



United States of America
FEDERAL TRADE COMMISSION
600 Pennsylvania Avenue, NW
Washington, DC 20580

Division of Advertising Practices
Bureau of Consumer Protection

Mary K. Engle
Associate Director

April 28, 2016

William H. Stallings
Mayer Brown LLP
1999 K Street, N.W.
Washington, D.C. 20006-1101

Sent by electronic and U.S. mail

Re: Foster Poultry Farms, Inc., FTC File No. 152-3244

Dear Mr. Stallings:

As you know, on July 2, 2015, Mercy for Animals (“MFA”), filed a complaint with the Federal Trade Commission alleging that your client, Foster Poultry Farms, Inc., and the 501(c)(3) nonprofit American Humane Association (“AHA”) have engaged in unfair and deceptive practices in connection with the advertising and promotion of AHA’s “American Humane Certified” label for chicken products. The staff of the FTC’s Division of Advertising Practices has investigated these allegations for possible violations of Sections 5(a) and 12 of the Federal Trade Commission Act, 15 U.S.C. §§ 45(a) and 52.

The AHA oversees the AHC program, a third-party farm animal welfare and audit system for producers of chicken, eggs, turkey, cattle, and pigs. The AHC label on product packaging purports to signify the producer’s commitment to the welfare of its animals by having met the AHC standards. Because the AHA holds itself out as a bona fide independent certification organization, the AHC label on Foster Farms products arguably constitutes an endorsement, as defined by the FTC Guides Concerning the Use of Testimonials and Endorsements in Advertisements. *See* 16 C.F.R. § 255.4; *see also* § 255.3, Example 3. According to the Endorsement Guides, “an endorsement may not convey any express or implied representation that would be deceptive if made directly by the advertiser.” *Id.* § 255.1(a). The Foster Farms website and packaging for its chicken products tout the company’s AHC certification. According to MFA, however, Foster Farms treats its live chickens inhumanely and, therefore, use of the AHC logo is deceptive. After carefully reviewing MFA’s allegations and investigating Foster Farms’ practices, as explained below, the staff has decided not to recommend enforcement action at this time.

Before certifying a producer of live broiler chickens under the AHC program, the AHA annually audits company facilities as to 106 different criteria. The criteria require the producer to give the birds clean and sufficient food and water; limit stress to the birds; allow growing birds to express normal behaviors; provide sufficient space, clean litter, and adequate lighting; limit ammonia levels; train staff in animal husbandry and welfare; make frequent checks of the live birds throughout the day; and keep daily records of those checks. The AHA will not certify a producer if it fails to accumulate a sufficient score on the annual audit¹ or if the on-site auditor observes, among other things, willful acts of animal abuse. Even if the producer receives a passing score on the audit, it must correct any non-conformances within ninety days.

MFA conducted undercover investigations of several Foster Farms chicken facilities between March and June 2015. One investigator gained employment as a laborer at “growout” facilities in Fresno County, California, and neighboring counties. At a growout facility, newly hatched chickens are raised to maturity before being transported to a slaughtering facility. Another MFA investigator gained employment at a slaughtering facility. Using pinhole-size cameras, the MFA investigators recorded instances of animal mistreatment and abuse, such as workers throwing bins of newly hatched chicks onto the ground; throwing, punching, and mishandling live birds on the shackling line; and ripping feathers from live birds.² Citing this video evidence, MFA challenges Foster Farms’ advertising claim that the AHC standards are in practice on its fresh chicken ranches “24 hours a day, seven days a week, 365 days a year.” MFA asserts that the recorded instances of animal cruelty, and the company’s alleged failure to respond, or respond adequately, to reported abuses, demonstrate that the AHC standards were not practiced at all times.

Despite concerns about the AHC certification in light of the documented animal abuse, the staff has decided not to recommend enforcement action. Some of the factors we considered include that, after MFA publicized its undercover video in June 2015, Foster Farms conducted its own investigation, which quickly resulted in the termination of five employees suspected of abusing live chickens. The AHA then conducted an unannounced audit of the facilities at issue, and each facility passed. In addition, Foster Farms recently implemented an expensive, state-of-the-art video monitoring and auditing system at its AHC-certified facilities. Under this system, auditors at a remote facility review footage on a daily basis to assess employee compliance with the company’s animal welfare policies and procedures. Such remote video auditing is

¹ The 106 audit items account for 1,001 total possible points. Twenty-one audit items, totaling 550 points, relate to “Core Criteria,” which have score values of 25 or 50 points. For the AHA to certify a farm, each site must achieve an audit score of 85% of total possible points.

² Some of this video evidence is available at <http://mercyforanimalsmedia.com/video/fosterfarms/ftc/>. MFA also turned over its findings to the Fresno County Sheriff’s Department. The Sheriff’s Department’s Agricultural Task Force subsequently recommended that the Fresno County District Attorney initiate a prosecution for animal abuse. On March 4, 2016, the Fresno County District Attorney’s Office announced that it had filed an animal cruelty criminal charge against one former employee of a Foster Farms processing plant in Fresno. http://www.co.fresno.ca.us/uploadedFiles/Departments/District_Atorney/PDF/2016%2003%2004_Cevalos%20News%20Release.pdf.

William H. Stallings

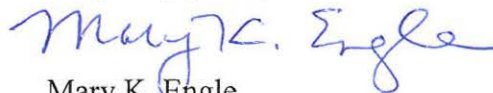
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considered a best practice for animal welfare compliance, because it enables more vigilant monitoring of employees who handle live birds, while deterring them from engaging in misconduct.

This action is not to be construed as a determination that a violation may not have occurred, just as the pendency of an investigation should not be construed as a determination that a violation has occurred. The Commission reserves the right to take such further action as the public interest may require.

Very truly yours,



Mary K. Engle

Associate Director

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