

January 10, 2024

Via e-mail

Samuel Levine, Director
Bureau of Consumer Protection
Federal Trade Commission
Slevine1@ftc.gov

Re: Complaint requesting action to enjoin false and deceptive advertising by Sustainable Fibre Alliance

Dear Director Levine:

On behalf of People for the Ethical Treatment of Animals (PETA), I am writing to request that the Federal Trade Commission (FTC) investigate and enjoin the Sustainable Fibre Alliance (SFA), owner and purveyor of the SFA Cashmere Standard certification, from using false and misleading claims in advertising in apparent violation of the Federal Trade Commission Act, 15 U.S.C. §§ 45–58.

As explained in further detail in the attached complaint, the SFA falsely and misleadingly asserts that SFA-Certified products are made with a higher standard of animal welfare than that which is actually required or assured by the standards. Consumers consider such claims material and understand them to mean that SFA certification ensures that producers meet strict animal welfare requirements backed by rigorous enforcement. But SFA's standards fail to support these claims as its certification does not "ensure the welfare of goats," nor is compliance with the standards reliably assured.

Further, PETA has specifically exposed inhumane treatment of animals at SFA-Certified sites—including pinning down goats and painfully tearing their hair out, leaving some goats to suffer from bleeding wounds—contrary to the SFA's claim that certification ensures "high animal welfare practices" and protects the "health and well-being of goats."

PETA respectfully requests that the FTC aid consumers by enjoining the SFA from making deceptive claims relating to animal care.

Very truly yours,



Mary Maerz
Counsel
PETA Foundation



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PETA FOUNDATION IS AN OPERATING
NAME OF THE FOUNDATION TO
SUPPORT ANIMAL PROTECTION.

ENTITIES:

- PETA U.S.
- PETA Asia
- PETA India
- PETA France
- PETA Australia
- PETA Germany
- PETA Switzerland
- PETA Netherlands
- PETA Foundation (U.K.)

BEFORE THE UNITED STATES
FEDERAL TRADE COMMISSION

PEOPLE FOR THE ETHICAL TREATMENT OF ANIMALS,

Petitioner,

v.

SUSTAINABLE FIBRE ALLIANCE,

Respondent.

COMPLAINT AND REQUEST FOR INVESTIGATION,
INJUNCTION, AND OTHER RELIEF

Mary Maerz
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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 the Sustainable Fibre Alliance (SFA), owner and purveyor of the SFA Cashmere Standard certification, 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, the SFA deceives consumers by implying that SFA-Certified products are made with a higher standard of animal welfare than that which is actually required or assured by the standards.

In response to the “threat” to the sustainability of the cashmere industry, the SFA created certifications to help brands and retailers “demonstrate responsible sourcing in their supply chains.”¹ The SFA’s Cashmere Standard is specifically designed to communicate that certified products are made with higher animal welfare standards than other comparable products.² According to the SFA, its certification program is intended to “ensure goat health and well-being” and “minimis[e] suffering and discomfort as much as possible.”³ Further, claims that accompany certified products claim that those products “ha[ve] been produced following high animal welfare practices,” and “produced in a way that improves the well-being of animals.”⁴ Consumers are assured that SFA-certified products have a rigorous system of assessment and auditing, ensuring that producers adhere to the standards to receive or maintain certification.⁵

Consumers have, and must be able to maintain, a reasonable expectation that when the SFA claims that its certification ensures strict animal welfare requirements, with rigorous enforcement, that such a description is truthful. However, these assertions are not true. SFA certification does not “ensure the welfare of goats,” nor is compliance with the standards reliably assured. The SFA’s animal welfare standards allow for obvious and standard industry cruelty while still permitting products to be sold as certified. Further, producers may not face consequences for violations of the standards, as the SFA’s assessment and auditing scheme allows for certification despite non-compliance.⁶ Under group certifications, enforcement authority is generally left to the producers themselves, rather than an independent body.⁷ If consumers were aware of the inadequacy of the standards and lack of accountability, they would not place any meaningful value on SFA certification, and many would likely choose to purchase alternative products.

Consumers cannot determine firsthand the level of care animals receive under SFA certification because they cannot observe how producers treat the goats used to make SFA-Certified products. As the SFA continues to expand by certifying more suppliers and companies, prompt action by the Commission is critical before it issues additional certifications. 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

¹ *About Us*, Sustainable Fibre Alliance, <https://sustainablefibre.org/> (last visited Jan. 9, 2024).

² *Animal Welfare*, Sustainable Fibre Alliance, <https://sustainablefibre.org/animal-welfare-indicators/> (last visited Jan. 9, 2024).

³ *Id.*

⁴ *Claims Guidance for SFA Chain of Custody Guidelines*, Sustainable Fibre Alliance, pp. 4-5 (Jul. 19, 2023), https://sustainablefibre.org/wp-content/uploads/2023/07/230626_SFA-Chain-of-Custody-Guidelines-v3-Claims-Guidance.pdf (last visited Jan. 9, 2024).

⁵ *Requirements for Conformity Assessment Bodies*, Sustainable Fibre Alliance (Aug. 2022), <https://sustainablefibre.org/wp-content/uploads/2023/07/SCS-015-04.0-EN-Requirements-for-Conformity-Assessment-Bodies.pdf> (last visited Jan. 9, 2024).

⁶ *See generally id.*

⁷ *Id.* at 30.

the SFA from deceiving consumers with false and misleading representations relating to the animal welfare standards claimed by its Cashmere Standard 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 Sustainable Fibre Alliance, a nonprofit organization organized in the United Kingdom, and headquartered at 41 Bryn Awelon, Leadmill, Mold, CH7 1LT, Wales, United Kingdom, “is a standard holding and membership organization [that] represent[s] a global alliance of supply chain actors, stakeholders and industry experts with a mission to ensure the long-term viability of the cashmere sector.”⁸ The SFA “aims to minimise the environmental impact of cashmere, safeguard livelihoods and ensure high animal welfare standards. [It] work[s] with the end-to-end supply chain, connecting livestock herders to brands and retailers in the global fashion industry.”⁹ The SFA administers various certification programs, one of which—the SFA Cashmere Standard—purports to ensure animal welfare for animals used to make cashmere products.

The SFA intentionally targets the United States market. The company registered its logo as a trademark with the U.S. Patent and Trademark Office (USPTO)¹⁰ for the purpose of informing U.S. consumers that products are “SFA-Certified” and—as the SFA claims—meet the standards required, including animal welfare standards. SFA-Certified operations supply cashmere to major global brands, such as Burberry, Louis Vuitton, Hermès, Dior, Gucci, Prada, Chanel, Max Mara, and Ralph Rucci.¹¹ SFA member companies also include Burberry, John Lewis, and U.S.-based J. Crew and Madewell.¹² Accordingly, the SFA is not only aware that its claims are made to U.S. consumers, but actively encourages it.

III. Statement of Facts

A. Certification and Accountability Scheme

The SFA creates the Cashmere Standard and controls the use of its logos and claims that entities or products are “SFA-Certified,” but plays little role in whether certified organizations reliably implement or adhere to the standards. Rather, accountability is severely diminished through limitless exceptions to the standards and lack of consequences for noncompliance. The SFA’s approach neither ensures reliable adherence to the standards nor sufficient accountability. Consumers believe they are paying for a product with a robust

⁸ *About Us*, *supra* note 1.

