

BEFORE THE UNITED STATES
FEDERAL TRADE COMMISSION

PEOPLE FOR THE ETHICAL TREATMENT OF ANIMALS,

Petitioner,

v.

SEAQUEST HOLDINGS, LLC

Respondent.

COMPLAINT AND REQUEST FOR INVESTIGATION,
INJUNCTION, AND OTHER RELIEF

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I. INTRODUCTION

Pursuant to Federal Trade Commission (FTC) regulations, 16 C.F.R. §§ 2.1–2.2, People for the Ethical Treatment of Animals (PETA) requests that the FTC investigate and commence an enforcement action against SeaQuest Holdings, LLC (SeaQuest), for engaging in unfair practices in apparent violation of the FTC Act, 15 U.S.C. §§ 41–58. Specifically, SeaQuest exhibits wild animals, who are inherently unpredictable, in settings that authorize and encourage the public—and particularly children—to interact with them, which creates a heightened risk of unavoidable and substantial physical injury to the millions of people reportedly frequenting SeaQuest’s facilities across the country.

As explained on its website, and depicted in the following sampling of website photos, SeaQuest invites the public to “touch, feed, and participate in animal interactions.”¹



Fig. 1. Photos of children interacting with wild animals posted on SeaQuest’s website.

SeaQuest markets itself as “a venue ideal for school field trips [and] birthday parties” and its hands-on encounters let customers connect with sloths, otters, stingrays, caiman alligators, sharks, birds, and other animals.² Exotic animals are unfamiliar to the public and the dangers they pose are not obvious to SeaQuest’s patrons. The playful hands-on environment obscures the safety hazards associated with coming into close contact with wild animals and has resulted in customers being scratched and bitten while engaging in the very activities that SeaQuest encourages and markets as safe. SeaQuest’s employees have also been put in harm’s way—sustaining scratches and bites—as a result of customer-animal interactions. Since the FTC has made harms against workers an enforcement target, this issue is particularly suitable for FTC intervention.³

¹ SEAQUEST, <https://visitseaquest.com/> (last visited Aug. 1, 2022).

² *About Us*, SEAQUEST, <https://visitseaquest.com/about-us/> (last visited Aug. 1, 2022); see e.g., *Asian Otter Interaction*, SEAQUEST, <https://visitseaquest.com/utah/product/asian-otter-interactions/> (last visited Aug. 1, 2022) (“[G]uests will meet and participate in an interactive feeding with SeaQuest’s charming otter friends.”); *Baby Sloth Interaction*, SEAQUEST, <https://visitseaquest.com/utah/product/baby-sloth-interaction/> (last visited Aug. 1, 2022) (“With this experience, you will get to pet and feed the sloths.”).

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

This complaint is also timely given the public’s growing and heightened awareness and concern over disease transmission between humans and animals. The COVID-19 pandemic has been described as “an unrelenting demonstration of the devastating impact of zoonotic disease, whereby viruses jump from animals to infect humans.”⁴ During the pandemic, the United Nations Environment Programme reported that “75 percent of all emerging infectious diseases are zoonotic.”⁵ The zoonotic disease transmission “scares” at SeaQuest reinforce the need to address and limit human-animal interface at these facilities. Accordingly, PETA submits this citizen complaint, requesting that the Commission take action, pursuant to Section 5 of the FTC Act, 15 U.S.C. § 45, to stop SeaQuest from engaging in unfair practices that continue to put the public, and its employees, at risk of substantial physical injury.

II. PARTIES

A. Petitioner

Petitioner People for the Ethical Treatment of Animals, Inc. is a Virginia non-stock corporation and animal protection charity pursuant to Section 501(c)(3) of the Internal Revenue Code. Dedicated to protecting animals from abuse, neglect, and cruelty, PETA engages in activities such as cruelty investigations, research, newsgathering, investigative reporting, and protest campaigns to further its mission.

B. Respondent

Respondent SeaQuest is an Idaho-based chain of for-profit aquariums, petting zoos, and animal exhibitions whose business model relies on direct contact between customers and wild animals.⁶ SeaQuest operates its facilities entirely indoors, typically in shopping malls, in ten locations—in ten different states—across the country.⁷ SeaQuest is a chain, but each location is a separate legal

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

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

⁶ *See generally*, SeaQuest, LINKEDIN, <https://www.linkedin.com/company/seaquestusa/about/> (last visited Aug. 1, 2022) (hereinafter SeaQuest LinkedIn).

⁷ *Id.*; *Find Your Location*, SEAQUEST, <https://visitseaquest.com/locations/find-your-location/> (last visited Aug. 1, 2022) (identifying locations in Utah, Nevada, Texas, Colorado, California, Minnesota, Connecticut, Virginia, New Jersey, and Georgia).

entity.⁸ Exhibiting over one thousand exotic animals, SeaQuest reportedly receives between two to five million customers annually to its “ultimate land and sea adventure.”⁹

III. STATEMENT OF FACTS

SeaQuest’s interactive business model, and lax animal handling practices, has repeatedly jeopardized the public’s safety. Injurious contact between wild animals and the public has been a chronic problem at many of SeaQuest’s facilities.

SeaQuest exhibits otters, animals having strong teeth, a powerful bite, and the potential to cause serious injury to people, as captured in a video of an otter named Xander biting customers’ boots during an interactive encounter at SeaQuest’s Texas facility.¹⁰ *See* Video 1 (recording the employee’s complete lack of control over the otter and laughing patrons failing to appreciate the riskiness of the interaction). Otters are also rabies vector species, which means any bite from an otter could be a potential rabies risk, and rabies is nearly universally fatal for humans if contracted. These characteristics underlie the U.S. Department of Interior’s warning to maintain a sixty-foot distance from otters in the wild,¹¹ and prompted some states to pass laws requiring that exhibitors maintain exclusive control over them.¹²

