

BEFORE THE UNITED STATES  
FEDERAL TRADE COMMISSION

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PEOPLE FOR THE ETHICAL TREATMENT OF ANIMALS,

Petitioner,

v.

TEXTILE EXCHANGE,

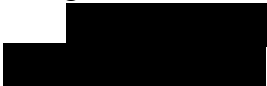
Respondent.

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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) hereby requests that the FTC investigate and commence an enforcement action against Textile Exchange, owner and purveyor of the Responsible Down Standard (RDS) and Responsible Animal Fibers (RAF) certifications, for engaging in false and misleading advertising in apparent violation of the Federal Trade Commission Act, 15 U.S.C. §§ 45–58 (FTC Act). Specifically, Textile Exchange deceives consumers by implying that RDS and RAF certified products are made with a higher standard of animal welfare than that which is actually required or assured by the standards.

Following exposés of cruelty in the down and animal fiber industries, Textile Exchange created the RDS and RAF certifications to meet consumer demand for cruelty-free or “responsible” products.<sup>1</sup> The RDS and the RAF standards (Responsible Wool Standard, Responsible Mohair Standard, and Responsible Alpaca Standard, collectively) are specifically designed to communicate that certified products are made with higher animal welfare standards than other comparable products.<sup>2</sup> According to Textile Exchange, its animal-based fiber certification program is intended to “improve animal welfare across the board” and “press[] the industry to raise its standards in respect of animal welfare.”<sup>3</sup> Further, tags that accompany certified products claim that certification “ensures strict animal welfare standards have been met.”<sup>4</sup> Consumers are assured that Textile Exchange-certified products have a rigorous system of supply chain traceability, ensuring that the product adheres to the standards from farm to final product.<sup>5</sup>

Textile Exchange approves generic language that, depending on the type of claim, certified or non-certified companies can use in marketing. Additionally, organizations can seek approval to use specific language to market RDS or RAF certification, or other commitments to Textile Exchange.<sup>6</sup> These Textile Exchange-approved explicit statements deceive consumers by implying that RDS and RAF certified products: (1) adhere to “strict animal welfare standards”;<sup>7</sup> (2) have full traceability from source to final product;<sup>8</sup> and that (3) “[a] professional, third-party certification body audits each stage in the supply chain” such that certifiers are independent from industry

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<sup>1</sup> *The Essentials of Responsible Down Standard*, TEXTILE EXCHANGE (2017) <https://textileexchange.org/app/uploads/2021/05/Essentials-of-the-RDS-Webinar-2017-02-02.pdf> (stating that the “story behind the RDS” was, in part, “campaigns target[ing] companies using down.”).

<sup>2</sup> *Id.* (listing a benefit of RDS certification as “an excellent opportunity for people to learn about the source of the products.”).

<sup>3</sup> *Animal Fibers*, TEXTILE EXCHANGE, <https://textileexchange.org/animal-fibers/> (last visited Feb. 23, 2023).

<sup>4</sup> Adam Ruggiero, *What’s in Your Puffy: ‘Track My Down’ Is a Feather Trove of Information*, GEAR JUNKIE (Jan. 23, 2019), <https://gearjunkie.com/winter/allied-track-my-down-traceability> (showing a sample hangtag for an RDS certified product); see e.g., NWT- *Lands End Womens 600 Down Puffer Spearmint Green Zip Vest Jacket Plus Sz 3X*, EBAY, <https://www.ebay.com/itm/266091297414?chn> (last visited Feb. 23, 2023) (showing a hangtag for an RDS certified down vest).

<sup>5</sup> See Section V(A)(5), *infra* (listing traceability claims).

<sup>6</sup> STANDARD CLAIMS POLICY, TEXTILE EXCHANGE (Feb. 04, 2022), <https://textileexchange.org/knowledge-center/documents/standards-claims-policy/>.

<sup>7</sup> See e.g., Ruggiero, *supra* note 4 (showing a sample hangtag for an RDS certified product).

<sup>8</sup> See Section V(A)(5) *infra* (listing traceability claims).

pressure.<sup>9</sup> Consumers have, and must be able to maintain, a reasonable expectation that when Textile Exchange claims that its certification ensures strict animal welfare requirements, with rigorous and independent enforcement, that such a description is truthful. However, these assertions are not true.

Textile Exchange's RDS and RAF certifications do not require "responsible" or materially "better"<sup>10</sup> animal welfare standards, nor can consumers trace products back to their source, nor is compliance with the standards always independent or even reliably assured. RDS and RAF animal welfare standards allow for obvious and standard industry cruelty while still permitting products to be sold as certified. Further, certifiers are unlikely to discover violations of the standards, as Textile Exchange's required annual inspections are pre-announced;<sup>11</sup> under farm area and group certifications, certifiers may *never* even visit some of the farms included in the certificate.<sup>12</sup> If consumers were aware of the inadequacy of the standards and lack of accountability, they would not place any meaningful value on the RDS or RAF certifications, and many would likely choose to purchase alternative products.

Consumers cannot determine firsthand the level of care animals receive under the RDS and RAF certifications because they cannot observe how farmers treat the ducks, geese, sheep, alpaca, and goats used to make Textile Exchange-certified products. As Textile Exchange continues to expand by certifying more companies, prompt action by the Commission is critical before it issues additional certifications. Further, while Textile Exchange is apparently rebranding its certification program, the information on that effort it has publicized provides no indication that it intends to resolve any of these problems, and in fact suggests they may worsen.<sup>13</sup> 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 Textile Exchange from deceiving consumers with false and misleading representations relating to the animal welfare standards claimed by RDS and RAF certifications.

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<sup>9</sup> *Responsible Down Standard*, TEXTILE EXCHANGE, <https://textileexchange.org/responsible-down-standard/> (last visited Mar. 03, 2023); *Responsible Mohair Standard*, TEXTILE EXCHANGE, <https://textileexchange.org/responsible-mohair-standard/> (last visited Mar. 03, 2023); *Responsible Wool Standard*, TEXTILE EXCHANGE, <https://textileexchange.org/responsible-wool-standard/> (last visited Mar. 03, 2023); *Responsible Alpaca Standard*, TEXTILE EXCHANGE, <https://textileexchange.org/responsible-alpaca-standard/> (last visited Mar. 03, 2023) [hereinafter *Standards Landing Pages*, TEXTILE EXCHANGE].

<sup>10</sup> *Standards Landing Pages*, TEXTILE EXCHANGE.

<sup>11</sup> See e.g., RESPONSIBLE DOWN STANDARD CERTIFICATION PROCEDURES, V3.2, TEXTILE EXCHANGE D2.6.1 (2021), <https://textileexchange.org/app/uploads/2020/08/RDS-102-V3.2-RDS-Certification-Procedures.pdf> [hereinafter RDS CERTIFICATION PROCEDURES, V3.2].

<sup>12</sup> See Sections V(A)(4)-(5) *infra* (listing the audit schedule for Farm Area and Group certification inspections).

<sup>13</sup> See generally, Textile Exchange, *Webinar The Development of the Unified Standards System An Update on Progress April, 6 2023*, YOUTUBE (Apr. 08, 2023), <https://www.youtube.com/watch?v=W9kIvkqkFTQ> (discussing the current status of Textile Exchange's efforts to rebrand existing certifications); see e.g., *Pilot Project: Multi-Site Certification with Sampling of Sites*, TEXTILE EXCHANGE (Nov. 01, 2022), <https://textileexchange.org/app/uploads/2022/11/CCS-107-V0.1-Pilot-Project-Multi-Site-Certification-with-Sampling-of-Sites.pdf> (introducing a pilot project to "[a]chieve acceptable reduction in auditing for multi-site organizations conducted by the certification body based on ICS responsibilities, with the goal to reduce cost and maintain credibility of certification.").

## **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 welfare claims encountered in the marketplace.

### **B. Respondent**

Respondent Textile Exchange, a 501(c)(3) nonprofit organization organized in Lamesa, Texas, and headquartered at 511 South 1st Street, Lamesa, TX, describes its mission as to “inspire, equip people to increase sustainable practices in the textile industry. Minimizing the harmful impacts and maximizing positive effects of the textile industry.”<sup>14</sup> Textile Exchange administers various certification programs, including four that purport to improve animal welfare for animals used to make consumer goods: the Responsible Down Standard; the Responsible Wool Standard; the Responsible Alpaca Standard; and the Responsible Mohair Standard.

## **III. Statement of Facts**

### **A. Certification and Accountability Scheme**

Textile Exchange creates the various standards and controls the use of their logos, but plays little to no role in whether certified organizations reliably implement or adhere to the standards. Rather, accountability is diffused through a complex web of accreditation bodies, certifying bodies, and certified organizations’ internal controls. Textile Exchange’s scheme purportedly attempts to create a bias-free system but instead creates an opaque system that neither ensures reliable adherence to the standards nor sufficient accountability. Consumers believe they are paying for a product with a robust accountability scheme guaranteed by Textile Exchange but actually receive a hollow certification backed by unknown organizations, or no oversight at all.

For a producer to be certified under the RDS or RAF, they must be certified by a certifying body, which audits certificate holders and applicants, conducts document review, and handles violations of the standards.<sup>15</sup> Certifying bodies are distinct from Textile Exchange and frequently perform audits for dozens of different standards across multiple industries. Accreditation bodies evaluate the competency of certifying bodies to administer a particular certification.<sup>16</sup> Textile Exchange determines whether an accreditation body is suitable to evaluate certifying bodies.<sup>17</sup>

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<sup>14</sup> RETURN OF ORGANIZATION EXEMPT FROM INCOME TAX (FORM 990), TEXTILE EXCHANGE (2019), <https://projects.propublica.org/nonprofits/organizations/331034726/202033109349300813/full>.

<sup>15</sup> ACCREDITATION AND CERTIFICATION PROCEDURES FOR TEXTILE EXCHANGE STANDARDS 2.1, TEXTILE EXCHANGE 37–46 (2020), <https://textileexchange.org/app/uploads/2021/02/ASR-101-V2.1-Accreditation-Certification-Procedures-for-Textile-Exchange-Standards.pdf> [hereinafter ACCREDITATION AND CERTIFICATION PROCEDURES].

<sup>16</sup> *Id.* at 11.

<sup>17</sup> *Id.*

Textile Exchange offers multiple certification schemes dependent on the size and type of farm seeking certification. As relevant to this complaint, Textile Exchange offers certifications for: Individual Farms, Farm Areas, Farm Groups, and Parent Farms.