⁹ *Id.*

¹⁰ Trademark Serial No. 90864354, USPTO (filed Aug. 4, 2021), https://tsdr.uspto.gov/#caseNumber=90864354&caseType=SERIAL_NO&searchType=statusSearch (last visited Jan. 9, 2024).

¹¹ During the PETA Asia investigation, Khanbogd confirmed it supplies to Lanificio Colombo, which supplies to Burberry, Louis Vuitton, Hermès, Dior, Gucci, Prada, Chanel, Max Mara, and Ralph Rucci. *See also Sustainability*, Lanificio Colombo, <https://www.lanificiocolombo.com/pages/sostenibilita> (last visited Jan. 9, 2024) (Lanificio Colombo website promoting SFA affiliation).

¹² *Board*, Sustainable Fibre Alliance, <https://cashmere-connect.com/board/page/5/> (last visited Jan. 9, 2024).

accountability scheme guaranteed by the SFA but actually receive a hollow certification with little to no ability to assure compliance with the organization's standards.

The SFA utilizes Conformity Assessment Bodies (CABs) for its certifications, which are independent "organizations performing professional and objective assurance of producers and processors operating the certification systems."¹³ According to the SFA, there are four steps to certification against the SFA Cashmere Standard:

1. Conduct a self-assessment against the applicable criteria and indicators of the SFA Cashmere Standard. This will enable users of the standard to ascertain their current level of compliance, identify areas of improvement or development and ensure that they are prepared to undergo third party audit.
2. The self-assessment documents are reviewed by a body separate from the producer being assessed (for example, SFA staff, a standards committee, or another stakeholder body authorised by SFA to conduct these second party reviews).
3. Undergo a third-party audit where standard users will be visited by an independent third-party auditor from one of the SFA approved Conformity Assessment Body (CAB). They will conduct on-site verification of compliance against the SFA Cashmere Standard, looking to verify that the applicable criteria and indicators for the standard user are being followed. The CAB will issue an audit report once they have completed the audit, and if successful, the CAB will issue certification against the SFA Cashmere Standard.
4. Review and re-certification. SFA Cashmere Standard certificates are valid for 1 year. When the certification period comes to an end, the standard user should review their self-assessment to ensure continued compliance against the SFA Cashmere Standard which is valid at the time and undergo another third-party audit. This audit scope will differ, speaking to different herders, staff, visiting different sites to previous/initial audit and reviewing different records (where applicable).¹⁴

CABs evaluate entities against all certification requirements, and the evaluation consists of a review of documents and an on-site assessment visit.¹⁵ A CAB awards a Certificate of Compliance if an entity meets all Cashmere Standard certification requirements.¹⁶

"In general, applicants that are obligated to be certified in accordance with the criteria provided in the Cashmere Standard are to be inspected at least annually," but the CAB may grant exceptions from the annual onsite assessment cycle.¹⁷ CABs use "Simple Random Sampling," to randomly select 10% or 10 producers, whichever is greater, to determine which producers CABs assess or inspect in any given annual cycle.¹⁸

The SFA provides group certification for producer organizations, which are "group[s] of farmers, farms or nomadic herding families that work together to produce Cashmere fibre."¹⁹ Producer organizations are required to have a defined internal control system (ICS), which is responsible for ensuring conformity to

¹³ *Requirements for Conformity Assessment Bodies*, *supra* note 5, at 5.

¹⁴ *SFA Cashmere Standard v 1.1*, Sustainable Fibre Alliance (Jan. 2023), p. 3, https://sustainablefibre.org/wp-content/uploads/2023/01/230110_SFA-Cashmere-Standard-Jan-2023_FINAL_V1.1-3.pdf (last visited Jan. 9, 2024).

¹⁵ *Requirements for Conformity Assessment Bodies*, *supra* note 5, at 27 (provision 5.2.1).

¹⁶ *Id.* at 29 (provision 5.3.2).

¹⁷ *Id.* at 30 (provision 5.4.2).

¹⁸ *Id.* at 27 (provision 5.2.2).

¹⁹ *Id.* at 30 (provision 5.5).

the Cashmere Standard by all of its members by inspecting members and handling non-conformities.²⁰ Compliance with the Cashmere Standard by all members of a producer organization is not required for SFA certification.²¹ CABs use sampling to assess the producer organization prior to certification, but CABs are apparently not required to conduct on-site assessments or inspections after the organization is certified.²²

B. Standards and Non-conformities

As described herein, the SFA has issued, and continues to issue, false and misleading representations about the level of welfare that animals used under the SFA certification receive. Reasonable consumers expect a level of animal care higher than that which the SFA requires. Further, consumers expect that certified products actually meet certification requirements—though the SFA may permit producers to be certified, and companies to market noncompliant goods as certified, despite failing to meet standards. Specifically, as detailed below, the SFA asserts that its certification “ensure[s] the welfare of [] goats,”²³ “ensure[s] goat health and well-being,”²⁴ and represents that certified cashmere has been “produced in a way that improves the well-being of animals,” and “produced to high animal welfare standards [and] practices.”²⁵

To achieve the stated animal welfare protections, the SFA writes the standards for certification. The SFA created and implements three primary standards: the SFA Cashmere Standard, the Clean Fibre Processing Standard, and the SFA Chain of Custody. Animal welfare in cashmere production is addressed by the SFA Cashmere Standard, which covers raw production of cashmere fiber in Mongolia and China.²⁶

The SFA adopted its Cashmere Standard (“New Standard”) in January 2023, replacing previous standards. Producers were intended to be in compliance with the New Standard beginning January 1, 2024, however, the implementation of the New Standard has recently been indefinitely delayed “due to an extended consultation period.”²⁷ Currently, Mongolian producers are only required to comply with the SFA Animal Husbandry Code of Practice v 2.2 (“Current Standard”), and producers in China are required to comply with the SFA Cashmere Goat Welfare Code of Practice v 1.0.²⁸ According to the SFA, the Current Standard will essentially become obsolete once the New Standard is implemented, though notably, “users [will not] need to get recertified [under the New Standard] until their current certificates expire” under the Current Standard.²⁹ The two standards outline similar animal welfare requirements. Both the New and Current Standards are addressed in this complaint, given the state of transition, and many of the SFA’s claims reference the New Standard specifically. Additionally, both standards are discussed to emphasize that, even under the SFA’s proposed changes to its animal welfare standards, the organization’s representations and advertisements remain deceptive under the FTC Act.

The New and Current Standards are comprised of core indicators and recommendations. “Core criteria cover the highest-priority and highest-risk environmental, social, and labour issues.”³⁰ The SFA claims that producers and processors are required to comply with all core criteria at all times as a condition for CABs to grant a certificate or for producers and processors to be licensed to sell SFA-Certified cashmere.³¹

²⁰ *Id.* at 30-31 (provisions 5.5.1-5.5.4).

²¹ *Id.* (provisions 5.5.1(D), 5.5.4).

²² *Id.* (provisions 5.5-5.5.4).

²³ *See, e.g., The SFA Cashmere Standard*, Sustainable Fibre Alliance, <https://sustainablefibre.org/the-sfa-cashmere-standard/> (last visited Jan. 9, 2024).

²⁴ *Animal Welfare*, *supra* note 2.

²⁵ *Claims Guidance for SFA Chain of Custody Guidelines*, *supra* note 4, at 4-5.

²⁶ *Abouts Us*, *supra* note 1.

