

BEFORE THE UNITED STATES
FEDERAL TRADE COMMISSION

PEOPLE FOR THE ETHICAL TREATMENT OF ANIMALS,

Petitioner,

v.

AUSTIN AQUARIUM, LLC

Respondent.

COMPLAINT AND REQUEST FOR INVESTIGATION,
INJUNCTION, AND OTHER RELIEF

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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) requests that the FTC investigate and commence an enforcement action against Austin Aquarium, LLC for engaging in unfair practices in apparent violation of the FTC Act, 15 U.S.C. §§ 41–58. Specifically, Austin Aquarium exhibits wild animals, who are inherently unpredictable and dangerous, in settings that authorize and encourage the public—and particularly children—to interact with them, which creates a heightened risk of unavoidable and substantial physical injury to the hundreds of thousands of people reportedly frequenting this Texas facility annually.

As highlighted on its website, and depicted in the following sampling of website photos, Austin Aquarium invites the public to interact with wild animals.¹



Fig. 1. Photos of patrons interacting with wild animals posted on Austin Aquarium’s website.

Austin Aquarium markets itself as a venue for birthday parties, school field trips, and day camps. It invites patrons to interact with and pet lemurs and kinkajous, among other wild animals. The facility also allows guests to feed stingrays, sharks, iguanas, tortoises, lorikeets, and octopus.² Exotic animals are unfamiliar to the public and the dangers they pose are not obvious to Austin Aquarium’s patrons. The playful hands-on environment obscures the safety hazards associated with coming into close physical contact with wild animals and has resulted in customers being bitten while engaging in the very activities that Austin Aquarium offers to customers and markets as safe. Austin Aquarium’s employees have also sustained frequent and repeated bites as a direct result of these customer-animal interactions. Since the FTC has made harms against workers an enforcement target, this issue is particularly suitable for FTC intervention.³

This complaint is also timely given the public’s growing concern over disease transmission between humans and animals. The COVID-19 pandemic has been described as “an unrelenting

¹ See *Animal Encounters*, AUSTIN AQUARIUM, <https://austinaquarium.com/aevents/animal-encounters/> (last visited Sept. 15, 2022); *Mammals*, AUSTIN AQUARIUM, <https://austinaquarium.com/> (last visited Sept. 15, 2022).

² *Animal Encounters*, *supra* note 1.

³ See *FTC Authorizes Investigations into Key Enforcement Priorities*, FTC (July 1, 2021), <https://www.ftc.gov/news-events/press-releases/2021/07/ftc-authorizes-investigations-key-enforcement-priorities>.

demonstration of the devastating impact of zoonotic disease, whereby viruses jump from animals to infect humans.”⁴ During the pandemic, the United Nations Environment Programme reported that “75 percent of all emerging infectious diseases are zoonotic.”⁵ The zoonotic disease transmission “scares” at Austin Aquarium reinforce the need to address and limit human-animal interface at this facility. Accordingly, PETA submits this citizen complaint, requesting that the Commission take action, pursuant to Section 5 of the FTC Act, 15 U.S.C. § 45, to stop Austin Aquarium from engaging in unfair practices that continue to put the public and its employees at risk of substantial physical injury.

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.

B. Respondent

Respondent Austin Aquarium, LLC, located in a strip mall at 13530 N. Highway 183, Suite 101, Austin, Texas 78750, is a for-profit aquarium, petting zoo, and animal exhibition whose business model relies on direct contact between customers and wild animals. Exhibiting over one thousand species, Austin Aquarium reportedly receives around a half a million customers annually to its “interactive adventure.”⁶

III. STATEMENT OF FACTS

Allowing wild animals to have direct contact with the public creates significant risks, regardless of a facility’s safety policies and procedures or a handler’s level of experience or training. This is because captive wildlife, whether captured from the wild or bred in captivity, retain their predatory and defensive instincts, and react to pain, fear, and stress as any wild animal would—by protecting themselves.⁷ When held in captivity, wild animals are denied their instinctive “flight” response, so their only remaining option is to “fight” when they feel threatened. In addition to the risk of

⁴ Edward C. Holmes, *COVID-19—Lessons for Zoonotic Disease*, SCIENCE (Mar 10, 2022), <https://www.science.org/doi/10.1126/science.abn2222#:~:text=The%20COVID%2D19%20pandemic%20is,from%20animals%20to%20infect%20humans>.

⁵ *Preventing the Next Pandemic – Zoonotic Diseases and How to Break the Chain of Transmission*, UNITED NATIONS ENV’T PROGRAMME (July 6, 2020), <https://www.unep.org/resources/report/preventing-future-zoonotic-disease-outbreaks-protecting-environment-animals-and> (Foreword by the Executive Director of UNEP).

⁶ *Animal Encounters*, *supra* note 1; see Laura Figi, *Austin Aquarium Under Scrutiny for Multiple Allegations of Animal Mistreatment*, AUSTONIA (July 25, 2022), <https://austonia.com/austin-aquarium-mistreatment> (reporting almost half a million guests in 2021).