Despite these warnings, SeaQuest has had several incidents with otters biting children during direct contact encounters. For example, in August 2019, SeaQuest allowed a child to come into contact with an otter during a public feeding at SeaQuest’s Connecticut facility.¹³ The otter bit the child on the hand and drew blood.¹⁴ The treating physician reported the incident to the Connecticut State Department of Public Health (DPH) because “a bite from this species is considered a potential rabies risk and there is no approved quarantine period or rabies vaccination in exotics and wildlife.”¹⁵ The DPH advised SeaQuest to either euthanize and test the otter or recommend that the child receive rabies post-exposure treatment (consisting of infusion of immunoglobulin around the wound and a series of four vaccinations)—a treatment course that the DPH described as

⁸ The individual entities (collectively “SeaQuest”) include: SeaQuest Interactive Aquarium Utah, LLC, SeaQuest Interactive Aquarium Las Vegas LLC, SeaQuest Interactive Aquarium Fort Worth LLC, SeaQuest Littleton, LLC, SeaQuest Folsom, LLC, SeaQuest Roseville, LLC, SeaQuest Trumbull, LLC, SeaQuest Management, Inc., SeaQuest Woodbridge, LLC, SeaQuest Seasonal, LLC. *See* Business Search, IDAHO SEC’Y OF STATE OFF., <https://sosbiz.idaho.gov/search/business> (last visited Aug. 10, 2022).

⁹ SeaQuest LinkedIn, *supra* note 6; *About Us*, *supra* note 2 (“Over 2 Million Guests Visit SeaQuest Ever Year”); *see* Ted Phillips, *Idaho Company Seeks Special-Use Permit to Bring ‘Interactive Aquarium’ to Sunrise Mall*, *NEWSDAY* (Oct. 9, 2018), <https://www.newsday.com/long-island/nassau/aquarium-sunrise-mall-interactive-wildlife-seaquest-e32990> (estimating that each SeaQuest facility draws between 300,000 and 500,000 visitors annually).

¹⁰ *20 Public Lands to Explore This Winter*, U.S. Dep’t of Interior (Jan. 10, 2022), <https://www.doi.gov/blog/20-public-lands-explore-this-winter>; Ex. 1 p. 13 (USDA Inspection Report). Although the exact date of the recording is unknown, it may have been taken in 2019. SeaQuest transferred Xander to its Virginia facility in October 2019 and the visitor who provided the video posted a Yelp Review in January 2020.

¹¹ *20 Public Lands to Explore This Winter*, *supra* note 10.

¹² *See, e.g.*, CONN. AGENCIES REGS. § 26-55-6(a)(4)(B)(iii) (classifying otters as Category Three Wild Animals); *id.* § 26-55-6(f)(5).

¹³ Connecticut requires that exhibitors maintain otters “under conditions that give the owner or keeper exclusive control over them at all times as to prevent loss or risk of injury to the public.” CONN. AGENCIES REGS. § 26-55-6(f)(5).

¹⁴ *See* Ex. 2 (Email and Otter Bite Incident Report, Aug. 22, 2019).

¹⁵ *Id.*

“uncomfortable, expensive, and although considered safe not totally without risk.”¹⁶ Ultimately, SeaQuest quarantined the otter for six-months after which the facility resumed public interactions with the otter.¹⁷ Two weeks later the otter bit another child on the finger, again drawing blood.¹⁸ This second otter bite led to a citation from the United States Department of Agriculture (USDA).¹⁹

Like otter interactions, wallaby-human interactions can be dangerous because wallabies have aggressive tendencies to kick and scratch.²⁰ On September 25, 2020, video footage captured a wallaby at the SeaQuest Connecticut facility who escaped his enclosure and frantically hopped around the gift shop. *See* Video 2. While no injuries were reported from that escape, a month earlier a customer shared her wallaby “souvenir”—a scratched arm—on social media after she tried petting and feeding a wallaby at SeaQuest.



Fig. 2: A customer’s wallaby “souvenir.” Ex. 6 (Rinsky Photo, August 15, 2020).

These otter and wallaby incidents are part of a pattern of animal encounters where SeaQuest’s Connecticut facility failed to maintain control over or supervise wild animals handled by the public.²¹ On August 15, 2020, a visitor reported that “we got to pet and hold a jinkajou [sic], pet and feed an old tortoise and 2 capybaras [sic] and a sloth, and finally an albino wallaby.” A video shows a kinkajou wrapped around the visitor’s neck with no employee visible.

The USDA has cited SeaQuest facilities multiple times after contact with an animal caused injury to the public:

- SeaQuest Texas (USDA Site 003): In February 2021, the USDA cited SeaQuest for failing to have sufficient barriers after a capybara bit a child’s hand when the child reached over the side of the enclosure.²² The USDA also cited SeaQuest for not fully monitoring an

¹⁶ *Id.*

¹⁷ *See* Ex. 3 (Email from SeaQuest Regarding Otter Quarantine, June 24, 2020).

¹⁸ *See* Ex. 4 (SeaQuest Incident Report, July 16, 2020).

¹⁹ *See* Ex. 5 p. 2 (USDA Inspection Report – Conn., Mar. 25, 2021).

²⁰ *Kangaroos and Wallabies*, ENVIRONMENT, <https://environment.des.qld.gov.au/wildlife/animals/living-with/kangaroos#:~:text=Females%20and%20smaller%20male%20animals,risk%20%2D%20particularly%20to%20small%20children> (last visited Aug. 1, 2022).

²¹ *See* Ex. 7 (E-mail from Sinnott to Dickson, Aug. 19, 2020).

²² *See* Ex. 1 pp. 2–3 (USDA Inspection Report, Feb. 3, 2021).

