

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

People for the Ethical Treatment of Animals, Inc.,
1536 16th St. NW, Washington, DC 20036,
on behalf of consumers

Plaintiff,

v.

The American Ostrich Company, LLC,
20601 S. Pleasant Valley Rd.,
Kuna, ID 83634

Defendant.

Case No. 2024-CAB-007556

**DEMAND FOR JURY
TRIAL**

People for the Ethical Treatment of Animals, Inc. (“PETA,” or “Plaintiff”), a non-profit organization, by and through its counsel, brings this action on behalf of a class of District of Columbia consumers described herein against The American Ostrich Company, LLC (“American Ostrich Farms,” “AOF,” or “Defendant”), pursuant to the District of Columbia Consumer Protection Procedures Act (“DC CPPA”), D.C. Code §§ 28-3901 to -3913, to halt Defendant’s false and misleading advertising of ostrich meat and derived products. PETA alleges the following based upon information, belief, and publicly available information.

NATURE OF THE ACTION

1. In its advertising, Defendant portrays itself as more than a run-of-the-mill meat producer. On its website, Defendant tells the story of its founding in 2014 by CEO Alexander McCoy—a self-described “novice in the ostrich industry” who established American Ostrich Farms after a career spent as an investment banker, venture capitalist, and international financier. McCoy, so the story goes, made a bet that ostrich meat would “redefine the American conception

of red meat”—and that Defendant would “become the global leader in vertically integrated ostrich production.”

2. As a first step to purportedly redefining the American conception of red meat, Defendant targets the ever-growing class of nationwide consumers, and specifically for this action, District of Columbia consumers that are concerned about animal welfare, and that care about the manner and conditions in which animals are raised for consumption and use (“Consumer Class”). These consumers, including the Consumer Class, are willing to pay a premium for products marketed as being “humanely” or “ethically” produced, and are attracted to Defendant’s ostensible mission of “excellence, forward-thinking, and ethical practices,” as well as more specific guarantees made at points of sale on its website, online retailer Amazon, social media, and on product packaging.

3. Specifically, Defendant represents to the Consumer Class that the ostriches it raises for consumption and use are “ethically raised” and “humanely harvested.” Defendant further boasts about its “ethical practices” and maintenance of “the highest standards of humane handling and product quality.” Defendant promises the Consumer Class that it “prioritize[s] humane treatment,” that “the health and wellbeing of [the] animals is one of [its] top priorities,” and that it “practice[s] strict ethical standards in the handling and care of each ostrich throughout their entire lifespan.” Defendant also represents to the Consumer Class that the ostriches are “incubated, hatched, and raised with the highest standards of care and respect.”

4. In addition to ostrich meat products for consumption, some of Defendant’s products also intended for human use, including skin care products (like ostrich oil, ostrich oil soap, ostrich moisturizing lip balm, and conditioning beard oil), other ostrich products (like eggshells), and even treats for companion animals (like ostrich jerky pet treats), have been and are marketed similarly.

These products are displayed and available for sale on Defendant's website and other points of sale in which Defendant makes humane and ethical representations to consumers, including online retailer Amazon, which are accessible to the Consumer Class.

5. Elsewhere on its website, Defendant directs consumers, including the Consumer Class, to learn more about its "Humane Handling Standards" or "Humane Handling Program," which set forth specific standards and practices that Defendant ostensibly adheres to in its ostrich husbandry.

6. The standards and practices prescribed in Defendant's "Humane Handling Program" are objective, measurable, and achievable. Defendant affirmatively represents that it complies with each of the standards and practices of the program in conducting its operations, including with respect to (i) feed and water, (ii) environment, (iii) "pasture raised" system, (iv) management, and (v) health care of the ostriches.

7. The representations on Defendant's website, online retailer Amazon, social media, and product packaging that it raises the ostriches under its care "humanely" or "ethically" could mislead, and on information and belief, have misled, reasonable consumers, including those in the Consumer Class, to believe that, at a minimum, Defendant spares the ostriches under its care from undue and preventable pain and suffering. Likewise, Defendant's advertising language guaranteeing the use of "highest standards of care and respect" and in accordance with Defendant's "Humane Handling Program" could mislead, and on information and belief, have misled, reasonable consumers, including those in the Consumer Class, to believe that the ostriches under Defendant's care are treated and raised in a manner that avoids the abuse, pain, and suffering caused by Defendant's treatment of the ostriches under its care as alleged in this Complaint. These

representations, individually and collectively, would induce, or have induced, consumers, including the Consumer Class, to pay a premium for Defendant's products.

8. Defendant's representations that it "humanely" or "ethically" raises ostriches using the "highest standards of care and respect" are lies. Indeed, Defendant—often at McCoy's direction—frequently inflicts undue and preventable pain and suffering on these ostriches—intelligent, social animals with complex psychological and physical needs—via neglect, purposeful cost-cutting, and barbaric abuse.

9. Specifically, multiple former members of Defendant's staff who have witnessed Defendant's production practices over different periods have provided detailed and corroborating information about the mistreatment, neglect, and abuse of the ostriches at Defendant's farm in Kuna, Idaho.

10. One commonality is Defendant's frequent prioritization of profits over the most basic standards of animal welfare and the essential needs of the ostriches. For instance, as illustrated by the photographs below, it is common for ostriches—who are native to equatorial Africa—at AOF's Idaho facilities to freeze to the ground during winter, and languish in muddy, flooded enclosures that lack necessary environmental enhancements to allow birds to dry off, dust bathe, or seek shelter from rain, snow, or wind. Defendant's CEO and staff have been aware of this issue but have refused to shelter all ostriches in available greenhouses in order to save on propane costs. The predictable result is dead birds—starved, frozen, or both.



Ostriches confined to wet, muddy enclosures at Defendant's facilities



Ostrich frozen to the ground at Defendant's facilities

11. Suffocation injuries and deaths are also common. At times, ammonia levels at the greenhouses that Defendant does use have been so high that ostriches kept by Defendant have gone temporarily blind, and ailing chicks have huddled in distress and, upon information and belief, suffocated due to the ammonia levels.

12. The conditions at Defendant's "chick barn," a small multiple room facility where chicks often go 48 hours after hatching, have also caused ostrich chicks to huddle to the point of suffocation. Defendant has maintained the barn with little sunlight, causing mold to grow on the walls and maggots, the larva of flies, to hatch on the ground.

13. The ostriches also commonly suffer injuries and die due to starvation and malnourishment. Defendant has poured food for the birds into mud or into broken, leaky feeders, resulting in wet feed that the birds cannot eat. Many birds have gone malnourished and become underweight, which has led to bird injury and death.

14. Defendant has exacerbated these problems by ignoring injuries and illnesses in birds, and failing to provide adequate veterinary care, including appropriately-administered euthanasia, when needed.

