to pay 10%–20% more for humanely raised products; and 28% of respondents were willing to pay 20%–30% more.⁶⁶ Respondents

⁶⁰ *Id.*

⁶¹ *Animal Welfare*, *supra* note 3 (emphasis added); *Our Values*, *supra* note 16 (emphasis added).

⁶² *Our Values*, *supra* note 16.

⁶³ *Earthwise*, *supra* note 15; *see also Our Values*, *supra* note 16.

⁶⁴ E-mail from Mary Engle, *supra* note 8; *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”).

⁶⁵ *See, e.g., Survey of Consumer Attitudes about Animal Raising Claims on Food (Part II)*, ANIMAL WELFARE INST. (Oct. 2018), <https://awionline.org/sites/default/files/uploads/documents/FA-AWI-survey-on-animal-raising-claims-Oct-2018.pdf> (reporting that 66% of individuals pay at least some attention to animal raising claims on labels of meat, poultry, egg, and dairy products).

⁶⁶ *Humane Heartland Farm Animal Welfare Survey*, *supra* note 10, at 3, 6–9 (basing the results off of 2,634 respondents). AHA acknowledged that humanely raised certified products cost more than other products. *Id.* at 5.

ranked “humanely raised” labeling as 95% necessary in their buying decision, outranking the importance of other labels, including organic, natural, or antibiotic free.⁶⁷

Consumers seek out (and pay more for) products labeled “humanely raised” because they equate such representation as signifying better treatment for animals.⁶⁸ For example, in one survey, 70% of respondents believed that “humanely raised” meant chickens were raised under a standard of care better than what is typical in the industry.⁶⁹ In another survey, 60.4% of respondents found the mutilation of laying hens’ beaks (“debeaking”) unacceptable⁷⁰—a stance that prompted one court to suggest that “a possible legal definition of ‘humane’ might reference treatment that does not cause undue pain to an animal.”⁷¹ In a survey conducted by Consumer Reports National Research Center, 90% of respondents considered “humanely raised” to mean that the animals had adequate living space; 79% expected it to mean that the animals went outdoors.⁷²

Although consumers may not agree on a single definition of “humane,” the NAD nonetheless considers a statement that a product is humane to be objective. In a case brought against Foster Farms, NAD rejected Foster’s assertion that “humane” is a question of morality outside NAD’s jurisdiction.⁷³ NAD explained that the truth and accuracy of objective statements “as well as issues concerning the interpretation of the statements by consumers are properly within the purview of the self-regulatory forum.”⁷⁴ In a challenge to Perdue Farms’ advertising, NAD reiterated that “consumer perception and understanding of ‘humane’ treatment or ‘raised humanely’ is directly relevant to the issue of whether such claims are substantiated or misleading to consumers.”⁷⁵

Consumers are willing to change their purchasing practices to support companies they understand to be treating farmed animals humanely. Consequently, Plainville’s deceptive representations regarding humane treatment—representations that influence consumers’ purchasing decisions, including motivating consumers to pay more for a product carrying a humane label—are material deceptions in violation of the FTC Act.

3. Plainville’s Humane Policy Does Not Differ, or Differs Immaterially, from Standard Industry Practices.

Contrary to the statements Plainville makes on its website that its farmers are “committed to the highest standards in animal welfare,”⁷⁶ the standards for turkey producers at the level Plainville was certified (hereinafter “Plainville’s standards”) closely conform to the turkey industry’s baseline level of care. Also contrary to Plainville’s claims, such standards do not create a stress-free environment for the turkeys. Like standard industry practices, which are often considered by consumers to be cruel and inhumane, Plainville’s standards allow turkeys to be kept indoors at all

⁶⁷ *Id.* at 6.

⁶⁸ *See id.* at 12 (reporting that 95% of respondents equated a humanely raised certified label as signifying better treatment for animals).

⁶⁹ *Perdue Farms Inc. (Perdue Poultry Food Products)*, Case No. 5295, NAD Case Reports (Mar. 2, 2011).