⁷ See, e.g., P.J. Nyhus et al., *Dangerous Animals in Captivity: Ex Situ Tiger Conflict and Implications for Private Ownership of Exotic Animals*, 22 ZOO BIOLOGY 573, 579 (2003), <https://www.zoocheck.com/wp-content/uploads/2020/11/Dangerous-animals-in-captivity-paper.pdf>.

physical injury, direct contact with these animals risks transmission of numerous zoonotic diseases, including rabies, smallpox, leptospirosis, salmonellosis, and E. coli. The Centers for Disease Control and Prevention (CDC) recognizes animal bites as one of the most common sources of zoonotic disease exposure and infection, which often requires treatment and hospitalization in humans.⁸

Buried on the “Guest Policies” page of its website, Austin Aquarium posts a Hold Harmless and Identification Agreement expressly acknowledging that interaction with wild animals at the facility is inherently dangerous: “All Guests assume the inherent risks associated with the feeding and touching of live animals and fully accept the risk of bodily injury or harm. These risks could include but are not limited to bumps, bruises, scratches, loss of vision, bodily injury, skin disorders, mental disorders, dismemberment, or death.”⁹ Austin Aquarium does not share this information on site before guests enter encounters, which means that any guest who did not stumble across the “Guest Policies” page prior to their visit would not have information about the risks of participating in the interactive activities at the facility. Instead, once customers are onsite, Austin Aquarium has downplayed the risks by abandoning the use of signed waivers because they slowed movement through the exhibits. *See* Video 1 at 2:27–3:16 (a manager explaining why Austin Aquarium does not use waivers). These risks become apparent to patrons after-the-fact and bear out in the number of incidents and type of injuries documented at Austin Aquarium including, for example, those involving nonhuman primates and kinkajous.¹⁰

❖ Nonhuman primates

All primates—including ring-tailed lemurs and red-ruffed lemurs—are dangerous. Primates have sharp teeth, are naturally aggressive, and have complex social hierarchies.¹¹ To establish dominance within a group, primates may bite other group members. Jay Pratte, an animal training, behavior, and welfare expert with over thirty years’ experience, explained that housing lemurs in solitary conditions, in small, barren holding areas—as they are housed at Austin Aquarium—where there is “minimal complexity in the environment and little (if any) access to natural lighting, . . . increases acute and chronic distress, increasing the likelihood of atypical, injurious responses to caregivers and guests.”¹² Disease transmission is a serious concern as well because all primates can carry rabies—a disease that is nearly universally fatal for humans if contracted. Austin Aquarium’s numerous documented incidents involving guests being bitten by lemurs have resulted in the animals being quarantined because of potential rabies transmission concerns:

- June 13, 2022: A male lemur (Wally) bit a 10-year-old child during an encounter.¹³ The emergency medical facility that treated the boy’s three puncture wounds reported the incident, and Animal Services required Austin Aquarium to quarantine Wally for thirty

⁸ *Compendium of Measure to Prevent Disease Associated with Animals in Public Settings*, CDC 3 (2005), <http://www.cdc.gov/mmwr/PDF/rr/rr5404.pdf>.

⁹ *Austin Guest Policies*, AUSTIN AQUARIUM, <https://austinaquarium.com/guest-policies/> (last visited Aug. 25, 2022).

¹⁰ *See* Ex. 1 (Chart of Animal Incidents).

¹¹ Irwin S. Bernstein & Thomas P. Gordon, *The Function of Aggression in Primate Societies*, 62 AM. SCIENTIST 304, 304, <https://www.jstor.org/stable/27844884>.

¹² Ex. 2 at 4 (Jay Pratte Expert Opinion, Aug. 31, 2022).

¹³ Ex. 3 (Activity No. A22-130866, June 14, 2022).

days. The United States Department of Agriculture (USDA) issued Austin Aquarium a critical citation and an official warning for an alleged violation of the Animal Welfare Act for the incident.¹⁴

- August 24, 2019: A female lemur (Jasmine) bit a seventeen year old on the hand during an encounter.¹⁵ St. David’s Round Rock Hospital treated the teenager’s bite injury and administered post-exposure rabies shots.¹⁶
- January 21, 2019: During an interaction, Jasmine bit a guest’s hand when the guest went to pet Jasmine.¹⁷ A medical facility treated the punctures.¹⁸ Animal Services required Austin Aquarium to quarantine Jasmine for thirty days.¹⁹
- November 11, 2018: While inside a lemur exhibit where the lemurs roamed freely, a six-month old female lemur (Jane) bit a ten-year old’s hand during an interaction.²⁰ Jane was placed in a thirty-day quarantine because of potential rabies transmission concerns.²¹

❖ Kinkajous

Kinkajous are small mammals, from the same family as raccoons, and are known to bite, scratch, and injure humans. For example, in 2013, a news article reported on a kinkajou with a “razor sharp bite” that left a North Texas sheriff with three puncture wounds even though the sheriff had been wearing puncture-proof gloves.”²² And, socialite Paris Hilton made headlines after her kinkajou bit her so hard that she needed to be rushed to the emergency room.²³ According to Mr. Pratte, the distress caused by employees and patrons invading an animal’s personal space during encounters “significantly increases the risk of aggression and injury to other animals, caregivers, and guests.”²⁴ An employee at Austin Aquarium explained that kinkajou bites are bad because, when the kinkajou bite, “they latch.” See Video 2 at 2:46–2:53. One employee described an incident involving a kinkajou attacking her: the animal “bit, thrashed, and then [the kinkajou] tried to keep on going.” See Video 3 at 0:16-0:40. In one incident, a kinkajou penetrated the employee’s jacket and “broke skin.” See Video 2 at 1:17-2:03. Another employee described a kinkajou bite that caused a manager’s arm to become “super swollen.” See Video 2 at 2:20–2:43. Employees are not the only ones who have been injured by kinkajous at Austin Aquarium. Earlier this year, a young

¹⁴ Ex. 4 (USDA Inspection Report, Aug. 2, 2022); Ex. 5 (USDA Official Warning, Oct. 27, 2022).

¹⁵ See Ex. 6 at 7 (Activity No. A19-027134, Aug. 26, 2019).

¹⁶ *Id.* at 8 (Aug. 30, 2019).

¹⁷ Ex. 7 at 8 (Activity No. A19-002687, Jan. 21, 2019).

¹⁸ *Id.* at 6 (Jan. 23, 2019).

