

Samuel Levine  
 Director Bureau of Consumer Protection  
 Federal Trade Commission

PEOPLE FOR  
 THE ETHICAL  
 TREATMENT  
 OF ANIMALS  
 FOUNDATION

Dear Director Levine,

I am writing on behalf of People for the Ethical Treatment of Animals, Inc. (PETA) to respectfully request that the Federal Trade Commission (FTC) investigate and take appropriate enforcement action against the Happy Egg Company (“Happy Egg”)<sup>1</sup> for its apparent unlawful false and misleading marketing claims that hens at Happy Egg farms roam “free range” “on 8+ acres,”<sup>2</sup> are “provide[d] [ ] with a superior standard of care,”<sup>3</sup> and “live their best lives”;<sup>4</sup> that the company “uphold[s] the highest animal-humane standards”;<sup>5</sup> and analogous claims made in sponsorship advertisements by hosts of the popular Smartless podcast, including Will Arnett and Sean Hayes.<sup>6</sup>

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The FTC Act declares unfair or deceptive acts or practices unlawful, including misrepresentations in advertising. 15 U.S.C. § 45(a)(1).<sup>7</sup> The elements of deception include: (1) an oral or written representation, omission, or practice, (2) that is likely to mislead a reasonable consumer, and (3) that is material.<sup>8</sup> The FTC Act’s “ban against false and misleading advertisements and representations applies to that which is suggested as well as that which is asserted.”<sup>9</sup> The Act requires an advertiser “to disclose qualifying information necessary to prevent one of his affirmative statements from creating a misleading impression.”<sup>10</sup> A deceptive representation, omission, or practice is actionable under the FTC Act if it is “material,” “which is likely to affect a consumer’s choice of or conduct regarding a product.”<sup>11</sup>

<sup>1</sup> Happy Egg is headquartered in Rogers, Arkansas, and states that its eggs are supplied by more than 103 farms throughout the Midwest, primarily in Arkansas and Missouri.

<sup>2</sup> *Our Farms*, Happy Egg, <https://happyegg.com/our-farms>.

<sup>3</sup> *FAQs*, Happy Egg, <https://happyegg.com/faqs?start=0>.

<sup>4</sup> *Happy Egg Co.*, Happy Egg, <https://happyegg.com/>.

<sup>5</sup> *FAQs*, *supra* note 3.

<sup>6</sup> In sponsored advertisements, at least two of the three hosts of Smartless, Will Arnett and Sean Hayes, claim that hens at Happy Egg farms “all [ ] roam on eight or more acres of land,” “live their best hen lives day in and day out,” and that Happy Egg “goes above traditional free range farming.” *See, e.g.*, “Henry Winkler,” YouTube (July 8, 2024), <https://www.youtube.com/watch?v=aKHPc4rR7Ss> (Hayes starting at 39:10); “Steve Martin & Martin Short,” YouTube (May 6, 2024), <https://www.youtube.com/watch?v=Z2tVTFvejsY> (Arnett starting at 43:38).

<sup>7</sup> *See also F.T.C. v. Pantron I Corp.*, 33 F.3d 1080, 1095 (9th Cir. 1994).

<sup>8</sup> *See FTC Policy Statement on Deception*, FED. TRADE COMM’N § I (Oct. 14, 1983).

<sup>9</sup> *Raymond Lee Org., Inc.*, 92 F.T.C. 489, 591 (1978). Although “words and sentences may be literally and technically true [they may be] framed in such a setting as to mislead or deceive.” *Horizon Corp.*, 97 F.T.C. 464, 732 (1981) (quoting *Bockenstette v. F.T.C.*, 134 F.2d 369, 371 (10th Cir. 1943)). Indeed, “[a] deceptive impression may be created by implication and innuendo without affirmative misrepresentation or misstating a single fact.” *MacMillan, Inc.*, 96 F.T.C. 208, 301 (1980).

<sup>10</sup> *Int’l Harvester Co.*, 104 F.T.C. 949, 1057 (1984).

<sup>11</sup> *See FTC Policy Statement on Deception*, *supra* note.

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

ENTITIES:

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

Despite Happy Egg’s representations, its claims are demonstrably false and misleading and deceptively represent to consumers that the eggs come from “free range” chickens whose lives are spent roaming idyllic pastures and experience the “highest” humane standards and the “best” quality of life possible.

Most consumers believe that the term “free-range” ensures that such designated animals spend most of their time on a pasture.<sup>12</sup> Happy Egg claims that “all of [its] hens roam on eight or more acres of land.”<sup>13</sup> In reality, the “free range” label does not ensure that hens spend any time outdoors, and birds on commercial free range egg farms experience many of the same horrific conditions as their counterparts raised on traditional factory farms.