⁷⁰ *United Egg Producers*, Report No. 122, NARB Case Reports (May 10, 2004).

⁷¹ *Animal Legal Def. Fund v. HVFG LLC*, 939 F. Supp. 2d 992, 1002 (N.D. Cal. 2013).

⁷² *Consumer Reports Aims to Ban “Natural” Label*, *supra* note 12.

⁷³ *See* News Release, *NAD Refers Foster Poultry Farms to FTC*, NAD News (June 1, 2006).

⁷⁴ *Id.*

⁷⁵ *Perdue Farms Inc. (Perdue Poultry Food Products)*, Case Report No. 5295, at 7, NAD Case Reports (Mar. 2, 2011).

⁷⁶ *Our Values*, *supra* note 16.

times in cramped, low-lit, and enrichment-deficient spaces and to have their beaks mutilated.⁷⁷ Such conditions and practices create social, psychological, environmental, and physical stress for the turkeys.⁷⁸

a. Confinement: Indoors, Enrichment Deficient, Low Lit, Cramped

Plainville's humane policy for raising turkeys does not require access to the outdoors for the birds.⁷⁹ This is the general industry standard; this is the lowest industry standard.⁸⁰ For example, the NTF, the trade association of the conventional turkey industry in the United States that represents over ninety-five percent of the turkey industry,⁸¹ created a set of minimum animal care guidelines for the turkey industry.⁸² The NTF does not require turkeys to have outdoor access.⁸³ Plainville's purported "highest standards" starkly contrast with G.A.P.'s actual highest standards, which require that turkeys live continuously on pasture from the age of seven weeks and only be housed during extreme weather conditions.⁸⁴

Plainville's standards do not require birds to have any environmental enrichments (e.g., provision of forages, scattering of grains, bales of hay, or other vegetation).⁸⁵ This is the lowest industry standard. Enrichments improve the welfare of birds by encouraging natural behavior, such as ground scratching, foraging, and pecking, while minimizing harmful behavior, such as aggression, distress, and feather pecking.⁸⁶ Within the turkey industry, turkeys are typically housed without environmental enrichments.⁸⁷

Plainville's standards do not require turkey housing to have windows for natural light.⁸⁸ Instead, artificial light during daylight hours must be at least twenty lux (two foot-candles).⁸⁹ Low lighting can cause abnormalities in the birds' eye physiology and causes the birds stress since they prefer

⁷⁷ See *Turkey Standards*, *supra* note 19.

⁷⁸ See Edward S. Mailyan, *Stress in Poultry: Focus on Turkeys*, ACADEMIA, https://www.academia.edu/22302274/Stress_in_Poultry_Focus_on_Turkeys_Causes_Mechanism_Consequences_Diagnostics_and_Prevention (last visited Sept. 16, 2021).

⁷⁹ See *Turkey Standards*, *supra* note 19.

⁸⁰ See *Appendix B. Animal Sector Descriptions*, ENV'T PROT. AGENCY B-7, https://www3.epa.gov/npdes/pubs/caofo_permit_guidance_appendixb.pdf (last visited Sept. 15, 2021) ("all turkey production occurs in partially or totally enclosed facilities").

⁸¹ *About the National Turkey Federation*, NAT'L TURKEY FED'N, <https://www.eatturkey.org/about/> (last visited Sept. 16, 2021).

⁸² See *NTF Standards of Conduct*, NAT'L TURKEY FED'N, <https://www.eatturkey.org/animal-welfare/standards/> (last visited Sept. 16, 2021).

⁸³ *Id.*

⁸⁴ *5-Step Animal Welfare Standards for Turkeys v2.1*, *supra* note 19, at 3.

⁸⁵ See *Turkey Standards*, *supra* note 19.

⁸⁶ *5-Step Animal Welfare Standards for Turkeys v2.1*, *supra* note 19, at 39.