15. Despite an alarmingly high death rate and the possibility of contagious diseases at Defendant's facilities, Defendant has also refused to send samples from dead birds to laboratories for testing to determine the cause of death because, in the words of Defendant's CEO, it is "a waste of money." Defendant has also refused to spend the resources to properly dispose of dead birds, who have piled up next to live birds at Defendant's facilities.

16. In addition to undue and preventable pain and suffering inflicted by a desire to unduly maximize profits, Defendant is also responsible for intentional mistreatment, cruelty, and abuse of the ostriches. In one instance, Defendant's CEO refused to promptly euthanize a suffering bird with an exposed bone due to frostbite because the bird was a "valuable breeder."

17. Defendant has also engaged in cruel and abusive handling practices. For example, Defendant's staff have grabbed the ostriches' heads, holding them to the ground to subdue them, kicked them, and struck them with large, metal shepherd hooks in purported attempts to force

compliance and control over the birds. Defendant's staff have also been known to violently pull sitting birds by their tails into standing positions.

18. This extends to intentional barbarity. Defendant's staff have inserted their boots into the external opening of the birds' cloaca to shock the birds and force them to move, while making statements such as "I'm going to f**k you in the a**." At times, the birds have been so distressed that they have run and hit Defendant's fences with excessive force, breaking their wings and toes, skinning their legs, and ripping their chests open.

19. This also extends to cruel killing practices. Among other procedures, Defendant's staff have stepped on ailing birds' necks to hold their heads down before shooting them.

20. Further, Defendant has left ostriches set for slaughter in a small muddy pen, often for weeks at a time before being slaughtered, which has caused the birds to suffer, including from frostbite. In another instance, Defendant sold a live bird and allowed him/her to be "sport killed" by the buyer.

21. Defendant's CEO is aware of these practices and is an active participant in many of them.

22. None of these practices can be justified by reference to applicable husbandry standards or economic necessity. Defendant has the benefit of experienced staffers, who should and in some cases do know better, and access to widely available public information on ostrich welfare and husbandry.

23. Nor are these isolated instances or rare occurrences. The neglect, abuse, and cruelty in Defendant's production practices is habitual and systemic.

24. Because Defendant's production practices are not "humane" or "ethical" and are inconsistent with Defendant's claims of raising the ostriches with the "highest standards of animal

care and respect” and in accordance with its “Humane Handling Program,” Defendant’s advertising is materially deceptive and misleading.

25. PETA, on behalf of the Consumer Class targeted by Defendant in the District of Columbia, brings this lawsuit for statutory and injunctive relief under the DC CPPA to prohibit Defendant from continuing its false, misleading, and deceptive advertising.

JURISDICTION AND VENUE

26. This Court has personal jurisdiction over the parties in this case. PETA maintains an office in the District of Columbia and, by filing this Complaint, consents to this Court having personal jurisdiction over it.

27. The Court has personal jurisdiction over Defendant because Defendant has purposefully directed its conduct to the District of Columbia and availed itself of the benefits and protections of District of Columbia law.

28. Defendant relies almost exclusively on online sales placed by consumers through its website and online retailer Amazon, which are accessible to the Consumer Class in the District of Columbia.

29. Defendant ships its products to consumers within the continental United States, including the District of Columbia.

30. This Court has subject matter jurisdiction over this action under D.C. Code § 28-3905(k)(1) and (k)(2).

31. PETA brings this action on behalf of the Consumer Class under D.C. Code § 28-3905(k)(1)(D).

32. Venue is proper in this Court and is authorized by D.C. Code § 28-3905(k)(2). Defendant aims its advertising at the District of Columbia.

33. Defendant's internet advertising is accessible in the District of Columbia to the Consumer Class.

34. The Consumer Class is able to place orders on Defendant's website and online retailer Amazon bearing substantially similar advertising placed by Defendant.

PARTIES

35. Plaintiff PETA is a 501(c)(3) non-profit public interest organization and qualifies as a non-profit organization pursuant to D.C. Code § 28-3901(a)(14) and as public interest organization pursuant to D.C. Code § 28-3901(a)(15).

36. PETA performs its work throughout the District of Columbia. Many PETA employees work in the District of Columbia. PETA has employees, members, and supporters who reside in the District of Columbia.

37. PETA is the largest animal rights organization in the world with more than 9 million members and supporters, including those who reside in the District of Columbia. PETA's mission statement reads: "Animals are not ours to experiment on, eat, wear, use for entertainment, or abuse in any other way."

38. Advocating on behalf of consumers for transparency in the meat industry and truth and accuracy in meat and poultry advertising is central to PETA's mission. By disseminating truthful information about the cruelties suffered by animals at agricultural facilities to consumers, consumers can make informed choices about whether they should consume those animals or use products derived therefrom. This information results in more educated consumers whom PETA believes will alter their meat-eating habits and habits relating to the use of animal products once those consumers have been exposed to the inhumane and unethical practices used to raise animals for consumption and use, and the substandard conditions in which they are raised for that purpose.

This in turn will result in fewer animals being raised in cruel and abusive conditions for consumption and use.

39. In furtherance of this mission, PETA advocates in various ways on behalf of consumers opposed to cruel treatment of animals used for food. For decades, PETA has conducted investigations of agricultural facilities, initiated litigation, and launched campaigns, websites, and programs aimed at informing and educating consumers about the true conditions to which animals raised for consumption and use are subjected by meat producers and counteracting false and misleading representations regarding the way in which these animals are raised.

40. PETA also regularly alerts consumers to conditions on farms that supply animal products. For example, in 2023, PETA investigators took a scheduled tour of a farm owned by the Ontario Water Buffalo Company and found systemic animal suffering amid piles of manure. PETA alerted consumers about these conditions and asked them, among other things, to petition a Canadian grocer to reconsider selling cheeses made from buffalo milk. The investigation led Quality Cheese, the company that makes Bella Casara buffalo mozzarella, to cut ties with the farm.

41. Similarly, PETA has alerted consumers about the abuse and suffering at Defendant's facilities and has asked them to petition grocers that Defendant has identified as selling its meat to reconsider their relationship with Defendant. Over forty PETA supporters identified as District of Columbia residents joined PETA in its petition and sent a message to these grocers asking them to stop selling Defendant's ostrich meat.

42. Defendant, The American Ostrich Company, LLC, is a limited liability company organized under the laws of the State of Idaho with its principal place of business in Kuna, Idaho.

43. Defendant's assumed business name is American Ostrich Farms.

44. Defendant is a producer of ostrich meat and derived products.

45. Defendant relies almost exclusively on online sales placed by consumers through its website and online retailer Amazon.

46. Defendant ships ostrich meat and derived products within the continental United States, including the District of Columbia.