“animal encounter” during which a member of the public attempted to pet a sloth when the attendant’s back was turned, resulting in the sloth biting the guest.²³

- SeaQuest Utah (USDA Site 004): In November 2019, the USDA cited SeaQuest for allowing public interactions without adequate barriers or direct control over Gus, a South American coatimundi, which resulted in Gus biting a visitor and an employee.²⁴ A few months later, in January 2020, the USDA issued SeaQuest a critical repeat citation after Gus bit another guest and employee during a public interaction session. On both occasions SeaQuest allowed two coatimundis free physical contact with seated guests within the enclosure.²⁵
- SeaQuest Texas (USDA Site 003): In February 2019, the USDA cited SeaQuest for failing to reduce the risk of injury to visitors during public encounters with an Asian small-clawed otter, which resulted in injuries to two visitors during a month period.²⁶ In June 2019, the USDA issued SeaQuest a repeat citation after two more incidents involving customers suffering injuries from the otter occurred. In its report, the USDA noted that, despite the multiple injuries, the “facility continue[d] to allow public interaction with an Asian Small-Claw otter without restraint on the otter or a barrier between the otter and the public.”²⁷

SeaQuest operates facilities in ten states.²⁸ But not every state requires SeaQuest to report all incidents involving patrons being injured by exhibited wildlife. Records of guest injuries in states, like Colorado, that did require such reporting provide insight into the actual frequency of incidents likely occurring at SeaQuest facilities in general.²⁹ For example, for a ten-month period (June 26, 2018 to April 25, 2019), incident reports from the SeaQuest Colorado facility document twenty-two customer injuries.³⁰ Except for one incident (involving an iguana’s claw piercing the skin on the inside of a child’s mouth), all of the incidents involved an animal (e.g., lizard, iguana, porcupine pufferfish, bamboo shark, lorikeet, horn shark, pacu, tortoise, pig) biting either a child or an adult.³¹

The severity of reported injuries has ranged from bites that caused “a small amount of blood” to customers seeking urgent care for numbness, shortness of breath, or potential exposure to rabies.³² Since SeaQuest encourages the public to interact with animals, including those having known dangerous tendencies (e.g., otters and wallabies), its millions of customers are at risk of sustaining

²³ See Ex. 1 p. 3 (USDA Inspection Report, Feb. 3, 2021).

²⁴ See Ex. 1 p. 9 (USDA Inspection Report, Nov. 21, 2019).

²⁵ See Ex. 1 p. 7 (USDA Inspection Report, Jan. 13, 2020).

²⁶ See Ex. 1 p. 13 (USDA Inspection Report, Feb. 5, 2019).

²⁷ See Ex. 1 p. 11 (USDA Inspection Report, June 19, 2019).

²⁸ See *Find Your Location*, *supra* note 7 (identifying locations in Utah, Nevada, Texas, Colorado, California, Minnesota, Connecticut, Virginia, New Jersey, and Georgia).

²⁹ See, e.g., 2 COLO. CODE REGS. § 406-11#1104(A)(2)(a)(4).

³⁰ See Ex. 8 (Incident Reports).

³¹ See *id.*

³² See, e.g., Ex. 2 (Email and Otter Bite Incident Report, Aug. 22, 2019); Ex. 8 pp. 3–5, 15 (Incident Reports).

serious physical injury.³³ Furthermore, the risk to children is heightened since children represent SeaQuest’s target market.³⁴

Adding to the already perilous environment created by the natural tendencies of wild animals, SeaQuest has a documented history of lax supervision. In 2021, the USDA cited SeaQuest Minnesota for failing to have a readily identifiable attendant present at all times during public contact with animals: an area housing two pigs, two wallabies, and two rabbits lacked public barriers and allowed contact between animals and the public without an attendant present.³⁵ That same year, the USDA cited SeaQuest Nevada for failing to have a responsible, knowledgeable, and readily identifiable employee present during all times of public contact.³⁶ And, the USDA issued SeaQuest Texas a repeat citation for failing to have attendants present during possible interactions between animals and the public at the facility: two rabbits and an armadillo were within easy reach of the public in enclosures with two-foot-tall fences and no barriers, and no employee was present to monitor the encounter.³⁷ In 2019, USDA inspectors personally experienced how the SeaQuest Texas facility handled animals during public interactions.³⁸ The inspectors entered a coatimundi enclosure, sat down, and two coatimundis climbed onto their laps.³⁹ When describing SeaQuest’s method of control—which consisted of grabbing the animals if they started a behavior that was not appropriate, an inspector commented: “One of the coati was able to grab my arm in its mouth before the attendant was able to restrain [the animal].”⁴⁰

SeaQuest’s advertising and messaging gives customers a false assurance that interaction with wild animals is safe. However, the frequency of injuries occurring at SeaQuest facilities, coupled with the potential for severe injury, evidence the opposite. FTC intervention carries particular importance in this instance because of the risk to children posed by the dangerous interactive environments.

IV. LEGAL STANDARD

Section 5 of the FTC Act (15 U.S.C. § 45) prohibits “unfair or deceptive practices in or affecting commerce.”⁴¹ An act or practice is unfair if it “causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition.”⁴² Injury may take any of three forms:

³³ See Phillips, *supra* note 9 (“[Covino] said the company’s . . . facilities draw 300,000 to 500,000 visitors each year, many of them children who get to feed the animals.”)

³⁴ *See id.*

³⁵ Ex. 9 (USDA Inspection Report - Minn., Nov. 1, 2021).

³⁶ Ex. 10 (USDA Inspection Report – Nev., July 13, 2021).

³⁷ Ex. 11 p. 1 (USDA Inspection Report – Tex., June 22, 2021).

³⁸ *See* Ex. 12 (USDA Inspection Report – Tex., Nov. 18, 2019).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ 15 U.S.C. § 45(a)(1).