⁸⁷ See, e.g., *Animal Welfare Standards for Turkeys*, AM. HUMANE 16 (Mar 2020), (on file as *Turkey Full Standards.pdf* at humaneheartland.org/index.php?option=com_content&view=article&id=3&Itemid=106&jsmallfib=1&dir=JSROOT/Animal+Welfare+Full+Standards+%2B+Supplements) (encouraging but not requiring turkey producers to provide environmental enrichment). The NTF does not include enrichment requirements in its standards of conduct. See *NTF Standards of Conduct*, *supra* note 82.

⁸⁸ *5-Step Animal Welfare Standards for Turkeys v2.1*, *supra* note 19, at 18.

⁸⁹ *Id.*

bright light to explore their environment.⁹⁰ Within the turkey industry, turkeys are typically housed in low light.⁹¹

The maximum stocking density inside the barn permitted under Plainville’s standards must not exceed ten pounds of bird weight per square foot.⁹² In contrast, G.A.P.’s highest standard does not allow stocking density to exceed six pounds per square foot.⁹³ Plainville sells turkeys ranging in weight from eight pounds to at least twenty-four pounds.⁹⁴ Application of Plainville’s standard on stocking density results in the following required space:

Weight	Space Required
8 lbs.	0.80 sq. ft.
10 lbs.	1.00 sq. ft.
15 lbs.	1.50 sq. ft.
20 lbs.	2.00 sq. ft.
24 lbs.	2.40 sq. ft.

Stocking density standards vary depending on the turkey’s age, sex, and weight.⁹⁵ Guides recommend 2.25 square feet for a 16 pound turkey hen to 3.5 square feet for a 40 pound canner tom.⁹⁶ The NTF suggests fifteen pounds per square foot as a measurable standard.⁹⁷ Plainville’s standard appears to fall within or near the industry’s generally accepted range. Nonetheless, the result is still that turkeys are tightly packed within the turkey sheds. Such crowded conditions “lead to deterioration in litter quality, which is associated with leg problems and resultant difficulty in walking, and hip and foot-pad dermatitis,”⁹⁸ create social stress for the turkeys,⁹⁹ and do meet the consumer’s expectation that birds raised humanely enjoy adequate living space. These conditions also contradict Plainville’s express statement that poultry “always have plenty of room to roam in comfortable barns.”¹⁰⁰

As a result of the standards that Plainville’s policy allows (and the turkey industry typically employs), turkeys may spend their whole lives in dark windowless sheds without sufficient space to move freely. With no room to engage in normal behaviors and a barren environment without enrichment items, the birds may have nothing else to do but peck at each other.¹⁰¹ Injured birds

⁹⁰ Sherwin, *supra* note 25; C.L. Barber et al, *Preferences of Growing Ducklings and Turkey Poults for Illuminance*, 13 ANIMAL-WELFARE, 211, 211–24 (2004).

⁹¹ See Auditor Guidelines for Conducting the NTF Production Audit, NAT’L TURKEY FED’N, https://www.eatturkey.org/wp-content/uploads/2021/03/Auditor-Guidelines-for-conducting-the-NTF-Production-Audit_UPDATED.pdf (last visited Sept. 16, 2021).

⁹² 5-Step Animal Welfare Standards for Turkeys v2.1, *supra* note 19, at 19.

⁹³ *Id.*

⁹⁴ See Turkey Roasting Instructions, PLAINVILLE FARMS, <https://www.plainvillefarms.com/turkey-roasting-instructions> (last visited on Sept. 15, 2021).

⁹⁵ M.A. Erasmus, *A Review of the Effects of Stocking Density on Turkey Behavior, Welfare, and Productivity*, 96 POULTRY SCIENCE 2540, 2540 (2017), <https://www.sciencedirect.com/science/article/pii/S003257911931449X#tb11>.

⁹⁶ Sandra G. Velleman & Nicholas B. Anthony, THE IMPACT OF STOCKING DENSITY ON GROWTH AND YIELD OF COMMERCIAL PHEASANTS 2, <http://www.mwpoultry.org/ProjectPDFs/07-15.pdf> (last visited Sept. 15, 2021).