Individual certification allows individual farms to be certified as compliant with the RDS or RAF standards. Textile Exchange states, under the RDS “Individual Farm Certification is intended for large farms that independently own the birds. However, it may be applied for any farm,”<sup>18</sup> and for the RAF, “Individual Farm Certification applies to farms wishing to become certified independently, or when the qualifications for Farm Group Certification are not met.”

Textile Exchange recognizes that supply chains, particularly those for down, frequently involve multiple small farms that are unable to afford certification individually. To better serve brands that wish to market their goods under the RDS or RAF, Textile Exchange created Farm Area and Group certifications, which allow multiple farms to be certified under a single certificate. However, these schemes effectively rely on internal controls and self-certification. Compliance is, in substantial part, determined by untrained auditors and members of the supply chain.

“Farm Area Certification applies for organizations purchasing from small farms within a defined geographical area.”<sup>19</sup> In effect, a geographic region can be certified, granting RDS or RAF certification for all relevant producers in the area. Collectors, which collect material from farms in the region, are the primary contact for the certification body.<sup>20</sup> Collectors are responsible for ensuring that the materials obtained from the region conform to RDS or RAF standards.<sup>21</sup> Collectors are not trained auditors, but part of the supply chain. Accordingly, they have a strong interest in the farms maintaining certification, rather than in unbiased independent evaluation. Certification bodies audit only a sample of farms in the area.<sup>22</sup>

Group certification “applies for groups with a defined internal control system (ICS) in place for the group.”<sup>23</sup> In short, a group of farmers can be covered by a single certification. This certification scheme relies on an ICS, wherein group members inspect other group members. The ICS is administered by the ICS manager and ICS inspectors, all of whom are also group members. ICS managers are the primary contact for certification bodies administering Farm Group certification.<sup>24</sup> ICS managers are responsible for ensuring that group members are in compliance with the RDS or RAF standards.<sup>25</sup> ICS managers and inspectors conduct annual audits of their group members, while certification bodies audit the ICS manager and a sample of group members.<sup>26</sup>

Parent Farm certification focuses on parent farms—those that breed ducks and geese for egg production. Most farms do not breed and hatch their own birds, but rather rely on parent farms to

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<sup>18</sup> RDS 3.0 B3.5.1 I; RWS 2.2 B3.5; RMS 1.2 B3.5; RAS 1.0 B3.5.

<sup>19</sup> RDS CERTIFICATION PROCEDURES, V3.2 B3.7.

<sup>20</sup> RDS 3.0 E.3.1.

<sup>21</sup> RDS 3.0 E.3.5.

<sup>22</sup> RDS CERTIFICATION PROCEDURES, V3.2 D3.3.

<sup>23</sup> RDS 3.0 B3.6.

<sup>24</sup> RDS 3.0, at 37.

<sup>25</sup> RDS 3.0, at 37.

<sup>26</sup> RDS 3.0, at 37.

source eggs and hatchlings. Parent farms sell eggs or hatchlings to farms where the birds will later be used for their meat and down.<sup>27</sup> Parent farms may also produce down. However, down from parent farms is considered high-risk for live-plucking. Live-plucking is a painful and traumatic process wherein birds' feathers are torn out while the bird is alive and conscious. This process continues once the feathers grow back and until the bird dies or is slaughtered. Concerns about live-plucking motivated Textile Exchange to create a separate Parent Farm certification scheme. However, in most cases, Parent Farm certification is completely voluntary. As discussed below, parent farms are only required to be audited and certified under limited scenarios, despite being the farms with the highest risk of live-plucking.

## B. Standards and Non-conformities

As described herein, Textile Exchange has issued, and continues to issue, false and misleading representations about the level of welfare that animals used under the RDS and RAF certifications receive. Reasonable consumers expect a level of animal care higher than that which Textile Exchange requires. Further, consumers expect that certified products actually meet certification requirements—though the RDS and RAF permit companies to market noncompliant goods as certified, despite failing to meet standards. Specifically, Textile Exchange asserts that RDS and RAF certification “*improves* the welfare of sheep,” “addresses animal . . . responsibility for mohair,” “*safeguards* the welfare of alpacas,” “*protects* ducks and geese,” “press[es] the industry to *raise* its standards in respect of animal welfare,”<sup>28</sup> and “ensures strict animal welfare standards have been met.”<sup>29</sup>

To achieve the stated animal welfare protections, Textile Exchange writes the standards for the RDS and RAF certification.<sup>30</sup> The standards set the guidelines and procedures for, among other things, animal care,<sup>31</sup> auditing,<sup>32</sup> and when malfeasance will result in suspending a certificate.

As to animal care, the standards set requirements and classify those requirements on a scale of severity: critical, major, minor, and recommendations.<sup>33</sup> Violations of these requirements are called non-conformities.<sup>34</sup> A critical non-conformity, the most serious class of violation, is supposed to suspend a certificate, meaning materials could not be sold as RDS or RAF certified.<sup>35</sup> However, under Farm Group and Area certification schemes, a site in critical non-conformity may not automatically trigger a certificate suspension.<sup>36</sup> Major and minor non-conformities do not

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<sup>27</sup> RDS USER MANUAL, TEXTILE EXCHANGE 60 (2020), <https://textileexchange.org/app/uploads/2021/02/RDS-201-V3.0-RDS-User-Manual.pdf>.

<sup>28</sup> *Standards Landing Pages*, TEXTILE EXCHANGE (emphasis added).

<sup>29</sup> See *supra* note 4 (showing two examples of RDS certified claims).

<sup>30</sup> STANDARD SETTING PROCEDURES, V3.0, TEXTILE EXCHANGE 5 (2021), <https://textileexchange.org/app/uploads/2021/02/ASR-102-V3.0-Standard-Setting-Procedures.pdf>

<sup>31</sup> See *e.g.*, RDS 3.0, at 9.

<sup>32</sup> ACCREDITATION AND CERTIFICATION PROCEDURES, *supra* note 15.

<sup>33</sup> *Id.* at 52–54 (2020).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 52.

<sup>36</sup> See *e.g.*, RDS CERTIFICATION PROCEDURES, V3.2, at D2.3 (A critical non-conformity will result in the farm being temporarily removed from the scope certificate; the certificate will not be suspended unless two or more critical

suspend a certificate automatically.<sup>37</sup> Rather, they trigger a 30, 60, or 90-day period in which the non-conforming site must come into conformity with the standards.<sup>38</sup> During these times, materials that are *not* produced in conformity with the standards may still be sold as RDS or RAF certified.<sup>39</sup> Failure to follow recommendations will not trigger any action,<sup>40</sup> although many relate to the bare minimum that consumers would require of a producer of “responsible” animal fibers. In sum, Textile Exchange’s standards explicitly allow for the sale of non-conforming materials, and materials obtained from animals treated cruelly, while claiming otherwise.

#### IV. Legal Standard

The FTC Act declares unfair or deceptive acts or practices unlawful, including misrepresentations in advertising.<sup>41</sup> 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.<sup>42</sup>

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.”<sup>43</sup> Although “words and sentences may be literally and technically true [they may be] framed in such a setting as to mislead or deceive.”<sup>44</sup> Indeed, “[a] deceptive impression may be created by implication and innuendo without affirmative misrepresentation or misstating a single fact.”<sup>45</sup>

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.”<sup>46</sup> 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.”<sup>47</sup> 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.”<sup>48</sup>

Deceptive advertising “must be judged by viewing it as a whole.”<sup>49</sup> The Commission is “required to look at the complete advertisement and formulate [its] opinions on the basis of the net general

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nonconformities are observed.). Under Farm Area and Group RDS certifications, live-plucking is not considered a critical-nonconformity. RDS CERTIFICATION PROCEDURES, V3.2, at D2.3.4.

<sup>37</sup> ACCREDITATION AND CERTIFICATION PROCEDURES, *supra* note 15, at 53–54 (five or more open major non-conformities will trigger a suspension).

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> 15 U.S.C. § 45(a)(1); *F.T.C. v. Pantron I Corp.*, 33 F.3d 1080, 1095 (9th Cir. 1994).

<sup>42</sup> See *FTC Policy Statement on Deception*, FED. TRADE COMM’N § I (Oct. 14, 1983).

<sup>43</sup> *Raymond Lee Org., Inc.*, 92 F.T.C. 489, 591 (1978).

<sup>44</sup> *Horizon Corp.*, 97 F.T.C. 464, 732 (1981) (quoting *Bockenstette v. F.T.C.*, 134 F.2d 369, 371 (10th Cir. 1943)).

<sup>45</sup> *MacMillan, Inc.*, 96 F.T.C. 208, 301 (1980).

<sup>46</sup> *Int’l Harvester Co.*, 104 F.T.C. 949, 1057 (1984).

<sup>47</sup> *Horizon Corp.*, 97 F.T.C. 464, 741 (1981).

<sup>48</sup> *Horizon Corp.*, 97 F.T.C. at 741–42.

<sup>49</sup> *Beneficial Corp. v. FTC*, 542 F.2d 611, 617 (3d Cir. 1976).

impression conveyed by them and not on isolated excerpts.”<sup>50</sup> The focus is the “entire mosaic . . . rather than each tile separately.”<sup>51</sup>

The Commission’s concern focuses on the “message conveyed or the implication created in the mind of the *ordinary* purchaser.”<sup>52</sup> 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.”<sup>53</sup> An objective reasonable standard determines whether advertising is false or misleading.<sup>54</sup> 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.”<sup>55</sup>

A deceptive representation, omission, or practice is actionable under the FTC Act if it is “material.”<sup>56</sup> 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.”<sup>57</sup> This is a subjective standard.<sup>58</sup> “[I]f consumers prefer one product to another, the Commission [does] not determine whether that preference is objectively justified.”<sup>59</sup>

An express claim is presumed material since “the willingness of a business to promote its products reflects a belief that consumers are interested in the advertising.”<sup>60</sup> The Commission will also infer materiality when “evidence exists that a seller intended to make an implied claim.”<sup>61</sup>

Recognizing that “seals and certifications are a useful tool that can help consumers choose where to place their trust and how to spend their money,” the FTC has pursued third party certifiers for violating the FTC Act.<sup>62</sup> In 2011, for example, the FTC successfully took action against Tested Green, a company that sold environmental certifications to businesses that produced “green” products or used “green” processes in the manufacture of goods and services.<sup>63</sup> Tested Green deceptively claimed that two independent firms endorsed the certifications when, in fact, both firms were owned and operated by the owner of Tested Green.<sup>64</sup> The FTC settlement barred Tested Green and its owner from making misrepresentations when selling any product, including making

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<sup>50</sup> *Standard Oil of Cal.*, 84 F.T.C. 1401, 1471 (1974), *modified*, 96 F.T.C. 380 (1980).