⁴² *Id.* § 45(n); *Unfair and Deceptive Practices—Federal Trade Commission Act*, FDIC Consumer Compliance Examination Manual 1.2 (Dec. 2018), <https://www.fdic.gov/resources/supervision-and-examinations/consumer-compliance-examination-manual/documents/7/vii-1-1.pdf>. The Commission’s Policy Statement on Deception defines deceptive practices as “involving a material representation, omission or practice that is likely to mislead a consumer acting reasonably in the circumstances.” *A Brief Overview of the Federal Trade Commission’s*

monetary, disruption, or physical.⁴³ The FTC Act defines commerce to mean “commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia”⁴⁴

V. CLAIMS

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

1. SeaQuest’s Interactive Model Is Unfair Because It Causes Substantial Physical Injury To Customers.

As a commercial enterprise operating in several states throughout the country, SeaQuest cannot lawfully engage in practices that are likely to cause substantial injury to customers. But SeaQuest’s interactive business model creates an environment where physical injuries are commonplace for its patrons and workers. Substantial injury that makes a practice unfair may involve “unwarranted health and safety risks.”⁴⁵ Although the FTC Act does not define “substantial,” the dictionary defines this term to mean “large in size, value, or importance.”⁴⁶ Substantiality is measured in the aggregate.⁴⁷ This means that a significant risk of harm to each consumer, or a small degree of harm to a large number of consumers, may be deemed substantial.⁴⁸ An unfairness case may be brought on the basis of actual or likely injury.⁴⁹ Although this complaint mainly focuses on the injuries that have already occurred at SeaQuest’s facilities, it is reasonable to presume that such injuries will likely continue to occur in the absence of intervention.

SeaQuest’s interactive model, combined with its inability to appropriately handle wild animals, have repeatedly placed the public’s safety at risk. SeaQuest’s acts are substantially injurious because: (1) they have actually caused a small degree of harm to a large number of customers; and (2) they are likely to continue to cause harm—potentially severe harm—to customers. Just in the

Investigative, Law Enforcement, and Rulemaking Authority, FTC (May 2021), <https://www.ftc.gov/about-ftc/what-we-do/enforcement-authority>.

⁴³ Letter from Harold Kim, Exec. Vice President U.S. Chamber Inst. for Legal Reform, to Donald S. Clark, FTC Sec’y 4 (Dec. 21, 2018), https://www.ftc.gov/system/files/documents/public_comments/2018/12/ftc-2018-0098-d-0037-163376.pdf.

⁴⁴ 15 U.S.C. § 44.

⁴⁵ *In re Int’l Harvester Co.*, 104 F.T.C. 949, 1061 (1980).

⁴⁶ *Substantial*, CAMBRIDGE DICTIONARY, <https://dictionary.cambridge.org/dictionary/english/substantial> (last visited Aug. 1, 2022); see Letter from Harold Kim, *supra* note 43, at 9 n.42 (citing Merriam-Webster’s Collegiate Dictionary and Cambridge Dictionary).

⁴⁷ Letter from Harold Kim, *supra* note 43, at 9.

⁴⁸ Michael D. Scott, *The FTC, The Unfairness Doctrine, and Data Security Breach Litigation: Has the Commission Gone too Far?*, 60 ADMIN. L. REV. 127, 152 (2008), https://administrativelawreview.org/wp-content/uploads/sites/2/2014/04/The-FTC-The-Unfairness-Doctrine-and-Data-Security-Breach-Litigation-Has-the-Commission-Gone-Too-Far_.pdf; see 15 U.S.C. § 44; *In re Int’l Harvester Co.*, 104 F.T.C. at 1064 n.55 (quoting *FTC Policy Statement on Unfairness*, FED. TRADE COMM’N (Dec. 17, 1980), <https://www.ftc.gov/public-statements/1980/12/ftc-policy-statement-unfairness>: “An injury may be sufficiently substantial, however, if it does a small harm to a large number people, or if it raises a significant risk of concrete harm.”).

⁴⁹ *In re Int’l Harvester Co.*, 104 F.T.C. at 1061 n.45 (explaining that the use of the term “risks” in the FTC’s Unfairness Statement means substantial injury encompasses both actual and likely injury); see generally *FTC Policy Statement on Unfairness*, *supra* note 48.

past few years, the physical injuries sustained by SeaQuest’s patrons due to animal interactions have included (but are not limited to) the following:

Incident Date	SeaQuest Facility (USDA Site No.)	Description	Exhibit(s)
June 6, 2022	Texas (003)	A fish bit a toddler’s fingers after she dipped her hand in the touch tank.	13
June 5, 2022	Texas (003)	An iguana jumped from a rock and latched on to a three-year-old’s arm causing the toddler to be rushed to the hospital where he received six sutures. No employees were in the enclosure when the attack occurred and, when the adult informed SeaQuest that someone was bit, an employee offered a band aid.	14; <i>see also</i> Video 3 (shows the boy, under adult supervision, interacting with the iguana before the attack); Video 4 (depicts the severity of the injury).
April 24, 2022	Connecticut (008)	A pig bit a customer’s finger; the customer’s doctor requested the pig’s vaccination records.	15
April 18, 2022	Nevada (001)	A coatimundi reportedly scratched a boy’s face and eye, resulting in enough bleeding to warrant an ambulance escort to the hospital.	16
February 24, 2022 (date documented by USDA)	Connecticut (008)	A kinkajou, while jumping off of a child’s shoulder to get to the bowl of food held by another child, scratched the first child’s face. A staff member was in the enclosure with the two children.	17 p. 1
November 13, 2021	Utah (004)	An Asian Small-Clawed otter bit the thumb of a guest during an interaction session.	18 p. 1
September 28, 2021	Utah (004)	A kinkajou bit a guest; security footage showed that the guest and a child were attempting to interact with the kinkajou and were not observed or stopped by an employee.	18 p. 1