⁹⁷ See Erasmus, *supra* note 95, at 2541.

⁹⁸ An HSUS Report: *The Welfare of Animals in the Turkey Industry*, *supra* note 23.

⁹⁹ See Mailyan, *supra* note 78.

¹⁰⁰ *Our Values*, *supra* note 16.

¹⁰¹ See Erasmus, *supra* note 97, at 2542.

have no ability to escape in such cramped quarters. The fear creates psychological stress.¹⁰² The birds cannot engage in behaviors they would perform if they had adequate space: “[d]omestic turkeys, if given the opportunity, will exhibit the same wide range of comfort and grooming activities as their ancestors, including preening, which involves the arrangement, cleaning and general maintenance of the structure of the feathers by the beak or feet; raising and ruffling the feathers; stretching the wings; and dust-bathing.”¹⁰³

b. Beak Mutilation

Plainville’s standards allow debeaking, a process that involves removing the pointed end of the beak.¹⁰⁴ Beak mutilation is a standard practice in the turkey industry.¹⁰⁵ According to the United States Department of Agriculture’s Agricultural Research Service, about one-third to one-half of the beaks of turkeys are cut off “to cut losses from poultry pecking each other.”¹⁰⁶

Debeaking causes acute and/or chronic pain. Beak tips contain highly sensitive mechanical receptors which are capable of feeling pain and are used to engage in precise tactile behaviors. Beak cutting, even by infrared light, can reduce sensory functions and disturbs instinctive foregoing behaviors. Debeaking also causes turkeys routine and painful discomfort performing natural behaviors. Beak cutting is an undue, rather than necessary, cause of pain—it can be avoided via humane flock management practices that prevent extreme density and stress.¹⁰⁷ The pain caused by debeaking, due to nerve injury and tissue damage,¹⁰⁸ runs afoul of a consumer’s reasonable definition of “humane” treatment and expectations of a “stress-free” environment.

c. Health: Substandard Mortality Rate and Painful Lameness

Plainville’s standards allow annual flock mortality to total twelve percent.¹⁰⁹ This rate is higher than the industry standard’s seven-to-ten percent turkey mortality rate.¹¹⁰ Plainville’s “highest standard” is significantly higher than the maximum rate allowed under G.A.P.’s actual highest standard, three percent.¹¹¹

Plainville allows lameness sums to total twenty, meaning twenty out of 100 turkeys may be unable to use one or more limbs in a normal manner.¹¹² Lameness is associated with pain and stress.¹¹³

¹⁰² See Mailyan, *supra* note 78.

¹⁰³ *Recommendation Concerning Turkeys*, COUNCIL OF EUROPE (June 21, 2001), https://www.coe.int/t/e/legal_affairs/legal_co-operation/biological_safety_and_use_of_animals/farming/Rec%20Turkeys.asp.

¹⁰⁴ *5-Step Animal Welfare Standards for Turkeys v2.1*, *supra* note 19, at 2, 44.

¹⁰⁵ See *Settling Doubts About Livestock Stress*, AGRIC. RESEARCH 6 (Mar. 2005), <https://agresearchmag.ars.usda.gov/AR/archive/2005/Mar/stress0305.pdf>.

¹⁰⁶ *Id.*

¹⁰⁷ See *Welfare Implications of Beak Trimming*, AM. VETERINARY MED. ASS’N (Feb. 7, 2010), <https://www.avma.org/resources-tools/literature-reviews/welfare-implications-beak-trimming>.

¹⁰⁸ H. Cheng, *Morphopathological Changes and Pain in Beak Trimmed Laying Hens*, 62 *WORLD’S POULTRY SCIENCE J.* (2006), <https://www.cambridge.org/core/journals/world-s-poultry-science-journal/article/abs/morphopathological-changes-and-pain-in-beak-trimmed-laying-hens/C458A337D5E35CA0681F3B181BED6FC2>.

¹⁰⁹ *5-Step Animal Welfare Standards for Turkeys v2.1*, *supra* note 19, at 15.