<sup>51</sup> *FTC v. Sterling Drug, Inc.*, 317 F.2d 669, 674 (2d Cir. 1963).

<sup>52</sup> *Horizon Corp.*, 97 F.T.C. 464, 741(1981) (emphasis added).

<sup>53</sup> *P. Lorillard Co.*, 186 F.2d at 58; see *FTC Policy Statement on Deception*, *supra* note 42, § III; *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”).

<sup>54</sup> See *Ortega v. Natural Balance, Inc.*, 300 F.R.D. 422, 428–29 (C.D. Cal. 2014).

<sup>55</sup> *Telebrands Corp.*, No. 9313, 2004 WL 3155567, at \*32 (F.T.C. Sept. 15, 2004).

<sup>56</sup> See *FTC Policy Statement on Deception*, *supra* note 42.

<sup>57</sup> *Id.* (endnote omitted).

<sup>58</sup> *Id.* § IV n.46.

<sup>59</sup> *Id.*

<sup>60</sup> *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm’n*, 447 U.S. 557, 568 (1980).

<sup>61</sup> *FTC Policy Statement on Deception*, *supra* note 42, § IV.

<sup>62</sup> *FTC Settlement Ends “Tested Green” Certifications that Were Neither Tested nor Green*, FTC (Jan. 11, 2011), <https://www.ftc.gov/news-events/news/press-releases/2011/01/ftc-settlement-ends-tested-green-certifications-were-neither-tested-nor-green> (quoting David Vladeck, the director of the FTC’s Bureau of Consumer Protection).

<sup>63</sup> See *id.*; Complaint at 2, *In re Nonprofit Management LLC*, F.T.C. File No. 102 3064 (Feb. 23, 2011) (No. C-4315), <https://www.ftc.gov/sites/default/files/documents/cases/2011/03/110301testedgreencmpt.pdf>.

<sup>64</sup> See *FTC Settlement Ends “Tested Green” Certifications that were Neither Tested nor Green*, *supra* note 62.



any representations about a user or endorser “unless they clearly and prominently disclose any connection they have with the endorser if one exists.”<sup>65</sup> The FTC’s director commented: “The FTC will continue to weed out deceptive seals and certifications like the one in this case.”<sup>66</sup>

Similarly, longstanding precedent makes clear that knowingly allowing the deceptive use of one’s trademark is a violation of the FTC Act.<sup>67</sup> “The author of false, misleading and deceptive advertising may not furnish customers with the means of misleading the public and thereby insulate himself against responsibility for its deception.”<sup>68</sup> Therefore, where the owner of the certification allows its customers to knowingly use its certification to make false or misleading statements, the owner is also in violation of the FTC Act.

## V. Claims

### A. Textile Exchange’s Certifications Mislead Consumers Regarding the Treatment of Animals, Deceiving Consumers into Supporting RDS and RAF Supply Chains.

#### 1. Textile Exchange Represents That Purchasing RDS or RAF Certified Products Ensures Strict Adherence to Animal Welfare Standards.

The “entire mosaic” of Textile Exchange’s advertising, including the RDS and RAF Certified seals and statements Textile Exchange makes on its websites, provides a net general impression that RDS and RAF certified farmers treat animals responsibly and according to strict animal welfare standards.

The RDS and RAF seals explicitly claim that the down, wool, alpaca fiber, and mohair in the product was sourced responsibly.



As part of the claimed “responsible” standards, a reasonable consumer viewing these seals would believe that a responsible method of collecting feathers and fibers would preclude cruelty to

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<sup>65</sup> *See id.*

<sup>66</sup> Decision and Order at 4, *In re Nonprofit Management LLC*, F.T.C. File No. 102 3064 (Feb. 23, 2011) (No. C-4315), <https://www.ftc.gov/sites/default/files/documents/cases/2011/03/110301testedgreendo.pdf>.

<sup>67</sup> *Irwin v. F.T.C.*, 143 F.2d 316, 325 (8th Cir. 1944) (citing *F.T.C. v. Winsted Hosiery Co.*, 258 U.S. 483, 493 (1922); *Warner & Co. v. Lilly & Co.*, 265 U.S. 526, 530 (1924); *Chicago Silk Co. v. F.T.C.*, 90 F.2d 689, 691 (7th Cir. 1937), *certiorari denied* 302 U.S. 753 (1937); *Masland, etc., Co. v. F.T.C.*, 34 F.2d 733, 736 (3d Cir. 1929); *Marietta Mfg. Co. v. F.T.C.*, 50 F.2d 641 (7th Cir. 1931); 642; *F.T.C. v. F. A. Martoccio Co.*, 87 F.2d 561, 564 (8th Cir. 1931), *certiorari denied* 301 U.S. 691 (1931)).

<sup>68</sup> *Irwin v. F.T.C.*, 143 F.2d 316, 325 (8th Cir. 1944).

animals. Indeed, Textile Exchange has approved statements that may accompany the seals and explicitly reinforce these commitments to animal welfare.<sup>69</sup>

- “This down has been certified to the Responsible Down Standard to *ensure strict animal welfare standards have been met.*”<sup>70</sup>
- “The Responsible Down Standard (RDS) (independently) certifies down and feathers against *animal welfare* requirements and tracks it from farm to final product.”<sup>71</sup>
- “The Responsible Down Standard (RDS) describes and (independently) certifies *animal welfare practices* in down and feather production and tracks the certified [down and feathers/material(s)] from farm to final product.”<sup>72</sup>
- “The purchase of Responsible Down Standard (RDS) certified products demonstrates demand for (*better*) *animal welfare practices* in the down and feather supply chain.”<sup>73</sup>
- “The Responsible Down Standard (RDS) aims to ensure that down and feathers come from animals that *have not been subjected to any unnecessary harm*. RDS ensures high product quality, safety and certainty that down used as filling material is ethically sourced and comes from tightly controlled and traceable supply chains.”<sup>74</sup>
- “The [Responsible Wool Standard (RWS)/Responsible Mohair Standard (RMS)/Responsible Alpaca Standard (RAS)] verifies [wool/mohair/alpaca fiber] *animal welfare* and land management requirements and tracks it from farm to final product.”<sup>75</sup>
- “Products certified to the [Responsible Wool Standard (RWS)/Responsible Mohair Standard (RMS)/Responsible Alpaca Standard (RAS)] contain [wool/mohair/alpaca fiber] from farms (independently) certified to *animal welfare* and land management requirements.”<sup>76</sup>
- “The purchase of [Responsible Wool Standard (RWS)/Responsible Mohair Standard (RMS)/Responsible Alpaca Standard (RAS)] certified products

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<sup>69</sup> STANDARD CLAIMS POLICY, V1.2, TEXTILE EXCHANGE 5 (2022) (requiring all claims bearing Textile Exchange logos to conform with the Standard Claims Policy) [hereinafter STANDARD CLAIMS POLICY].

<sup>70</sup> NWT- Lands End Womens 600 Down Puffer Spearmint Green Zip Vest Jacket Plus Sz 3X, EBAY, <https://www.ebay.com/itm/266091297414?chn> (last visited Feb. 23, 2023).

<sup>71</sup> STANDARD CLAIMS POLICY, *supra* note 69, at D2.1.15.

<sup>72</sup> *Id.* at D2.1.17.

<sup>73</sup> *Id.* at D2.1.19.

<sup>74</sup> *Luxurious Siberian Goose Down Comforter All-Season Duvet Insert*, LUXURY EGYPTIAN LINENS, <https://www.luxuryegyptianlinens.com/lu12thcotwtw.html> (last visited Mar. 06, 2023).

<sup>75</sup> STANDARD CLAIMS POLICY, V1.2, *supra* note 69, at D2.1.20.

<sup>76</sup> *Id.* at D2.1.21.

demonstrates demand for *(better) animal welfare* practices and (responsible) land management in the [wool/mohair/alpaca fiber] supply chain.”<sup>77</sup>

Further still, Textile Exchange’s websites reiterate that the primary purpose of the seal is to market high animal welfare standards:

- The first and largest words on the RDS landing page state, “The Responsible Down Standard aims to *protect* ducks and geese used for down.”<sup>78</sup> In smaller but prominent subtext, immediately below this heading, the website states, “The Responsible Down Standard (RDS) incentivizes the down and feather industry to *treat ducks and geese humanely* and rewards organizations leading the way.”<sup>79</sup>
- The next heading states, “We’re helping companies to *ensure* that down and feathers don’t cause unnecessary harm.”<sup>80</sup> In the subtext to that heading, the website states that RDS certification “Ensure[s] to the *highest possible standard* that down and feathers don’t come from animals that have been subjected to unnecessary harm” and “Incentivize[s] the down and feather industry to treat ducks and geese *humanely*.”<sup>81</sup>
- In bolded text, the website touts how the RDS ensures “[a]nimal welfare protection,” stating, “Respect for the welfare of birds and geese, from hatching to slaughter. The Five Freedoms of animal welfare are respected.”<sup>82</sup>
- The first and largest words on the RWS landing page state: “The Responsible Wool Standard aims to *improve the welfare* of sheep and the land they graze on.”<sup>83</sup> Similar language appears on the RMS landing page: “The Responsible Mohair Standard *addresses animal welfare* and environmental responsibility in mohair supply chains.”<sup>84</sup> Similar language appears on the RAS landing page: “The Responsible Alpaca Standard *safeguards the welfare of alpacas* and the ecosystems around them.”<sup>85</sup> All RAF websites say in subtext to the heading that “farmers and ranchers must meet *animal welfare*, land management, and social requirements.”<sup>86</sup>
- The RWS website states, “We’re pressing for a progressive approach to animal and environmental welfare” and that the RWS “Make[s] sure that wool comes from farms that take a progressive approach to land management and *respect*

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<sup>77</sup> *Id.* at D2.1.24.

<sup>78</sup> *Responsible Down Standard*, *supra* note 9 (emphasis added).

<sup>79</sup> *Id.* (emphasis added).

<sup>80</sup> *Id.* (emphasis added).

<sup>81</sup> *Id.* (emphasis added).

<sup>82</sup> *Id.* (emphasis added).

<sup>83</sup> *Responsible Wool Standard*, *supra* note 9 (emphasis added).