¹⁹ *Id.* (Jan. 25, 2019).

²⁰ Ex. 8 at 5 (Activity No. A18-038707, Nov. 14, 2018). Afterwards, the child’s parents sued Austin Aquarium but dropped the lawsuit a year later for unknown reasons. See Ex. 9 (Complaint); *Dumra et al. v. Austin Aquarium, LLC*, Civ. NO. D-1-GN-19-003623 (Travis Cnty. Dist. Ct., June 24, 2019).

²¹ Ex. 8 at 4–5 (Activity No. A18-038707, Nov. 14, 2018).

²² Kate Stanton, *Wild Kinkajou Captured in Texas*, UPI (Feb. 7, 2013, 10:51 AM), <https://www.upi.com/blog/2013/02/07/Wild-Kinjajou-captured-in-Texas-VIRAL-VIDEO/4691360250850/>.

²³ *Paris Hilton Hates the Kinkajous*, TMZ (Feb. 27, 2007, 3:02 AM), <https://www.tMZ.com/2007/02/27/paris-hilton-hates-the-kinkajous/>.

²⁴ Ex. 2 at 7 (Jay Pratte Expert Opinion, Aug. 31, 2022).

child was bitten by a female kinkajou during an encounter and he had to receive “medical attention” after the incident and the animal had to be quarantined.²⁵ The USDA issued Austin Aquarium a critical repeat citation and an official warning for an alleged violation of the Animal Welfare Act for the incident.²⁶

Kinkajou bites are especially dangerous because they can transmit the bacteria *Kingella potus*, which has resulted in extensive medical problems in humans.²⁷ For example, a teen in Chattanooga, Tennessee, fell seriously ill and was hospitalized for six days after being bitten by a kinkajou.²⁸ Kinkajous further pose a risk of serious illness and death in humans because, according to the CDC, captive kinkajous can carry and transmit the parasite raccoon roundworm.²⁹

In addition to offering direct interaction with lemurs and kinkajous, Austin Aquarium sells encounters with other dangerous wild animals, including otters and sloths.³⁰ These mammals all have strong teeth, a powerful bite, and the potential to cause serious injury to people.³¹ They are also rabies vector species, which means any bite from an otter or sloth could be a potential rabies risk. These characteristics underlie the American Veterinary Medical Association’s caution to “[o]bserve all wild animals from a distance,”³² the U.S. Department of Interior’s warning to maintain a sixty-foot distance from otters in the wild,³³ and prompted states, like Connecticut, to enact laws that require exhibitors to maintain exclusive control over otters.³⁴ As noted by Mr. Pratte, “[i]t is neither an industry standard nor common practice to allow otters to interact with or have contact with guests” and “[i]t is not an industry standard to allow free-contact situations

²⁵ Ex. 10 (USDA Inspection Report, Aug. 24, 2022); Ex. 11 (Activity No. A22-137801, Aug. 28, 2022).

²⁶ Ex. 5 (USDA Official Warning, Oct. 27, 2022).

²⁷ Julie R. Harris, et al., *Blastomycosis in Man After Kinkajou Bite*, 17 EMERGING INFECTIOUS DISEASES (Feb. 2011), http://wwwnc.cdc.gov/eid/article/17/2/10-1046_article.htm; see, e.g., Kate Belz, *Kinkajou Bite Sends Chattanooga Teen to Hospital for 6 Days*, CHATTANOOGA TIMES FREE PRESS (Oct. 27, 2011), <http://www.timesfreepress.com/news/2011/oct/27/kinkajou-bite-sends-teen-to-hospital-for-6-days/>; see also Paul A. Lawson, et al., *Description of Kingella potus sp. nov., an Organism Isolated from a Wound Caused by an Animal Bite*, J. CLINICAL MICROBIOLOGY (2005), <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1169176/>.

²⁸ See Belz, *supra* note 23.

²⁹ *Dangerous Parasite Found in Pet Kinkajous*, UPI (Mar. 17, 2011), http://www.upi.com/Health_News/2011/03/17/Dangerous-parasite-found-in-pet-kinkajous/UPI-65931300413050/; see *Raccoon Roundworms in Pet Kinkajous—Three States, 1999 and 2010*, CDC (Mar. 18, 2011), <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6010a2.htm>.

³⁰ See Ex. 12 (Otter Encounter, Nov. 29, 2019); *Animal Encounters*, *supra* note 1.

³¹ *20 Public Lands to Explore This Winter*, U.S. DEP’T OF INTERIOR (Jan. 10, 2022), <https://www.doi.gov/blog/20-public-lands-explore-this-winter>; Rebecca Cliffe, *Why Sloths Do Not Make Good Pets*, SLOTH CONSERVATION, <https://slothconservation.org/sloths-do-not-make-good-pets/> (last visited Sept. 15, 2022); Pete Guide, *Are Capybara Dangerous? – 7 Tips You Need to Know*, PETS GUIDE (June 12, 2022), <https://petsguide.info/are-capybara-dangerous-7-tips-you-need-to-know/>.

³² *Rabies and Your Pet*, AM. VETERINARY MED. ASS’N, <https://www.avma.org/resources/public-health/rabies-and-your-pet> (last visited Sept. 15, 2022) (“All mammals are susceptible to rabies.”).

³³ *20 Public Lands to Explore This Winter*, *supra* note 27.

