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November 16, 2011

Federal Trade Commission  
Office of the Secretary, Room H-113 (Annex O)  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

RE: Fur Rules Review; Matter No. P074201

On behalf of the more than 11 million members and supporters of The Humane Society of the United States (HSUS), I submit the following comments to be considered regarding the Federal Trade Commission's (FTC) notice of proposed rulemaking under the federal Fur Products Labeling Act (FPLA), 16 U.S.C. § 69, *et seq.*<sup>1</sup> The HSUS previously submitted comments on the FTC's advance notice of rulemaking on May 16, 2011. The HSUS incorporates those comments as though reiterated in their entirety herein.

The rulemaking is being proposed in response to the Truth in Fur Labeling Act (TFLA), Public Law 111-113, enacted in December 2010, which eliminated the *de minimis* value exemption from the FPLA, 16 U.S.C. § 69(d), and directs the FTC to initiate a review of the Fur Products Name Guide, 16 C.F.R. 301.0. The FTC's proposed rulemaking, discussed in 77 FR 57043, focuses primarily on changes to the Name Guide, though the agency has also addressed other aspects of its fur rules.

The HSUS applauds the FTC for undertaking a review of its fur regulations and Name Guide, and for making some changes to prevent species misidentification. However, as discussed below, the FTC has acted arbitrarily and capriciously, and inconsistent with the language and purpose of the FPLA, in choosing to use the industry trade name "Asiatic raccoon" for one of the most commonly used animals in fur garments today, the raccoon dog (*Nyctereutes procyonoides*). Further, the agency entirely failed to address problems with some additional entries in the Name Guide (e.g., bassarisk, burunduk, susilk, lynx cat, pahmi, and peschanik). Finally, the agency improperly dismissed the HSUS's proposal that vendor guaranties specifically designate the type of fur contained in the fur products guarantied.

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<sup>1</sup> Over 28,660 comments from the HSUS's individual members and constituents will also be submitted separately.

The purpose of the FPLA and the fur rules is to ensure that consumers receive truthful and accurate information—not simply consistent information—about the fur content of the products they are purchasing. Unfortunately, sales of unlabeled and mislabeled fur garments, and inaccurate or misleading advertising of fur garments, remain all too common occurrences in today’s marketplace. Raccoon dog fur remains one of the most commonly mislabeled and falsely advertised types of fur in the marketplace, and the FTC’s current vendor guide policy does not ensure that retailers obtain sufficient information to ensure that their labeling and advertising of fur garments is accurate.

The Name “Asiatic Raccoon” should be Replaced by the Name “Raccoon Dog” and no Other Names should be Allowed for the Species *Nyctereutes procyonoides*.

The FPLA and associated regulations require that all names in the Fur Products Name Guide be “the true English names for the animals in question,” 16 U.S.C. § 69e(a), that the names do not mislead or deceive as to the animal’s “geographical or zoological origin,” 16 C.F.R. 301.17, and that “no trade names [or] coined names” may be used, 16 C.F.R. 301.11. A *New York Times* article published when the law took effect noted that the new law was “enacted to eliminate unfair trade practices and deceptive merchandising and advertising of fur coats.”<sup>2</sup> Thus, use of a name that is inaccurate as to an animal’s zoological origin, and that was created and perpetuated by the industry in order to increase sales of the fur, is patently unlawful, and contrary to the consumer protection purposes of the FPLA.

One of the most commonly used animals in the fur industry today, the raccoon dog (*Nyctereutes procyonoides*), is listed in the Name Guide by the industry trade name “Asiatic raccoon,” despite the fact that the species is taxonomically identified as a member of the Canidae (dog) family and not a member of the Procyonidae (raccoon) family, the species is most commonly referred to by the name “raccoon dog” in all other arenas (governmental reports, scientific treatises, zoological institutions, newspapers, television programs, dictionaries, etc.), and the use of the term “Asiatic raccoon” is itself confusing to consumers.

In its proposed rulemaking, the FTC admits—as did all commentators—that the correct taxonomic identification of the species *Nyctereutes procyonoides* is within the Canidae (dog) family and not the Procyonidae (raccoon) family. 77 FR 57044. Nevertheless, the FTC otherwise ignores its obligation to require use of only those names that do not deceive as to an animal’s “zoological origin.” 16 C.F.R. 301.

Instead, the agency relies on a description of certain characteristics of raccoon dogs, such as their similar coloration to raccoons, and a list of common raccoon dog behaviors that are

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<sup>2</sup> “Fur-Labeling Law Starts Tomorrow.” *The New York Times*. August 8, 1952.

dissimilar to dogs. 77 FR 57045 (citing the fact that raccoon dogs do not bark or wag their tail, and have a different gait than dogs). Such distinctions can be found between many species within the same taxonomic families—the distinctions noted *do not change the zoological characteristics that make raccoon dogs a member of the Canidae family*. Indeed, a kangaroo rat looks like a kangaroo, and while it has many of the same characteristics of so-called “true-rats” in the genus *Rattus* (e.g., cheek pouches for food storage) kangaroo rats also have several distinct characteristics from “true-rats” (e.g., their bi-pedal hopping gait that makes them appear kangaroo-like). But it would not be appropriate to call the kangaroo rat a “small desert kangaroo,” even if the species was important to the fur trade and the industry claimed that it would lose money if it was forced to use a name including the term “rat.” A kangaroo rat is not a kangaroo, just like the species the fur industry has decided to call “Asiatic raccoon” is not a raccoon.<sup>3</sup>