Incident Date	SeaQuest Facility (USDA Site No.)	Description	Exhibit(s)
April 15, 2021	California (006)	An arowana fish reportedly bit a toddler's hand.	19
January 20, 2021	Texas (003)	A sloth bit an adult while the attendant's back was turned.	1 p. 3
December 2, 2020	Texas (003)	A capybara bit a child's palm, causing it to bleed, after the child reached inside the capybara's enclosure.	1 pp. 2-3
August 15, 2020	Connecticut (008)	A wallaby scratched a customer.	6
July 16, 2020	Connecticut (008)	An otter bit a child and drew blood.	4
February 23, 2020	Texas (003)	A coatimundi jumped on a child during a public interaction and scratched or bit the child's lip. SeaQuest quarantined the animal for thirty-days.	20 p. 6
December 27, 2019	Utah (004)	A coatimundi bit a customer (and an employee) after SeaQuest allowed the animal free physical contact with the seated guest.	1 p. 7
November 11, 2019	Utah (004)	A coatimundi bit a customer (and an employee) after SeaQuest allowed the animal free physical contact with the seated guest.	1 p. 9
August 26, 2019	Utah (004)	An otter bit a patron's finger while being fed. The animal was quarantined for ten days because of possible rabies exposure.	21
August 21, 2019	Connecticut (008)	An otter bit a child and drew blood. The animal potentially exposed the child to rabies and was quarantined for six months.	2, 22
July 1, 2019	Minnesota (007)	Flash, a two-toed sloth, bit a guest during an encounter. Flash was put into a thirty-day quarantine after the incident.	23 p. 2
June 19, 2019 (date documented by USDA)	Texas (003)	In two separate incidents, after SeaQuest allowed public interaction with an otter—without restraint on the otter or a barrier between the otter and the public—an otter wounded a customer.	1 p. 11
May 31, 2019 (posting date)	Colorado (005)	A patron reported that a pig bit a three-year-old through her pants, breaking the skin.	24 p. 4

Incident Date	SeaQuest Facility (USDA Site No.)	Description	Exhibit(s)
April 25, 2019	Colorado (005)	A customer sought treatment at an urgent care facility after being bit by a pig. The animal did not have up-to-date vaccination and was thus quarantined for fifteen days.	8 p. 30
April 23, 2019	Colorado (005)	A pig lunged at and bit a patron.	8 p. 29
February 2019	Texas (003)	In two separate incidents, after SeaQuest allowed public interaction with an otter—without restraint on the otter or a barrier between the otter and the public—an otter wounded a customer.	1 p. 11
January 18, 2019	Colorado (005)	A tortoise, bit a patron's hand.	8 p. 28
November 6, 2018	Colorado (005)	A wounded customer went to urgent care after he leaned over the water monitor enclosure and dangled his finger in front of the monitor.	8 p. 20
August 27, 2018	Colorado (005)	After reaching into a tank and touching a pufferfish—a fish that naturally excretes an extremely potent and deadly neurotoxin—911 was called because the customer complained of numbness and difficulty breathing.	8 pp. 3–5
August 22, 2018	Colorado (005)	An iguana bit a toddler when the toddler was feeding the reptile.	8 p. 2



Fig. 3: Fish bite, June 6, 2022



Fig. 4: Iguana bite, June 5, 2022



Fig. 5: Pig bite, April 24, 2022

The actual frequency of incidents occurring at SeaQuest facilities is not publicly available because not every state requires SeaQuest to report all incidents involving exhibited wildlife. However, based on reported injuries there may be hundreds of injuries involving animal attacks at SeaQuest’s ten facilities annually.⁵⁰ The severity has ranged from invasive bites to breathing difficulty and potential exposure to rabies.⁵¹

SeaQuest has demonstrated an inability to provide an environment that facilitates direct interaction between wild animals and customers in a manner that does not result in substantial physical injury to its customers. As such, SeaQuest’s actions have satisfied the first prong of the unfair practices test.

2. SeaQuest’s Interactive Model Is Unfair Because Consumers Are Not Reasonably Able To Avoid Injury.

SeaQuest’s interactive business model encourages customers to engage in the very activities that cause injury thereby making SeaQuest’s interactive model an unfair practice. The FTC imposes a duty on consumers to take *reasonable* actions to avoid injury.⁵² Whether a consequence is reasonably avoidable “depends, not just on whether people know the physical steps to take in order to prevent it, but also on whether they understand the necessity of actually taking those steps.”⁵³ Regarding the former, in general, the Commission requires mandatory disclosure to “those core aspects of a transaction that virtually all consumers would consider essential to an informed decision . . . [including] information bearing on significant hidden safety hazards.”⁵⁴

In *In re International Harvester Co.*, a case involving a company that manufactured gasoline-powered tractors that were subject to fuel geysering—the forceful ejection of hot fuel from a loosened gas cap—the FTC did not find the farmers to be primarily responsible for their own accidents.⁵⁵ Even though the fuel geysering injuries could have been avoided if the farmers had refrained from removing the cap from a hot or running tractor—something both the owner’s manuals and common knowledge suggested was a dangerous practice—the court reasoned that the farmers did not fully appreciate the necessity for taking these steps.⁵⁶ “Farmers may have known that loosening the fuel cap was generally a poor practice, but they did not know from the limited disclosures made, nor could they be expected to know from prior experience, the full consequences that might follow from it.”⁵⁷

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

⁵⁰ See *supra* Part III.

⁵¹ See, e.g., Ex. 2 (Email and Otter Bite Incident Report, Aug. 22, 2019); Ex. 8 pp. 3–5, 15 (Incident Reports).

⁵² See *Unfair and Deceptive Practices—Federal Trade Commission Act*, *supra* note 42.

⁵³ *In re Int’l Harvester Co.*, 104 F.T.C. at 1066.

⁵⁴ *Id.* at 1062.

⁵⁵ *Id.* at 1050–51, 1066.

⁵⁶ *Id.* at 1065–66.

⁵⁷ *Id.* at 1066.

Most consumers expect and assume, in the absence of some indication to the contrary, that a product marketed to the general public is safe for the use for which it is sold. This assumption and expectation is, we think, especially widespread in the case of products intended for the use of children. Few would imagine that any manufacturer would place on the market a dangerous toy without warning the purchaser of the danger. Thus, at least where the danger is not an obvious one immediately apparent even to the casual purchaser or user, it is an unfair trade practice to market such a product without clear disclosure of the danger.”⁵⁸

SeaQuest exhibits exotic animals—animals that are unfamiliar to the public. The dangers posed by unfamiliar wild animals are not obvious to adults and are even less obvious to children. Whereas some customers may know that coming into close contact with a wild animal is generally a poor practice, they likely would not realize the full consequences that might follow from it while immersed in SeaQuest’s playful surroundings. The hands-on environment further obscures the safety hazard. Even presuming that children can and will read a posted warning sign,⁵⁹ a child cannot fully appreciate the necessity for taking steps to avoid contact with the wild animals at SeaQuest. For example, several bite injuries have resulted from children feeding the otters—an activity SeaQuest encourages children to engage in. Even some adults do not themselves appreciate the necessity to avoid contact.⁶⁰