³⁴ See CONN. AGENCIES REGS. § 26-55-6(a)(4)(B)(iii), 26-55-6(f)(5) (classifying otters as Category Three Wild Animals).

between sloths and guests, particularly not children who are unlikely to understand behavioral warning cues.”³⁵

Austin Aquarium encourages interaction with wild animals who have known dangerous tendencies and documented bite histories. In 2022, a PETA investigator worked at Austin Aquarium for four months and, during that time, documented thirty four incidents of animals (including lemurs, kinkajous, otters, and a capybara) scratching, biting, or otherwise injuring guests and/or employees.³⁶ The eyewitness also learned of eight additional incidents that occurred prior to her employment.³⁷ Nonetheless, the facility continued to sell public encounters with these animals while downplaying the risks associated with them. *See, e.g.*, Video 1 at 2:27–3:16 (a manager explaining that waivers are not used because they are time consuming and slowed the traffic through the exhibits); Video 4 at 8:06–8:17 (an employee explaining that Austin Aquarium used to have waivers but they took too long for people to get into encounters so “they made us shorten our rules”).

Austin Aquarium’s advertisements and the hands-on interaction it encourages, give customers a false assurance that interaction with wild animals at its facility is safe. However, the frequency of injuries occurring at Austin Aquarium, coupled with the potential for severe injury, evidence the opposite. FTC intervention carries particular importance in this instance because of the risk to children posed by the dangerous interactive environments.

IV. LEGAL STANDARD

Section 5 of the FTC Act (15 U.S.C. § 45) prohibits “unfair or deceptive practices in or affecting commerce.”³⁸ An act or practice is unfair if it “causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition.”³⁹ Injury may take any of three forms: monetary, disruption, or **physical**.⁴⁰ The FTC Act defines commerce to mean “commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia”⁴¹

³⁵ Ex. 2 at 8, 10 (Jay Pratte Expert Opinion, Aug. 31, 2022).

³⁶ *See* Ex. 1 (Chart of Animal Incidents).

³⁷ *See id.* at 1–2 (describing incidents involving a sloth, kinkajous, ring-tailed lemurs, and a macaw).

³⁸ 15 U.S.C. § 45(a)(1).

³⁹ *Id.* § 45(n); *Unfair and Deceptive Practices—Federal Trade Commission Act*, FDIC Consumer Compliance Examination Manual 1.2 (Dec. 2018), <https://www.fdic.gov/resources/supervision-and-examinations/consumer-compliance-examination-manual/documents/7/vii-1-1.pdf>. The Commission’s Policy Statement on Deception defines deceptive practices as “involving a material representation, omission or practice that is likely to mislead a consumer acting reasonably in the circumstances.” *A Brief Overview of the Federal Trade Commission’s Investigative, Law Enforcement, and Rulemaking Authority*, FTC (May 2021), <https://www.ftc.gov/about-ftc/what-we-do/enforcement-authority>.

⁴⁰ Letter from Harold Kim, Exec. Vice President U.S. Chamber Inst. for Legal Reform, to Donald S. Clark, FTC Sec’y 4 (Dec. 21, 2018), https://www.ftc.gov/system/files/documents/public_comments/2018/12/ftc-2018-0098-d-0037-163376.pdf.

⁴¹ 15 U.S.C. § 44.

V. CLAIMS

A. Austin Aquarium Engages In Unfair Practices That Cause Injury That Is Substantial, Unavoidable, And Not Outweighed By Countervailing Benefits.

1. Austin Aquarium's Interactive Model Is Unfair Because It Causes Substantial Physical Injury to Customers.

As a commercial enterprise operating in Texas and attracting patrons from across the country, Austin Aquarium cannot lawfully engage in practices that are likely to cause substantial injury to customers.⁴² But Austin Aquarium's interactive business model creates an environment where physical injuries are commonplace for its patrons and workers. Substantial injury that makes a practice unfair may involve "unwarranted health and safety risks."⁴³ Although the FTC Act does not define "substantial," the dictionary defines this term to mean "large in size, value, or importance."⁴⁴ Substantiality is measured in the aggregate.⁴⁵ This means that a significant risk of harm to each consumer, or a small degree of harm to a large number of consumers, may be deemed substantial.⁴⁶ An unfairness case may be brought on the basis of actual or likely injury.⁴⁷ Given the number of injuries that have already occurred at Austin Aquarium, it is reasonable to presume that such injuries will likely continue to occur in the absence of intervention.

Austin Aquarium's interactive model, combined with its inability to appropriately manage wild animals, have repeatedly put the public's safety at risk. Austin Aquarium's acts are substantially injurious because: (1) they have actually caused a small degree of harm to a large number of customers; and (2) they are likely to continue to cause harm—potentially severe harm—to customers. As acknowledged by Austin Aquarium, these harms could include "bumps, bruises, scratches, loss of vision, bodily injury, skin disorders, mental disorders, dismemberment, or death."⁴⁸

⁴² See *Austin Aquarium*, TRIPADVISOR, https://www.tripadvisor.co.nz/Attraction_Review-g30196-d5932721-Reviews-or20-Austin_Aquarium-Austin_Texas.html (last visited Aug. 25, 2022) (posting reviews by patrons from various states, including Nevada, Florida, and Pennsylvania).

⁴³ *In re Int'l Harvester Co.*, 104 F.T.C. 949, 1061 (1980).

⁴⁴ *Substantial*, CAMBRIDGE DICTIONARY, <https://dictionary.cambridge.org/dictionary/english/substantial> (last visited Aug. 25, 2022); see Letter from Harold Kim, *supra* note 36, at 9 n.42 (citing Merriam-Webster's Collegiate Dictionary and Cambridge Dictionary).

⁴⁵ Letter from Harold Kim, *supra* note 36, at 9.