The FTC cites two justifications for its decision to use the name “Asiatic raccoon” in the Name Guide. First, the agency claims that this term “describes the animal in a way that consumers in the United States can properly identify it.” 77 FR 57048. In support of this argument, the FTC cites only the fact that the descriptor “Asiatic” “gives you an idea where the animal originated naturally,”<sup>4</sup> and that the animal “superficially” resembles a raccoon given the “fur pattern around its eyes.”<sup>5</sup> *Id.* (internal quotations omitted). Second, the agency claims that “consumers likely have become familiar with the name ‘Asiatic raccoon’ through fur labels.” *Id.* These arguments ignore the record evidence that the most accurate, commonly used, and true English name of the species is raccoon dog.

The FTC entirely ignores the *uncontroverted* fact that the term “Asiatic raccoon” is an industry trade name. There is record evidence that the fur industry *itself developed* the term “Asiatic raccoon.” The fur treatise authored by Arthur Samet *at the same time* that Congress was considering the Fur Products Labeling Act— which was

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<sup>3</sup> The FTC’s reliance on one commentator’s statement that “Asiatic raccoon” is appropriate because it correctly connotes the species’ historic range, just as “African lion” is used to refer to a subspecies of lion historically found in Africa, 77 FR 57045, is unavailing. An African lion *is* a lion (no matter where it is found). The species referred to by the fur industry as “Asiatic raccoon” *is not* a raccoon (no matter where it is found).

<sup>4</sup> The location of *historic origination* is of no value to consumers making a purchasing decision as to a fur garment *today*. Recognizing that fur products consumers care about the location in which fur was produced for the garment they are *presently* considering buying (e.g. avoiding fur products from China where there are few if any animal welfare laws governing fur production), the FPLA and associated regulations make clear that the country of origin of the fur must be specified, and that this is especially important if a geographic descriptor is part of the species name. 16 C.F.R. 301.7; 301.17. As noted in the HSUS’s May 2011 comments, raccoon dogs are no longer only found in Asia, they are also farmed and found in the wild in Europe. See UPI, *infra* n. 24; Comments of Finnish Fur Sales, *infra* n.35. Thus, use of the term “Asiatic raccoon” is not helpful to consumers and can only create confusion—the fur in the garment is not from a raccoon, and may be from an animal killed in Europe (not Asia).

<sup>5</sup> The true English name raccoon dog *also* provides consumers with information that the animal is raccoon-like in some features, just without suggesting that the animal *is* a raccoon.

quoted in the HSUS's May 2011 comments and at the December 2011 hearing on the FTC's Name Guide review—clearly reports that the intent of the “fur trade [is to] continue to recognize the name of the raccoon” for *Nyctereutes procyonoides*, despite “zoological study which reveals this fur bearer as a dog,” and specifically states that term “Asiatic raccoon” is “our” term (i.e., belonging to the “fur men” Samet described as “resent[ing] the truth”).<sup>6</sup> There is no record evidence to the contrary.

Ironically, at the hearing on the agency's review of the Name Guide, commentators from the fur industry argued that trade names may actually be preferable, based on the theory consumers would be presented with a name defined within the industry in which they are making a purchase.<sup>7</sup> However convenient this approach would be for the fur industry,<sup>8</sup> the law specifically forbids use of “trade names [or] coined names.” 16 C.F.R. 301.11. This fact alone makes the FTC's decision to include the term “Asiatic raccoon” in the Name Guide unlawful.

Further, the FTC's proposed rulemaking ignores the substantial record evidence that the name raccoon dog is the commonly accepted name for the species. As noted in our May 2011 comments, several other U.S. federal agencies refer to the species as raccoon dog. In December 1982, the U.S. Fish and Wildlife Service (FWS) announced the listing of raccoon dogs as an injurious species under the Lacey Act, 18 U.S.C. § 42.<sup>9</sup> The FWS also refers to the species by the name raccoon dog when tracking international wildlife trafficking.<sup>10</sup> The U.S. Department of Agriculture calls the species by the name raccoon dog when it reports commodity and trade data on fur animals and products.<sup>11</sup> In addition, the federal agencies that administer the Integrated Taxonomic Information System (ITIS)—including the FWS, National Oceanic and Atmospheric Administration, United States Geological Survey, Environmental Protection Agency, Agricultural Research Service, Natural Resources Conservation Service, and the Smithsonian Institution (including the National Museum of

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<sup>6</sup> Arthur Samet, *Pictorial Encyclopedia of Furs* (1950) (Attachment to HSUS's May 2011 comments); Hearing Tr. 47.

<sup>7</sup> See Hearing Tr. 28-31.