Customer reviews describe how SeaQuest facilitates the public’s misunderstanding of the potential risks associated with interacting with wildlife. After patron, Jayme Roy, took her daughter to SeaQuest’s California facility, Roy described her experience on social media:

We have never been there before so I was shocked to see that you were able to touch, feed, and interact with everything. I was a little apprehensive at first so I asked one of the workers to double check [that my daughter] could dip her fingers in [the pools] and not only did they say yes, they encouraged Harper to play in the pools and feed the fish. So we bought food tokens and went in. She had a blast, until the last pool (tank). I lifted her up and let her throw the fish food in the water. She had NO FOOD in her hand but was lightly splashing in the water and then it happened. So FAST. A fish lunged up Harper’s hand [was] full of blood and shredded with tiny tooth marks [This Arowana fish] is dangerous and aggressive and has NO PLACE being in a tank, on display, with NO WARNING or signage next to the food for littles to touch and feed. This is completely unacceptable, and unsafe.⁶¹

⁵⁸ *Stupell Originals, Inc.*, 67 F.T.C. 173, 187–88 (1965).

⁵⁹ *See, e.g.*, Ex. 25 (Kookaburras Exhibit Warning – Conn., July 13, 2019) (“Please keep fingers out of cage.”).

⁶⁰ *See* Ex. 6 (Rinsky Photo, Aug. 15, 2020) (picturing a scratched adult arm from a wallaby encounter).

⁶¹ Ex. 19 (Roy’s Facebook Post, Apr. 15, 2021). Roy reported speaking to the “main animal keeper” after the incident who explained that the Arowana Fish is a “lunge eater” who can be aggressive during feeding. *Id.*

The dangers posed by interacting with wild animals are not reasonably avoidable because SeaQuest markets the experience as safe. As depicted in the sampling of website photos above, SeaQuest displays pictures of children, including toddlers, touching wild animals at the facility.⁶² Statements made by Vince Covino, SeaQuest’s owner, including “we are passionate and committed to delivering a safe, educational, and fun experience at each of our facilities for the animals, our guests, and team members,” provide further assurance.⁶³ In a press release seeking investors, SeaQuest even claimed to offer “100% Safe Animal-Interactions.”⁶⁴

SeaQuest’s messaging is not operating in a vacuum. Social media perpetuates a misconception that interacting with wildlife is safe and generally acceptable. Between 2014 and 2017, the number of wildlife selfies posted on Instagram by its 800 million users increased by 292 percent.⁶⁵ Roughly forty percent were “bad selfies,” meaning that the image captured “tourists hugging, holding, touching, baiting, or otherwise inappropriately interacting with animals in the wild.”⁶⁶ These images de-sensitize people to the risks associated with interacting with wild animals and, consequently, their understanding of the necessity to taking steps to avoid injury when opportunities to interact with wild animals in captivity present themselves.

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

3. SeaQuest’s Interactive Model Is Unfair Because Its Countervailing Benefits Do Not Offset The Injury To Consumers.

The cost of physical injuries to customers outweighs the benefits realized from SeaQuest’s interactive model thus satisfying the third prong of the unfair practices test. An act is unfair when it is “injurious in its net effects—that is, the injury must not be outweighed by any offsetting consumer or competitive benefits that are also produced by the act.”⁶⁷ A court is required to “balance against the risks of injury the costs of notification and the costs of determining what the prevailing consumer misconceptions actually are.”⁶⁸ For example, a seller may decide to present less technical data on a product to keep prices lower; this act may be considered less injurious than providing the information but charging more for the product.⁶⁹

The FTC has recognized that practices which inflict physical injury on consumers weigh down the scale heavily. Your agency undertook a cost-benefit analysis in *In re International Harvester Co.*

⁶² See *supra* Figure 1.

⁶³ Frank Rizzo, *Opponents Want to Drain Support for SeaQuest*, THE NASSAU OBSERVER (Apr. 3, 2019), <https://nassauobserver.com/opponents-want-to-drain-support-for-seaquest/>; see, e.g., Phillips, *supra* note 9 (quoting Covino: “We told [the Town of Oyster Bay board members] that we do believe it is a safe environment.”).

⁶⁴ Ex. 26 (Press Release Dec. 16, 2021) (“\$4,000,000 Investor Wanted for New Aquarium Featuring 100% Safe Animal-Interactions with Millions of Potential Visitors”).

⁶⁵ Sherry Noik, *Your Wildlife Selfies Are Hurting the Animals, Study Finds*, CBC (Dec. 6, 2017), <https://www.cbc.ca/news/science/wildlife-selfies-good-and-bad-1.4340944>.

⁶⁶ *Id.*

⁶⁷ *Unfair and Deceptive Practices—Federal Trade Commission Act*, *supra* note 42.

⁶⁸ *In re Int’l Harvester Co.*, 104 F.T.C. at 1061.

⁶⁹ See *FTC Policy Statement on Unfairness*, *supra* note 48.

before concluding that the “consuming public has realized no benefit from Harvester’s non-disclosure that is at all sufficient to offset the human injuries involved.”⁷⁰ In that case, the fuel geysering killed at least one person and burned eleven others.⁷¹ Likewise, in *In re Uncle Ben’s Inc.*, the FTC banned ads showing children cooking food without adult supervision because the risk that the ads might lead children to imitate the potentially harmful activity outweighed any offsetting benefit.⁷² And, in *Philip Morris, Inc.*, the FTC required the distributor to cease and desist distributing unsolicited razor blades in newspapers without special packaging that was “designed or constructed to be significantly difficult for children under six years of age to open within a reasonable time . . . ” because the razor blades might reach and injure small children.⁷³