SUBSTANTIVE ALLEGATIONS

I. Ostriches Are Sensitive, Social Animals Who Suffer if They Cannot Meet Their Physical, Behavioral, and Social Needs

47. The ostrich—native to the grasslands and savannas of equatorial Africa— is a member of a group of birds called ratites. Ostriches are the oldest living birds on Earth, designed by 60 million years of evolution to roam over vast tracts of grassland and desert.

48. Ostriches are the largest of all the bird species and can grow to be as tall as 9 feet and weigh over 300 pounds. They are flightless birds, though they may use their wings to cool themselves and to communicate. Ostriches can live for more than 40 years.

49. Ostriches are an intelligent, social species. The social structure of an ostrich flock is organized, and they form strong bonds with each other. Ostrich groups have a recognized social structure with a dominant male, a dominant female called the “main hen,” and several other females. The dominant male establishes and defends his territory.

50. Ostriches use a variety of vocalizations to communicate with each other, including chirps, hisses, growls, and honks. In the wild, these intelligent birds share parental duties, with the mother taking care of the eggs during the daytime and the father taking night-time duty.

51. Ostriches are also sentient beings capable of experiencing states like joy, happiness, fear, and pain.

52. For example, ostriches are the only birds to dance at times other than when mating. Experts explain that “[e]specially in the early morning, a few birds in a group will suddenly receive

a[n] . . . inaudible cue and begin to dance in circles on tip-toes, with outspread wings. Very soon the whole group will join spontaneously in this twirling dance. This may be a primeval urge or simply an expression of the joy of being alive.”¹

53. In the wild, ostriches feed on grasses, shrubbery, berries, seeds, and succulents. They also eat insects and small reptiles. Ostriches can rely on vegetation as a water source for a short time; however, for long-term survival, they need open-water sources.

54. Ostrich courtship exemplifies the complexity of ostrich communication and social behavior. The process is ritualized and synchronized. A male uses his coloring to attract a female. He will bow to the ground and then wave and shake the feathers of first one wing and then the other while moving his tail up and down. After this movement, he gets up and moves toward the female, holding his wings out and stamping as he goes to impress her. If she approves, she mates with him.

55. Ostrich chicks in the wild need a strong sense of security. They are never left alone by their parents, and to be abandoned in the wild could mean certain death for the chicks. Whenever ostrich chicks find themselves deserted, they call with a gentle “kr kr kr.” Although this may give the impression that the birds are happy and content, this is the sound of fear, anxiety, and distress.

II. Industry Standards of Ostrich and Animal Welfare

56. Given the particularities of the ostrich, various organizations and governments have set standards and recommendations intended to govern the welfare of ostriches in the ostrich

¹ Viva!, *How Ostriches Are Farmed and Killed*, <https://viva.org.uk/animals/other-animals/ostriches/#:~:text=Ostriches%20are%20the%20only%20birds,%2Dtoes%2C%20with%20outspread%20wings>, quoting Holtzhausen, A., and Kotze, M., *The Ostrich*, C.P. Nel Museum, Oudtshoorn South Africa (1990).

farming industry.²

57. For example, the *Ostrich Manual* (2014), published by South Africa's Western Cape Government (the "Ostrich Manual"), specifies that keen animal welfare is a critical aspect of properly keeping ostriches. The Ostrich Manual describes the widely acknowledged Five Freedoms of animal welfare, by which ostrich producers are to be measured: (i) freedom from hunger and thirst; (ii) freedom from discomfort; (iii) freedom from pain and suffering; (iv) freedom from stress; and (v) freedom to express normal behavior. The Manual notes that these freedoms not only are a welfare concern but a basic requirement for ensuring accountable production, which has a direct influence on the farming business' sustainability. The Manual further notes that the ostrich industry and its producers are leaders in this regard and must maintain a high level of responsibility and accountability.

58. In addition, the World Ostrich Association's Welfare Code for Ostrich ("WCO") sets minimum standards of operation designed to govern ostrich husbandry under all production systems. According to the WCO, the most significant single influence on the welfare of any flock would be the staff tasked with caring for the ostriches, typically identified as stockmen, who should develop and carry out an effective routine for continuing care.

59. Under the WCO, all stockmen should be aware of the welfare needs of the stock under their care and be capable of safeguarding them under all foreseeable conditions. Further,

² See, e.g., World Ostrich Association, *Welfare Codes for Ostrich*, September 2007, <https://worldostrich.org/standards/ostrich-welfare/>; Australian Primary Industries Committee, *Model Code of Practice for the Welfare of Animals, Farming of Ostriches*, 2003, <https://www.publish.csiro.au/ebook/download/pdf/3526>; Western Cape Government, *Ostrich Manual*, 2014, https://www.elsenburg.com/wp-content/uploads/2022/02/Ostrich-Manual-English-ed_-2014_content.pdf; New Zealand Animal Welfare Advisory Committee, *Code of Recommendations and Minimum Standards for the Welfare of Ostrich and Emu*, <https://www.mpi.govt.nz/dmsdocument/46066-Code-of-Recommendations-and-Minimum-Standards-for-the-Welfare-of-Ostrich-and-Emu>.

stockmen should know the signs of good health in ostriches of all ages and handle ostriches as calmly as possible. For example, stockmen must not use sticks to hit ostriches. Abusive handling of ostriches may lead to, among other things, fear, distress, and abnormal behavior in the ostriches, which in turn cause them injury and death.

60. As it pertains to food and water, the WCO provides that ostriches must be fed a wholesome diet that satisfies their nutritional needs, and clean water must always be available. All birds of all ages, from one day old, must have feed available every day. Further, stale and contaminated feed should be removed from troughs before fresh feed is added. Feed must always be palatable and of good quality. If the ground where any food is placed for ostriches is not clean and cleared, for example, they may be in danger of ingesting too much sand or eating on soiled areas. Lack of adequate feed and water may lead to, among other things, malnourishment, illnesses, and death of the ostriches.

61. With respect to ostrich health, the WCO provides that ostriches who appear to be ill or injured shall be cared for appropriately without delay and where they do not respond to such care, veterinary advice shall be obtained as soon as possible. Where necessary, sick or injured ostriches shall be isolated in suitable accommodation with dry comfortable bedding as appropriate. Where the stockman is able to identify the cause of ill health in the ostriches, he or she should take immediate remedial action. Moreover, it is necessary to make provision for the segregation and care of sick or injured ostriches, with care taken to avoid undue stress as a result of segregation from companions. Handlers should not cause or allow unnecessary pain or distress by leaving ostriches who do not respond to treatment to suffer. The WCO also specifies that ostrich farmers must maintain records of any medicinal treatment given to the ostriches and the number of mortalities found on each inspection of the ostriches.

62. Regarding ostrich management, the WCO provides that ostriches not kept in buildings shall be given protection from adverse weather conditions, predators, and risks to their health. Ostriches shall, at all times, have access to a well-drained lying area and access to shelter from rain, wind, or sun. Further, under the WCO, ostriches should be maintained free range, with access to shelter and outdoor runs. Ostriches may only be held indoors for a period greater than 24 hours when weather conditions are such that it would be unsafe to allow them out. Stocking density must ensure, among other things, that muddy conditions do not affect their wing feathers, which may lead to injuries and death.