<sup>8</sup> The FPLA was enacted *to prevent* the industry from creating its own terms to refer to types of fur, because the industry has had a history of sacrificing accuracy for profits. See Statement of Joseph H. Francis, Executive Secretary, National Board of Fur Farming Organizations, Hearing before House Comm. on Interstate and Foreign Commerce on H.R. 3734, at 13-14 (April 6-7, 1948) (“To continue the practice now in effect of using whatsoever names or combination of names as one may choose to use merely in order to promote the sale . . . can add nothing short of confusion . . .”).

<sup>9</sup> See U.S. Dept. of Interior, *News Release: The United States Prohibits Import of Raccoon Dog* (Dec. 17, 1982) (Attachment to HSUS's May 2011 comments).

<sup>10</sup> See U.S. Fish and Wildlife Service, *U.S. Wildlife Trade: An Overview for 1997-2003*, App. B (Attachment to HSUS's May 2011 comments).

<sup>11</sup> See U.S. Dept. of Agriculture, *Peoples Republic of China – Fur Animals and Products* (May 25, 2010), available at [http://gain.fas.usda.gov/Recent%20GAIN%20Publications/Fur%20Animals%20and%20Products\\_Beijing\\_China%20-%20Peoples%20Republic%20of\\_5-25-2010.pdf](http://gain.fas.usda.gov/Recent%20GAIN%20Publications/Fur%20Animals%20and%20Products_Beijing_China%20-%20Peoples%20Republic%20of_5-25-2010.pdf)).

Natural History)—currently list raccoon dog as the common name of the species.<sup>12</sup> International governmental entities like the United Nations Environment Programme (UNEP) –World Conservation Monitoring Centre<sup>13</sup> and the European Environment Agency<sup>14</sup> also refer to the species as raccoon dog.

The IUCN Canid Specialist Group refers to the species by the name raccoon dog.<sup>15</sup> The IUCN is the chief body of scientific and practical expertise on the status and conservation of species worldwide.<sup>16</sup> The Canid Specialist Group is made up of 75 experts, representing over 30 countries, including field biologists, academics, wildlife managers, government officials, non-government organization (NGO) staff members, and other experts.<sup>17</sup> Other NGOs like the American Society of Mammalogists<sup>18</sup> and the World Wildlife Fund<sup>19</sup> also refer to the species as raccoon dog. Further, the HSUS submitted un rebutted evidence with its May 2011 comments that “the common name ‘raccoon dog,’ sometimes preceded by ‘Asiatic,’ ‘Japanese,’ or ‘Chinese,’ is the only common name used to refer to this animal in the scientific literature.”<sup>20</sup>

The vast majority of zoological institutions around the world—many of whom have raccoon dogs for purposes of public display and education—call the species by the name raccoon dog,

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<sup>12</sup> See [http://www.itis.gov/servlet/SingleRpt/SingleRpt?search\\_topic=TSN&search\\_value=183821](http://www.itis.gov/servlet/SingleRpt/SingleRpt?search_topic=TSN&search_value=183821) (last accessed Nov. 15, 2012) (The “Taxonomy and Nomenclature” section of the ITIS report lists raccoon dog as the only common name for the species, with no synonyms).

<sup>13</sup> UNEP-WCMC, *Species Database: Nyctereutes procyonoides*, at <http://www.unep-wcmc.org/apps/isdb/Taxonomytax-common-result.cfm?source=animals&displaylanguage=ENG&Common=17394&tabname=names> (listing raccoon dog as the only English name for the species).

<sup>14</sup> EEA, *Nyctereutes procyonoides*, at <http://eunis.eea.europa.eu/species/11316/vernacular> (listing raccoon dog as the only English name for the species); see also EEA, *Europe’s Biodiversity – The Boreal Biogeographical Region*, p.29 (June 2003), available at [http://www.eea.europa.eu/publications/report\\_2002\\_0524\\_154909/biogeographical-regions-in-europe/Boreal\\_Region.pdf](http://www.eea.europa.eu/publications/report_2002_0524_154909/biogeographical-regions-in-europe/Boreal_Region.pdf) (describing raccoon dogs as an introduced species in Europe).

<sup>15</sup> See <http://www.canids.org/cap/CANID4.pdf>.

<sup>16</sup> See <http://www.canids.org/index.htm>.

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

<sup>18</sup> See American Society of Mammalogists, *Mammalian Species Accounts: Raccoon Dog*, No. 358 (last updated June 2011), available at <http://www.science.smith.edu/msi/msiaccounts.html> (the entry for raccoon dog was edited by Dr. Alfred Gardner, a witness at the FTC’s hearing on the Name Guide review). A study published in 2007 in the ASM’s *Journal of Mammalogy* not only refers to the species as raccoon dog, but also shows the danger of using the trade name “Asiatic raccoon” to refer to raccoon dogs. See Fumie Okabe and Naoki Agetsuma, *Habitat Use by Introduced Raccoons and Native Raccoon Dogs in a Deciduous Forest of Japan*, *JOURNAL OF MAMMALOGY*, vol. 88, no. 4, pp. 1090-1097 (Aug. 2007), available at <http://www.asmjournals.org/doi/abs/10.1644/06-MAMM-A-117R2.1?journalCode=mamm> (comparing habitat use of introduced raccoons and native raccoon dogs in Japan). If raccoons have been introduced into the native habitats of raccoon dogs in Asia, how is a consumer to know that “Asiatic raccoon” refers to a raccoon dog (which now exists in wild and farmed populations in both Asia and Europe) or a raccoon found in Asia?