²⁷ *The SFA Cashmere Standard*, *supra* note 20.

²⁸ *Id.*

²⁹ *SFA Cashmere Standard v 1.1*, *supra* note 11, at 6.

³⁰ *Requirements for Conformity Assessment Bodies*, *supra* note 5, at 14 (provision 2.1.15).

³¹ *Id.*

Recommendations do not need to be complied with in order for an entity to be certified,³² although many relate to the bare minimum that consumers would require of a producer practicing “high animal welfare standards.”

As discussed in more detail below, non-compliance with the standard—referred to as non-conformities—may lead to the withholding, suspension, denial, or withdrawal of SFA certification,³³ though certification decisions may merely include requests for the correction of minor non-conformities.³⁴ CABs may also develop their own criteria and procedures for granting apparently indefinite exceptions to requirements for certification.³⁵ In sum, the SFA’s standards explicitly allow for the certification and sale of non-conforming cashmere, and cashmere obtained from animals treated cruelly, while claiming otherwise.

According to the SFA, the Cashmere Standard “defines best practice for responsible cashmere production. Focused at the herder-level, the standard covers the most pressing sustainability issues associated with raw fibre production and outlines the intended outcomes achieved through the standard’s adoption.”³⁶ The SFA makes various claims about the legitimacy of its animal welfare standards, including:

- The SFA draws on traditional knowledge and internally recognised best practice to ensure goat health and well-being.³⁷
- Our standards allow companies to...make credible claims about SFA-Certified products.³⁸
- The SFA Cashmere Standard defines best practice for responsible cashmere production, [which upholds] five global principles, [including] that herders [] ensure the welfare of their goats....³⁹
- The SFA offers a holistic and globally-recognized standard that addresses the key sustainability and welfare issues related to cashmere production and provides assurance for ‘responsibly-produced cashmere.’⁴⁰
- At [the] heart [of the SFA Cashmere Standard] are our codes of practice, which outline best practice requirements that must be followed in order for producers to become SFA-Certified.⁴¹

The SFA allows certain product claims related to SFA certification, including on clothing labels, online product descriptions, and point-of-sale marketing.⁴² One example of an allowed product claim, provided in the SFA’s Claims Guidance document, is “[X%/All] of the cashmere in this [garment/product] has been produced following high animal welfare practices, as certified by the SFA.”⁴³ The guidance document also instructs that all claims bearing the “SFA Certified” logo “should include qualifying statements about the

³² *Id.* at 36 (provision 6.8).

³³ *Id.* at 29 (provision 5.3.4).

³⁴ *Id.*

³⁵ *Id.* (provision 5.3.5).

³⁶ *The SFA Cashmere Standard*, *supra* note 20.

³⁷ *Animal Welfare*, *supra* note 2.

³⁸ *About Us*, *supra* note 1.

³⁹ *The SFA Cashmere Standard*, *supra* note 20.

⁴⁰ *Id.*

⁴¹ *C001 Animal Husbandry and Cashmere Fibre Harvesting Code of Practice*, Sustainable Fibre Alliance, p. 4, <https://sustainablefibre.org/wp-content/uploads/2021/06/SCS-007-02.2-EN-C001-Animal-Husbandry-and-Cashmere-Fibre-Harvesting-Code-of-Practice-1.pdf> (last visited Jan. 9, 2024).

⁴² *Claims Guidance for SFA Chain of Custody Guidelines*, *supra* note 4.

⁴³ *Id.* at 4.

SFA to increase consumer understanding and awareness of our work.”⁴⁴ SFA-provided examples of qualifying statements include:

- The certified cashmere in this garment has been produced in a way that improves the well-being of animals.⁴⁵
- ‘SFA Certified’ cashmere has been produced to high animal welfare standards, tracing it from herders to final product, and supporting socially responsible practices.⁴⁶

IV. Legal Standard

The FTC Act declares unfair or deceptive acts or practices unlawful, including misrepresentations in advertising.⁴⁷ 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.⁴⁸

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.”⁴⁹ Although “words and sentences may be literally and technically true [they may be] framed in such a setting as to mislead or deceive.”⁵⁰ Indeed, “[a] deceptive impression may be created by implication and innuendo without affirmative misrepresentation or misstating a single fact.”⁵¹

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.”⁵² 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.”⁵³ 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.”⁵⁴

Deceptive advertising “must be judged by viewing it as a whole.”⁵⁵ The Commission is “required to look at the complete advertisement and formulate [its] opinions on the basis of the net general impression conveyed by them and not on isolated excerpts.”⁵⁶ The focus is the “entire mosaic . . . rather than each tile separately.”⁵⁷

The Commission’s concern focuses on the “message conveyed or the implication created in the mind of the ordinary purchaser.”⁵⁸ The law is made to protect the public—“that vast multitude . . . who, in making

⁴⁴ *Id.* at 5.

⁴⁵ *Id.*

⁴⁶ *Id.*

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

⁴⁸ See *FTC Policy Statement on Deception*, FED. TRADE COMM’N § I (Oct. 14, 1983).

⁴⁹ *Raymond Lee Org., Inc.*, 92 F.T.C. 489, 591 (1978).

⁵⁰ *Horizon Corp.*, 97 F.T.C. 464, 732 (1981) (quoting *Bockenstette v. F.T.C.*, 134 F.2d 369, 371 (10th Cir. 1943)).

⁵¹ *MacMillan, Inc.*, 96 F.T.C. 208, 301 (1980).

⁵² *Int’l Harvester Co.*, 104 F.T.C. 949, 1057 (1984).

⁵³ *Horizon Corp.*, 97 F.T.C. 464, 741 (1981).

⁵⁴ *Horizon Corp.*, 97 F.T.C. at 741–42.

⁵⁵ *Beneficial Corp. v. FTC*, 542 F.2d 611, 617 (3d Cir. 1976).

⁵⁶ *Standard Oil of Cal.*, 84 F.T.C. 1401, 1471 (1974), *modified*, 96 F.T.C. 380 (1980).

⁵⁷ *FTC v. Sterling Drug, Inc.*, 317 F.2d 669, 674 (2d Cir. 1963).

⁵⁸ *Horizon Corp.*, 97 F.T.C. 464, 741(1981) (emphasis added).

purchases, do not stop to analyze, but are governed by appearances and general impressions.”⁵⁹ An objective reasonable standard determines whether advertising is false or misleading.⁶⁰ 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.”⁶¹

A deceptive representation, omission, or practice is actionable under the FTC Act if it is “material.”⁶² 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.”⁶³ This is a subjective standard.⁶⁴ “[I]f consumers prefer one product to another, the Commission [does] not determine whether that preference is objectively justified.”⁶⁵

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.”⁶⁶ The Commission will also infer materiality when “evidence exists that a seller intended to make an implied claim.”⁶⁷

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.⁶⁸ 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.⁶⁹ 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.⁷⁰ The FTC settlement barred Tested Green and its owner from making misrepresentations when selling any product, including making any representations about a user or endorser “unless they clearly and prominently disclose any connection they have with the endorser if one exists.”⁷¹ The FTC’s director commented: “The FTC will continue to weed out deceptive seals and certifications like the one in this case.”⁷²

⁵⁹ *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”).

⁶⁰ See *Ortega v. Natural Balance, Inc.*, 300 F.R.D. 422, 428–29 (C.D. Cal. 2014).