Happy Egg advertises that each of its more than 103 farms houses 20,000 hens.<sup>14</sup> PETA’s eyewitness footage<sup>15</sup> of a Nellie’s Free Range Eggs<sup>16</sup> supplier with the same flock size showed thousands of hens crammed tightly together with little more than a square foot of indoor space each. These conditions, which have been documented in numerous “free range” facilities,<sup>17</sup> practically prevents birds’ access to the outdoors.<sup>18</sup>

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 hens. The distance to any openings and crowded conditions would effectively prevent the vast majority of hens from reaching or even seeing grass, soil, fresh air, or sunlight. In fact, studies of commercial “free-range” conditions—including at operations with one-fifth the flock size of Happy Egg farms—have found that, on average, *only 12.5% of hens actually make it outside.*<sup>19</sup>

According to Happy Egg, its farms open the small hatches through which 20,000 hens may attempt to access the outside for only eight hours per day, and the openings are often closed during cold and inclement weather.<sup>20</sup> This means that, at best, hens only have theoretical access to the outdoors for one-third of their lives spent at the company’s suppliers. Moreover, the company’s farms likely keep birds

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<sup>12</sup> Lake Research Partners, ASPCA Labeling Online Survey Public Memo (Jun. 29, 2016) p. 2, [https://www.aspc.org/sites/default/files/aspc-2016\\_labeling\\_survey.pdf](https://www.aspc.org/sites/default/files/aspc-2016_labeling_survey.pdf).

<sup>13</sup> See “Henry Winkler,” *supra* note 6.

<sup>14</sup> *Happy Egg Co.*, *supra* note 4.

<sup>15</sup> See *Chickens Crammed Inside Shed on ‘Free-Range’ Farm*, PETA Investigations (Feb. 2018), <https://investigations.peta.org/chickens-crammed-inside-shed-free-range-farm/>;

<sup>16</sup> Nellie’s Free Range Eggs is Certified Humane by Humane Farm Animal Care, whose standards only require 1.0-1.5 square feet of indoor space per hen depending on the type of barn. *HFAC Laying Hen Standards*, Humane Farm Animal Care at p. 8 (Jan. 1, 2018), <https://certifiedhumane.org/wp-content/uploads/Std18.Layers.2A.pdf>. Happy Egg products are certified “Free Range” by the American Humane Association, which generally requires the same amount of indoor space. *Animal Welfare Standards Guidelines*, American Humane at p. 30 (Sep. 2021), <https://www.americanhumane.org/app/uploads/2022/06/Layers-Free-Range-and-Pasture-Full-Standards-v5.2c-2021.09.10-FINAL.pdf>.

<sup>17</sup> See, e.g. *Australian Competition and Consumer Commission v Snowdale Holdings Pty Ltd* (2016) FCA 541 (Austral.); Leonard Chiello 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/>.

<sup>18</sup> Gyorgy Scrinis et al., *The Caged Chicken or the Free-Range Egg? The Regulatory and Market Dynamics of Layer-Hen Welfare in the UK, Australia and the USA*, *Journal of Agricultural and Environmental Ethics* (2017) at 11, <https://rest.neptune-prod.its.unimelb.edu.au/server/api/core/bitstreams/c1805f9a-574b-5574-a4ab-0907394fa204/content>.

<sup>19</sup> Leonard Chiello et al., *supra* note 12 (finding as little as 3% of hens accessed an outdoor space in large commercial flocks).

<sup>20</sup> *FAQs*, *supra* note 3.

entirely indoors until they are around 22 weeks of age,<sup>21</sup> which is about 15-23% of the lifespan of a commercial egg-laying hen.<sup>22</sup> Considering all this information, hens at Happy Egg farms *may only have theoretical access to the outdoors for approximately one-fourth of their lifespan*, and only a minuscule number of hens likely make it outdoors in these limited windows.

The company's deceptive representations are likely 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*,<sup>23</sup> and the Arkansas Department of Agriculture strongly recommends confining all birds indoors.<sup>24</sup> Accordingly, it is more than likely that Happy Egg advertises that its eggs come from "free range" hens who "roam on eight or more acres," when in reality farms are currently providing no outdoor access.

In addition to misrepresentations regarding outdoor access, Happy Egg falsely and misleadingly claims that the company "uphold[s] the highest animal-humane standards," and that hens on its farms "live their best lives" and are "provide[d] [ ] with a superior standard of care." Despite these humane washing statements, chickens who are part of the supply chain of free range or pasture raised farms are not provided meaningfully higher animal welfare standards as consumers expect. The industry's 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, dust-bathing, and socializing. All male chicks are killed soon after birth, frequently by being thrown into a high-speed grinder or suffocated while fully conscious. Hens at Happy Egg farms have part of their beaks seared off,<sup>25</sup> which often leads to lifelong complications and pain and stressed birds still injure themselves and others. After spending their short lives producing so many eggs that their bodies break down, they are hung upside down and slaughtered often while fully conscious.