<sup>84</sup> *Responsible Mohair Standard*, *supra* note 9 (emphasis added).

<sup>85</sup> *Responsible Alpaca Standard*, *supra* note 9 (emphasis added).

<sup>86</sup> *Standards Landing Pages*, TEXTILE EXCHANGE, *supra* note 9(emphasis added).

*animal welfare.*<sup>87</sup> Under the heading of, “Make sure that wool comes from farms that take a progressive approach to land management and respect animal welfare,” Textile Exchange highlights “[a]nimal welfare protection” as the first aspect of the RWS.<sup>88</sup>

- The RMS website states, “Make sure that wool comes from farms that take a progressive approach to land management and respect animal welfare” and “Ensure that mohair comes from farms that take a progressive approach to land management and respect the Five Freedoms of animal welfare.”<sup>89</sup>
- The RAS website states, “We’re setting the criteria for agricultural practices that are *better for animals* and the land” and “Ensure that alpaca wool comes from farms that take a progressive approach to land management and respect the Five Freedoms of animal welfare.”<sup>90</sup>

Through repeated prominent assertions, Textile Exchange’s websites make abundantly clear that a primary part of “responsible” animal use is ensuring and improving animal welfare. There is no doubt that Textile Exchange’s statements claim or imply that the RDS and RAF ensure and improve animal welfare for ducks, geese, sheep, goats, and alpaca used in certified supply chains.

## **2. Consumers Are Concerned About the Humane Treatment of Animals, Which Renders the Respondent’s Deceptive Claims Material.**

Consumers are concerned about the welfare of animals. Consumer perception about animals used to produce food and fiber continues to evolve as cruel practices are exposed. Increased awareness of inhumane treatment of animals has led to noticeable changes in consumer preferences. Indeed, this increased awareness and the threat of continued exposure is an explicit selling point Textile Exchange markets to potential customers.<sup>91</sup>

This increased awareness and concern has inspired some of the largest companies in the world to become RDS and RAF certified. Textile Exchange’s certifications have permeated the market, exposing millions of consumers to false and misleading advertising. H&M, the second largest clothing retailer in the world,<sup>92</sup> boasts its commitment to the RMS and RDS as part of its animal welfare policy.<sup>93</sup> Gap Inc. and its associated brands, another multibillion-dollar retailer, markets

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<sup>87</sup> *Responsible Wool Standard*, *supra* note 9 (emphasis added).

<sup>88</sup> *Id.* (emphasis added).

<sup>89</sup> *Responsible Mohair Standard*, *supra* note 9 (emphasis added).

<sup>90</sup> *Responsible Alpaca Standard*, *supra* note 9 (emphasis added).

<sup>91</sup> See e.g., *Essentials of the Responsible Down Standard Webinar*, *supra* note 1, at 13 (devoting an entire slide to “Responding to Activism” and listing a benefit of the RDS as “Protection from Activist or Media Attacks, Let the RDS and all of its users provide a united response to any claims against your supply chain or the down industry in general.”).

<sup>92</sup> Anna Ringstrom, *Fashion Retailer H&M’s Sales Jump, But Investors Fret Over Margins*, REUTERS (June 15, 2022), <https://www.reuters.com/business/retail-consumer/hms-march-may-sales-grow-more-than-expected-2022-06-15/>.

<sup>93</sup> *Animal Welfare Policy*, H&M GROUP (Mar. 28, 2023), <https://hmgroup.com/wp-content/uploads/2022/03/HM-Group-Animal-Welfare-Policy-2022.pdf>.

its partnership with the RDS and RWS.<sup>94</sup> Companies see the marketability of animal welfare assurances and seek to cater specifically to consumers concerns.

In the fashion and textile industries, a 2021 survey found that 90% of survey participants believed that companies should make animal protection a priority; a third of survey participants stated that “they would choose one fashion brand over another if they prioritised animal welfare.”<sup>95</sup> Yet another survey of over 14,000 participants found that 64% of respondents were aware of animal cruelty in the fashion industry, 31% specifically looked for products with animal welfare credentials while 37% chose one brand over others if they prioritized animal welfare, and 86% thought companies should make animal protection a key priority.<sup>96</sup>

A 2019 survey conducted by American Humane, a certification body, reported that “77 percent of respondents said it’s important to see a third-party certification label on the packages of chicken they purchase to help ensure it was humanely treated. Over half said they would pay more for chicken that has been certified as humane.”<sup>97</sup> More than three quarters of the 5,900 Americans polled in another 2019 American Humane survey stated that they were willing to pay more for humanely raised eggs, meat, and dairy products.<sup>98</sup> Likewise, in a 2018 survey conducted by the Foundation for Meat & Poultry Research & Education, 67% of the 389 respondents claimed they were more likely to purchase a meat or poultry product identified as “humanely-raised” over a conventional product.<sup>99</sup>

Further, consumers are so influenced by animal welfare concerns that if a label only lightly implies higher animal welfare standards, consumers are more likely to purchase that product. A 2022 study of U.S. consumers found that “nearly 90% of those who purchased products with claims that had little to no actual impact on animal welfare reported doing so *because* they believed the label indicated higher-welfare standards. And 79% knowingly paid more for those products based on the same misconception.”<sup>100</sup> Even labels that did not make any claims about animal welfare, such as “natural” or “farm-raised,” induced a majority of consumers to purchase the product because

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<sup>94</sup> 2021 ESG Report, Gap Inc. (2021), <https://gapinc-prod.azureedge.net/gapmedia/gapcorporatesite/media/images/values/sustainability/documents/2021/gap-inc-2021-esg-report.pdf>.

<sup>95</sup> Danielle Wightman-Stone, *Consumers Turning Their Back on Animal-Derived Textiles*, FASHION UNITED (Aug. 03, 2021), <https://fashionunited.uk/news/fashion/consumers-turning-their-back-on-animal-derived-textiles/2021080356938>.

<sup>96</sup> See, Press Release, Four Paws, *New Study: Pandemic Leads to Increased Demand for Compassion in Fashion* (Aug. 03, 2021), <https://www.four-paws.org/our-stories/press-releases/new-study-pandemic-leads-to-increased-demand-for-compassion-in-fashion> (presenting survey results).

<sup>97</sup> *Survey Reveals Consumers Want to See Humane Certification on Chicken Packages to Help Ensure Humane Treatment*, AM. HUMANE (July 22, 2019), <https://www.americanhumane.org/press-release/survey-reveals-consumers-want-to-see-humane-certification-on-chicken-packages-to-help-ensure-humane-treatment/>.

<sup>98</sup> *American Humane, Farmers, and Leading Food Organizations Go to Capitol Hill to Urge Americans to Set a Humane Table for the Holidays and Support Humane Farm Practices*, AP NEWS (Nov. 15, 2019), <https://apnews.com/press-release/pr-newswire/science-business-lifestyle-animals-holidays-8c793eaf30a0f896e4b22ad9c564cad2>.

<sup>99</sup> *2018 Power of Meat*, FOUND. FOR MEAT & POULTRY RES. & EDUC. 48 (2018), [http://www.meatconference.com/sites/default/files/books/Power\\_of\\_meat\\_2018.pdf](http://www.meatconference.com/sites/default/files/books/Power_of_meat_2018.pdf).

<sup>100</sup> Melissa Thibault et al., *Why Are They Buying It?: United States Consumers’ Intentions When Purchasing Meat, Eggs, and Dairy With Welfare-related Labels*, 7 FOOD ETHICS 12 (2022), <https://link.springer.com/article/10.1007/s41055-022-00105-3>

they thought the label indicated improved animal welfare.<sup>101</sup> The reasonable consumer consistently believes that higher animal welfare standards are implicit in general benefit claims on products made from animals.

Clearly, consumers' purchasing decisions are impacted by claims related to animal welfare and treatment, and Textile Exchange's assertions promoting "responsible" practices and high animal welfare standards reflect its acknowledgment and specific intent that consumers will rely on its seal and representations.

### **3.The RDS and RAF Standards Permit Inhumane Treatment of Animals that the Ordinary Consumer Would Find Cruel, Unacceptable, and Irresponsible.**

Textile Exchange publishes the RDS and RAF standards, which auditors inspect against. Each requirement under the standard is assigned a severity: Critical, Major, Minor, or Recommended, in order of most to least severe.<sup>102</sup> Failure to meet a specific standard, other than those recommended, is considered a non-conformity.<sup>103</sup>

Critical non-conformities are the most severe violations of the standard. Critical non-conformities begin to address absolute bare minimum animal care requirements. Violations of critical non-conformities include:<sup>104</sup>

- Live-plucking and force-feeding waterfowl;<sup>105</sup>
- Outright mistreatment including "rough physical contact such as kicking, striking, throwing or dropping animals, dragging or pulling waterfowl by the feathers, wings, head, neck, tail, or legs" and "slamming gates on the sheep, tripping, throwing, or dropping animals, dragging, or pulling sheep/alpaca/goats by the fleece, tail, ears, head, horns, or neck, or dragging by the back legs."<sup>106</sup>
- Failing to provide sheep, alpaca, and goats with access to enough food and water to prevent malnutrition;<sup>107</sup>
- Failing to provide sheep, alpaca, and goats who are found suffering with necessary veterinary care;<sup>108</sup> and

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<sup>101</sup> *Id.*

<sup>102</sup> ACCREDITATION AND CERTIFICATION PROCEDURES, *supra* note 15, at 52-54.

<sup>103</sup> *Id.*

<sup>104</sup> A table summarizing critical non-conformities is presented in Appendix 1.

<sup>105</sup> RDS 3.0 AW1.1; RDS 3.0, AW3.10; it is important to note that under Farm Area and Group RDS certifications, live-plucking is not considered a critical-nonconformity. RDS CERTIFICATION PROCEDURES, V3.2, at D2.3.4.

<sup>106</sup> RDS 3.0 AW4.1.1; RWS 2.2 AW4.1; RAS 1.0 AW4.1; RMS 1.2 AW4.1.

<sup>107</sup> RWS 2.2 AW1.1; RAS 1.0 AW1.1; RMS 1.2 AW1.1; RWS 2.2 AW1.2; RAS 1.0 AW1.2; RMS 1.2 AW1.2.

<sup>108</sup> RWS 2.2 AW3.3; RAS 1.0 AW3.3; RMS 1.2 AW3.3.