⁶¹ *Telebrands Corp.*, No. 9313, 2004 WL 3155567, at *32 (F.T.C. Sept. 15, 2004).

⁶² See *FTC Policy Statement on Deception*, *supra* note 42.

⁶³ *Id.* (endnote omitted).

⁶⁴ *Id.* § IV n.46.

⁶⁵ *Id.*

⁶⁶ *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm’n*, 447 U.S. 557, 568 (1980).

⁶⁷ *FTC Policy Statement on Deception*, *supra* note 42, § IV.

⁶⁸ *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).

⁶⁹ 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>.

⁷⁰ See *FTC Settlement Ends “Tested Green” Certifications that were Neither Tested nor Green*, *supra* note 62.

⁷¹ See *id.*

⁷² 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>.

Similarly, longstanding precedent makes clear that knowingly allowing the deceptive use of one’s trademark is a violation of the FTC Act.⁷³ “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.”⁷⁴ 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. The FTC Has Authority Over the SFA’s Deceptive Conduct

The FTC has the authority to take action to enforce the FTC Act with respect to the SFA’s deceptive advertising. The FTC Act, as amended by the U.S. SAFE WEB Act, contains the requisite “clear, affirmative indication” that the Act’s prohibition on “unfair or deceptive acts or practices” extends to foreign-based conduct. *See FTC v. Centro Natural Corp.*, 2014 WL 7525697, at *4-5 (S.D. Fla. Dec. 10, 2014); *see also FTC v. Western Union Co.*, 579 Fed. Appx. 55, 56 (2d Cir. 2014). The FTC has authority over “acts or practices involving foreign commerce” that either: “(i) cause or are likely to cause reasonably foreseeable injury within the United States; or (ii) involve material conduct occurring within the United States.” 15 U.S.C. § 45(a)(4)(A). Here, the SFA’s claims cause or are likely to cause reasonably foreseeable injury within the United States.” *Id. See also FTC v. Triangle Media Corp.*, 2018 WL 3436972, at *2 (S.D. Cal. Jul. 17, 2018) (holding that “[e]ven if, as [defendant] contends, 93% of its business is based on non-U.S. customer transactions,” it was “reasonably foreseeable” that defendant’s conduct would harm United States consumers).

Courts have found that deceptive marketing directed at U.S. consumers—or that may be relied on by U.S. consumers in making a purchase—are likely to cause reasonably foreseeable harm under § 45(a)(4)(A). *See In re Sanctuary Belize Litig.*, 482 F. Supp. 3d 373, 396, n. 9 (D. Md. 2020), *vacated in part on other grounds sub nom.*, *Fed. Trade Comm’n v. Pukke*, 53 F.4th 80 (4th Cir. 2022) (“Deceptive marketing to U.S. residents causes or is likely to cause reasonably foreseeable injury,” in case of a telemarketing and sales scam targeting American-based consumers for real estate project development in Belize). In *Fed. Trade Comm’n v. Superior Prod. Int’l II, Inc.*, No. 20-2366-HLT-GEB, 2022 WL 218708, at *4 (D. Kan. Jan. 25, 2022) (hereinafter, “*Superior Products*”), the defendant argued that it was not subject to FTC authority, because “even if consumers in the United States saw marketing materials with purportedly false [] claims placed into the marketplace by their foreign distributors, the consumer would purchase Defendant’s products from a domestic distributor and thus not involve foreign commerce.” The court rejected this argument and found that “in the foreseeable situation where a consumer in the United States sees a purportedly false [] claim made by Defendants’ foreign distributors and makes a purchase of Defendants’ products, if the purchase is based upon those false claims, foreseeably a U.S. consumer would be injured.” *Id.*

The SFA’s conduct is analogous to *Superior Products*. Consumers do not directly purchase SFA products, but they could foreseeably purchase member companies’ SFA-Certified cashmere products based on the SFA’s deceptive animal welfare claims. Importantly, such purchasing decisions are sought after by the SFA, which administers the certification system specifically to encourage consumers—regardless of location—to support its supply chain.⁷⁵ SFA-Certified operations supply cashmere to major global brands,

⁷³ *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)).

⁷⁴ *Irwin v. F.T.C.*, 143 F.2d 316, 325 (8th Cir. 1944).

⁷⁵ *See About Us*, *supra* note 1 (“Growing consumer awareness and industry regulation means that brands and retailers are under pressure to demonstrate responsible sourcing in their supply chains. The SFA offers a holistic and globally-recognized standard that addresses the key sustainability and welfare issues related to cashmere production and provides assurance for ‘responsibly-produced cashmere.’”).

such as Burberry, Louis Vuitton, Hermès, Dior, Gucci, Prada, Chanel, Max Mara, and Ralph Rucci.⁷⁶ SFA member companies also include Madewell, J. Crew, Burberry, and John Lewis.⁷⁷ The SFA is therefore aware—and encourages—that its claims are made to U.S. consumers.

This is further supported by the fact that the SFA registered a trademark for its logo with the United States Patent and Trademark Office.⁷⁸ See 15 U.S.C. § 1051 (An applicant must verify that the mark is used in commerce to be federally registered); *Grand Canyon W. Ranch, LLC*, 78 U.S.P.Q.2d 1696 (T.T.A.B. 2006) (“It is clear that an applicant cannot obtain a registration under Section 1 of the Trademark Act for goods or services upon which it has not used the mark.”). SFA is undoubtedly aware that its logo, which represents that a company or product complies with its standards, is used in U.S. commerce to promote the SFA’s claims. Therefore, the SFA’s deceptive claims, at the very least, “are likely to cause reasonably foreseeable injury within the United States,” by inducing consumers to purchase cashmere products based on those claims. 15 U.S.C. § 45(a)(4)(A); *Superior Products*, at *4.

VI. Claims

A. The SFA’s certifications and claims mislead consumers regarding the treatment of animals, deceiving consumers into supporting the SFA’s supply chain

1. The SFA represents that purchasing SFA-Certified products ensures adherence to “high animal welfare” standards and “ensures the welfare of goats”

The “entire mosaic” of the SFA’s advertising, including the statements it makes on its websites and in approved product claims, provides a net general impression that SFA-Certified operations treat animals according to “high animal welfare standards” and “ensure the welfare of goats.”⁷⁹ The SFA’s statements explicitly claim that the cashmere in an SFA-Certified product was sourced from producers that abide by its animal welfare standards:

- The SFA draws on traditional knowledge and internally recognised best practice to ensure goat health and well-being.⁸⁰
- Our standards allow companies to...make credible claims about SFA-Certified products.⁸¹
- The SFA Cashmere Standard defines best practice for responsible cashmere production, [which upholds] five global principles, [including] that herders [] ensure the welfare of their goats....⁸²
- The SFA offers a holistic and globally-recognized standard that addresses the key sustainability and welfare issues related to cashmere production and provides assurance for ‘responsibly-produced cashmere.’⁸³
- At [the] heart [of the SFA Cashmere Standard] are our codes of practice, which outline best practice requirements that must be followed in order for producers to become SFA-Certified.⁸⁴

⁷⁶ See *supra* note 11.

⁷⁷ Board, Sustainable Fibre Alliance, <https://cashmere-connect.com/board/page/5/> (last visited Jan. 9, 2024).

⁷⁸ Trademark Serial No. 90864354, USPTO (filed Aug. 4, 2021), https://tsdr.uspto.gov/#caseNumber=90864354&caseType=SERIAL_NO&searchType=statusSearch (last visited Jan. 9, 2024).