SeaQuest boasts that its hands-on activities are designed to test children’s observation and scientific reasoning skills and teach them how to feed animals.⁷⁴ SeaQuest’s marketing assertions as to the value of its entertainment facility are not supported by any meaningful evidence. Regardless, this purported “educational” experience has caused injuries ranging from minor scratches to serious bites and potential exposure to rabies and other infectious diseases.⁷⁵ Last year a three-year-old reportedly contracted salmonella after visiting SeaQuest’s New Jersey facility and touching the fish food.⁷⁶ In 2019, the Minnesota facility diagnosed a capybara and coati with ringworm, a bird with chlamydia, and wallabies with toxoplasmosis.⁷⁷ The Minnesota Department of Health (MDH) highlighted the potential zoonotic disease exposure present at SeaQuest due to its interactive model:⁷⁸

Animals Available for Interaction		
Species	Interaction Types	Potential Zoonotic Diseases
Pigs	Touch / Feed / Walk-In Pen	- Rabies ⁷⁹ - <i>Streptococcus suis</i> ⁸⁰ - <i>Yersina enterocolitica</i> ⁸¹ - <i>Brucella suis</i> ⁸²

⁷⁰ *In re Int’l Harvester Co.*, 104 F.T.C. at 1065.

⁷¹ *Id.* at 1064.

⁷² *See In re Uncle Ben’s, Inc.*, 89 F.T.C. 131, 136 (1977).

⁷³ *Philip Morris, Inc.*, 82 F.T.C. 16, 19 (1973).

⁷⁴ *Exception Educational Events Start Here*, SEAQUEST, <https://utah.visitseaquest.com/field-trips/> (last visited Aug. 1, 2022).

⁷⁵ *See, e.g.*, Ex. 2 (Email and Otter Bite Incident Report, Aug. 22, 2019); Ex. 8 p. 15 (Incident Reports, Oct. 15, 2018).

⁷⁶ Ex. 27 p. 14 (SeaQuest N.J. Records, June 23, 2021).

⁷⁷ Ex. 28 pp. 1, 4, 136, 160 (Minn. DOH Records, 2019).

⁷⁸ *Id.* pp. 17–19 (Minn. DOH Records, 2019).

⁷⁹ Early symptoms include fever, headache, itching at the site of the bite, confusion and abnormal behavior; hypersensitivity to light and sound, and difficulty swallowing can also occur. Ex. 28 p. 47 (Minn. DOH Records, 2013). Once signs of disease begin, recovery is very rare; death usually occurs within two to ten days. *Id.*

⁸⁰ “Strep throat” is common in children; symptoms include sore throat, painful swallowing, headache, high fever, nausea, vomiting, and runny nose. Ex. 28 p. 55 (Minn. DOH Records, June 2006). Streptococcosis can also cause infections throughout the body (e.g., skin, heart, joints, lungs) and, less commonly, it can lead to severe and even fatal disease such as toxic shock syndrome. *Id.*

⁸¹ This disease manifest as acute gastrointestinal illness. Ex. 28 p. 765 (Minn. DOH Records, Jan. 8, 2019).

⁸² Infection in people causes flu-like signs (fever, night sweats, headaches, back pain); arthritis and re-occurring fevers may occur with long term infection. Ex. 28 p. 28 (Minn. DOH Records, Apr. 2008). Although rare, cases of brucellosis can involve the nervous system, eyes, or heart. *Id.*

Animals Available for Interaction		
Species	Interaction Types	Potential Zoonotic Diseases
		<ul style="list-style-type: none"> - Enteric bacteria⁸³ - <i>Cryptosporidium</i>⁸⁴ - Toxoplasmosis⁸⁵
Flemish Rabbits	Touch / Feed / Walk-In Pen	<ul style="list-style-type: none"> - <i>Pasteurella multocida</i>⁸⁶ - Tularemia (rabbit fever)⁸⁷ - Mites - Ringworm (fungal skin infection) - Rabies
Wallabies	Touch / Feed / Walk-In Pen	<ul style="list-style-type: none"> - Rabies - Toxoplasmosis - <i>Cryptosporidium</i>
Capybara	Touch / Feed / Walk-In Pen	<ul style="list-style-type: none"> - Rabies - Mites - Ringworm (fungal skin infection)
Coatimundis	Touch / Feed / Walk-In Pen	<ul style="list-style-type: none"> - Rabies - Raccoon Roundworm⁸⁸ - Ringworm (fungal skin infection)
Kinkajou	Touch / Feed	<ul style="list-style-type: none"> - Rabies - Raccoon Roundworm
Sloth	Touch / Feed / Walk-In Pen	<ul style="list-style-type: none"> - Rabies
Otters	Feed	<ul style="list-style-type: none"> - Rabies - Salmonella - <i>Campylobacter</i>⁸⁹
Hedgehogs	Touch / Feed	<ul style="list-style-type: none"> - Rabies - <i>Salmonella</i> - Ringworm (fungal skin infection)

⁸³ Illness from an E. coli infection begins with abdominal pain and cramping and watery diarrhea with blood. Ex. 28 p. 32 (Minn. DOH Records, June 2006). In children under age ten and the elderly, serious complications involving the kidneys can develop in a small percentage of cases. *Id.*

⁸⁴ Symptoms include watery diarrhea, stomach cramps, nausea and a poor appetite, vomiting, fever, and muscle aches; young children and pregnant women are particularly susceptible to dehydration. Ex. 28 p. 30 (Minn. DOH Records, 2013).

⁸⁵ Symptoms begin with mild, flu-like signs (fever, body aches, headache, sore throat); severe disease can occur if the protozoan invades the muscles, nervous system, heart, lungs or eye. *Id.* p. 56.

⁸⁶ Human infection is generally local inflammation around the bite or scratch, possibly leading to abscess formation with systemic symptoms. Ex. 28 p. 78 (Minn. DOH Records, Jan. 8, 2019).

⁸⁷ Initially flu-like signs, such as fever, chills, nausea, headache and joint pain occur; other signs include skin rash, sore throat, or swelling of the eyes. Ex. 28 p. 57 (Minn. DOH Records, 2013). If the lungs become infected, coughing, chest pain, shortness of breath, and severe pneumonia can occur. *Id.*

⁸⁸ Symptoms include nausea, tiredness, liver enlargement, loss of coordination and muscle control, blindness and coma. *Id.* p. 27.

