

May 14, 2024

Via email

Will Arnett
c/o Bradie Steinlauf
Creative Artists Agency
[REDACTED]

Dear Mr. Arnett:

I represent People for the Ethical Treatment of Animals, Inc. (PETA). PETA urges you to immediately stop disseminating misleading marketing claims on your podcast that all eggs sold by Happy Egg Co. come from hens who all “roam on eight or more acres of land,” roam “across eight-plus acres of farmland,” and “live their best hen lives day in and day out,” which you read on the May 6, 2024, episode featuring Steve Martin and Martin Short.¹

Despite these express representations, the hens do not all roam “eight-plus” acres, and do not live “their best hen lives” on idyllic farms. Although prior to this letter you may not have been aware of it, hens on such commercial egg farms experience many of the same horrific conditions as their counterparts raised on traditional factory farms.² Birds are often crammed into sheds by the tens of thousands³—sometimes with little more than a square foot of space each⁴—which limits their access to the outdoors.⁵ The hatches through which hens access the outside are often closed during cold and inclement weather, and at night.

The density of these living conditions prevents hens from engaging in functional social dynamics, such that many cannot access hatches or pop-holes without pushing past many thousands of other frantic birds. The distance to any openings and crowded conditions effectively prevents most hens from reaching or even seeing grass, soil, fresh air, or sunlight. In fact, studies of commercial “free-range” conditions have confirmed that, on average, only 12.5% of hens make it outside.⁶

¹ “*Steve Martin & Martin Short*,” SMARTLESS, at 43:38-44:54 (May 6, 2024).

² In addition to misrepresentations regarding outdoor access, hens in the supply chain of free-range farms are not provided with meaningfully higher animal welfare standards as consumers expect. All male chicks are killed soon after they hatch, often by being ground up alive. Hens’ beaks are typically cut, which can lead to lifelong complications and pain. The crowding of hens into sheds is often so intense that hens almost never have the chance to engage in any of their natural behaviors, such as foraging, dustbathing, and socializing. Stressed birds injure themselves and others. After spending their short lives producing so many eggs that their bodies break down, they are violently slaughtered.

³ See *Chickens Crammed Inside Shed on ‘Free-Range’ Farm*, PETA Investigations (Feb. 2018), <https://investigations.peta.org/chickens-crammed-inside-shed-free-range-farm/>. Happy Egg farms similarly hold (at least) 20,000 hens each. See Happy Egg Co., <https://happyegg.com/our-farms>.

⁴ *Chickens Crammed Inside Shed on ‘Free-Range’ Farm*, *supra* note 3.

⁵ See Leonard Chielo et al., *Ranging Behavior of Commercial Free-Range Laying Hens*, 6(5) *Animals* (Basel) 28 (May 2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4880845/>.

⁶ *Id.* (finding as little as 3% of hens accessed an outdoor space in large commercial flocks).

FOUNDATION
TO SUPPORT
ANIMAL
PROTECTION

Washington

1536 16th St. N.W.
Washington, DC 20036
202-483-PETA

Los Angeles

2154 W. Sunset Blvd.
Los Angeles, CA 90026
323-644-PETA

Norfolk

501 Front St.
Norfolk, VA 23510
757-622-PETA



Info@fsap.org

These deceptive labeling practices are exacerbated by the ongoing avian influenza outbreak, which has been detected in numerous commercial flocks across the United States. It is now common practice for commercial operations to keep all birds indoors *indefinitely*.⁷ Yet companies continue to market eggs as “free-range” or “pasture raised” when many hens are given no access to an outdoor space whatsoever. In fact, Happy Egg advertises to consumers that they obtain eggs from farms “located throughout the Midwest,” specifically identifying Wisconsin, Illinois, Indiana, Iowa, Missouri, and Arkansas.⁸ These states all have documented avian influenza outbreaks in commercial flocks, affecting more than 18 million birds on egg farms specifically, during which time the farms likely prohibited (and may still be prohibiting) hens from accessing the outdoors entirely.

Happy Egg’s claims that all of its eggs come from hens who “roam on eight or more acres of land,” roam “across eight-plus acres of farmland,” and “live their best hen lives day in and day out,” are clearly intended to convey to consumers that the hens spent most of their time on pasture. In this vein, federal courts have already found that egg sellers must defend consumer lawsuits for making similar representations.⁹ As described above, the reality of commercial egg operations like Happy Egg’s do not ensure all or even most hens spend any time outdoors or are provided meaningfully better treatment than many caged chickens. These claims are likely to deceive ordinary consumers concerned about animal welfare into paying a higher price for “free-range” or “pasture raised” eggs that do not meet their expectations or offer the benefit they seek.

Accordingly, PETA looks forward to your prompt confirmation that you will no longer participate in this form of deceptive advertising and **will cease disseminating false and misleading marketing claims on your podcast that eggs sold by Happy Egg Co. come from hens who roam freely on eight or more acres of land and “live their best hen lives.”** If you continue to disseminate such assertions, PETA reserves all rights to pursue further legal action. Please retain all records or documentation related in any way to the advertisement.

Respectfully,


Jared Goodman
Managing General Counsel


⁷ David Pitt, *Bird Flu Drives Free-Range Hens Indoors to Protect Poultry* (Apr. 24, 2022), <https://apnews.com/article/business-health-environment-iowa-animals-d76524dace2b34e2cb0dc25925cead65>.

⁸ Happy Egg Co., <https://happyegg.com/our-farms>.

⁹ See *Lugones v. Pete & Gerry's Organic, LLC*, 440 F. Supp. 3d 226, 242 (S.D.N.Y. 2020) (finding plaintiffs sufficiently alleged that egg company’s statements and depictions of hens in vast grassy fields were false, misleading, and fraudulent under New York state law); *Mogull v. Pete & Gerry's Organics, LLC*, 588 F. Supp. 3d 448, 454 (S.D.N.Y. 2022) (same, but challenging company’s claims that its eggs come from “free-range” chickens); *Usher v. Vital Farms, Inc.*, No. A-21-CV-447-RP, 2022 WL 1491091, at *3-5 (W.D. Tex. Jan. 31, 2022), *report and recommendation adopted*, No. 1:21-CV-447-RP, 2022 WL 1514068 (W.D. Tex. Mar. 2, 2022) (finding plaintiffs sufficiently alleged egg seller’s animal welfare claims, including “pasture raised,” were false and misleading under Texas, California, Florida, and Michigan consumer protection statutes, and fraudulent under Texas common law).