⁷⁹ See *The SFA Cashmere Standard*, *supra* note 20.

⁸⁰ *Animal Welfare*, *supra* note 22.

⁸¹ *About Us*, *supra* note 1.

⁸² *The SFA Cashmere Standard*, *supra* note 20.

⁸³ *Id.*

⁸⁴ *C001 Animal Husbandry and Cashmere Fibre Harvesting Code of Practice*, *supra* note 38, at 4.

A reasonable consumer viewing these statements would believe that the SFA’s standards reflect “best practice” in animal welfare, which includes “ensur[ing] the welfare of goats.” Indeed, the SFA has approved statements that may accompany “SFA-Certified” claims and explicitly reinforce these commitments to animal welfare, which it describes as “high”:

- [X%/All] of the cashmere in this [garment/product] has been produced following high animal welfare practices, as certified by the SFA.⁸⁵
- The certified cashmere in this garment has been produced in a way that improves the well-being of animals.⁸⁶
- ‘SFA Certified’ cashmere has been produced to high animal welfare standards, tracing it from herders to final product, and supporting socially responsible practices.⁸⁷

As a whole, the SFA represents that any SFA-Certified products were produced in compliance with the SFA’s standards and that the requirements uphold “high animal welfare” practices and standards.

2. Consumers are concerned about the humane treatment of animals which renders the SFA’s deceptive claims material

Consumers are concerned about the welfare of animals, as indicated by the growth of the global ethical fashion market of which animal cruelty-free fashion is the largest segment.⁸⁸ 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 the SFA markets to potential customers.⁸⁹

This increased awareness and concern has inspired major companies to become SFA members and claim their products are SFA-Certified, including Burberry, Louis Vuitton, Hermès, Dior, Gucci, Prada, Chanel, Max Mara, and Ralph Rucci, Madewell, and Naadam. The SFA’s certifications expose potentially millions of consumers to false and misleading advertising. 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

⁸⁵ *Claims Guidance for SFA Chain of Custody Guidelines*, *supra* note 4, at 5.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ The global ethical fashion market is anticipated to grow from \$7.57 billion in 2022 to \$11.12 billion in 2027. *Sustainable Apparel Industry: A Comprehensive Outlook for 2023*, The Business Research Company (Dec. 2023), https://www.reportlinker.com/p06251082/Ethical-Fashion-Global-Market-Report.html?utm_source=PRN. Ethical fashion refers to the design, production, and distribution of clothing that prioritizes minimizing harm and includes fair trade, animal cruelty-free, eco-friendly, and charitable brands. *Id.* In 2022, animal cruelty-free was the largest segment of the ethical fashion market by type, accounting for 43.3% of the total. *Ethical Fashion Global Market Opportunities And Strategies To 2032*, The Business Research Company (Feb. 2023), https://www.researchandmarkets.com/report/sustainable-fashion?utm_source=GNOM&utm_medium=PressRelease&utm_code=qhd75p&utm_campaign=1826867+-+%2416.819+Billion+Ethical+Fashion+Global+Market+Opportunities+and+Strategies+to+2032+Featuring+Eileen+Fisher%2c+LVMH%2c+Levi+Strauss+%26+Co%2c+H%26M+Conscious%2c+%26+Reformation&utm_exec=chdo54prd.

⁸⁹ *See, e.g., About Us*, *supra* note 1 (“Growing consumer awareness and industry regulation means that brands and retailers are under pressure to demonstrate responsible sourcing in their supply chains. The SFA offers a holistic and globally-recognized standard that addresses the key sustainability and welfare issues related to cashmere production and provides assurance for ‘responsibly-produced cashmere.’”).

choose one fashion brand over another if they prioritised animal welfare.”⁹⁰ 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.⁹¹

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.”⁹² 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.⁹³ 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.⁹⁴

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.”⁹⁵ 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 they thought the label indicated improved animal welfare.⁹⁶ 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 the SFA’s assertions promoting best practice and high animal welfare standards reflect its acknowledgment and specific intent that consumers will rely on its certification and representations.

⁹⁰ 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>.

⁹¹ 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).

⁹² *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/>.

⁹³ *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>.

⁹⁴ *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.

⁹⁵ 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>

⁹⁶ *Id.*

3. The SFA standards permit inhumane treatment of animals that the ordinary consumer would find cruel, unacceptable, short of “best practice” or “high animal welfare standards,” and do not “ensure the welfare of goats”

The SFA publishes the Current and New Standards, “which outline best practice requirements that must be followed in order for producers to become SFA-Certified.”⁹⁷ The SFA’s assessment protocols, discussed below, allow for producers to be certified despite noncompliance with the requirements in the standards. Even if the SFA could ensure strict adherence to them, its standards allow conduct that a reasonable consumer would consider to be cruel and short of high animal welfare standards.

Moreover, reasonable consumers would believe that an SFA-Certified producer would be required to comply with indicators that the SFA merely recommends, particularly because the SFA claims that the best practice requirements in its standards must all be followed in order for a producer to be certified.

a. Current Standard

Conduct that the Current Standard permits that a reasonable consumer would find unacceptable includes combing and slaughter. The standards provide, “When combing and shearing, care *should* be taken not to nick or cut the skin,⁹⁸ yet state that “[g]oats *should* be combed rather than shorn.”⁹⁹ As discussed below, the Current Standard merely recommends—not requires—that the combing process should be used and that care be taken not to cut goats’ skin during combing or shearing. These and related indicators therefore do not account for or provide protections against the standard harms of the fiber harvesting process.

In any event, despite the Current Standard’s preference for combing over shearing, several industry and welfare organizations have indicated that combing is harmful and not a preferred method of collecting the goats’ hair:

- The Australian Royal Society for the Prevention of Cruelty to Animals states, “The RSPCA does not support the combing of goats with a sharp-toothed comb. It is a prolonged procedure that can lead to bruising and skin injuries, and cause unnecessary and extended pain, suffering and distress in goats.”¹⁰⁰
- Ignou University, India’s central university, states “the collection process through combing method is the main animal welfare concern” because “the combing process is painful and prolonged, particularly if collection is carried out when the goat is not naturally moulting, and can result in bruising and injuries.”¹⁰¹
- The 2020 Chinese Farm Animal Welfare Requirements [for] Cashmere Goat states in standard 8.1.4, “For cashmere goats with good down fiber density and high cashmere yield, the fiber should be sheared.”¹⁰²

⁹⁷ *C001 Animal Husbandry and Cashmere Fibre Harvesting Code of Practice*, *supra* note 38, at 4.

⁹⁸ *Id.* at 13 (Indicator 6.2) (emphasis added).

⁹⁹ *Id.* (Indicator 6.1) (emphasis added).

¹⁰⁰ *What are the animal welfare issues associated with cashmere production?*, Royal Society for the Prevention of Cruelty to Animals (Oct. 8, 2019), <https://kb.rspca.org.au/knowledge-base/what-are-the-animal-welfare-issues-associated-with-cashmere-production/#what-is-the-rspcas-view> (last visited Jan. 9, 2024).

¹⁰¹ *Welfare Issues in Small Ruminants*, Ignou University, p. 75, <https://egyankosh.ac.in/bitstream/123456789/69018/1/Unit-4.pdf>.