63. The environment in which ostriches are housed must also be properly ventilated. Both the *Code of Recommendations and Minimum Standards for the Welfare of Ostrich and Emu*, published by the New Zealand Animal Welfare Advisory Committee (the “Code of Recommendations”), and the *Model Code of Practice for the Welfare of Animals, Farming of Ostriches*, issued by the Australian Primary Industries Committee (the “Model Code”), specify that fresh air is required at all times where chicks are reared to prevent the accumulation of, among other things, ammonia. These guidelines explain that the presence of ammonia may be a problem where there is poor ventilation and is usually a reliable indicator of the build-up of noxious gases. Similarly, the Ostrich Manual specifies that good ventilation is required to prevent the accumulation of ammonia, which causes necrosis (the death of tissue or an organ in an animal’s body) and mucous-producing cells.

64. In relation to the handling of ostriches, the WCO specifies that ostrich farmers should have easily operated and efficient handling pens to facilitate routine management and treatment of ostriches, on a size and scale to suit the flock numbers. Pens and floors should be maintained in good repair and should not have any sharp edges or projections to protect birds from

injuries. Subpar confinement conditions cause undue stress to farmed ostriches, which leads to abnormal behavior and injuries.

65. For example, if ostriches are engaging in destructive behaviors like feather picking, there may be too many birds in one area, the birds may have been kept indoors excessively, or both. Birds aggressively peck feathers from each other's backs, a problem directly brought about by stress and boredom. In winter, ostriches are often subjected to even greater confinement, which worsens feather picking. As a result of stress caused by confinement, housed ostriches may also "stargaze," lifting their heads up and back until it touches their spines.

66. With respect to fencing and hedges, the WCO provides that any fence must be highly visible. Hedges are suitable for ostriches, provided they are well-maintained, and gaps are filled. Barbed wire should never be used near ostriches. Further, fence height should be appropriate to the size of the birds being contained. Any wire used should be installed in a way to ensure that the birds do not get their necks or feet caught in the wire. Inadequate fencing or hedging may lead to injuries and death of the ostriches. For example, large gaps in fencing may cause ostriches to be tangled in the wires.

67. The WCO also provides standards for the breeding of farmed ostriches. Ostrich farmers should generally not employ any natural or artificial breeding procedures that cause, or are likely to cause, suffering or injury to any of the birds. Further, no ostriches shall be kept for farming purposes unless it can reasonably be expected, based on their genotype or phenotype, that they can be kept without detrimental effect on their health or welfare. For example, forcing ostriches to breed despite being underweight or not sexually mature may lead to unsuccessful pregnancies, rape by other ostriches, and death.

68. Concerning chick handling, the WCO provides that chicks must be handled with care during the transition process, from hatching trays, to identification, sexing, and dispatch to rearing units. Moreover, ostrich chicks must have access to food and water immediately on arrival at a chick rearing unit. Ostrich chicks are particularly vulnerable to suffering on ostrich farms because they often never see their parents. Desertion stress may trigger stomach ulcers and lower a chick's immune system, making the chick susceptible to disease. Ostrich chicks reared without parents are also notoriously slow to recognize their feed, which is another cause of stress. They may also simply starve to death.

69. Furthermore, the Model Code provides guidelines for the slaughter of ostriches, including that it is essential that the method of slaughter be effective and cause sudden and painless death for the bird. The firearm used for slaughter must be adequate for the slaughter of the ostriches, birds should never be shot while they are moving their heads, and personnel must wait patiently for a quiet interval before firing.

70. The Code of Recommendations also provides that ostriches must be humanely handled prior to slaughter and birds must be stunned before being killed by bleeding, dislocation of the upper cervical vertebrae or decapitation. Slaughter for human consumption (and sale to the public) must be carried out in licensed or registered premises.

71. Moreover, the United States Food Safety and Inspection Service has emphasized that "live poultry must be handled in a manner that is consistent with good commercial practices, which means they should be treated humanely." Treatment of Live Poultry Before Slaughter, 70 FR 56624-01. For example, to ensure the humane handling of poultry, handlers should not mishandle the birds when transporting them to slaughter and should not allow birds to freeze inside

cages. USDA, *Humane Handling of Livestock and Poultry Handbook*, https://www.fsis.usda.gov/sites/default/files/media_file/2021-03/humane_handling_booklet.pdf.

72. With respect to euthanasia, the *Guidelines for the Euthanasia of Animals* (2020 Edition), published by the American Veterinary Medical Association, <https://www.avma.org/sites/default/files/2020-02/Guidelines-on-Euthanasia-2020.pdf>, specify that euthanasia methods should be chosen based on the welfare of the bird, human safety, skill and training of personnel, availability of equipment, and the ability to adequately restrain the bird.

73. The WCO also provides that where emergency euthanasia is necessary to kill an ostrich immediately to prevent suffering, the animal should be euthanized in a humane manner and, where possible, by a person experienced and/or trained both in the techniques and the equipment used for killing the ostrich. In addition, the Model Code provides that ostriches may be euthanized under veterinary supervision or may be euthanized on a property using a gunshot to the brain from a close range. The Code of Recommendations specifies that where emergency euthanasia is required, the method must be effective, cause sudden and painless death of the bird, and should be conducted under veterinary supervision if practicable.

74. These are far from isolated reference points. Ostrich husbandry, and applicable standards of animal care, are commonplace. Other examples include the *Standards for Ground Feeding Bird Sanctuaries* published by the Global Federation of Animal Sanctuaries, <https://sanctuaryfederation.org/wp-content/uploads/2019/07/Ground-Feeding-Bird-Standards-2019.pdf>, and the animal care manuals published by the Association of Zoos & Aquariums, <https://www.aza.org/animal-care-manuals>. All of these materials are publicly available and easily accessible to Defendant.

75. As detailed below, Defendant, on information and belief, does not adequately meet these standards—and so could and does mislead consumers.

III. Reasonable Consumers Will Be Misled to Believe that Defendant Raises the Ostriches “Humanely,” “Ethically,” and with the “Highest Standards of Care and Respect”

A. Consumer Expectations Concerning Animal Welfare

76. An ever-growing population of American consumers believes it is important that farmed animals are treated humanely by producers, and with attention to their needs and natural behaviors. These consumers base their purchasing decisions on their perceptions of animal welfare and are willing to pay a premium to sellers who treat the animals they raise for consumption and use with care and who allow them to engage in natural behaviors.