⁴⁶ Michael D. Scott, *The FTC, The Unfairness Doctrine, and Data Security Breach Litigation: Has the Commission Gone too Far?*, 60 ADMIN. L. REV. 127, 152 (2008), https://administrativelawreview.org/wp-content/uploads/sites/2/2014/04/The-FTC-The-Unfairness-Doctrine-and-Data-Security-Breach-Litigation-Has-the-Commission-Gone-Too-Far_.pdf; see 15 U.S.C. § 44; *In re Int'l Harvester Co.*, 104 F.T.C. at 1064 n.55 (quoting *FTC Policy Statement on Unfairness*, FED. TRADE COMM'N (Dec. 17, 1980), <https://www.ftc.gov/public-statements/1980/12/ftc-policy-statement-unfairness>: "An injury may be sufficiently substantial, however, if it does a small harm to a large number people, or if it raises a significant risk of concrete harm.").

⁴⁷ *In re Int'l Harvester Co.*, 104 F.T.C. at 1061 n.45 (explaining that the use of the term "risks" in the FTC's Unfairness Statement means substantial injury encompasses both actual and likely injury); see generally *FTC Policy Statement on Unfairness*, *supra* note 42.

⁴⁸ *Austin Guest Policies*, *supra* note 9.

During a four-month period in 2022, PETA’s eyewitness collected evidence that shed light on the extent of animal incidents happening at Austin Aquarium. A sampling of the injuries patrons sustained due to animal interactions that the eyewitness documented include (but are not limited to) the following:⁴⁹

Date	Animal (Name/Species)	Injury	Description
April 15, 2022	Pepper (ring-tailed lemur)	Bites	During an encounter in the ring-tailed lemur enclosure, Pepper jumped on a young boy’s lap and repeatedly bit the child in the face. After a brief fifteen-minute break, staff continued to run encounters with Pepper and the other ring-tailed lemurs.
April 30, 2022– May 1, 2022	Biggie (ring-tailed lemur)	Bites	An employee reported that Biggie bit a guest during an encounter two days in a row and was nibbling people. <i>See Video 5.</i>
May 21–22, 2022	Banana (kinkajou)	Bites	An employee reported that Banana had bitten guests two days in a row and put her teeth on an employee. <i>See Video 6 at 0:00-0:21, 2:36–2:44.</i>
June 5, 2022	Wally (ring-tailed lemur)	Bite	During a ring-tailed lemur encounter, Wally reportedly leapt at a child’s face. The child put up a hand to block her face, which resulted in Wally biting the child’s hand. <i>See Video 7 at 0:08-0:26.</i>
June 13, 2022	Wally (ring-tailed lemur)	Bites	Wally reportedly bit a ten-year old child and the employee who tried to restrain him. The child reportedly felt faint afterwards and went to the hospital. <i>See Video 8.</i>

PETA’s investigation revealed that Austin Aquarium does not keep accurate records of the actual frequency of animal incidents occurring at the facility. PETA’s eyewitness documented the routine and intentional efforts of staff to avoid reporting or documenting animal attacks. An employee told the eyewitness to never document an attack, but rather to simply note that an animal got “overly excited” during an encounter. The husbandry manager told the eyewitness that, if a guest is bitten, staff should try to keep the situation “low key” because, if a bite victim goes to a doctor, staff will have to quarantine the animals, which they do not want to do. One employee’s lemur-attack injuries reportedly required seven stitches and resulted in a scarred nose.⁵⁰ Despite the seriousness of the wound, the employee said she lied at the hospital about the cause of her injury because she did not want the lemur to be quarantined. Another employee reported that she went to the emergency room after a bite wound from a lemur started to look infected, with red streaks under

⁴⁹ Refer to Ex. 1 (Chart of Animal Incidents) for the full listing of animal incidents at Austin Aquarium documented by PETA’s eyewitness.

⁵⁰ *See Ex. 1, No. 4 (Chart of Animal Incidents).*

her skin, coming from the bite site.⁵¹ This employee also reported lying about the source of her injury, telling the eyewitness that she “wasn’t allowed” to report the injury accurately. These conversations demonstrate that staff and management at Austin Aquarium are fully aware of the dangers posed by these animals and intentionally fail to document and report incidents regardless of the severity of the injury. Not only does this conceal the true risks involved in patronizing this facility, but also it highlights that the actual frequency and severity of injuries from animal attacks at Austin Aquarium are likely more substantial than they appear on paper.

Out of the thirty-four incidents of animals injuring people documented by the eyewitness between March 2022 and July 2022, only one of these incidents was appropriately reported to the local animal control agency.⁵² The eyewitness also learned of eight additional incidents of animals injuring people (both guests and employees) that occurred before she was employed at the facility, none of which were appropriately reported.⁵³

Sources apart from PETA’s eyewitness corroborate Austin Aquarium’s apparent predilection for nondisclosure and secrecy with respect to injuries caused by the interactive nature of its facility:

- August 24, 2019: After a lemur bit a seventeen year old during an encounter, the Animal Services Office reported that the facility told the victim’s mother “she would be fine” and not to report the bite because “if the lemur is separated for the quarantine [she] will die.”⁵⁴
- January 21, 2019: After a lemur bit a guest’s hand during an interaction, she sought treatment at a medical facility.⁵⁵ The medical facility—and not Austin Aquarium—reported the incident to Animal Control.⁵⁶ When Animal Control visited the facility to ensure compliance with the mandatory quarantine, Ammon Covino, the facility’s operator, “was argumentative” and claimed that the “victim made [the] story about being bitten up and that she was never even allowed to enter the area to interact with the animals given her attitude.”⁵⁷ The officer noted in his report that he “did not believe [Covino’s] accounting.”⁵⁸ The officer also reported that the victim was “getting confrontational text messages from [Covino].”⁵⁹
- November 11, 2018: After a lemur bit a ten-year old’s hand during an interaction, the child’s mother—and not Austin Aquarium—reported the incident to animal control.⁶⁰

The true extent of injuries caused by direct contact with wild animals at Austin Aquarium is unknown because the facility does not track or report these injuries. However, based on the

⁵¹ See *id.*, No. 29.