¹⁰² Animal Welfare International Cooperation Committee of the China Association for the Promotion of International Agricultural Cooperation, *Farm Animal Welfare Requirements for Cashmere Goats* (Aug. 1, 2020), http://www.3ecashmere.com/?category_id=5 (translated document available [here](#)).

- The Good Cashmere Standard allows for combing but the preference is for shearing: “Goats should have their fibre removed with hand shears or electric clippers in preference to combing.”¹⁰³

Between April 2022 and February 2023, PETA Asia’s investigators visited cashmere operations in Mongolia—including one herding operation with ties to clothing companies such as Naadam, Louis Vuitton, Dior, Prada, Gucci, Hermès, Chanel, Burberry, and Bottega Veneta.¹⁰⁴ The investigation revealed widespread cruelty committed by the operations, including SFA-Certified producers Khanbogd Cashmere LLC and Ulemj Cashmere LLC, which both claim to be leading cashmere suppliers in Mongolia.¹⁰⁵ PETA Asia’s investigative findings shed light into industry-standard combing operations, including those certified by the SFA. Goats harvested for cashmere for Khanbogd were pinned down by their legs and horns as herders pulled out their hair.¹⁰⁶ The investigation also documented during the operation’s combing process a dead adult goat, a goat that was left to suffer from a bleeding wound, and workers who pulled off a piece of skin with a goat’s hair. At Ulemj, goats were documented pinned down by their legs and horns as herders pulled out their hair.¹⁰⁷

A reasonable consumer would assume that high animal welfare practices or methods that ensure the welfare of goats would not injure the animals, but it is plainly obvious that combing causes injuries, pain, and suffering in goats.

The SFA’s Current Standard permits the slaughter of goats no longer desired for cashmere production, including kids. One requirement provides, “Where kids and goats are not required for fibre production or breeding purposes they should be treated humanely prior to slaughter.”¹⁰⁸ Again, a reasonable consumer would assume that “ensuring the welfare of goats” at an SFA-Certified facility would not include slaughtering them for food. Not only does the Current Standard allow the killing of kids and goats, but it appears to support the practice so long as the animals are “not required” for cashmere production or breeding.

Additionally, the Current Standard does not address off-farm slaughter, which is where a tremendous amount of cruelty to animals occurs. Investigators in PETA Asia’s recent exposé documented workers dragging cashmere goats to the kill floor, hitting them on the head with a hammer, and cutting their throats. The killing took place in full sight of other goats, and, afterward, some goats continued to move for several minutes after their throats had been cut before finally dying. In not addressing the welfare of cashmere goats once they are no longer considered productive, the SFA fails even facially to provide standards sufficient to claim that certification ensures the welfare of goats.

Furthermore, the Current Standard includes animal welfare indicators that reflect what the SFA considers “best practice,” but are not required to be complied with. These recommendations include:

- When combing and shearing, care *should* be taken not to nick or cut the skin.¹⁰⁹

¹⁰³ AbTF, *The Good Cashmere Standard*, Standard 6.0.3., p. 15, https://thegoodcashmerestandard.org/wp-content/uploads/2022/03/The-Good-Cashmere-Standard-by-AbTF_v1.2_EN.pdf.

¹⁰⁴ *PETA Asia Investigation Exposes Extreme Abuse of Goats for Cashmere*, PETA, <https://investigations.peta.org/peta-asia-exposes-cashmere-industry/>.

¹⁰⁵ *About Us*, Khanbogd, <https://khanbogdcashmere.com/en/about-us/> (last visited Jan. 9, 2024); *About Ulemj*, Ulemj, <https://ulemjcashmere.com/> (last visited Jan. 9, 2024).

¹⁰⁶ *PETA Asia Investigation Exposes Extreme Abuse of Goats for Cashmere*, *supra* note 104.

¹⁰⁷ *Id.*

¹⁰⁸ *C001 Animal Husbandry and Cashmere Fibre Harvesting Code of Practice*, *supra* note 38, at 14 (Indicator 8.3).

¹⁰⁹ *Id.* at 13 (Indicator 6.2) (emphasis added).

- Pain relief *should* be used when castration is carried out.¹¹⁰
- Where kids and goats are not required for fibre production or breeding purposes they *should* be treated humanely prior to slaughter.¹¹¹
- Goats *should* be stunned using captive bolt (or electric stun where this was available) rather than blunt force trauma prior to slaughter.¹¹²

A reasonable consumer would assume, based on the SFA's representations, that all "best practice" conduct in the Current Standards would be required to be complied with in order for a producer to be SFA-Certified. Instead, certified producers are permitted to engage in incredibly cruel conduct, including not treating kids and goats humanely before slaughter, using blunt force trauma to stun goats prior to slaughter, not taking any care or precautions to not cut a goat's skin during combing, and castrating goats without pain relief.

b. New Standard

While the requirements outlined in the New Standard are improved, the New Standard permits similar conduct to the Current Standard that a reasonable consumer would consider cruel, short of high animal welfare standards, and to not ensure the welfare of goats.

Like the Current Standard, the New Standard permits the combing and slaughter of goats. While it no longer explicitly prefers the combing method, it notes, "When using the combing method, fibre must only be harvested when it begins to shed naturally."¹¹³ Moreover, the New Standard appears to acknowledge that injuries and discomfort during combing are unavoidable, but those injuries are nonetheless permitted under the standards.¹¹⁴ For example, it provides, "Goats must be gradually desensitised to the combing or shearing process from a young age."¹¹⁵ Thus, the SFA recognizes that significant pain, or at least distress, is caused by any production process, and it addresses this concern by requiring producers to force young goats to suffer through the process rather than ensure that goats are not injured or suffer.

Moreover, the New Standard fails to provide a meaningful standard with respect to its indicator which states, "Goats must only be restrained during fibre harvesting using best practice approaches that do not restrict blood circulation or cause distress or injury."¹¹⁶ In reality, PETA Asia's recent¹¹⁷ and prior investigations¹¹⁸ revealed that workers restrain goats by pinning them down by the legs and horns, stepping on them, and bending their legs into unnatural positions as they tore out their hair. The SFA's standards fail to recognize the apparently inherent distress and pain stemming from restraint in the combing or shearing processes. As a consequence, this requirement seemingly is not a genuine standard or ensuring protection for goats.

¹¹⁰ *Id.* at 10 (Indicator 4.6) (emphasis added).

¹¹¹ *Id.* at 14 (Indicator 8.3) (emphasis added).

¹¹² *Id.* (Indicator 8.5) (emphasis added).

¹¹³ *SFA Cashmere Standard v 1.1*, *supra* note 11, at 19 (Indicator 30.2).

¹¹⁴ *See id.* at 20 (Indicator 31.6) ("Herders must monitor the injuries obtained during fibre harvesting and take appropriate steps to improve fibre harvesting practices."); *id.* at 19 (Indicator 31.1) ("Fibre harvesting must only be carried out by competent personnel, using appropriate techniques and well-maintained equipment that minimises discomfort and risk of injury to the goat.").

¹¹⁵ *Id.* at 19 (Indicator 31.3).

¹¹⁶ *Id.* at 20 (Indicator 31.4)

¹¹⁷ *PETA Asia Investigation Exposes Extreme Abuse of Goats for Cashmere*, *supra* note 100.

¹¹⁸ *Breaking PETA Exposé Reveals Cruelty in Your Cashmere Sweater*, PETA, <https://investigations.peta.org/cashmere-cruelty-china-mongolia/>.