- Mulesing sheep, including freeze mulesing (steining), which refers to removing large chunks of skin near the tail to reduce flystrike in the skin of animals who were bred to have more skin folds, thereby increasing wool production.<sup>109</sup>

A critical non-conformity under an individual farm certification would generally require the auditor to immediately suspend RDS or RAF certification or decline to issue or renew a certificate.<sup>110</sup> However, under Group or Area certification schemes, one critical non-conformity will not immediately suspend the group or area certificate, nor will a critical nonconformity be issued to an Internal Control System (ICS).<sup>111</sup> Therefore, even when these critically non-conforming actions are observed, the standards are designed to allow some certified entities to avoid accountability.

No other standards are considered sufficiently important to immediately suspend a certification,<sup>112</sup> including practices a reasonable consumer would consider irresponsible and cruel. A major non-conformity upon an initial inspection or renewal inspection will prevent certification until the non-conformity is remedied. In all other cases, major non-conformities must be resolved within 30 days. During those 30 days, the certified entity may continue marketing their product as certified. If the major non-conformity is not resolved within 30 days, the certificate is suspended until the non-conformity is addressed. A certificate will be suspended if a site receives a cumulative total of five major non-conformities. Minor non-conformities, which relate to infrastructure and record keeping, must be remedied within 60 days. During that time, the certification is valid and the entity can continue marketing their product as certified. Failure to remedy a minor non-conformity will escalate to a major non-conformity, adding another 30 days for compliance. Conduct that violates the standards but can still continue to occur for some time while still certifying the product as “responsible,” includes:

- Failing to provide geese and ducks with “sufficient food to meet their nutritional needs” or clean and safe drinking water.<sup>113</sup>
- Subjecting ducks and geese to “extreme weather conditions” by failing to provide sufficient housing or shelter.<sup>114</sup> Similarly, failing to provide housing

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<sup>109</sup> RWS 2.2 AW3.11; mulesing is a procedure “in which [farmers] force live sheep onto their backs, restrain their legs between metal bars, and, often without any painkillers whatsoever, carve huge chunks of skin away from the animals’ backsides or attach vise-like clamps to their flesh until it dies and sloughs off. Both procedures are terribly painful.” *Mulesing by the Wool Industry*, PETA, <https://www.peta.org/issues/animals-used-for-clothing/wool-industry/mulesing/> (last visited March 22, 2023).

<sup>110</sup> ACCREDITATION AND CERTIFICATION PROCEDURES, *supra* note 15, at 52.

<sup>111</sup> *Id.* at 53 (an on-farm critical non-conformity does not necessarily result in an ICS receiving a critical non-conformity, but an ICS may receive a critical non-conformity for failing to meet its obligations); *see also* RDS CERTIFICATION PROCEDURES, V3.2, at D2.3 (A critical non-conformity will result in the farm being temporarily removed from the scope certificate; the certificate will not be suspended unless two or more critical nonconformities are observed).

<sup>112</sup> Except in the case of a new or renewed certificate inspection. ACCREDITATION AND CERTIFICATION PROCEDURES, *supra* note 15, at 53.

<sup>113</sup> RDS 3.0 AW1.1, 1.3.

<sup>114</sup> RDS 3.0 AW2.1.

- with drainage, forcing ducks and geese to stand in mud or water, and allowing bedding to become infested with mold.<sup>115</sup>
- Keeping ducks and geese in cages and/or failing to provide animals with enough room to “freely, stand, turn around, stretch their wings, and run.”<sup>116</sup>
  - Raising ducks and geese without access to sunlight.<sup>117</sup>
  - Raising ducks and geese without the ability to express natural behaviors like swim.<sup>118</sup>
  - Under the RDS, failing to comply with local animal welfare laws.<sup>119</sup>
  - Under the RDS, failing to train personnel in basic animal welfare principles, including the requirements of the RDS.<sup>120</sup>
  - Storing hazardous material near feed.<sup>121</sup>
  - Withholding food and water from sheep and goats for up to 24 hours; withholding food and water for longer will still not automatically trigger a suspension.<sup>122</sup>
  - Housing sheep, alpaca, and goats in buildings which are not structurally sound, regularly inspected, or maintained, including housing that lacks sufficient ventilation, sanitation, traction, or protection from heat and cold stress.<sup>123</sup>
  - Housing sheep in shelters where there is insufficient room to lie in a normal resting posture.<sup>124</sup>
  - Failing to provide sheep with access to sunlight.<sup>125</sup>
  - Moving sick and injured sheep, alpaca, and goats in an inhumane manner.<sup>126</sup>
  - Tail docking and castrating sheep without pain relief.<sup>127</sup>

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<sup>115</sup> RDS 3.0 AW2.4, 2.4.1.

<sup>116</sup> RDS 3.0 AW2.5, 2.6.

<sup>117</sup> RDS 3.0 AW2.7.1.

<sup>118</sup> RDS 3.0 AW 2.8.2.

<sup>119</sup> RDS 3.0 AW5.1.

<sup>120</sup> RDS 3.0 AW5.5.

<sup>121</sup> RWS 2.2 AW1.4.1; RAS 1.0 AW1.4.1; RMS 1.2 AW1.4.1.

<sup>122</sup> RWS 2.2 AW 1.7; RMS 1.2 AW1.7

<sup>123</sup> RWS 2.2 AW2.1-2.6; RAS 1.0 AW2.1-2.6; RMS 1.2 AW2.1-2.6.

<sup>124</sup> RWS 2.2 AW2.6.

<sup>125</sup> RWS 2.2 AW2.9.

<sup>126</sup> RWS 2.2 AW3.3.2; RAS 1.0 AW3.3.2; RMS 1.2 AW3.3.2.

<sup>127</sup> RWS 2.2 AW3.9.



- Failing to provide lambs, cria, and kids with necessary nutrition (colostrum) after birth.<sup>128</sup>
- Killing sheep, alpaca, and goats by cutting their throat without first stunning the animal.<sup>129</sup>
- Failing to ensure that employees are aware of certification requirements.<sup>130</sup>

The reasonable consumer would consider any of the above examples to be cruel and irresponsible. Further, recommended standards include bare-minimum animal welfare standards, though failure to meet these standards carries absolutely no accountability. Reasonable consumers would believe that “responsible” animal care would require what Textile Exchange merely recommends. Such recommendations include:

- Giving birds access to food and water at least every 8 hours;<sup>131</sup>
- Keeping birds’ housing clean enough to avoid “a strong ammonia smell;”<sup>132</sup>
- Ensuring that birds’ housing has well-drained flooring;<sup>133</sup>
- Providing enough nesting boxes for 25% of birds<sup>134</sup>—much less ensuring that each bird has access to a nesting box.
- Providing birds with shelter that has access to natural sunlight;<sup>135</sup>
- If birds do not have access to natural sunlight, that the artificial light is at least distributed evenly;<sup>136</sup>
- Providing waterfowl with water deep enough for them to swim;<sup>137</sup>
- Using housing with exits such that birds can go outdoors;<sup>138</sup>
- Having basic compliance mechanisms like giving workers have a way to report nonconformities to the certification body;<sup>139</sup>
- Protecting waterfowl from having to see other waterfowl being slaughtered;<sup>140</sup>

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<sup>128</sup> RWS 2.2 3.22.1

<sup>129</sup> RWS 2.2 AW3.25.3; RAS 1.0 AW3.21.2; RMS 1.2 AW3.20.3

<sup>130</sup> RWS 5.10.2; RAS 1.0 AW5.10.2; RMS 1.2 AW5.10.2.

<sup>131</sup> RDS 3.0 AW1.2.2, 1.3.2.

<sup>132</sup> RDS 3.0 AW2.2.1

<sup>133</sup> RDS 3.0 AW2.4.1.

<sup>134</sup> RDS 3.0 AW2.5.1.

<sup>135</sup> RDS 3.0 AW2.7.1.

<sup>136</sup> RDS 3.0 AW2.7.3.

<sup>137</sup> RDS 3.0 AW2.8.2.

<sup>138</sup> RDS 3.0 AW2.9.4.

<sup>139</sup> RDS 3.0 AW6.2.3.

<sup>140</sup> RDS 3.0 AW6.7.1.

- Ensuring minimum space requirements when housing sheep/alpaca/goats;<sup>141</sup>
- Providing housed alpacas with natural sunlight;<sup>142</sup>
- Inspecting horned sheep and goats to ensure that their horns do not irritate their face;<sup>143</sup>
- Requiring that sheep, alpaca, and goats be handled using visual and audible aids rather than physical contact; and<sup>144</sup>
- Maintaining employee training records.<sup>145</sup>

Textile Exchange has marketed the benefits of the RDS inspection process as “mak[ing] sure animals are well cared for and *never treated with cruelty*.”<sup>146</sup> Accordingly, the reasonable consumer would believe that RDS and RAF would actually enforce all of the above, to truly “ensure strict animal welfare standards have been met.”<sup>147</sup> However, Textile Exchange does not ensure that consumers receive products that meet basic expectations of “responsible” and humane treatment. Rather, certified organizations can openly flout the requirements—in some cases for months—while still marketing their products as complying with Textile Exchange’s standards.

#### **4.RDS and RAF Certifications Do Not Ensure Independent Evaluation or Strict Enforcement of Animal Welfare Standards.**

Textile Exchange’s standards allow for cruelty to animals, which the reasonable consumer would expect to be strictly prohibited. Yet, Textile Exchange does not even ensure that its own insufficient standards are even followed. Some Textile Exchange-certified farms may never be inspected by an independent certifier, but rather by local community members, customers, or other farms charged with enforcement.

Individual Farm, Farm Area, and Farm Group certification schemes do not ensure that farms will be independently inspected, contrary to Textile Exchange’s express claims:

- “The Responsible Down Standard (RDS) (independently) certifies down and feathers against animal welfare requirements and tracks it from farm to final product.”<sup>148</sup>
- “The Responsible Down Standard (RDS) describes and (independently) certifies animal welfare practices in down and feather production and tracks the certified [down and feathers/material(s)] from farm to final product.”<sup>149</sup>

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<sup>141</sup> RWS 2.2 AW2.7.2; RAS 1.0 AW2.7.2; RMS 1.2 AW2.7.2.

<sup>142</sup> RAS 1.0 AW2.9.1.

<sup>143</sup> RWS 2.2. AW3.12.1; RMS 1.2 AW3.10.1.

<sup>144</sup> RWS 2.2. AW3.12.1; RAS 1.0 AW4.2; RMS 1.2 AW4.2

<sup>145</sup> RWS 2.2 AW5.10.1; RAS 1.0 AW5.10.1; RMS 1.2 AW5.10.1.