⁵² See Ex. 8 at 4 (Activity No. A18-038707, Nov. 12, 2018).

⁵³ See Ex. 1 at 1–2 (Chart of Animal Incidents).

⁵⁴ See Ex. 6 at 7 (Activity No. A19-027134, Aug. 26, 2019). The hospital treated the teenager’s bite injuries and administered post-exposure rabies shots. *Id.* at 8 (Aug. 30, 2019).

⁵⁵ Ex. 7 at 6, 8 (Activity No. A19-002687, Jan. 21, 2019 & Jan. 23, 2019).

⁵⁶ *Id.* at 6 (Jan. 23, 2019).

⁵⁷ *Id.* (Jan. 26, 2019).

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ Ex. 8 at 4 (Activity No. A18-038707, Nov. 12, 2018).

evidence collected by PETA’s eyewitness, animal attacks are a chronic problem at this facility. Austin Aquarium has demonstrated an inability to provide an environment that facilitates direct interaction between wild animals and customers in a manner that does not result in substantial physical injury to its customers. As such, Austin Aquarium’s actions have satisfied the first prong of the unfair practices test.

2. Austin Aquarium’s Interactive Model Is Unfair Because Consumers Are Not Reasonably Able to Avoid Injury.

Austin Aquarium’s interactive business model encourages customers to engage in the very activities that cause injury thereby making Austin Aquarium’s interactive model an unfair practice. The FTC imposes a duty on consumers to take *reasonable* actions to avoid injury.⁶¹ Whether a consequence is reasonably avoidable “depends, not just on whether people know the physical steps to take in order to prevent it, but also on whether they understand the necessity of actually taking those steps.”⁶² Regarding the former, in general, the Commission requires mandatory disclosure to “those core aspects of a transaction that virtually all consumers would consider essential to an informed decision . . . [including] information bearing on significant hidden safety hazards.”⁶³

In *In re International Harvester Co.*, a case involving a company that manufactured gasoline-powered tractors that were subject to fuel geysering—the forceful ejection of hot fuel from a loosened gas cap—the FTC did not find the farmers to be primarily responsible for their own accidents.⁶⁴ Even though the fuel geysering injuries could have been avoided if the farmers had refrained from removing the cap from a hot or running tractor—something both the owner’s manuals and common knowledge suggested was a dangerous practice—the court reasoned that the farmers did not fully appreciate the necessity for taking these steps:⁶⁵ “Farmers may have known that loosening the fuel cap was generally a poor practice, but they did not know from the limited disclosures made, nor could they be expected to know from prior experience, the full consequences that might follow from it.”⁶⁶

In *Stupell Originals, Inc.*, a case in which the defendant sold a children’s toy that caused three eye injuries, the FTC examined the reasonability factor with respect to products marketed to children:

Most consumers expect and assume, in the absence of some indication to the contrary, that a product marketed to the general public is safe for the use for which it is sold. This assumption and expectation is, we think, especially widespread in the case of products intended for the use of children. Few would imagine that any manufacturer would place on the market a dangerous toy without warning the purchaser of the danger. Thus, at least where the danger is not an obvious one immediately apparent even to the

⁶¹ See *Unfair and Deceptive Practices—Federal Trade Commission Act*, *supra* note 35.

⁶² *In re Int’l Harvester Co.*, 104 F.T.C. at 1066.

⁶³ *Id.* at 1062.

⁶⁴ *Id.* at 1050–51, 1066.

⁶⁵ *Id.* at 1065–66.

⁶⁶ *Id.* at 1066.

casual purchaser or user, it is an unfair trade practice to market such a product without clear disclosure of the danger.”⁶⁷

Austin Aquarium exhibits exotic animals—animals that are unfamiliar to the public. The dangers posed by unfamiliar wild animals are not obvious to adults and are even less obvious to children. Whereas some customers may know that coming into close contact with a wild animal is generally a poor practice, they likely would not realize the full consequences that might follow from it while immersed in Austin Aquarium’s playful surroundings. The hands-on environment further obscures the safety hazard. Even presuming that children can and will read a posted warning sign,⁶⁸ a child cannot fully appreciate the necessity for taking steps to avoid or tailor contact with the wild animals at Austin Aquarium. For example, animals have bitten children during the interaction sessions while doing the very activities that Austin Aquarium encourages children to engage in. Even some adults do not themselves appreciate the necessity to avoid contact.⁶⁹

The dangers posed by interacting with the wild animals are not reasonably avoidable because Austin Aquarium markets the experience as safe. As depicted in the sampling of website photos above, Austin Aquarium displays pictures of children interacting with wild animals at the facility.⁷⁰ Statements appearing on its website, including that “[a]bove all, the Austin Aquarium promotes education through an engaging experience in a safe and comfortable environment,” provide further assurance.⁷¹ Austin Aquarium has methodically gotten rid of waivers before allowing customers to enter enclosures and has limited the time employees can spend giving safety warnings to thirty seconds. *See* Video 4 at 8:06–8:17 (employee explaining that Austin Aquarium used to have waivers but they took too long for people to get into encounters so “they made us shorten our rules.”). The dangers posed by these direct contact interactions are not only unclear from Austin Aquarium’s marketing, but are also further obscured by the facilities intentional efforts to conceal the number of animal bites and other injuries by not tracking or reporting that information, which means that critical information is not reaching the general public. Austin Aquarium’s customers cannot make informed decisions because their ability to appreciate the dangers has been short circuited by the facility’s efforts to obscure the risks and maximize foot traffic to bolster profits.