¹¹⁰ *An HSUS Report: The Welfare of Animals in the Turkey Industry*, *supra* note 23, at 2.

¹¹¹ *5-Step Animal Welfare Standards for Turkeys v2.1*, *supra* note 19, at 15.

¹¹² See *id.* at 15, 36, 44.

¹¹³ See E.G. Granquist et al, *Lameness and Its Relationship with Health and Production Measures in Broiler Chickens*, 13 *ANIMAL* 2365, 2365 (2019).

Turkeys may exhibit moderate lameness (uneven gait, irregular strides, or poor balance) or more severe lameness (i.e., the turkey is reluctant or unable to move, shuffles on the ground if forced to move, uses wings to help with movement, takes at most a few steps, if any).¹¹⁴ Although Plainville’s standard seems to fall within the poultry industry standard,¹¹⁵ this standard is markedly below G.A.P.’s highest standard, which prohibits lameness sums from exceeding a total of one.¹¹⁶

d. Long Transport Durations

“All procedures and practices involved in transportation and the micro-environments prevailing in containers and vehicles may impose varying degrees of stress upon [poultry].”¹¹⁷ Thus, any claim asserting “stress-free transportation” is false and misleading.

Additionally, Plainville’s standards allows turkeys to be transported for eight hours.¹¹⁸ Experiments studying the impact of transport duration on turkeys use an eight-hour duration to replicate “longer transport time.”¹¹⁹ Researchers conclude that minimizing journey durations have beneficial effects.¹²⁰ G.A.P. imposes a four-hour duration maximum for facilities to achieve higher step level certifications.¹²¹ Plainville’s standards do not support its express claims of “stress-free transportation” and that “[w]e do everything we can to ensure our flocks are comfortable ... in transport.”¹²² Further, contrary to Plainville’s assertion that it applies the “highest standards,” the highest level of G.A.P. certification does not allow turkeys to be transported off the farm at all for slaughter.

4. Conditions at Plainville Evince the Misleading Nature of the “Humanely Raised” Label.

In 2020, Plainville ranked fifteenth among the largest turkey processors in the United States, producing 138 million pounds of turkey.¹²³ Plainville touts a nearly two hundred year commitment to “the highest standards in animal welfare.”¹²⁴

A 2021 undercover investigation of Plainville Farms revealed workers attacking turkeys by kicking and stomping on them, throwing birds through the air by the wing, neck, head, and snood, tying birds’ snoods together and laughing, hitting them with an iron bar, standing on their heads, choking and throttling them, wringing and breaking their necks, and using the turkeys’ bodies to mimic sex acts.¹²⁵ In addition to this affirmative abuse, every night and on every farm, PETA’s investigator documented dying turkeys who received no treatment for their illnesses or injuries.

¹¹⁴ *Id.* at 37.

¹¹⁵ Granquist et al, *supra* note 114 (noting that 14% to 50% of broiler chickens suffer from lameness).

¹¹⁶ *5-Step Animal Welfare Standards for Turkeys v2.1*, *supra* note 19, at 15.

¹¹⁷ Chris Harris, *Poultry Welfare During Transport*, THE POULTRY SITE (Sept. 3, 2015), <https://www.thepoultrysite.com/articles/poultry-welfare-during-transport> (emphasis added).

¹¹⁸ *See 5-Step Animal Welfare Standards for Turkeys v2.1*, *supra* note 19, at 27.

¹¹⁹ *See, e.g.*, Harris, *supra* note 118.

¹²⁰ *See id.*

¹²¹ *See 5-Step Animal Welfare Standards for Turkeys v2.1*, *supra* note 19, at 27.

¹²² *Animal Welfare*, *supra* note 3.

¹²³ *Top Turkey Companies*, *supra* note 5.

¹²⁴ *Our Values*, *supra* note 16.

¹²⁵ *See Turkeys Stomped on, Punched, and Left to Die at ‘Humane’ Farms Supplying Top Grocers: A PETA Undercover Investigation*, *supra* note 30.