<sup>19</sup> WWF, *WildFinder*, at <http://worldwildlife.org/science/wildfinder/> (listing *Nyctereutes procyonoides* under raccoon dog).

<sup>20</sup> See Comment letter submitted by biologist Lauren Nolfo-Clements (Attachment to HSUS’s May 2011 comments).

including the United States' Association of Zoos and Aquariums (AZA) and its member institutions, the World Association of Zoos and Aquariums (WAZA), Yorkshire Wildlife Park (UK), Munkholm Zoo (Denmark), Zoo Atlanta (Atlanta, GA), Ostrava Zoo (Czech Republic), Red River Zoo (Fargo, ND), and Kyoto City Zoo (Japan).<sup>21</sup>

The species has also been consistently referred to as raccoon dog in mainstream media. By example, PBS dedicated an episode of its television show “Wild Hour” to describing the origins and proliferation of raccoon dogs in eastern Europe.<sup>22</sup> BBC’s popular Nature program maintains a website called “WildFacts,” from which consumers can obtain information about raccoon dogs.<sup>23</sup> News reports have tracked controversial government efforts to reduce non-native raccoon dog populations in Europe.<sup>24</sup> There was even a recent and well-publicized international trademark infringement case in which outwear producer Canada Goose successfully sued Swedish fur sellers for producing counterfeit versions of the company’s popular parkas using cheap raccoon dog fur from China.<sup>25</sup> Even commonly used dictionaries contain entries for “raccoon dog” but not for “Asiatic raccoon.”<sup>26</sup>

Thus, nearly everywhere a consumer would find information about the species *Nyctereutes procyonoides*, he or she would be presented with information under the true English name raccoon dog. This is important because information relevant to consumers’ purchase of fur products—such as the manner in which this species is raised and killed for purpose of fur production—would most likely be associated with the true English name of the species.<sup>27</sup> Numerous accounts of raccoon dogs being mistreated in the fur production process are

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<sup>21</sup> See Hearing Tr. 56; see also AZA, *Canidae General Index*, available at <http://www.species.net/Carnivora/Canidae/Canidind.html>; David Anderson and Melissa Rodden, *Minimum AZA Guidelines for Keeping Small Canids in Captivity*, available at <http://www.species.net/Carnivora/Canidae/Guidesd.htm>; WAZA, *Raccoon Dog (Nyctereutes procyonoides)*, <http://www.waza.org/en/zoo/visit-the-zoo/dogs-and-hyenas/nyctereutes-procyonoides>; Yorkshire Wildlife Park, <http://www.yorkshirewildlife-park.net/animal-adoption>; Munkholm Zoo, <http://www.zoochat.com/827/munkholm-zoo-raccoon-dogs-105311>; Zoo Atlanta, [http://www.zooatlanta.org/media/file/081312\\_Zoo\\_ATL\\_tanuki.pdf](http://www.zooatlanta.org/media/file/081312_Zoo_ATL_tanuki.pdf); Ostrava Zoo, <http://www.zoo-ostrava.cz/en/tour-of-the-zoo/animal-section/152-raccoon-dogs.html>; Kyoto City Zoo [http://www5.city.kyoto.jp/zoo/lang/en/animals/mammal/n\\_procyonoides](http://www5.city.kyoto.jp/zoo/lang/en/animals/mammal/n_procyonoides).

<sup>22</sup> See <http://www.rmpbs.org/content/index.cfm/program/18054-417>.

<sup>23</sup> See <http://www.bbc.co.uk/nature/wildfacts/factfiles/156.shtml>.

<sup>24</sup> United Press International (Sweden), *Sweden Says Open Season on Raccoon Dogs* (Sept. 4, 2009), at [http://www.upi.com/Top\\_News/2009/09/04/Sweden-says-open-season-on-raccoon-dogs/UPI-95421252091031/](http://www.upi.com/Top_News/2009/09/04/Sweden-says-open-season-on-raccoon-dogs/UPI-95421252091031/).

<sup>25</sup> See <http://www.ctvnews.ca/business/canada-goose-wins-significant-case-against-counterfeiters-1.1006678> (CTV is Canada’s largest private broadcasting company, and CTV News is Canada’s most-watched news program).

<sup>26</sup> See, e.g., Webster’s Third New International Dictionary, pp. 128, 1869 (2002) (defining “raccoon dog” as, *inter alia*, a type of “canid”; and containing definitions for “Asiatic beetle,” “Asiatic cockroach,” “Asiatic elephant,” and “Asiatic garden beetle,” but no definition of “Asiatic raccoon”).