77. Research demonstrates that many consumers will believe that the terms “humanely” and “ethically” mean, at a minimum, that Defendant spares the ostriches under its care from undue and preventable pain and suffering. Likewise, many consumers will believe advertising language guaranteeing the use of “highest standards of care and respect” and in accordance with Defendant’s “Humane Handling Program” means that Defendant treats the ostriches under its care in a manner that would avoid the abuse, and pain, and suffering caused by Defendant’s treatment of ostriches under its care as alleged in this Complaint.

78. Research also demonstrates that the animal welfare representations described above are material to these consumers, who believing in them, are accordingly willing to pay a premium for products from animals raised “humanely,” “ethically,” or with the “highest standards of care and respect.”

79. For example, a 2022 survey by a national nonprofit organization found that 89% of consumers purchasing a product bearing labels such as “humane” and “farm-raised” did so because they thought the label indicated higher-welfare production practices, and 79% consciously paid

more for the product with the label because they thought that the label indicated better-than-standard animal welfare.³

80. Moreover, a national survey by C.O.nxt, a food marketing firm, found that animal welfare claims on meat, dairy, and egg packaging increased the intent to purchase for over half of consumers.⁴

81. Further, a 2018 survey by a national research firm found that 76% of consumers shopping at conventional grocery stores, and 87% of consumers at premium/natural grocery stores say they are concerned about the welfare of animals raised for food.⁵ Results were similar across every demographic group.⁶

82. In addition, a 2018 survey by a research firm supporting foodservice clients found that close to a third of supermarket industry decision-makers are motivated to stock products that promise better animal welfare, and that 70% of those stocking products with humane claims report that sales from these products have increased.⁷

³ ASPCA, *Why Are They Buying It?: United States Consumers' Intentions When Purchasing Meat, Eggs, and Dairy With Welfare-related Labels* (Jun. 18, 2022), https://link.springer.com/epdf/10.1007/s41055-022-00105-3?sharing_token=OnXperCmzrpibH816JD0p_e4RwIQNchNByi7wbcMAY4AcHon34VnvNSv4PTojjhRhegu4UHcY_dX2KBVm-nVk3JrqF29H17Vne6wrgnKgkF6HBI_zu4QYwSnvYvirC5Fjtsbpu1hEJQU4deoBfgc-tqbkRVywf88xhpU12xaJDU%3D.

⁴ C.O.nxt, *Food Label Claims That Make Consumers More Likely To Buy*, <https://co-nxt.com/blog/food-label-claims-that-make-consumers-more-likely-to-buy/>.

⁵ Lake Research Partners, *Results from a Survey of American Consumers* (Feb. 1, 2019), https://www.aspc.org/sites/default/files/aspc-2018_animal_welfare_labelling_and_consumer_concern_survey.pdf.

⁶ *Id.*

⁷ ASPCA and Technomic Inc., *Understanding Retailers' Animal Welfare Priorities* (2018), https://www.aspc.org/sites/default/files/aspc_2018_understanding_retailers_animal_welfare_priorities.pdf.

83. The growing interest in “ethical” food choices has contributed to a growing demand for ostrich meat. Consumers are attracted to the purported “low environmental impact” of ostrich meat and prioritization of animal welfare by ostrich meat producers, including spacious habitats and natural diets.⁸ These consumers find it important that ostriches be kept in sustainable production systems that prioritize animal welfare.⁹

84. Ostrich meat producers such as Defendant know or should know about consumers’ expectations concerning ostrich welfare. Indeed, many merchants selling ostrich meat online in the United States make representations regarding the welfare of the ostriches they raise for consumption. See, e.g., Briardale Ostrich Farm, *Education*, <https://briardaleostrichfarm.com/pages/natural-life-cycle> (“The life of an ostrich on our farm is a rich one with fresh fields of grass and attentive care.”) (last visited November 18, 2024); Amaroo Hills, *Ostrich*, <https://amaroo hills.com/collections/ostrich> (“[O]striches have access to large pastures and natural surroundings.”) (last visited November 18, 2024); Salger’s Ostrich Products, *About Our Birds*, <https://salgersostrichproducts.com/pages/about-our-birds> (“The birds . . . have spacious pens and fields to run in and remain healthy, which is important in passing on quality meat to you!”) (last visited November 18, 2024); and Superior Ostrich, *About Us*, <https://superiorostrich.com/pages/about-us> (“Our team of experts has meticulously bred and raised our ostrich flock to ensure the highest quality production and animal welfare standards.”) (last visited November 18, 2024).

⁸ Ostrichfarmla, *Why Are Ostrich Dishes Popular?* (Jul. 5, 2024), <https://www.ostrichfarmla.com/why-are-ostrich-dishes-popular/>

⁹ See *id.*

B. Defendant's Ostrich Welfare Advertising

85. Defendant was founded by Alex McCoy, a career investment banker, venture capitalist, and international financier.

86. Defendant's business model requires it to out-compete other sellers of humane-marketed ostrich products for the patronage of conscientious consumers looking to vote with their wallets and willing to pay premium prices for these products under the belief that they come from "humanely" or "ethically" raised ostriches.

87. While living in South Africa, Mr. McCoy learned that "[ostrich meat] production requires fewer resources than other commercially-available red meat sources."¹⁰ "Finding ostrich meat largely unavailable in the United States," Mr. McCoy "return[ed] to his home state of Idaho," "[left] his career in finance," and "purchas[ed] a 120-acre horse property in Idaho's Snake River Plain" to start American Ostrich Farms.¹¹

88. On its website, Defendant asserts that "[s]ince recognizing the potential for ostrich to become a mainstream animal protein, McCoy has positioned his company to become the global leader in vertically integrated ostrich production."¹² Defendant's aim is to "redefine the American conception of red meat" and purports to be "driven by excellence, forward-thinking, and ethical practices."¹³

89. Defendant had a rocky start. In 2016, for instance, Defendant sued an ostrich distributor for allegedly defrauding it and breaching a contract with it.¹⁴ As part of the lawsuit,

¹⁰ American Ostrich Farms, *About Us*, <https://www.americanostrichfarms.com/pages/vision-1> (last visited November 18, 2024).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

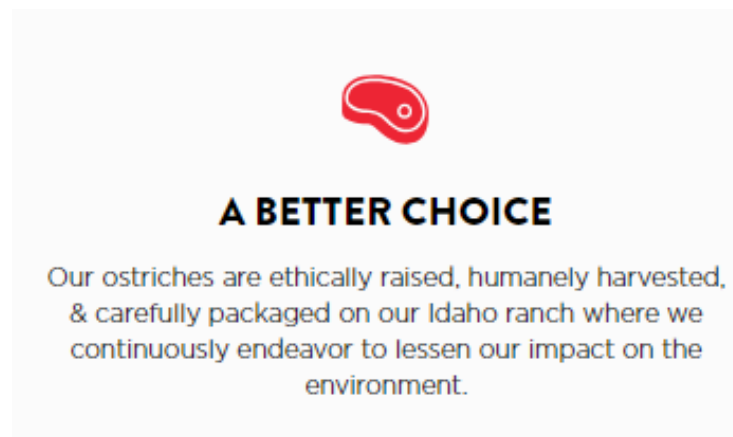
¹⁴ Complaint, *American Ostrich Company, LLC v. Blue Feather Ostrich Farms, LLC*, No. 1:16-CV-014 (D. Idaho).