The New Standard still permits slaughter. In fact, the requirements only explicitly prohibit the sale of goats for international slaughter,¹¹⁹ meaning that the SFA supports the use of goats in domestic slaughter. As in the Current Standard, the New Standard does not address the off-farm slaughter of goats, meaning that a major segment of welfare concerns is completely unacknowledged in the SFA's standards. Consumers would assume that the organization's promise of "ensuring the welfare of goats" extends to the end of their lives, not the end of their use for cashmere harvesting.

In conclusion, reasonable consumers assume that practices that cause pain, suffering, distress, and death of cashmere goats do not "ensure the welfare" of those goats. But both the Current and New Standards permit conduct that a reasonable consumer would find cruel or short of high animal welfare practices, including combing and slaughtering.

4. SFA certifications do not ensure strict enforcement of animal welfare standards

Based on the SFA's statements and representations,¹²⁰ consumers would assume that producers are required to comply with all of the SFA's animal welfare standards in order to be certified by the organization. However, the SFA's own certification and assessment procedures allow producers to be noncompliant with an indefinite scope of requirements and still become or remain certified. The procedures provide:

- When a non-conformity with certification requirements is substantiated, either during an assessment or otherwise, the CAB shall consider and decide upon the appropriate action. Appropriate action can include the following:
 - a) continuation of certification under conditions specified by the CAB (e.g., increased Monitoring)
 - b) reduction in the scope of certification to remove non-conforming CAS components
 - c) suspension of the certification pending remedial action by the applicant
 - d) withdrawal of the certification.If certification is suspended, withdrawn, or terminated, the applicant must immediately cease to advertise themselves as SFA certified and all certification documents must be returned to the CAB.¹²¹
- Certification decisions may include requests for the correction of minor non-conformities¹²² within a specified time. In Case of major non-conformities,¹²³ a certificate shall be withheld or suspended until implementation of corrective actions can be demonstrated. In serious Cases certification shall be denied or withdrawn.¹²⁴

"Minor non-conformities occur when a single observed lapse has been identified in a procedure required as part of the applicant's management system,"¹²⁵ whereas, "Major non-conformities occur if, either alone or in combination with further non-conformities relating to other requirements, they result in, or are likely to result in, a fundamental or systematic failure to achieve the objectives of the standards system."¹²⁶ Major

¹¹⁹ *Id.* (Indicator 32.9) ("Goats must not be sold for international slaughter.").

¹²⁰ *See, e.g., C001 Animal Husbandry and Cashmere Fibre Harvesting Code of Practice, supra* note 38, at 4 ("At [the] heart [of the SFA Cashmere Standard] are our codes of practice, which outline best practice requirements that must be followed in order for producers to become SFA-Certified.").

¹²¹ *Requirements for Conformity Assessment Bodies, supra* note 5, at 11 (provision 2.1.10).

¹²² *Id.* at 36 (provision 6.7).

¹²³ *Id.* at 35-6 (provision 6.6).

¹²⁴ *Id.* at 29 (provision 5.3.4).

¹²⁵ *Id.* at 36 (provision 6.7).

¹²⁶ *Id.* at 35-6 (provision 6.6).

non-conformities “may be indicated by non-conformities which: [(a)] continue over a long period of time, [or (b)] are repeated or systematic.”

For already-certified producers, a minor non-conformity is required to be remedied within 60 days of an audit, but there is no apparent requirement for the producer to be inspected again after 60 days.¹²⁷ This suggests that noncompliant producers may be able to “demonstrate” that they have resolved the non-conformity without sufficient assessment by the SFA. If the minor non-conformity is not resolved after 60 days, it is upgraded to a major non-conformity, which must similarly be resolved within another 30 days.¹²⁸ If that is not resolved, then the “scope certificate” as to the SFA’s Current Standard on animal welfare “shall not be reissued” or be suspended.¹²⁹

In other words, when a producer applying for certification is not in compliance with any given animal welfare standard, there is no requirement that its certificate be suspended or withdrawn. Instead, the CAB is able to unilaterally decide to simply leave the certification in place or reduce the scope of certification. It is not clear from any of the SFA’s publicly available documents what reducing the scope of certification would entail, and there is no indication a producer with a reduced scope of certification could not still claim it is SFA-Certified. Notably, the SFA-Certified logo and marketing statements that sellers are authorized to use may not reflect the scope of the certification.¹³⁰

The SFA’s lack of ability to ensure compliance is further evidenced by the fact that “minor non-conformities”—which could be serious violations of animal welfare requirements—do not warrant a withholding of certification, and those not in compliance may not face any consequences.

Already-certified producers are given up to 90 days from a documented non-conformity to remedy it, and the SFA does not apparently inspect again to confirm that the non-conformity is resolved. In addition, the SFA apparently does not provide objective factors for determining what qualifies as a minor or major non-conformity. Instead, the SFA’s procedures appear to require that non-conformities continue over a long period of time or happen repetitively before any certification is to be denied or withdrawn.

Moreover, the SFA’s protocols broadly permit vague exceptions with little to no SFA oversight. For example:

- The CAB shall have clear criteria and procedures for granting exceptions to requirements for certification and shall document the basis on which the exception is granted.¹³¹
- In general applicants that are obliged to be certified in accordance with the criteria provided in Cashmere Standard are to be inspected at least annually.¹³²
- The CAB may decide on exceptions from the annual onsite assessment cycle in accordance with the criteria provided in the Cashmere Standard and the Manual for Implementation.¹³³

Simply put, the CABs, not the SFA, are responsible for not only granting exceptions to SFA requirements but also developing the criteria and procedures for doing so. The CABs may also decide on exceptions from

¹²⁷ *Id.* at 36 (provision 6.7).

¹²⁸ *Id.* at 35-6 (provision 6.6).

¹²⁹ *Id.*

¹³⁰ The SFA standards make no mention of a division of the “scopes” of certification, nor of any limited ability to make claims based on any particular scope. It is unclear whether a producer whose scope of certification does not include animal welfare is allowed to make welfare statements or use the logo.

¹³¹ *Requirements for Conformity Assessment Bodies*, *supra* note 5, at 29 (provision 5.3.5).

¹³² *Id.* at 30 (provision 5.4.2).

¹³³ *Id.* The Manual for Implementation is not publicly available.

the annual on-site inspection for producers. Taken together, the SFA assessment protocols allow CABs to independently grant exceptions to *any* certification requirements without apparent limits, and producers may be allowed to violate the standards potentially for years before their certifications are revoked.

Lastly, the SFA's sampling and producer organization group certification schemes further demonstrate that the SFA does not ensure strict compliance with its animal welfare standards. CABs are required to have a sampling strategy to determine which producers are assessed or inspected in any given annual cycle:

The CAB shall have a sampling strategy which will inform their sampling plan and any variations made to it must be recorded. Every Producer and processor must be sampled to some degree. For the Animal Husbandry and Rangeland Stewardship CoPs, the CAB shall use Simple Random Sampling to determine the initial sample. Using a Sampling Frame, the CAB shall identify the number of Producers or Processors. Producers and Processors are allocated a unique number and using an Excel formula (e.g. "=randbetween(1,200)" generates a random number between 1 and 200) and use this to randomly select 10% or 10 Producers whichever is greater. The sampling plan must include consideration of geographical location, previous assessment activity and feedback on performance/complaints.