Austin Aquarium’s messaging is not operating in a vacuum. Social media perpetuates a misconception that interacting with wildlife is safe and generally acceptable. Between 2014 and 2017, the number of wildlife selfies posted on Instagram by its 800 million users increased by 292 percent.⁷² Roughly forty percent were “bad selfies,” meaning that the image captured “tourists hugging, holding, touching, baiting, or otherwise inappropriately interacting with animals in the wild.”⁷³ These images de-sensitize people to the risks associated with interacting with wild animals and, consequently, their understanding of the necessity to taking steps to avoid injury when opportunities to interact with wild animals in captivity present themselves.

⁶⁷ *Stupell Originals, Inc.*, 67 F.T.C. 173, 187–88 (1965).

⁶⁸ *See, e.g.*, Ex. 13 (Warning Sign) (“PLEASE TOUCH US! 2 FINGERS ONLY”).

⁶⁹ *See* Ex. 1, No. 28 (Chart of Animal Incidents).

⁷⁰ *See supra* Figure 1.

⁷¹ *About Austin Aquarium*, AUSTIN AQUARIUM, <https://austinaquarium.com/about-us/> (last visited Aug. 25, 2022).

⁷² Sherry Noik, *Your Wildlife Selfies Are Hurting the Animals, Study Finds*, CBC (Dec. 6, 2017), <https://www.cbc.ca/news/science/wildlife-selfies-good-and-bad-1.4340944>.

⁷³ *Id.*

Austin Aquarium’s business model expressly relies on hands-on experience and, consequently, the public not being able to fully appreciate the risks associated with such interaction. Consumers are thus not able to reasonably avoid injury which satisfies the second prong of the unfair practices test.

3. Austin Aquarium’s Model Is Unfair Because Its Countervailing Benefits Do Not Offset the Injury to Consumers.

The cost of physical injuries to customers outweighs any benefits realized from Austin Aquarium’s interactive model thus satisfying the third prong of the unfair practices test. An act is unfair when it is “injurious in its net effects—that is, the injury must not be outweighed by any offsetting consumer or competitive benefits that are also produced by the act.”⁷⁴ A court is required to “balance against the risks of injury the costs of notification and the costs of determining what the prevailing consumer misconceptions actually are.”⁷⁵ For example, a seller may decide to present less technical data on a product to keep prices lower; this act may be considered less injurious than providing the information but charging more for the product.⁷⁶

The FTC has recognized that practices which inflict physical injury on consumers weigh down the scale heavily. Your agency undertook a cost-benefit analysis in *In re International Harvester Co.* before concluding that the “consuming public has realized no benefit from Harvester’s non-disclosure that is at all sufficient to offset the human injuries involved.”⁷⁷ In that case, the fuel geysering killed at least one person and burned eleven others.⁷⁸ Likewise, in *In re Uncle Ben’s Inc.*, the FTC banned ads showing children cooking food without adult supervision because the risk that the ads might lead children to imitate the potentially harmful activity outweighed any offsetting benefit.⁷⁹ And, in *Philip Morris, Inc.*, the FTC required the distributor to cease and desist distributing unsolicited razor blades in newspapers without special packaging that was “designed or constructed to be significantly difficult for children under six years of age to open within a reasonable time . . .” because the razor blades might reach and injure small children.⁸⁰

Austin Aquarium boasts that its interactive experience promotes education.⁸¹ Austin Aquarium’s marketing assertions as to the value of its entertainment facility are not supported by any meaningful evidence. Austin Aquarium is nothing more than an amusement park with animals that has no educational benefit to consumers. Even if there was a kernel of educational value to Austin Aquarium’s interactive environment—which there is not—the injuries caused by this purported “educational” experience outweigh any small benefit.

⁷⁴ *Unfair and Deceptive Practices—Federal Trade Commission Act*, *supra* note 35.

⁷⁵ *In re Int’l Harvester Co.*, 104 F.T.C. at 1061.

⁷⁶ See *FTC Policy Statement on Unfairness*, *supra* note 42.

⁷⁷ *In re Int’l Harvester Co.*, 104 F.T.C. at 1065.

⁷⁸ *Id.* at 1064.

⁷⁹ See *In re Uncle Ben’s, Inc.*, 89 F.T.C. 131, 136 (1977).

⁸⁰ *Philip Morris, Inc.*, 82 F.T.C. 16, 19 (1973).

⁸¹ *About Austin Aquarium*, *supra* note 67.

The animal interactions encouraged by Austin Aquarium jeopardize the health and safety of its customers. Children, in particular, are among the most vulnerable to some of these risks. The FTC has recognized that physical injuries (i.e. eye injuries and lacerations)—whether actual or threatened—outweighed countervailing benefits in cases where products were either marketed or accessible to children. Here, in addition to reported scratches and bites, customers risk being exposed to bacterial infections and zoonotic diseases, such as rabies, leptospirosis, salmonellosis, and E. coli. Certainly whatever countervailing benefits of the interactive model that Austin Aquarium may espouse do not offset the injury to Austin Aquarium’s customers.

B. The FTC Should Enforce The FTC Act Against Austin Aquarium Because Austin Aquarium’s Interactive Model Jeopardizes The Safety Of Employees.

One of the FTC’s top enforcement targets includes harms against workers,⁸² which makes this a particularly concerning issue as employees at Austin Aquarium are routinely injured by the animals. Over the course of PETA’s four month investigation, an eyewitness documented more than twenty instances of lemurs, kinkajous, a capybara, and otters biting employees at Austin Aquarium. The eyewitness also learned of eight incidents of animals attacking employees that reportedly occurred prior to her employment. A number of animal attacks directed at staff required a visit to an emergency room. Despite repeated injuries from lemurs and kinkajous, the facility still required employees to have direct contact with these animals largely to facilitate public interactions (which have also resulted in injuries to guests).