No reasonable consumer considers this industry-wide suffering to constitute "the highest animal-humane standards," or "superior standard[s] of care" as Happy Egg claims. Yet the company goes even further in its attempt to keep consumers in the dark about the suffering that commercial "free range" hens endure by making the egregiously false claim that hens "live their best lives" on its farms. There is no reality in which being crammed in sheds with thousands of other birds for approximately three-fourths of their lifetimes, physically exploited, and then slaughtered for commercial egg production is any hen's "best life." This absurd and fraudulent claim alone demonstrates that Happy Egg is happy to deceive consumers concerned about animal welfare into paying higher prices for eggs that do not meet their expectations or offer the benefit they seek.

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<sup>21</sup> See *Happy Egg Organic Egg Scorecard*, Cornucopia Institute, <https://www.cornucopia.org/scorecard/eggs/happy-egg/>.

<sup>22</sup> Most commercial layers are kept for 2-3 years as their egg production decreases after this time. See Sandra Stuttgen, *Life Cycle of a Laying Hen*, University of Wisconsin-Madison Livestock Extension, <https://livestock.extension.wisc.edu/articles/life-cycle-of-a-laying-hen/#:~:text=Most%20commercial%20layers%20are%20kept%20for%202%2D3%20years%20as%20their%20egg%20production%20decreases%20after%20this%20time.>

<sup>23</sup> The United States Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS) recommend that commercial poultry operations and other bird owners keep poultry confined inside during this high-risk period of avian influenza. See *USDA Provides Additional \$502 Million For Highly Pathogenic Avian Influenza – Stands Ready to Combat Additional Detections*, APHIS (March 28, 2024), <https://www.aphis.usda.gov/news/agency-announcements/usda-provides-additional-502-million-highly-pathogenic-avian-influenza>.

<sup>24</sup> *Statewide Confinement Notification*, Arkansas Department of Agriculture (Jan. 19, 2024), <https://www.agriculture.arkansas.gov/highly-pathogenic-avian-influenza/statewide-confinement-notification/>.

<sup>25</sup> *FAQs*, *supra* note 3.

Lastly, Happy Egg's deceptive claims are actionable under the FTC Act because they are material to consumers who are widely concerned about the welfare of animals. Increased awareness of the inhumane treatment of animals has led to noticeable changes in consumer preferences. In recent surveys, more than three-quarters of Americans report that they are willing to pay more for humanely raised eggs, meat, and dairy products,<sup>26</sup> and 67% of respondents claimed they were more likely to purchase a meat or poultry product identified as "humanely-raised" over a conventional product.<sup>27</sup> Further, consumers are so influenced by animal welfare concerns that if a label only lightly implies higher animal welfare standards, consumers are more likely to purchase that product. A 2022 study of U.S. consumers found that "nearly 90% of those who purchased products with claims that had little to no actual impact on animal welfare reported doing so because they believed the label indicated higher-welfare standards and 79% knowingly paid more for those products based on the same misconception."<sup>28</sup> Happy Egg must not be allowed to take advantage of concerned consumers by making false and misleading claims about animal welfare to market its products.

Accordingly, for the reasons set forth herein, PETA respectfully requests that the FTC investigate Happy Egg and hold it accountable for any and all violations of federal law, including, but not limited to, 15 U.S.C. § 45(a)(1).

Respectfully,



Mary Maerz  
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<sup>26</sup> *American Humane, Farmers, and Leading Food Organizations Go to Capitol Hill to Urge Americans to Set a Humane Table for the Holidays and Support Humane Farm Practices*, AP NEWS (Nov. 15, 2019), <https://apnews.com/press-release/pr-newswire/science-business-lifestyle-animals-holidays-8c793eaf30a0f896e4b22ad9c564cad2>.

<sup>27</sup> *2018 Power of Meat*, FOUND. FOR MEAT & POULTRY RES. & EDUC. 48 (2018), [http://www.meatconference.com/sites/default/files/books/Power\\_of\\_meat\\_2018.pdf](http://www.meatconference.com/sites/default/files/books/Power_of_meat_2018.pdf).

<sup>28</sup> Melissa Thibault et al., *Why Are They Buying It?: United States Consumers' Intentions When Purchasing Meat, Eggs, and Dairy With Welfare-related Labels*, 7 FOOD ETHICS 12 (2022), <https://link.springer.com/article/10.1007/s41055-022-00105-3>.