The abuse PETA documented was not an isolated incident, but rather a pattern of physical abuse perpetrated by many workers, including supervisors, throughout the time of the investigation. These conditions were allowed to persist, notwithstanding Plainville’s assertions that “[w]e regularly open our gates to third party verification to ensure our quality standards are being upheld,” because audits for its G.A.P. certification occurred only once every fifteen months.¹²⁶ This treatment of turkeys exemplifies the misleading nature of Plainville’s “humanely raised” claims and contradicts Plainville’s claim that “[a]ll animals are raised in accordance with Plainville Farms humane policy for raising poultry.”¹²⁷

B. The FTC Should Enforce the FTC Act Against Plainville Because Plainville’s False and Misleading Claims are Difficult for Consumers to Detect.

If a particular consumer group is targeted, or likely to be affected by an advertisement, the Commission will examine advertising from the perspective of a reasonable member of the targeted group.¹²⁸ In determining which advertising claims to challenge, the Commission prioritizes “those claims [that] are expensive for consumers . . . or are beyond the competence or expertise of ordinary consumers to verify.”¹²⁹ “Because of their lack of susceptibility to consumer assessment,” Plainville’s claims about their humanely raised treatment of turkeys are of exactly the type “subject to more intense scrutiny by the FTC.”¹³⁰

It is often “difficult for consumers to detect . . . process attributes that . . . are important to consumers for ethical reasons, such as the use of child labour, or harvesting techniques that threaten an endangered species.”¹³¹ In 2010, then-Commissioner Julie Brill explained that ensuring the truthfulness of environmental marketing claims 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.”¹³² The same is true of Plainville’s humane marketing claims. Consumers can easily tell how much a packaged turkey costs, or how it looks or tastes, but they cannot observe or learn specifically of the treatment of that turkey during life.

If a product can be easily evaluated by the consumer, there is little likelihood of deception because the company would lose repeat business if the product is deficient. Such is not the case when there is asymmetric information regarding process attributes which, in this case, concern the treatment

¹²⁶ *Our Values*, *supra* note 16; see *G.A.P. Certification*, GLOB. ANIMAL P’SHP, <https://globalanimalpartnership.org/certification/> (last visited Sept. 29, 2021).

¹²⁷ *Animal Welfare*, *supra* note 3.

¹²⁸ See FTC POLICY STATEMENT ON DECEPTION, *supra* note 33, § III.

¹²⁹ Mary L. Azcuenaga, *The Role of Advertising and Advertising Regulation in the Free Market*, FTC (Apr. 8, 1997), <https://www.ftc.gov/public-statements/1997/04/role-advertising-and-advertising-regulation-free-market>; see also Roscoe B. Starek, III, *The Consumer Protection Pyramid: Education, Self-Regulation, and Law Enforcement*, FTC (Dec. 2, 1997), <https://www.ftc.gov/public-statements/1997/12/consumer-protection-pyramid-education-self-regulation-law-enforcement> (“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.”).

¹³⁰ Azcuenaga, *supra* note 129.

¹³¹ Jill E. Hobbs, *Technical Barriers to Trade*, in HANDBOOK ON INTERNATIONAL TRADE POLICY 394, 395 (William A. Kerr & James D. Gaisford eds., 2011).

¹³² Julie Brill, *Opening Keynote of FTC Commissioner Julie Brill*, FED. TRADE COMM’N 1 (Nov. 18, 2010), https://www.ftc.gov/sites/default/files/documents/public_statements/remarks-commissioner-julie-brill/101118promomarketingspeech.pdf.

of the living turkey. The consumer relies on the packaging for information about production processes but Plainville has access to far more complete and accurate information about those processes.¹³³ Plainville’s packaging claims convey to consumers that its animals are humanely raised without clearly and conspicuously disclosing the parallels between its practices and the general practices of the turkey industry. The consumer’s inability to discern the veracity of the humane claim makes her more likely to be deceived or misled about the very information that will lead her to become a repeat customer. As a result, she may purchase a lower-quality or more objectionable product than was her intention.