<sup>146</sup> *Essentials of the Responsible Down Standard Webinar*, *supra* note 1, at 18 (emphasis added).

<sup>147</sup> Ruggiero, *supra* note 4 (showing a sample hangtag for an RDS certified product).

<sup>148</sup> STANDARD CLAIMS POLICY, *supra* note 69, at D2.1.15

<sup>149</sup> *Id.* at D2.1.17.

- “Products certified to the [Responsible Wool Standard (RWS)/Responsible Mohair Standard (RMS)/Responsible Alpaca Standard (RAS)] contain [wool/mohair/alpaca fiber] from farms (independently) certified to animal welfare and land management requirements.”<sup>150</sup>
- “The [Responsible Wool Standard (RWS)/Responsible Mohair Standard (RMS)/Responsible Alpaca Standard (RAS)] describes and (independently) certifies animal welfare and land management practices in [wool/mohair/alpaca fiber] production and tracks the certified material from farm to final product.”<sup>151</sup>
- “The RDS reduces the risk to brands and down suppliers, by verifying practices on the farms.”<sup>152</sup>

Under the RAF, Individual Farm certificate holders are generally subject to an announced annual audit.<sup>153</sup> Certificates are valid for three years, meaning that certificate holders should be audited three times: an initial or recertification audit and two annual audits.<sup>154</sup> However, under the RAF, the certificate holder may waive one of the non-recertification audits if a previous audit was conducted “during times when castration, tail docking, or shearing (as applicable to the species) are occurring.”<sup>155</sup> In sum, some farms may go years without independent auditing. When auditing does occur, it is announced ahead of time—giving farms ample time to present the most favorable view of operations, rather than the day-to-day reality.

Even when farms are known to be high-risk, Textile Exchange does not require a full annual audit, much less a full unannounced audit. An individual farm is considered high-risk if it has received a critical non-conformity in the past year or, if under the RWS, mulesing is a common practice in the region and the risk of mulesing is not mitigated by other factors.<sup>156</sup> Even if a farm is considered high-risk, a full annual audit may be waived in favor of a “simplified audit,” which limits the scope of the audit to either document review, chain of custody review, or non-documentation criteria, such as visual inspections of animal welfare.<sup>157</sup> Further, certification bodies are under no obligation to conduct unannounced audits on high-risk farms. The RAF standards only require certification bodies to conduct semi-announced (three days’ notice or notice of a 2-month window) *or* unannounced (less than an hour’s notice) audits on 10% of high-risk farms.<sup>158</sup>

Under Farm Group and Farm Area certifications, most oversight cannot be considered independent. Collectors and ICS managers/inspectors are neither independent certifiers nor formally trained auditors. Under Farm Group certification, ICS managers and inspectors are interested parties that face pressure from their community and industry to protect farmers and

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<sup>150</sup> *Id.* at D2.1.21.

<sup>151</sup> *Id.* at 1.22.

<sup>152</sup> *Essentials of the Responsible Down Standard Webinar*, *supra* note 1.

<sup>153</sup> RESPONSIBLE ANIMAL FIBER CERTIFICATION PROCEDURES 2.1, TEXTILE EXCHANGE at D4.2.1 (2020), <https://textileexchange.org/app/uploads/2020/08/RAF-102-V2.1-RAF-Certification-Procedures.pdf>.

<sup>154</sup> *Id.*

<sup>155</sup> *Id.* at D3.1.2.a., D2.5.2.

<sup>156</sup> *Id.* at D2.4.4.

<sup>157</sup> *Id.* at D3.1.2.b., D2.5.2.

<sup>158</sup> *Id.* at D3.1.3.

existing supply chains. Under the Farm Area certification, collectors or their partners sell the material they collect and thus have a direct financial interest in selling the material as RDS or RAF certified. While some oversight is provided by certification bodies, by design these independent auditors only audit a *fraction* of farms and often do so through announced audits. These schemes are inherently flawed, as certification body audits only get a narrow and curated view of the group or area, rather than auditing against the actual conditions at each farm whose output will be marketed as “responsible.” Thus, there is no guarantee that material from a Farm Area or Group certification was actually independently audited or that the source farm was compliant.

Farm Group and Area independent oversight is based on the risk level assigned to the group or area.<sup>159</sup> Certification bodies determine whether the group or area is high, medium, or low risk.<sup>160</sup> The frequency and sample size of certifying bodies’ independent auditing for Farm Group and Area certification is presented below:

- RDS Farm Group Independent Oversight<sup>161</sup>
  - High-risk group: audit at least  $3\sqrt{n}$  annually and confirmation visits for at least 10% of farms.
    - $n$  represents the total number of farms in the group. For example, in a high-risk Farm Group with 100 farms, the certification body would need to audit at least 30 farms ( $3\sqrt{100}$ ).
  - Medium-risk group: audit at least  $2\sqrt{n}$  annually
  - Low-risk group: audit at least  $\sqrt{n}$  annually
  - Parent Farm group members: all audited annually
- RDS Farm Area Independent Oversight<sup>162</sup>
  - Annual audit of the organization responsible for the region’s certification, consisting solely of document review
  - Audit of large farms and large slaughter sites<sup>163</sup>
  - Optional: annual parent farm auditing
  - All other sites are subject to possible auditing according to the area’s risk level

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<sup>159</sup> ACCREDITATION AND CERTIFICATION PROCEDURES, *supra* note 15, at 55.

<sup>160</sup> *Id.*; see also RDS 3.0, at 36 (presenting the criteria for risk determinations).

<sup>161</sup> RDS CERTIFICATION PROCEDURES, V3.2 D3.2 (all audits are either announced or semi-announced).

<sup>162</sup> RDS CERTIFICATION PROCEDURES, V3.2 D3.3.2

<sup>163</sup> “Large slaughter sites” is not defined. However, “small slaughter site” is defined as “Any slaughter site with a capacity of less than 1,000 waterfowl per day.” TERMS AND DEFINITIONS FOR TEXTILE EXCHANGE STANDARDS AND RELATED DOCUMENTS, V1.2, at 15, TEXTILE EXCHANGE (2021), <https://textileexchange.org/app/uploads/2021/02/TE-101-V1.2-Terms-and-Definitions-for-Textile-Exchange-Standards-and-Related-Documents.pdf>.

- Base audit time: the time it would take to audit a sample of farms housing 10% of all birds in the area (2 hours minimum per farm including local travel to the site) plus the square root of the number of small slaughter sites (Textile Exchange requires 4 hours minimum for slaughter sites but does not provide a minimum time for small slaughter sites).
- High risk area: 3x base audit time
- Medium risk area: 2x base audit time
- Low risk area: base audit time.

PETA has specifically exposed accountability issues with this scheme. In 2022, PETA Asia investigated goose farms in Russia, including the Novosibirsk region.<sup>164</sup> According to an RDS certified Russian down company representative, the Novosibirsk region falls under an RDS farm area certification.<sup>165</sup> The representative stated that, unlike other areas, any down he collected from the region could be sold as RDS certified.<sup>166</sup> As to auditing in the region, the representative stated the obvious: auditors do not even ask farmers how the geese are raised.<sup>167</sup> If the auditors are locals, “[t]hey don’t even have to ask,” he said.<sup>168</sup> “They know how the birds are kept.”<sup>169</sup> Nonetheless, the representative stated that the collected down would still be sold as RDS certified.<sup>170</sup> Shockingly, investigators found at least one farm within this region that was unaware that they were RDS certified and insisted that the farm was *not* certified.<sup>171</sup> Accordingly, this farm did not make any effort to comply with RDS animal welfare standards—because they had no reason to believe they had to.<sup>172</sup> Further, this organization is still certified under the RDS despite PETA revealing obvious violations of the standards, including failing to stun birds before their heads are hacked off with a dull axe.<sup>173</sup>

Similarly, between 2021 and 2022, PETA Asia spent 13 months investigating Vietnamese duck farms and slaughterhouses, *all* of which sold down to RDS certified suppliers.<sup>174</sup> PETA investigated sites where ducks’ feet were cut off while they were still conscious, a critical violation of RDS standards.<sup>175</sup> These farms supplied to Nam Vu, a Vietnamese down purchaser and

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<sup>164</sup> *How Geese Are Slaughtered for ‘Responsible’ Down*, PETA, <https://investigations.peta.org/russia-responsible-down/> (last visited Mar. 06, 2023).

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

<sup>167</sup> *Id.*

<sup>168</sup> *Id.*

<sup>169</sup> *Id.*

<sup>170</sup> *Id.*

<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> *Ducks Stabbed in the Neck and Legs Cut Off for ‘Responsible’ Down*, PETA (The use of the collector model strongly implies that these farms fell under a farm area certification), <https://investigations.peta.org/vietnam-responsible-down/> (last visited Mar. 06, 2023).

<sup>175</sup> *Id.*

processor.<sup>176</sup> Nam Vu remains an RDS certified down collector despite Textile Exchange’s assurance that PETA’s recording “shows numerous unacceptable violations of the RDS requirements, including the critical requirement that birds are handled humanely on farms and at slaughter sites.”<sup>177</sup>

Farm Area certification holders continue to market down product as RDS certified despite clear evidence that their suppliers are in critical violation of RDS standards. However, despite bringing these examples of extreme cruelty to Textile Exchange’s attention, these organizations continue to use misleading RDS-certification to market their products—apparently with Textile Exchange’s approval.

Farm Area and Group certification schemes diffuse accountability and do not ensure independent evaluation. Biased and untrained parties are conducting the audits on behalf of independent auditors. The Farm Area and Group certification schemes are specifically designed to only subject a fraction of all farms in the area to independent evaluation. Moreover, under the RDS, audits are always announced or semi-announced. Only confirmation visits are unannounced—though Certifying Bodies are not required to conduct confirmation visits under Farm Area certification.<sup>178</sup> Under the RAF, Certifying Bodies may elect to conduct unannounced audits, though may instead opt for semi-announced audits.<sup>179</sup> In sum, while all RDS and RAF certified products claim to be from independently certified farms, this claim is based on a snapshot of a select few farms, which have had the opportunity to prepare and rehearse for inspection. Certification is rarely based on an independent evaluation of regular conditions.