<sup>27</sup> See, e.g., Swiss Animal Protection, *Fun Fur?: A Report on the Chinese fur Industry* (2005) (referring to the manner in which raccoon dogs are raised and slaughtered) (Attachment to HSUS’s May 2011 comments).

readily available to consumers.<sup>28</sup> Rather than confront consumer reactions to these accounts directly, the industry seeks the FTC's stamp of approval to call the animal by a fictitious trade name.<sup>29</sup>

Contrary to the agency's speculative conclusion that the term "Asiatic raccoon" has likely "become familiar" to consumers through fur labeling, 77 FR 57048, the record can only support a conclusion that use of the term "Asiatic raccoon" has been sporadic at best within the fur industry. As noted in the HSUS's May 2011 comments, there is evidence that the fur trade used the name raccoon dog prior to the enactment of the FPLA, although it is unclear how consistently the name was used at that time.<sup>30</sup> In its notice of proposed rulemaking, the FTC discounts this evidence by stressing that it pre-dates the enactment of the FPLA.<sup>31</sup> 77 FR 57048. This fact does not make the evidence irrelevant. To the contrary, the fact that the name raccoon dog was used by the fur industry long before the industry coined the term "Asiatic raccoon" is yet another indicator that raccoon dog is the true English name of the species.

In fact, even though the FTC incorporated the term "Asiatic raccoon" into the Name Guide several decades ago, the record shows that the industry has never consistently applied that term. As noted at the December 2011 hearing on the Name Guide review, some Finnish fur producers have called the species "finnraccoon" even though this name is not permitted by the Name Guide.<sup>32</sup> Indeed, Saga Furs—a major fur producer and auction house—has a section of its current website dedicated to sale of "finnraccoon."<sup>33</sup> Presently, fur garments advertised as containing "finnraccoon" can be purchased from a number of different sources in the U.S., including brand name designers such as Coach and popular retailers such as Sears and Amazon.com.<sup>34</sup> Notably, in their May 2011 comments on the Name Guide,

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<sup>28</sup> See, e.g., <http://www.youtube.com/watch?v=sLcgxIGTFRs>; <http://www.animal-protection.net/furtrade/movies/index.html>; <http://www.youtube.com/watch?v=oxVwsA2MLWA>; <http://www.youtube.com/watch?v=ce4DJh-L7Ys>.

<sup>29</sup> See Hearing Tr. at 43 (fur industry representative expressing concern over what use of the name raccoon dog might do to industry sales of fur from that animal—as the fur industry previously did with respect to use of the name rabbit instead of "coney," and muskrat instead of "Hudson Bay seal"—and stating "I don't believe the Commission should be protecting the consumer.").

<sup>30</sup> See, e.g., Henry Poland, *Fur-Bearing Animals in Nature and Commerce* (1892) (referring to the species as "raccoon dog" and "raccoon-like dog") (Attachment to HSUS's May 2011 comments); *Petersen's Fur Traders Lexicon* (1920)(contains an entry for "Raccoon Dog") (Attachment to HSUS's May 2011 comments).

<sup>31</sup> One of the treatises cited by the HSUS *did not pre-date* the FPLA, but rather was published decades later. Scientifur, *In Beautiful Fur Animals and Their Colour Genetics* (1988) (containing a chapter on the "Raccoon Dog" that begins: "The raccoon dog belongs taxonomically to the family Canidae.") (Attachment to HSUS's May 2011 comments).

<sup>32</sup> See Hearing Tr. at 41.

<sup>33</sup> Saga Furs, *Finnraccoon*, at [http://www.sagafurs.com/en/auctions\\_home/Products/Fur+Selection/products\\_finnraccoon](http://www.sagafurs.com/en/auctions_home/Products/Fur+Selection/products_finnraccoon).

<sup>34</sup> See, e.g., Amazon.com, *M. Miller Finn Raccoon Headband Womens*, at <http://www.amazon.com/Miller-Finn-Raccoon-Headband-Womens/dp/B001P8VC1W>; Coach, *Braided Cable Hat with Finn Raccoon*, at [http://www.coach.com/online/handbags/Product-braided\\_cable\\_hat\\_with\\_finn\\_raccoon\\_](http://www.coach.com/online/handbags/Product-braided_cable_hat_with_finn_raccoon_)

Finnish Fur Sales noted that some fur products consumers would not want to buy certain products based on “vastly different animal welfare standards” between different fur producing countries, and stated that “[c]onsumers are, therefore, justifiably confused about the quality of fur products identified as ‘Asiatic raccoon.’”<sup>35</sup> Other terms for the species have also been used to sell fur products, such as “tanuki” and “magnut,” and though less common, advertisements for sale of fur products using these terms presently exist.<sup>36</sup>

The true English name raccoon dog is also being used often, but sporadically, by the industry in both brick-and-mortar stores and online. By example, in October 2012, Neiman Marcus offered a Roberto Cavalli garment for sale in its San Francisco store that was labeled with a hang tag containing the scientific name *Nyctereutes procyonoides* and the common name raccoon dog.<sup>37</sup> Presently, there are a number of jackets, vests, scarves and other fur garments advertised as containing “raccoon dog” by sellers on eBay and Alibaba.<sup>38</sup> The purpose of the FPLA is to promote both *consistency and accuracy* in labeling and advertising of fur products—these goals are distinct but equally important for protection of consumers in the marketplace. Unfortunately, not only is there a lack of consistency within the industry in terms of labeling and advertising of products containing fur from *Nyctereutes procyonoides*, but the representations made are often erroneous.