The sampling strategy should include an obligation for assessor progression and the need to inform the SFA of the results of conformity assessments.¹³⁴

This implies that 90% of SFA-Certified producers are not assessed in any given cycle, meaning that many producers may likely go without meaningful assessment or inspection for years.

Similarly, the SFA certifies producer organization groups, but does not ensure that all producers in the group comply with its standards. "A Producer Organisation is a group of farmers, farms or nomadic herding families that work together to produce Cashmere fibre and comply with the requirements of a standard to obtain group certification."¹³⁵

For one, any assessment of a group utilizes the sampling strategy above, meaning that 90% of the group's members are not evaluated for compliance:

Annual on-site assessments of the Producer Organisation's ICS are required for Group Certification. The CAB's sampling strategy and sampling plan shall include assessments of Producer Organisation members according to the risk assessment of the CAB. The CAB may also carry out additional confirmation visits of Producer Organisation members without notice.¹³⁶

Importantly, the primary responsibility for ensuring member compliance falls on the group itself, which is required to have a defined internal control system (ICS) in place. This means that members are generally not subject to any independent assessment or oversight:

- The Producer Organisation shall have a defined internal control system (ICS) in place for the entire group.¹³⁷

¹³⁴ *Id.* at 27 (provision 5.2.2).

¹³⁵ *Id.* at 30 (provision 5.5).

¹³⁶ *Id.*

¹³⁷ *Id.* (provision 5.5.1).

- The Producer Organisation shall have an internal control system (ICS) in place and shall appoint an ICS Manager who is responsible for the management of the ICS and for ensuring conformity to the Cashmere Standard by all members. The Producer Organisation shall cooperate with the CAB's risk assessment process and with the coordination of information and assessment for member sites.¹³⁸
- The ICS shall document and implement an inspection protocol to ensure that the Cashmere Standard requirements are met by all group members and shall meet requirements 5.5.4 - 5.5.5.¹³⁹
- The ICS shall appoint one or more ICS inspectors to carry out inspections. The ICS manager may also be an ICS inspector. ICS inspectors shall not be responsible for inspections of family members or themselves.¹⁴⁰
- The ICS inspector(s) shall carry out annual inspections of each group member. Inspections shall be carried out on-site.¹⁴¹

It is clear that the SFA does not ensure that all members of a producer organization group comply with its animal welfare standards. The ICS is responsible for assessing its own members, inspecting *all* members annually, and ensuring compliance with the standards in general. The inspectors may themselves be group members who clearly have a substantial conflict of interest in ensuring continued group certification, which they can accomplish by simply not recording noncompliances at their co-members' facilities. The SFA generally only bases any group assessment on the ICS, rather than overseeing or inspecting group members itself or requiring independent oversight.

For certification purposes, producer members are not even required to comply with the standards, and only "must commit to complying with the requirements of the Cashmere Standard."¹⁴² Neither minor nor major non-conformities require any immediate consequences for a member or the group. One of the ICS' duties is "[e]nsuring that non-conformities are closed within a specified timeline which is not more than 30 days for major non-conformities and 60 days for minor non-conformities."¹⁴³ For producer groups, unlike for individual producers, the SFA's protocols do not indicate what must happen if those timelines are not met, nor is there any clear consequence for the group or member if the non-conformities are not resolved within the timeframe (beyond being suspended from the group until that particular nonconformity is remedied). It is therefore possible that there is no requirement that certification be denied or withdrawn even if group members are regularly not in compliance.

In conclusion, the SFA has claimed that producers are required to meet and comply with all of the requirements in its animal welfare standards. Accordingly, the reasonable consumer would believe that the SFA would actually enforce all of the above. However, the SFA does not ensure that consumers receive products that meet basic expectations of "high animal welfare standards" and humane treatment. Rather, the SFA's procedures allow certified producers to defy the requirements while still marketing their products as complying with the organization's standards.

B. The SFA's deceptive 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. *See FTC*

¹³⁸ *Id.* at 31 (provision 5.5.2).

¹³⁹ *Id.* (provision 5.5.3).

¹⁴⁰ *Id.* at 31-2 (provision 5.5.5).

¹⁴¹ *Id.* at 31 (provision 5.5.4).

¹⁴² *Id.* at 30 (provision 5.5.1).

¹⁴³ *Id.* at 31 (provision 5.5.4).

Policy Statement on Deception, supra, § III. 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.”¹⁴⁴ “Because of their lack of susceptibility to consumer assessment,” the SFA’s claims that its certification ensures strict animal welfare standards are of exactly the type “subject to more intense scrutiny by the FTC.”¹⁴⁵

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.”¹⁴⁶ 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.”¹⁴⁷ The same is true of the SFA’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 of the living animals. The consumer relies on the “SFA-Certified” claim for information about treatment practices, but the SFA has access to far more complete and accurate information about those practices.¹⁴⁸ SFA certification conveys 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 a “SFA-Certified” product. As a result, her purchase may support practices she specifically attempts to avoid.

The SFA takes advantage of the consumer’s concern for the humane treatment of animals. Its certification, product claims, and assertions regarding animal treatment made on its website deflect attention from the SFA’s minimal standards and falsely assure the buying public that SFA certification “ensures the welfare of

¹⁴⁴ 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.”).

¹⁴⁵ *Id.*

¹⁴⁶ Jill E. Hobbs, *Technical Barriers to Trade*, in HANDBOOK ON INTERNATIONAL TRADE POLICY 394, 395 (William A. Kerr & James D. Gaisford eds., 2011).

¹⁴⁷ 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.

¹⁴⁸ 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.”).

goats.”¹⁴⁹ A consumer considering purchasing an SFA-Certified product has no way of independently knowing the conditions in which animals used to make the product are kept. If the SFA made clear to consumers that its certifications do not reliably ensure any level of animal welfare, consumers would not specifically purchase SFA-Certified products out of a concern for animal welfare.

The SFA’s claims that its certification ensures the welfare of goats and “high animal welfare,” 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 the SFA.

VII. Relief Requested

The SFA’s deceptive and misleading advertising appears to violate Section 5 of the FTC Act. PETA urges the Commission to take action to stop the SFA from deceiving consumers about the treatment of animals used to produce goods under its certifications. Contrary to the SFA’s claims, its standards do not ensure the welfare of goats or require that SFA-Certified cashmere is produced using high animal welfare standards. The reasonable consumer is thus misled by the SFA’s false and misleading claims.

Consumers would not prioritize SFA-Certified products based on animal welfare considerations absent the misleading claims. If consumers knew the truth—that many of the SFA’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 the SFA be held accountable for misleading consumers into believing that its certifications ensure high animal welfare, or at the very least indicate that goats are protected from cruelty, in a way reasonable consumers expect.

Accordingly, the undersigned petitioner respectfully requests that the Commission:

- (1) require the SFA to cease and desist its certification and Cashmere Standard marketing as “ensur[ing] the welfare of goats,” and representing “high animal welfare standards;”
- (2) require the SFA to disclose the actual conditions under which animals are treated at SFA-Certified producers;
- (3) require the SFA to disseminate corrective statements in all media in which the misleading statements were previously disseminated;
- (4) require the SFA to disclose the actual audit reports of its certified producers;
- (5) require the SFA 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 the SFA from making such misleading statements in the future; and
- (7) impose all other penalties as are just and proper.

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¹⁴⁹ See *The SFA Cashmere Standard*, *supra* note 20.

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