### **5. RDS Certification Does Not Ensure Full Traceability from the “Source to Final Product.”**

Textile Exchange repeatedly markets RDS certification as a reliable method to trace materials from their source through the entirety of the supply chain:

- “The Responsible Down Standard (RDS) (independently) certifies down and feathers against animal welfare requirements and tracks it *from farm to final product*.”<sup>180</sup>
- “The Responsible Down Standard (RDS) describes and (independently) certifies animal welfare practices in down and feather production and tracks the certified [down and feathers/material(s)] *from farm to final product*.”<sup>181</sup>
- “The Responsible Down Standard (RDS) aims to ensure that down and feathers come from animals that have not been subjected to any unnecessary harm. RDS

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<sup>176</sup> Jasmin Malic Chua, *PETA Slams ‘Sham’ Responsible Down Standard*, SOURCING J. (Nov. 28, 2022), <https://sourcingjournal.com/sustainability/sustainability-materials/peta-responsible-down-standard-h-and-m-gap-lacoste-ducks-pangaia-flwrdown-391985/>.

<sup>177</sup> *Id.*

<sup>178</sup> RDS CERTIFICATION PROCEDURES, V3.2, D3.3.9.

<sup>179</sup> RESPONSIBLE ANIMAL FIBER CERTIFICATION PROCEDURES 2.1, *supra* note 153, at D3.1.2.

<sup>180</sup> STANDARD CLAIMS POLICY, *supra* note 69, at D2.1.15 (emphasis added).

<sup>181</sup> *Id.*, at D2.1.17 (emphasis added).

ensures high product quality, safety and certainty that down used as filling material is ethically sourced and *comes from tightly controlled and traceable supply chains.*<sup>182</sup>

- “Tracing down and feathers through to finished products.”<sup>183</sup>
- “Chain of custody tracks fibers *at every stage* of their journey.”<sup>184</sup>
- “[We are/Organization Name is] certified to the [Standard Name], which certifies [organically grown material/recycled material/down/wool/mohair/alpaca fiber] *from the source to final product.*”<sup>185</sup>

Despite multiple assurances to consumers and customers, Textile Exchange admits that its certifications *do not* provide transparency as to the source of an animal. Textile Exchange states that its standards, like the RDS, “are not designed to provide full supply chain transparency.”<sup>186</sup> In some cases, it is impossible to know where materials originated due to the limited scope of certification. However, rather than address these realities, Textile Exchange misleadingly markets RDS products as transparent and infallibly traceable to the source.

Further, despite numerous assurances that down can be traced back to its source, certified companies are either unable to do so, or unwilling to publically disclose whether their down is truly traceable. Following PETA’s investigation of Vietnamese down suppliers, PETA identified H&M and Gap Inc. as two companies that reportedly received down from a noncompliant supplier,<sup>187</sup> based on the supplier’s own advertising and representations. Both Gap Inc. and H&M deny involvement with the investigated down suppliers, though have failed to provide any evidence of such. Surely, if the traceability claims were true, these companies could easily show that they have no connection to noncompliant down sources and market their commitments to animal welfare. However, their failure to release any information to corroborate their claims reflects either an inability to trace down to its source or an unwillingness to admit the actual source of their down.

Not only is the RDS incapable of transparency, in most cases, it does not trace material back to the “source.” Parent farms raise ducks and geese for egg production; once the eggs hatch, those birds are used for their meat and down.<sup>188</sup> Parent farms differ from other farms in that most farms do not breed and hatch their own birds. Rather, they supply other farms with eggs or hatchlings who will

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<sup>182</sup> *Luxurious Siberian Goose Down Comforter All-Season Duvet Insert*, LUXURY EGYPTIAN LINENS, <https://www.luxuryegyptianlinens.com/lu12thcotwtw.html> (last visited Mar. 06, 2023) (emphasis added).

<sup>183</sup> *Responsible Down Standard*, TEXTILE EXCHANGE, <https://textileexchange.org/responsible-down-standard/> (last visited Mar. 03, 2023) (emphasis added).

<sup>184</sup> *Chain of Custody*, TEXTILE EXCHANGE, <https://textileexchange.org/chain-of-custody/> (last visited Mar. 06, 2023).

<sup>185</sup> STANDARD CLAIMS POLICY, *supra* note 69, at 32 (emphasis added).

<sup>186</sup> *Responsible Down Standard*, TEXTILE EXCHANGE, <https://textileexchange.org/responsible-down-standard/> (last visited Mar. 06, 2023).

<sup>187</sup> *Ducks Stabbed in the Neck and Legs Cut Off for ‘Responsible’ Down*, PETA (the use of the collector model strongly implies that these farms fell under a farm area certification), <https://investigations.peta.org/vietnam-responsible-down/> (last visited Mar. 22, 2023).

<sup>188</sup> RDS USER MANUAL, TEXTILE EXCHANGE 60 (2020), <https://textileexchange.org/app/uploads/2021/02/RDS-201-V3.0-RDS-User-Manual.pdf>

later be used for their meat and feathers. Accordingly, the source of the birds used for their feathers is the parent farm where they are born.

Additionally, the adult birds on parent farms may be used for both their eggs and their feathers through live-plucking. Birds on parent farms are at a significantly higher risk of live-plucking because they are kept alive much longer than birds used for their meat. Live-plucking involves forcefully pulling a bird’s feathers from their skin while the animal is alive. If the bird survives the trauma, the feathers will grow back, and the painful cycle continues—as many as 16 times—until the bird is sent to slaughter.<sup>189</sup> A recent investigation of Polish parent farms found that nearly half of the farms engaged in live-plucking.<sup>190</sup>

Because of the substantially higher likelihood of live-plucking on parent farms, Textile Exchange developed a scheme to certify parent farms, as distinguished from individual, group, or area certifications. However, the RDS does not require all parent farms—the *source* of the birds used for their down—to be certified or inspected.<sup>191</sup> While organizations may choose to include parent farms in their certification, Textile Exchange does not require parent farm certification in most cases.<sup>192</sup>

Type of Certification	Minimum Audit Frequency	Relevant Information
Parent farms under <b>individual farm certification</b> (parent farm and meat farm are the same certified site)	Annual <sup>193</sup>	Parent farm treated as any other farm; auditing conducted by Certifying Body. <sup>194</sup>
<b>Parent Farm Certification</b>	Annual <sup>195</sup>	Voluntary certification; auditing and confirmation visits conducted by Certifying Body; live-plucking will revoke Parent Farm Certification “ <i>but will not affect the RDS certification of the farm or applying organization.</i> ” <sup>196</sup>

<sup>189</sup> *Severe Pain and Distress: Live Plucking of Geese Exposed in Poland Farms Despite EU-Wide Ban*, FOUR PAWS (Nov. 12, 2022), <https://www.four-paws.org.uk/our-stories/press-releases/down-expose>.

<sup>190</sup> *Id.*

<sup>191</sup> If a parent farm is considered a group member, each parent farm will be inspected annually. RDS 3.0 D3.2.

<sup>192</sup> If a parent farm is the source of RDS certified down, the parent farm is audited according to the same auditing as a farm under the same certification scheme. RDS USER MANUAL, TEXTILE EXCHANGE 60 (2020), <https://textileexchange.org/app/uploads/2021/02/RDS-201-V3.0-RDS-User-Manual.pdf>.

<sup>193</sup> RDS 3.0 B1.1.1.a.

<sup>194</sup> RDS 3.0 B1.1.1.a.

<sup>195</sup> RDS 3.0 B1.1.1.b. (emphasis added).

<sup>196</sup> RDS 3.0 B1.1.1.b. (emphasis added).



<b>Farms in industrial supply chains</b> (200 or more birds are raised on a farm at once)	None; Confirmation visits according to risk level.	Certified farms must observe parent farms, provide the Certifying Body with a list of parent farms, and allow the certification body to conduct confirmation visits, if necessary according to risk.
<b>Farm Group Certification</b>	Annual <sup>197</sup>	Only applies if the parent farm is also a group member.  Auditing will be conducted by ICS inspector or potentially a Certifying Body.
<b>Farm Area Certification</b> (200 or more birds on farm at once)	Annual <sup>198</sup>	Auditing will be conducted by ICS inspector or potentially a Certifying Body.
<b>Farm Area Certification-Small Farm</b> (fewer than 200 birds on farm at once)	None; a sample of farms in the area are audited annually according to area’s risk level. <sup>199</sup>	“Confirmation visits may be conducted but are not required for Farm Area Certification.” <sup>200</sup> Inspection may be conducted by Group ICS inspector or potentially Certifying Body.

Under the Farm Area certification schemes, even where a certification body knows that live-plucking occurs in a region, Textile Exchange only requires annual confirmation visits (which are not full audits)<sup>201</sup> of 50% of parent farms in the area.<sup>202</sup> Where live-plucking is actually observed on a parent farm, the certificate for the *organization* will not immediately be suspended.<sup>203</sup> Rather, the organization needs to either “confirm that live-plucking on the parent farm has ceased or that the parent farm is no longer a supplier of eggs or hatchlings to the RDS certified farm.” However, certifiers are not required to conduct a confirmation visit to ensure that the corrective action plan

<sup>197</sup> RDS CERTIFICATION PROCEDURES, V3.2 D3.4.1.

<sup>198</sup> *Id.* at D3.4.2.

<sup>199</sup> *Id.* at D3.4.1.

<sup>200</sup> *Id.* at D3.3.9.

<sup>201</sup> *Id.* at D2.6.1.c (“Confirmation visits, where the site receives less than one hour’s notice of the visit and the auditor limits the evaluation to a visual check for animal welfare only. (Note that a confirmation visit is not considered to be a full audit.)”).

<sup>202</sup> *Id.* at D2.1.2.b.

<sup>203</sup> *Id.* at D2.3.4.

is actually followed.<sup>204</sup> Finally, even where audits are required, these audits are announced or semi-announced, allowing malfeasance to easily be concealed.<sup>205</sup>

Consumers expect that an RDS certification that claims to ensure *strict* animal welfare standards from *source* to final product through *independent* auditing would do just that. However, at the point when ducks and geese are the most vulnerable to extreme cruelty, RDS is no assurance.

### **B. The FTC Should Enforce the FTC Act Against Textile Exchange Because Textile Exchange’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.<sup>206</sup> 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.”<sup>207</sup> “Because of their lack of susceptibility to consumer assessment,” Textile Exchange’s claims that RDS and RAF certification ensures strict animal welfare standards are of exactly the type “subject to more intense scrutiny by the FTC.”<sup>208</sup>

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.”<sup>209</sup> 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.”<sup>210</sup> The same is true of Textile Exchange’s animal welfare claims. Consumers can easily ascertain the price charged for a product but they cannot observe or learn specifically of the treatment of the animal it was made from.