Indeed, raccoon dog fur is one of the most commonly mislabeled and falsely advertised types of fur in the marketplace.<sup>39</sup> In its notice of proposed rulemaking, the FTC twice attempts to

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pom-10551-10051-83440-en#118632; Sears, *Madison Ave Mall Plus Size Brown Cashmere Cape-Finn Raccoon Trim*, at <http://www.sears.com/madison-ave-mall-plus-size-brown-cashmere-cape/p-SPM459936514?prdNo=1&blockNo=1&blockType=G1>; O’Connell’s Clothing, *Quartz Nature Jacket Finn Raccoon Fur Collar*, at <http://www.oconnellsclothing.com/product.php?productid=17956>.

<sup>35</sup> See Comments of Finnish Fur Sales, available at <http://www.ftc.gov/os/comments/furlabeling/00015-59946.pdf>.

<sup>36</sup> See Today’s Dressed Pelts, *Japanese Tanuki Fur Bomber Jacket with Leather Trim*, at <http://todaysdressedpelts.storenvy.com/products/738071-japanese-tanuki-fur-bomber-jacket-w-leather-trim>.

<sup>37</sup> Investigators’ notes on file with author.

<sup>38</sup> See, e.g., Alibaba, *Animal Fur>Showroom>RaccoonDog*, at <http://www.alibaba.com/showroom/raccoon-dog-fur.html>; eBay, *Real Raccoon Dog Fur Trim Hooded Rex Rabbit Jacket*, at [http://www.ebay.com/itm/Popular-Real-Raccoon-Dog-Fur-Trim-Hooded-Rex-Rabbit-Fur-Jackets-Coat-New-QD38812-/130766534165?pt=UK\\_Women\\_s\\_Coats\\_Jackets&var=430094993886&hash=item1e724af615](http://www.ebay.com/itm/Popular-Real-Raccoon-Dog-Fur-Trim-Hooded-Rex-Rabbit-Fur-Jackets-Coat-New-QD38812-/130766534165?pt=UK_Women_s_Coats_Jackets&var=430094993886&hash=item1e724af615); eBay, *Real Raccoon Dog Fur Vest New Design Charm Gilet Outwear*, at [http://www.ebay.com/itm/Popular-Real-Raccoon-Dog-Fur-Vest-New-Design-Charm-Gilet-Outwear-Garment-QD86812-/130765890265?pt=UK\\_Women\\_s\\_Waistcoats&var=430094822700&hash=item1e724122d9](http://www.ebay.com/itm/Popular-Real-Raccoon-Dog-Fur-Vest-New-Design-Charm-Gilet-Outwear-Garment-QD86812-/130765890265?pt=UK_Women_s_Waistcoats&var=430094822700&hash=item1e724122d9).

<sup>39</sup> Of a group of 38 jackets purchased by HSUS from 2005-2007 and subjected to mass spectrometry testing, every single garment was either unlabeled, contained a label that misidentified the animal, or was falsely advertised. Several of these jackets (27 of 38) contained fur from raccoon dogs. See HSUS, *Quick Reference Guide: Fur Investigation Results* (last updated Mar. 19, 2008 (Attachment to HSUS’s May 2011 comments)). In November 2008, the HSUS filed a lawsuit against several leading retailers for falsely labeling and advertising fur garments. Several of these garments (8 of 12)



attribute to the HSUS support for the agency’s conclusion that consumers are likely to be familiar with the term “Asiatic raccoon” at this time, citing the HSUS’s testimony that the term has been used “fairly often.” 77 FR 57045, 57048. This is a grossly inaccurate distortion of the HSUS’s testimony, which was actually that the term “Asiatic raccoon” is “used frequently, *but no more frequently than we find it misused*,” and that there is “sporadic use, at best” of the term in the current marketplace.<sup>40</sup> In several investigations by the HSUS, jackets and other garments that contained raccoon dog fur were found to be falsely described as containing “faux” fur or fur from another species of animal.<sup>41</sup> Indeed, raccoon dog fur is very commonly found inaccurately advertised or labeled as raccoon fur—as also clearly indicated in the HSUS’s testimony—a problem no doubt perpetuated by the use of the term “Asiatic raccoon.”<sup>42</sup> In sum, the FTC has reached a conclusion about the term “Asiatic raccoon” based entirely on an unsupported *assumption* that “consumers likely have become familiar with the name ‘Asiatic raccoon’ through fur labels.” 77 FR 57048.

Separate from its conclusion that the term “Asiatic raccoon” is an “appropriate name” for the species, the FTC cursorily concludes that use of the name raccoon dog “could significantly mislead consumers.” 77 FR 57048. This conclusion is based entirely on the unsubstantiated statements by “industry commenters” that consumer exposure to the name raccoon dog has harmed industry sales due to consumer confusion.<sup>43</sup> *Id.* at 57045, 57048. Even if these reports were true, harm to industry sales has nothing to do with accuracy of product representations or consumer protection, and is *not* a basis upon which the FTC can

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contained fur from raccoon dogs. *See HSUS v. Andrew Marc, et al.*, Civ. No. 08-8285, Complaint (D.C. Super. Ct., Nov. 24, 2008).