While some of the documented employee injuries occurred while conducting routine husbandry, many stemmed from Austin Aquarium’s interactive environment, which requires employees to handle animals in order to facilitate public encounters. A sampling of the injuries that Austin Aquarium’s animals have caused to employees, as documented by PETA’s eyewitness, include (but are not limited to):⁸³

Date	Animal (Name/Species)	Injury	Description
Unknown	Star (lemur)	Bite	An employee reported needing stitches after a lemur bit her on the nose, and sent her to the emergency room.
Unknown	Banana (kinkajou)	Bite	An employee reported that Banana bit her during an encounter. The employee said that Banana “hates kids” and, during this incident, Banana broke skin even though she was wearing a jacket. <i>See Video 2 at 1:17-2:03.</i>
March 2, 2022	Forest (ring-tailed lemur)	Bites	While doing a mock encounter with Forest, the eyewitness was told to pet Forest on the back as a guest would. Forest turned around and bit the

⁸² *FTC Authorizes Investigations into Key Enforcement Priorities, supra* note 3.

⁸³ Refer to Ex. 1 (Chart of Animal Incidents) for the full listing of animal incidents at Austin Aquarium documented by PETA’s eyewitness.

Date	Animal (Name/Species)	Injury	Description
			eyewitness on the right hand, breaking the skin. Another employee wanted to continue the practice-encounter and asked the eyewitness to try touching Forest again. When the eyewitness touched Forest again, he attacked her hand again, this time drawing blood.
April 8, 2022	Pepper (ring-tailed lemur)	Bites	While running an encounter in the ring-tailed lemur enclosure, Pepper jumped on the eyewitness and tried to reach the treat pouch. The eyewitness held the pouch closed and Pepper bit her three times on her right arm.
April 27, 2022	Coconut (capybara)	Bite	While running an encounter with Coconut, and opening the door to let a guest out of the exhibit, the capybara bit the eyewitness's thigh, drawing blood.
May 9, 2022	Wally (ring-tailed lemur)	Bites	While running an encounter with the ring-tailed lemurs, Wally jumped onto a guest's shoulder. The guest refused to drop his shoulder to get Wally to move. When the eyewitness approached Wally to try and move him off the guest's shoulder, Wally bit the eyewitness's hand several times, breaking the skin.



Fig. 2: Capybara bite, Apr. 27, 2022



Fig. 3: Lemur bite, May 9, 2022

While no amount of training and expertise will completely eliminate the risk of injury when engaging in direct physical contact with wild animals, it is clear that whatever training Austin Aquarium provides its employees is not sufficient given the sheer quantity and severity of animal bites documented at this facility. As detailed in Mr. Pratte's declaration, "[t]he incredible number of bites and other injuries at the Austin Aquarium resulting from free-contact situations is unprecedented, and does not represent professional industry standards for care of lemurs."⁸⁴ Mr.

⁸⁴ Ex. 2 at 3 (Jay Pratte Expert Opinion, Aug. 31, 2022).

Pratte explained that, in his experience with capybara, kinkajous, sloths and macaws, “bites and injuries are rare when these species are managed professionally and by trained, experienced staff.”⁸⁵ He emphasized that “after even a single injury to Austin Aquarium staff, protected-contact protocols should have been implemented” and that lemurs, kinkajous, and otters “can be successfully managed for all husbandry and medically related behaviors in a protected-contact situation, resulting in minimal risk of injury to humans.”⁸⁶ According to Mr. Pratte, “[i]t is not a professional industry standard to continue in free-contact scenarios with an animal that has exhibited a tendency towards aggression or injury to humans, caregivers or otherwise” and that staff “should be protected from the hazards of[f] bites, scratches and exposure to pathogens.”⁸⁷ Mr. Pratte further observed that Austin Aquarium “staff regularly miss, ignore, or do not respond to behavioral cues from the animals” and that “methods used to ‘redirect’ agitated behavior that risks injury to a person” are not appropriate, leading him to conclude that Austin Aquarium “[s]taff are not skilled in training methodologies.”⁸⁸ In Mr. Pratte’s expert opinion, “Austin Aquarium has allowed a hazardous environment to evolve.”⁸⁹

Austin Aquarium’s heavy emphasis on public encounters requires employees to have direct contact with dangerous wild animals in order to train for and facilitate these public interactions. These employees are not skilled in the handling or training of wild animals, which has allowed an inherently dangerous interactive environment to snowball out of control leading to unprecedented injuries to patrons and staff. Ending these direct contact encounters would reduce the risk of employees being injured by dangerous animals, which would also protect consumers from the same risk.

VI. RELIEF REQUESTED

PETA urges the FTC to take action to stop Austin Aquarium from continuing to allow customers to interact with wild animals as this unfair practice appears to violate Section 5 of the FTC Act. Since Austin Aquarium already posts warnings on its website, and injuries are still repeatedly occurring, customers clearly cannot reasonably understand the necessity of actually taking precautionary measures when the facility is simultaneously encouraging the interactions.

Consumers depend on the Commission to protect them from Austin Aquarium’s unfair practices. This complaint demands that Austin Aquarium be enjoined from continuing to allow the public to interact with wild animals. Accordingly, the undersigned petitioner respectfully requests that the Commission:

- (1) require Austin Aquarium to cease and desist all interactivity between wild animals and the public;

⁸⁵ *Id.*

⁸⁶ *Id.* at 9.

⁸⁷ *Id.* at 11.

⁸⁸ *Id.* at 15.

⁸⁹ *Id.* at 16.

- (2) require Austin Aquarium to disclose on their website and next to each exhibit the risks—including zoological disease transmission—that customers may be potentially exposed to by interacting with wild animals;
- (3) impose all other penalties as are just and proper.

DATED: December 5, 2022.

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