Defendant explained that, since McCoy was “a novice in the ostrich industry,” he had relied on parties like this distributor to supply both assets and expertise.¹⁵ According to the lawsuit, this was a failure—and as a result, more than one hundred ostrich embryos developing in an incubator were killed, and ostrich “breeders” were paired up without “‘any idea’ whether the ostriches that were transferred to [Defendant] were related.”¹⁶

90. Defendant goes to extensive lengths to market ostrich meat and derived products as “humanely” and “ethically” raised using the “highest standards of care and respect.” Defendant’s representations to consumers appear on its website, online retailer Amazon, social media, and product packaging.

91. On Defendant’s website—through which consumers, including those in the District of Columbia, can place orders—Defendant represents that:

- a) “[O]striches are **ethically raised, humanely harvested**, & carefully packaged on our Idaho ranch where we continuously endeavor to lessen our impact on the environment.”¹⁷ (emphasis added).



¹⁵ *Id.* ¶ 13.

¹⁶ *Id.* ¶¶ 44–46.

¹⁷ *See, e.g.*, American Ostrich Farms, Premium Meats, Ostrich Steaks & Filets, Whole Ostrich Fan, <https://www.americanostrichfarms.com/collections/meats/products/whole-ostrich-fan?variant=33002770169910> (last visited November 18, 2024).

- b) “American Ostrich Farms is driven by excellence, forward-thinking, and **ethical practices**. We champion responsible red meat consumption and **prioritize humane treatment** and sustainability.”¹⁸ (emphasis added)

WHO WE ARE

American Ostrich Farms is driven by excellence, forward-thinking, and ethical practices. We champion responsible red meat consumption and prioritize humane treatment and sustainability. Rooted in authentic All-American values, we combine tradition and innovation in our vertically integrated value chain. We deliver exceptional experiences, from packaging to flavor, setting the benchmark in the market. We’re more than just meat; we’re a promise of unmatched quality and a commitment to positive change.

- c) “Staffed by a team of experienced handlers, birds **are incubated, hatched, and raised with the highest standards of care and respect**.

With a state-of-the-art USDA processing facility on site, we can ensure no corners of our Hatch to Harvest operation are cut, maintaining the integrity of our **humane handling**, product quality, and traceability standards.”¹⁹ (emphasis added)

OUR FARM

Our flagship farm sits in the heart of Idaho’s Snake River Plain on 120 acres of native grasses and sagebrush. Here, our ostriches enjoy open spaces and an arid climate similar to that of their native range. Staffed by a team of experienced handlers, birds are incubated, hatched, and raised with the highest standards of care and respect.

With a state-of-the-art USDA processing facility on site, we can ensure no corners of our Hatch to Harvest operation are cut, maintaining the integrity of our humane handling, product quality, and traceability standards.

¹⁸ See, e.g., American Ostrich Farms, *About Us*, <https://www.americanostrichfarms.com/pages/vision-1> (last visited November 18, 2024).

¹⁹ *Id.*

d) “**Humanely-raised**

Ostriches can be efficiently farmed while **putting the welfare of the animals first.**”²⁰ (emphasis added).



92. In addition, some of Defendant’s treats intended for companion animals, which are available for sale on Defendant’s website, bear a “humanely raised” representation on its packaging²¹:

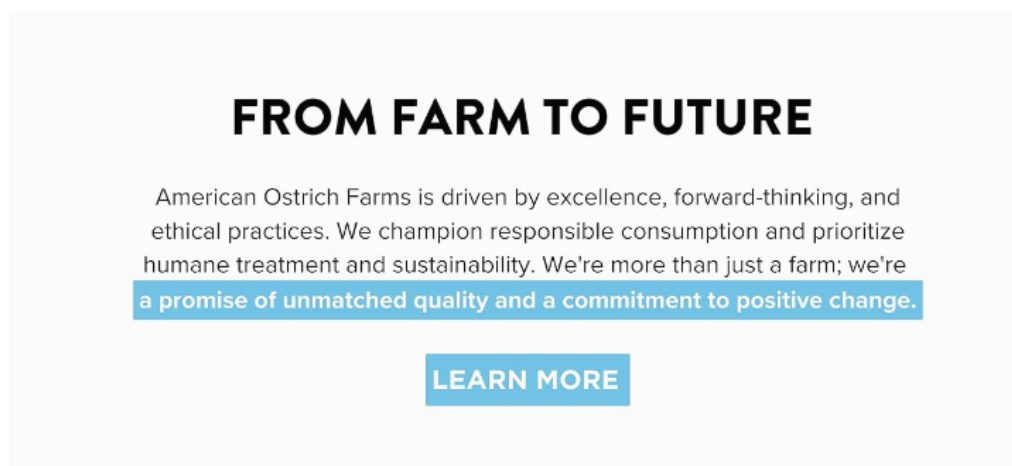


²⁰ American Ostrich Farms, *Why Ostrich?*, <https://www.americanostrichfarms.com/pages/why-ostrich> (last visited November 18, 2024).

²¹ See, e.g., American Ostrich Farms, Pet Treats, Ostrich Jerky Pet Treats, <https://www.americanostrichfarms.com/collections/pet-treats/products/ostrich-jerky?variant=42412816979> (last visited November 18, 2024).

93. Defendant, upon information and belief, has made the following representations at the point of sale for all of its skin products sold on online retailer Amazon, through which consumers, including those in the District of Columbia, can place orders:

- a) When displaying its skin care products available for sale, Defendant has represented to consumers that “American Ostrich Farms is driven by excellence, forward-thinking, and **ethical practices**. We champion responsible consumption and **prioritize humane treatment** and sustainability. We’re more than just a farm; we’re a promise of unmatched quality and a commitment to positive change.”²² (emphasis added).