⁸⁹ Campylobacteriosis causes gastrointestinal symptoms, such as diarrhea, cramping, abdominal pain, and fever in domestic animals and humans; young animals and humans are the most severely affected. Ex. 28 p. 29 (Minn. DOH Records, Jan. 2006).

Animals Available for Interaction		
Species	Interaction Types	Potential Zoonotic Diseases
Parakeets	Touch / Feed / Walk-In Pen	- <i>Chlamydia psittaci</i> ⁹⁰ - <i>Mycobacterium avium</i> (Avian tuberculosis)
Ducks	Feed (touch water)	- <i>Salmonella</i>
Chickens	Touch / Feed	- <i>Campylobacter</i>
Giant Tortoise	Touch / Feed / Walk-In Pen	- <i>Salmonella</i> ⁹¹
Iguanas		
Snakes	Touch	
Savannah Monitor	Touch / Feed	
Bearded Dragon		
Leopard Gecko		
Caiman	Feed	- <i>Salmonella</i> - <i>Mycobacterium</i> species ⁹² - <i>Aeromonas</i> species ⁹³ - <i>Vibrio</i> specie ⁹⁴
Arowana	Feed (touch water)	- <i>Mycobacterium</i> species
Koi		- <i>Aeromonas</i> species
Dungeness Crabs		- <i>Vibrio</i> specie
Octopus		
White Sturgeon		
Rainbow Trout		
Tropical Fish		
Sharks		
Stingrays	Feed / Swim In Tank	

The MDH specifically called out SeaQuest’s party room interactions as creating “the perfect opportunity for disease transmission because you have numerous children, food and drink present, and no handwashing in the room.”⁹⁵

The animal interactions encouraged by SeaQuest jeopardize the health and safety of its customers. Children, in particular, are among the most vulnerable to some of these risks. The FTC has recognized that physical injuries (i.e. eye injuries and lacerations)—whether actual or threatened—outweighed countervailing benefits in cases where products were either marketed or accessible to children. Here, in addition to reported eye injuries, lacerations, bites, and scratches, customers risk

⁹⁰ Signs of disease humans include mild flu-like signs (fever, chills, headache), a dry cough, difficulties breathing or pneumonia can also occur; severe cases may affect the heart, liver or nervous system. Ex. 28 p. 34 (Minn. DOH Records, 2013).

⁹¹ The symptoms of salmonellosis in people include diarrhea, fever, and stomach pain; the diarrhea can be severe and infection may spread to other organs, requiring hospitalization. *Id.* p. 54.

⁹² *Mycobacterium* can cause skin lesions. Ex. 28 p. 20 (Minn. DOH Records, Aug. 29, 2019).

⁹³ Humans infected with *Aeromonas* may show a variety of clinical signs, including gastroenteritis (nausea, vomiting and diarrhea) and localized wound infections. Ex. 28 p. 58 (Minn. DOH Records, Jan. 8, 2019).

⁹⁴ *Vibrio* can cause skin lesions. Ex. 28 p. 20 (Minn. DOH Records, Aug. 29, 2019).

⁹⁵ *Id.* p. 15.

being exposed to zoonotic diseases that may cause gastrointestinal illness, pneumonia, or death. Certainly whatever countervailing benefits of the interactive model that SeaQuest may espouse do not offset the injury to SeaQuest’s customers.

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

One of the FTC’s top enforcement targets includes harms against workers.⁹⁶ SeaQuest’s employees may be getting injured by SeaQuest’s animals at the same rate as the public. Although not every incident description explains the circumstances surrounding how an employee’s injury occurred,⁹⁷ some indisputably stemmed from the interactive environment. For several years, SeaQuest’s animals have caused injuries to employees, including (but not limited to):

Incident Date	SeaQuest Facility (USDA Site No.)	Description	Exhibit(s)
November 11, 2021	Nevada (001)	After biting a SeaQuest employee, a kinkajou was quarantined for ten days because the animal was unable to be vaccinated against rabies due to a medical condition.	31 pp. 6–13
January 3, 2020	Nevada (001)	Chip, a small-clawed otter, bit an employee during a presentation. SeaQuest quarantined Chip for ten days because of the risk of rabies exposure.	32
December 27, 2019	Utah (004)	A coati bit an employee (and a guest) during a public interaction session causing skin abrasions.	1 p. 7
November 11, 2019	Utah (004)	A coati bit an employee during a public interaction session. The single employee was responsible for both coati, treats and targets, photos, and the guests.	1 p. 9
January 2, 2019	Colorado (005)	An iguana scratched and broke an employee’s skin after she tried to remove the iguana from climbing a guest’s leg.	33 p. 21
September 2, 2018	Colorado (005)	An iguana scratched and broke an employee’s skin after she tried to remove the iguana from crawling up a guest’s leg.	33 p. 5

⁹⁶ *FTC Authorizes Investigations into Key Enforcement Priorities*, supra note 3.

⁹⁷ See, e.g., Ex. 29 (Nev. Bite Report, Feb. 9, 2019) (describing an employee being bitten by a coati mundi after stepping into the animal’s enclosure to assist a coworker who was bitten); Ex. 30 (Nev. Bite Report, Sept. 7, 2019) (describing an otter biting an employee while being handled).

Incident Date	SeaQuest Facility (USDA Site No.)	Description	Exhibit(s)
August 17, 2018	Colorado (005)	A red tegu scratched an employee's arm, causing it to bleed, while being taken back from a birthday party.	33 p. 2

VI. RELIEF REQUESTED

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

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

- (1) require SeaQuest to cease and desist all interactivity between wild animals and the public;
- (2) require SeaQuest to disclose on its website and next to each exhibit the risks—including zoological disease transmission—that customers may be potentially exposed to by interacting with wild animals;
- (3) impose all other penalties as are just and proper.

DATED: December 5, 2022.

For People for the Ethical Treatment of Animals (PETA)

By: 

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