<sup>40</sup> Hearing Tr. at 78; *see also id.* at 84 (“the suggestion is that because it’s been on the books for 50 years it should be maintained, but our point is that in pattern and practice, it has not been -- it has not been maintained.”).

<sup>41</sup> HSUS, *Quick Reference Guide*, *supra* n.39.

<sup>42</sup> *Id.* (16 of 27 garments containing raccoon dog fur were inaccurately labeled or advertised as containing *raccoon* fur); *see also* Hearing Tr. at 78 (“We’ve seen it called faux, coyote. Probably one of the most common ones is just straight raccoon, just the term raccoon has been very, very common.”).

<sup>43</sup> The *only* support cited for this conclusion is a statement by an industry representative that “two major department stores have stopped carrying items with [raccoon dog] fur because consumers confused it with domestic dog.” 77 FR 57045, 57048. This statement is false. The two retailers referenced are Federated Department Stores (i.e., Macy’s and Bloomingdale’s) and Lord & Taylor. *Id.* at 57045; Hearing Tr. At 60. Lord & Taylor stopped selling raccoon dog fur as a result of a settlement agreement in a lawsuit filed by the HSUS over the company’s advertising practices, not because of reports of consumer confusion. *See* Amy O’Dell, *Lord & Taylor Agrees Not to Sell Raccoon-Dog Fur*, NY Magazine (Dec. 4, 2009), at [http://nymag.com/thecut/2009/12/lord\\_taylor\\_agrees\\_not\\_to\\_sell.html](http://nymag.com/thecut/2009/12/lord_taylor_agrees_not_to_sell.html). Federated Department Stores still sells raccoon dog garments. *See, e.g.*, Macy’s Inc., 2012 Vendor Standards, *available at* <https://www.macysnet.com/Vs/standards/VendorStandards.pdf> (listing only “domestic dog and cat fur” as “prohibited furs”); Macy’s Inc., Fur Bulletin (2010), *available at* [https://www.macysnet.com/RegulatoryAlerts/pdf/10\\_FurBulletin.pdf](https://www.macysnet.com/RegulatoryAlerts/pdf/10_FurBulletin.pdf) (describing requirements for labeling garments with fur from *Nyctereutes procyonoides* to be sold by Macy’s and Bloomingdale’s); Bloomingdale’s.com, Keyword Search “Asiatic raccoon”, at [http://www1.bloomingdales.com/search/index.ognc?SearchTarget=\\*%22asiatic+raccoon%22&KEYWORD\\_GO\\_BUTTON.x=0&KEYWORD\\_GO\\_BUTTON.y=0](http://www1.bloomingdales.com/search/index.ognc?SearchTarget=*%22asiatic+raccoon%22&KEYWORD_GO_BUTTON.x=0&KEYWORD_GO_BUTTON.y=0) (showing 42 items containing raccoon dog fur currently being sold by Bloomingdale’s).

choose not to use the name raccoon dog.<sup>44</sup> Further, as discussed above, the fact that raccoon dogs differ from domestic dogs in some characteristics is not itself evidence of consumer confusion, as appears to be suggested by the agency's notice. *Id.* at 57048, n.114.<sup>45</sup>

Importantly, the FTC's proposed rulemaking cites no record evidence that the true English name of the species *Nyctereutes procyonoides* is "Asiatic raccoon." The FTC's choice to use a zoologically inaccurate and industry-coined name instead of the most accurate, commonly used, and true English name for the species is arbitrary and capricious, contrary to the language and purpose of the FPLA, and will lead to continued mislabeling and false advertising of this species.

### The FTC Failed to Address some Other Inaccurate or Deceptive Entries in the Name Guide

In addition to the necessary incorporation of the name "raccoon dog," the HSUS also proposed dozens of other changes to the FTC's Name Guide, consistent with the mandate from Congress in enacting TFLA that the *entire* Name Guide be corrected and otherwise updated. The welcome addition of "leopard cat" appears to be one of the few changes proposed by HSUS that was addressed. As noted in our prior comments, several of the entries in the Name Guide are no longer the accepted common name, appear to have never been the accepted common name, or appear to be trade names, and would not properly inform the consumer (e.g., bassarisk, burunduk, suslik, lynx cat, pahmi and peschanik). The entries for kolinsky and lynx appear to have disappeared entirely from the Name Guide, and without explanation.

The FTC suggests it relied on "the assistance of FWS" to "independently verif[y]" any suggested updates and correction; but even obvious clerical errors identified by the HSUS and other commentators were ignored. By example, the species suslik was identified as misspelled in the current Name Guide by both the HSUS and Dr. Alfred Gardner of the FWS, but the entry does not appear to have been changed. 77

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<sup>44</sup> In the first hearings to establish the FPLA, and subsequently the Name Guide, fur trade representatives argued for the continued use of the term "coney" instead of "rabbit." See Statement of Max Zucker, Board of Trade of the Coney Fur Industry in New York, Rabbit Dressers Institute, and United Rabbit Dressers, Inc., Hearing before House Comm. on Interstate and Foreign Commerce on H.R. 3734 (April 6-7, 1948) ("The industry has recognized... rabbit is not a good name for the selling the article" ... "we are not having great success in the promotion of the rabbit because I think if you asked your wife she would tell you that there is a resistance to [ ] the use of the name 'rabbit,' a rabbit coat."). Despite the industry's protestations, the name rabbit was required to be used.