94. Defendant, upon information and belief, has also made the following representations on online retailer Amazon:

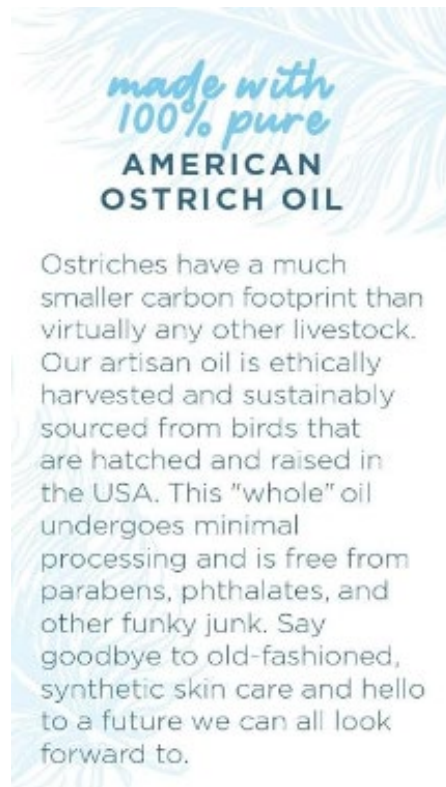
- a) At the point of sale for Defendant’s Pure Ostrich Oil, Defendant has represented to consumers that “[w]e are committed to the **highest standards of animal welfare**

²² Amazon, American Ostrich Farms Store, Skin Care, https://www.amazon.com/stores/page/3EBD0BCD-61E2-4F77-8F58-C7D3FF35EAF7?ingress=2&visitId=148fe8e1-ad53-4628-b9aa-48a849aa6015&store_ref=bl_ast_dp_brandLogo_sto&ref_ast_bln (last visited November 18, 2024).

and humane handling, which yields a healthy and sustainable oil that is great for regular use.”²³ (emphasis added).

- SUSTAINABLY SOURCED - With a very low carbon footprint, ostriches use less water and produce less greenhouse gases than almost any other livestock. We are committed to the highest standards of animal welfare and humane handling, which yields a healthy and sustainable oil that is great for regular use.

b) At the point of sale for Defendant’s Pure Ostrich Oil, Defendant has also displayed the packaging of this product bearing an “ethically harvested” representation: ²⁴




²³ Amazon, American Ostrich Farms Store, Skin Care, Pure Ostrich Oil, https://www.amazon.com/American-Ostrich-Farms-All-Natural-Moisturizer/dp/B086CWYCQ7?ref_=ast_sto_dp (last visited November 18, 2024).

²⁴ *Id.*

c) At the point of sale for Defendant’s Handmade Ostrich Soap, Defendant has represented to consumers that “[e]ach soap is cruelty free.”²⁵

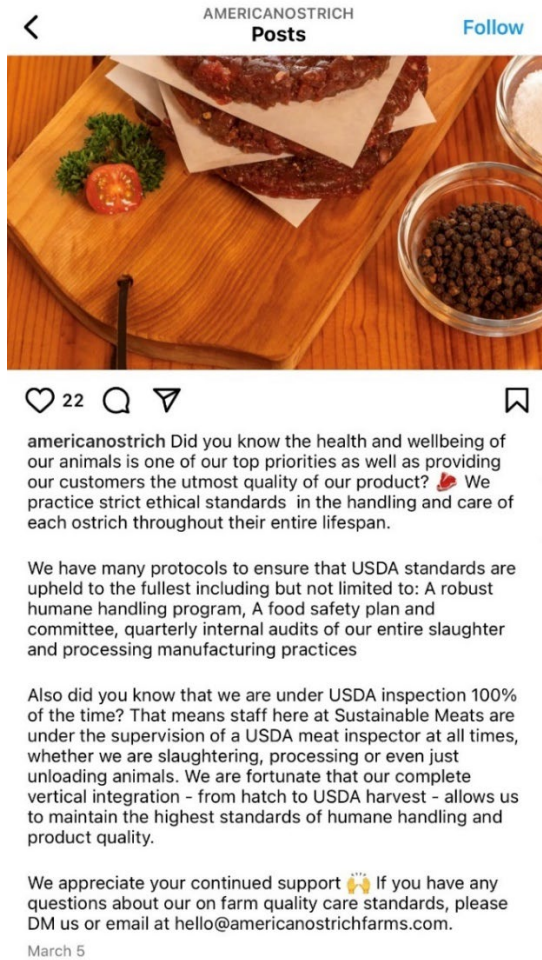
- **ALL AMERICAN:** Our Ostrich soap is made in a humane and sustainable environment — our solar powered factory located in Boise, Idaho. Each soap is cruelty free and designed to provide maximum effectiveness.

95. Defendant has also made the following representations in its social media (@americanostrich Instagram account):

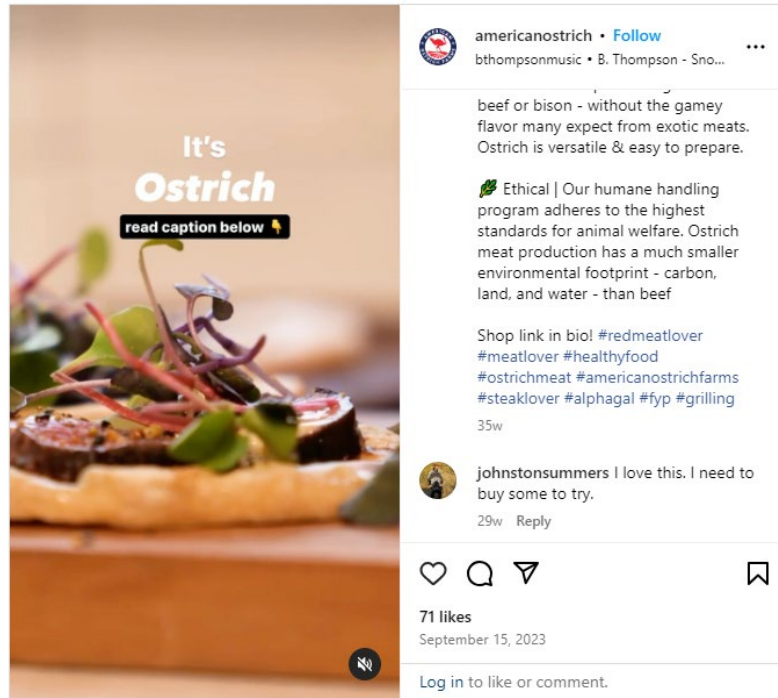
a) “Did you know **the health and wellbeing of our animals is one of our top priorities** as well as providing our customers the utmost quality of our product?
 We practice strict **ethical standards in the handling and care of each ostrich throughout their entire lifespan.**

We have many protocols to ensure that USDA standards are upheld to the fullest including but not limited to: A **robust humane handling program . . .**
. . . We are fortunate that our complete vertical integration - from hatch to USDA harvest - allows us to maintain **the highest standards of humane handling and product quality.**” (emphasis added).

²⁵ Amazon, American Ostrich Farms Store, Soap, https://www.amazon.com/Artisan-Soaps-American-Ostrich-Farms/dp/B089YTZHJ7?ref=ast_sto_dp (last visited November 18, 2024).