Plainville takes advantage of the consumer’s concern for humane treatment of farmed animals. The “humanely raised” label deflects attention from Plainville’s minimal standards and falsely assures the buying public that Plainville has raised their animals in a way that contrasts with the general treatment of turkeys within the industry. Consumers who are considering which turkey to purchase at the grocery store cannot readily recognize that there is little or no material difference in the way the Plainville-labeled turkey was raised and the way other turkeys were raised. If Plainville made clear to consumers that many of its standards simply conform to general practices of the turkey industry, most consumers would not choose to spend more money on a Plainville-labeled product than a non-labeled product.¹³⁴

Plainville has an incentive to mislead consumers in order to charge a premium for turkeys consumers erroneously believe were treated humanely. The “humanely raised” claim, which produces a misleading effect on the well-intentioned but informationally-disadvantaged purchasing public, is unlawful. The Commission should adhere to its announced policies and prioritize enforcement of the FTC Act against Plainville.

VI. RELIEF REQUESTED

Plainville’s deceptive and misleading advertising violates Section 5 of the FTC Act. PETA urges the Commission to take action to stop Plainville from deceiving consumers about the nature of its turkey products. Contrary to Plainville’s claims, its standards track the prevailing practices within the turkey industry, nullifying any claim that Plainville turkeys have been treated in a manner consistent with a reasonable consumer’s expectation of the import of a “humane” label.

Many consumers would choose not pay more for these products, or not purchase these products at all, absent the misleading claim and if they knew the truth—that many of Plainville’s standards

¹³³ As recognized by agricultural economists:

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

David Blandford & Linda Fulponi, *Emerging Public Concerns in Agriculture: Domestic Policies and International Trade Commitments*, 26 EUR. REV. OF AGRIC. ECON. 409, 409 (1999).

¹³⁴ See, e.g., HARRIS TEETER, <https://www.harristeeter.com/shop/store/348/search/ground%20turkey> (last visited Sept. 23, 2021) (comparing Plainville Farms 94% Ground Turkey with “Humanely Raised” label priced at \$.41/oz with Harris Teeter 99% Fresh Ground Turkey with no “Humanely Raised” label at \$.36/oz.).



correspond to the general practices within the turkey industry. These consumers depend on the Commission to protect them from Plainville’s deception and its misleading claims that take advantage of their concern for animals. This complaint demands that Plainville be held accountable for misleading consumers into believing that Plainville treats turkeys in a way that differs from the prevailing standards within the industry and that the reasonable consumer would consider humane.

Accordingly, the undersigned petitioner respectfully requests that the Commission:

- (1) require Plainville to remove its “Humanely Raised” label from its turkey products, including those already in stores;
- (2) require stickers be placed over the label on products already in stores if labels cannot be removed from in-store products;
- (3) prevent Plainville from placing the label on any of its products that have not yet been packaged;
- (4) enjoin Plainville from making such misleading statements in the future;
- (5) require Plainville to disclose the actual conditions under which the animals were raised on any future Plainville-labeled product;
- (6) require Plainville to disseminate corrective statements in all media in which the misleading statements were previously disseminated;
- (7) require Plainville to remove any reference to “stress-free” in its advertising;
- (8) require Plainville to remove false or misleading statements from its advertising including, but not limited to:
 - i. 100 years of commitment to the highest standards in animal care
 - ii. All animals are raised in accordance with Plainville Farms humane policy of raising poultry.
 - iii. We strictly maintain our animal welfare program which is designed to enforce humane and responsible treatment of all.
 - iv. We do everything we can to ensure our flocks are comfortable, whether they’re at the family farm or in transport.
 - v. always have plenty of room to roam in comfortable barns
 - vi. We use globally-recognized animal welfare practices to assure humane and responsible treatment of all turkey.
- (9) impose all other penalties as are just and proper.

DATED October 6, 2021. **For People for the Ethical Treatment of Animals (PETA)**

By:



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