<sup>45</sup> Leopard cats differ from domestic cats in some physical and behavioral characteristics—just as raccoon dogs are nocturnal and have similar markings to raccoons unlike domestic dogs, leopard cats are nocturnal and have similar markings to leopards unlike domestic cats. However, the name "leopard cat" is used in the Name Guide in addition to "leopard" and "domestic cat". 77 FR 57053. The FTC cannot treat raccoon dogs differently than other species included in the Name Guide without an explanation grounded in record evidence.

FR 57054. The FTC's obligation under TFLA is to fully and credibly review the entirety of the Name Guide, not to ignore entries other than those that seem most controversial.

The FTC Should Adopt a More Specific Vendor Guaranty Policy that Will Help Ensure the Accuracy of Representations Made to Consumers

In its May 2011 comments, the HSUS recommended that the FTC require that vendor guaranties specifically designate the type of fur contained in the fur products guaranteed. The FTC's current vendor guide policy does not ensure that retailers obtain sufficient information to ensure that their labeling and advertising of fur garments is accurate. The FTC currently *requires* use of a form that only needs to be filled out one time, and covers *all fur products* regardless of their source that the vendor will ever send to the retailer.<sup>46</sup>

The current guaranty form offers *very little opportunity* for accountability. If a garment is advertised incorrectly, there is no way for the FTC to discern from the guaranty form whether or not the error was due to the retailers' actions or the vendor's actions. As the FTC is well aware, the current guarantee process is not working as well as it should – there have been many instances in which labels sewn into a garment are accurate but a retailer's advertisement is inconsistent with the labels and thus inaccurate.<sup>47</sup>

Retailers frequently develop copy for online and catalogue advertisements many months after information about the garment is initially exchanged between a buyer and the vendor. A guaranty form that requires the vendor to provide the five types of information required to be on the label of every fur product<sup>48</sup> would go a long way toward ensuring that the information that the FPLA requires be communicated to consumers is recorded accurately and maintained.

This is information that is *already required to be communicated to consumers by the FPLA*, and thus retailers are already obligated to obtain it from vendors. Thus, the proposed change would not create any additional burden on these businesses – it would simply create a better paper-trail for accountability.

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<sup>46</sup> FTC, *Continuing Guaranty*, at <http://www.ftc.gov/os/statutes/textile/ftc31a.shtm>; see also 16 CFR 301.48(a) (requiring use of the form).

<sup>47</sup> HSUS, *Quick Reference Guide*, *supra* n.39. (noting 6 garments that contained correct labels but which were inaccurately advertised).

<sup>48</sup> These five pieces of information are: (1) the animal's name as provided in the Name Guide; (2) the presence of any used, bleached, dyed, or otherwise artificially colored fur; (3) that the garment is composed of paws, tails, bellies, or waste fur, if that is the case; (4) the name or RIN of the manufacturer or other party responsible for the garment; and (5) the garment's country of origin. 15 U.S.C. § 69b(2); 16 CFR 301.2(a).

The FTC rejected the HSUS’s proposal that vendor guaranties specifically designate the type of fur contained in the fur products guaranteed on the sole grounds that doing so would “conflict[ ] with the Fur Act.” This is an erroneous interpretation of the FPLA.

The FPLA states that a “continuing guaranty” is one that shall be “applicable to any fur product or fur handled by a guarantor, in such form as the Commission by rules and regulations may prescribe.” 15 U.S.C. § 69h(a)(2). This language would not permit the FTC to limit a continuing guaranty to a particular fur product or set of fur products a vendor might sell to the retailer—the statute makes clear that such a guaranty must be allowed for “any fur product” sold by the vendor. But the language of the statute does not prevent the FTC from requiring that such guaranties contain certain types of information. To the contrary, the statute specifically grants the FTC the authority to establish the form of the guaranty by rule or regulation. *Id.*

The agency’s conclusion that it is powerless to establish certain minimum information requirements for continuing guaranty forms would impermissibly render the statutory phrase “in such form as the Commission by rules and regulations may prescribe” superfluous. Further, the guaranty provisions of the FPLA allow a retailer to avoid liability for activity that would otherwise be unlawful under the Act, and the provisions make clear that such a guaranty is only valid if received in “good faith.” *Id.* § 69h(a). Thus, the FPLA anticipates that not every guaranty will be sufficient, and it is entirely consistent with the purpose and language of the guaranty provisions, and the FPLA as a whole, for the FTC to establish by rule the necessary elements of a guaranty that a retailer can rely on.

#### Enforcement of the Fur Rules by the FTC

The fur rules are only as effective as enforcement by the FTC allows them to be. A number of the findings from the HSUS’s past investigations established violations of the FPLA and fur rules, irrespective of implementation of the *de minimis* value exemption that was recently eliminated by Congress, and other decisions to be finalized by the FTC in the current rulemaking process. The HSUS reiterates its request that the FTC ensure that the FPLA and the fur rules are diligently enforced.

Respectfully submitted,

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