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

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<sup>204</sup> *Id.* at D2.3.4.

<sup>205</sup> *Id.* at D2.6.1.

<sup>206</sup> See *FTC Policy Statement on Deception*, *supra* note 42, § III.

<sup>207</sup> 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.”).

<sup>208</sup> Azcuenaga, *supra* note 207.

<sup>209</sup> Jill E. Hobbs, *Technical Barriers to Trade*, in *HANDBOOK ON INTERNATIONAL TRADE POLICY* 394, 395 (William A. Kerr & James D. Gaisford eds., 2011).

<sup>210</sup> 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](https://www.ftc.gov/sites/default/files/documents/public_statements/remarks-commissioner-julie-brill/101118promomarketingspeech.pdf).

of the living animals. The consumer relies on the RDS and RAF seals for information about treatment practices, but Textile Exchange has access to far more complete and accurate information about those practices.<sup>211</sup> The RDS and RAF seals convey to consumers that animals are treated responsibly without clearly and conspicuously disclosing the standards' lack of accountability or rigor. The consumer's inability to discern the veracity of these claims makes her more likely to be deceived or misled about the very information that will lead her to purchase an RDS or RAF certified product. As a result, her purchase may support practices she specifically attempts to avoid.

Textile Exchange takes advantage of the consumer's concern for humane treatment of animals. The RDS and RAF seals and assertions regarding animal treatment made on its website deflect attention from Textile Exchange's minimal standards and falsely assure the buying public that RDS and RAF certification "makes sure animals are well cared for and *never treated with cruelty*."<sup>212</sup> A consumer considering purchasing an RDS or RAF certified product has no way of independently knowing the conditions in which animals used to make the product are kept. If Textile Exchange made clear to consumers that its certifications do not reliably ensure any level of animal welfare, consumers would not specifically purchase RDS or RAF certified products out of a concern for animal welfare.

Textile Exchange's claims of responsible treatment of animals, prohibition of cruelty to animals, independent certification, and supply chain traceability produce a misleading effect on the well-intentioned but informationally disadvantaged purchasing public, and are therefore unlawful. The Commission should adhere to its announced policies and prioritize enforcement of the FTC Act against Textile Exchange.

## **VI. Relief Requested**

Textile Exchange's deceptive and misleading advertising appears to violate Section 5 of the FTC Act. PETA urges the Commission to take action to stop Textile Exchange from deceiving consumers about the treatment of animals used to produce goods under the RDS and RAF certifications. Contrary to Textile Exchange's claims, its standards do not prevent cruelty to animals, do not require independent or reliable auditing, and do not provide full traceability for consumers. The reasonable consumer is thus misled by Textile Exchange's false and misleading claims.

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<sup>211</sup> Cf. David Blandford & Linda Fulponi, *Emerging Public Concerns in Agriculture: Domestic Policies and International Trade Commitments*, 26 EUR. REV. OF AGRIC. ECON. 409, 409 (1999) (explaining that agricultural economists recognize that, "[w]here 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.").

<sup>212</sup> *Essentials of the Responsible Down Standard Webinar*, *supra* note 1, at 13 (emphasis added).

Consumers would not prioritize RDS or RAF certified products based on animal welfare considerations absent the misleading claims. If consumers knew the truth—that many of Textile Exchange’s standards do not prevent cruelty to animals and are unreliably enforced at best—they would be significantly more likely to choose a different product. These consumers depend on the Commission to protect them from such claims. This complaint demands that Textile Exchange be held accountable for misleading consumers into believing that the RDS and RAF certifications ensure animals are treated with respect, or at very least protected from cruelty, in a way reasonable consumers expect.

Accordingly, the undersigned petitioner respectfully requests that the Commission:

- (1) require Textile Exchange to cease and desist its RDS and RAF marketing as “responsible”;
- (2) require Textile Exchange to disclose the actual conditions under which animals are treated at RDS and RAF certified farms;
- (3) require Textile Exchange to disseminate corrective statements in all media in which the misleading statements were previously disseminated;
- (4) require Textile Exchange to disclose the actual audit reports of its certified farms;
- (5) require Textile Exchange to remove false or misleading statements from its advertising including, but not limited to:
  - a. Statements on its websites
  - b. Statements in promotional materials; and
  - c. Statements it approves for third-party use
- (6) enjoin Textile Exchange from making such misleading statements in the future; and
- (7) impose all other penalties as are just and proper.

DATED: May 15, 2023

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

By: \_\_\_\_\_

Cydnee Bence

PETA Foundation  
1536 16<sup>th</sup> Street, NW  
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Appendix 1: Table of Critical Non-Conformities

Standard	Critical Non-conformities
Responsible Down Standard (RDS)	<ul style="list-style-type: none"> <li>• “There shall be no force-feeding of waterfowl” or sourcing animals who were force-fed or outsourcing force-feeding.<sup>213</sup></li> <li>• “There shall be no live-plucking of down and feather of waterfowl” including molt harvesting, forced molting, assisted molting, or sourcing from animals who were live-plucked or outsourcing for live-plucking.<sup>214</sup></li> <li>• “Animals shall be handled humanely; mistreatment of animals is unacceptable. Mistreatment includes rough physical contact such as kicking, striking, throwing or dropping animals, dragging or pulling waterfowl by the feathers, wings, head, neck, tail, or legs.”<sup>215</sup> Further, special care must be taken when handling hatchlings, chicks, sick, lame, or injured animals.<sup>216</sup></li> <li>• Slaughterhouse workers may not deliberately injure an animal.<sup>217</sup></li> </ul>
Responsible Animal Fibers (RWS, RAS, RMS)	<ul style="list-style-type: none"> <li>• “Sheep/Alpaca/Goats shall have access to adequate nutrition, suited to the animals’ age and needs, to maintain normal health and to prevent prolonged hunger or malnutrition.”<sup>218</sup></li> <li>• “Sheep/Alpaca/Goats shall have an adequate supply of clean, safe drinking water each day.”<sup>219</sup></li> <li>• “Sheep/Alpaca/Goats shall have access to natural pasture at all times unless emergency or severe weather conditions would otherwise negatively impact on their welfare.”<sup>220</sup></li> <li>• “Sheep/Alpaca/Goats that are found suffering from health problems shall be treated promptly.”<sup>221</sup></li> <li>• “Animal husbandry procedures shall be performed or supervised by a competent stockperson, using well</li> </ul>

<sup>213</sup> RDS 3.0 AW1.1.

<sup>214</sup> RDS 3.0, AW3.10; it is important to note that under Farm Area and Group RDS certifications, live-plucking is not considered a critical-nonconformity. RDS CERTIFICATION PROCEDURES, V3.2, at D2.3.4.

<sup>215</sup> RDS 3.0 AW4.1.1

<sup>216</sup> RDS 3.0 AW4.1

<sup>217</sup> RDS 3.0 AW6.5.1.

<sup>218</sup> RWS 2.2 AW1.1; RAS 1.0 AW1.1; RMS 1.2 AW1.1.

<sup>219</sup> RWS 2.2 AW1.2; RAS 1.0 AW1.2; RMS 1.2 AW1.2.

<sup>220</sup> RWS 2.2 AW2.11; RAS 1.0 AW2.11; RMS 1.2 AW2.12.

<sup>221</sup> RWS 2.2 AW3.3; RAS 1.0 AW3.3; RMS 1.2 AW3.3.

	<p>maintained equipment designed specifically for the purpose.”<sup>222</sup></p> <ul style="list-style-type: none"> <li>• “Shearing shall be performed by - or under the direct supervision of - a competent shearer.”<sup>223</sup></li> <li>• “Artificial breeding procedures shall be carried out by competent operators.”<sup>224</sup></li> <li>• “Sheep/Alpaca/Goats shall be euthanized without delay if they are experiencing severe pain or illness and do not have a reasonable expectation of improvement.”<sup>225</sup></li> <li>• “When an animal is slaughtered on-farm, it shall be done using a method that is quick, causes minimal stress and pain, and results in a rapid loss of consciousness followed by death without the animal regaining consciousness.”<sup>226</sup></li> <li>• “Animals shall be handled humanely; mistreatment of animals is unacceptable. Mistreatment includes rough physical contact such as kicking, striking, slamming gates on the sheep, tripping, throwing, or dropping animals, dragging, or pulling sheep/alpaca/goats by the fleece, tail, ears, head, horns, or neck, or dragging by the back legs.”<sup>227</sup></li> <li>• “Farmers shall not knowingly sell their sheep/alpaca/goats to traders or brokers who intend to export their livestock for slaughter internationally.”<sup>228</sup></li> <li>• “Farmer shall comply with all applicable legislation on animal welfare and land management.”<sup>229</sup></li> <li>• “Parallel production is prohibited: all sheep/alpaca on the farm shall fall under RWS/RAS/RMS certification.”<sup>230</sup></li> <li>• “Farmer shall give the auditor full access to the farm and operations that fall under certification.”<sup>231</sup></li> <li>• <b>RWS only:</b> “Mulesing is prohibited” including freeze mulesing (steining). Farms with “Ceased Mulesing</li> </ul>
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<sup>222</sup> RWS 2.2 AW3.7; RAS 1.0 AW3.7; RMS 1.2 AW3.7.

<sup>223</sup> RWS 2.2 AW3.15; RAS 1.0 AW3.13; RMS 1.2 AW3.13.

<sup>224</sup> RWS 2.2 AW3.19; RAS 1.0 AW3.17; RMS 1.2 AW3.17.

<sup>225</sup> RWS 2.2 AW3.25; RAS 1.0 AW3.24; RMS 1.2 AW3.23.

<sup>226</sup> RWS 2.2 AW3.26; RAS 1.0 AW3.25; RMS 1.2 AW3.24.

<sup>227</sup> RWS 2.2 AW4.1; RAS 1.0 AW4.1; RMS 1.2 AW4.1.

<sup>228</sup> RWS 2.2 AW4.8; RAS 1.0 AW4.7; RMS 1.2 AW4.8.

<sup>229</sup> RWS 2.2 AW5.1; RAS 1.0 AW5.1; RMS 1.2 AW5.1.

<sup>230</sup> RWS 2.2 AW5.2; RAS 1.0 AW5.2; RMS 1.2 AW5.2.

<sup>231</sup> RWS 2.2 AW5.4; RAS 1.0 AW5.4; RMS 1.2 AW5.4.

	status” are considered to be free of mulesing, despite previously practicing mulesing. <sup>232</sup>
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<sup>232</sup> RWS 2.2 AW3.11.