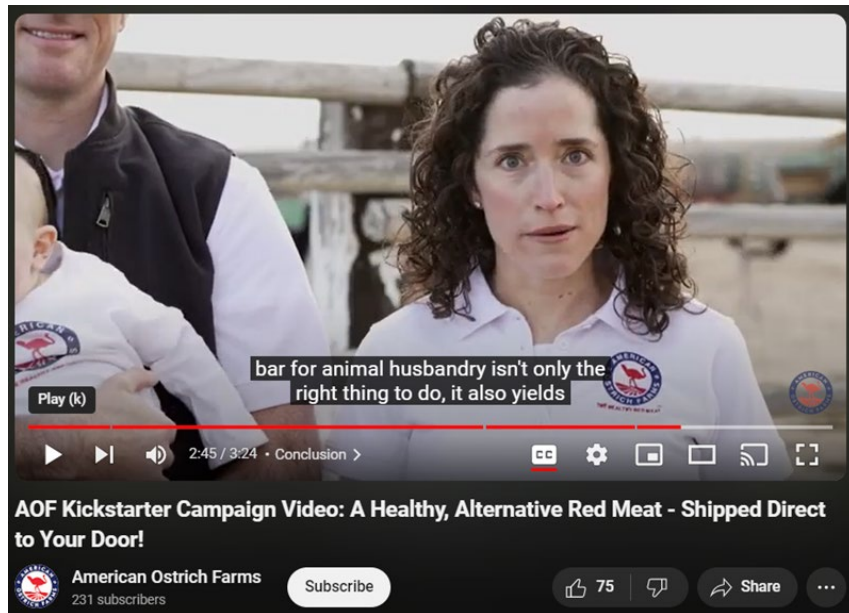


- b) “🌿 Ethical | Our **humane handling program adheres to the highest standards for animal welfare**. Ostrich meat production has a much smaller environmental footprint - carbon, land, and water - than beef
- Shop link in bio! #redmeatlover #meatlover #healthyfood #ostrichmeat #americanostrichfarms #steaklover #alphagal #fyp #grilling” (emphasis added).



96. Moreover, Defendant boasts about its “highest standards of animal welfare” in a video uploaded to its YouTube channel (@americanostrich) in November 2019 titled “[AOF Kickstarter Campaign Video: A Healthy, Alternative Red Meat – Shipped Direct to Your Door](#)” (minute 2:35 to 2:52 of the video):

- a) “Every product we produce upholds our core values, including the **highest standards** of environmental **and animal welfare** and no hormones or antibiotics, ever. We love our ostriches but **raising the bar for animal husbandry** isn’t only the right thing to do, it also yields superior quality products.” (emphasis added).



97. Defendant intends consumers to rely on these representations as specific claims about how Defendant treats the ostriches.

98. If consumers have any doubts, Defendants invite them to learn more about its “Humane Handling Program.”²⁶ In the Frequently Asked Questions of its website, Defendant states that “[w]e go to great lengths to ensure the health and wellbeing of our ostriches. Download the details of our humane handling program.”²⁷

99. In its “Humane Handling Program,”²⁸ Defendant admits that for ostriches to be raised “humanely,” they must, among other things:

- a) Be provided free access to a wholesome, nutritious feed free of contaminants;

²⁶ American Ostrich Farms, *Humane Standards*, https://cdn.shopify.com/s/files/1/1776/1055/files/AOF_Ostrich_Humane_Standards_3.2022.pdf?v=1646844323 (last visited November 18, 2024).

²⁷ American Ostrich Farms, FAQs, *Industry & Ranching, Is Ostrich Meat Humanely Raised?*, <https://www.americanostrichfarms.com/pages/faq> (last visited November 18, 2024).

²⁸ See American Ostrich Farms, *Humane Standards*, https://cdn.shopify.com/s/files/1/1776/1055/files/AOF_Ostrich_Humane_Standards_3.2022.pdf?v=1646844323 (last visited November 18, 2024).

- b) Be maintained in clean facilities that are carefully designed to prevent injuries or distress to the birds, including without sharp edges or protrusions and free of substances that are toxic to them;
- c) Have daily access to well maintained, suitable loose substrate/litter;
- d) Have sufficient freedom of movement to be able, without difficulty, to stand normally, turn around, and stretch their legs and wings;
- e) Have sufficient space to be able to sit quietly without repeated disturbance by other birds;
- f) Enjoy healthy air quality and access to a thermally comfortable environment at all times, so that heat/cold stress does not occur;
- g) Be free to roam at will and be kept indoors at night for protection;
- h) Be in areas that are not heavily degraded, muddy/sodden, worn, and free of build-up of agents that may cause disease;
- i) Have access to fixed or mobile housing that keeps them dry and protects them from wind and from predators.
- j) Be protected from pain, injury and disease;
- k) Be housed in an environment that is conducive to good health;
- l) Be housed in an environment designed and maintained in such a way that there are no recurring injuries;
- m) If sick or injured, be segregated, treated without delay, or humanely and promptly killed if necessary.

100. Moreover, in its “Humane Handling Program,”²⁹ Defendant admits that for ostriches to be raised “humanely”:

- a) Staff with responsibility for animal care must have the relevant and necessary skill to perform their duties. When deficiencies are noted, managers must provide appropriate training to ensure that all caretakers have the required skills;
- b) Operators that receive a complaint relating to a failure to comply with the “Ostrich Humane Farm Animal standards” must take appropriate action to respond to the complaint and correct any deficiency in the products or services that affect their compliance with the standards;
- c) Caretakers must know the normal behavior of ostriches and understand the signs that indicate good health and welfare;
- d) Caretakers must understand the factors that affect litter condition (e.g., moisture, ammonia buildup in the housing, nitrogen content, ventilation, and stocking density);
- e) Caretakers must understand the risk of broken bones (e.g., bone fragility, bird age, nutrition).
- f) Caretakers must be properly trained and competent to, among other things, handle birds in a positive and compassionate manner;
- g) All movement throughout the farm must be slow and deliberate both to alleviate fear and reduce possible injury due to excitement of the birds; and
- h) Any welfare problems seen during an inspection by the caretakers must be dealt with appropriately and without delay.

²⁹ *Id.*

101. Crucially, the standards set forth in Defendant’s “Humane Handling Program” are objective, measurable, and achievable—Defendant affirmatively represents that it complies with each of the standards of the program in conducting its operations (e.g., “AOF **ensures** that there are no sharp edges or protrusions likely to cause injury or distress to the birds”; “[p]rovisions **are made to ensure** that all ostriches have access to a thermally comfortable environment at all times, so that heat/cold stress does not occur”; “[c]aretakers **are able** to demonstrate competence in handling animals in a positive and compassionate manner.”) (emphasis added).³⁰

102. As detailed below, Defendant’s production practices render the above representations to consumers regarding ostrich welfare false and misleading.

C. Contrary to Its Representations, Defendant’s Acute and Chronic Failures Cause Undue and Preventable Pain and Suffering to the Ostriches

103. Defendant’s advertising representing, among other things, that it treats the ostriches it raises for consumption and use “humanely,” “ethically,” and with the “highest standards of care and respect” is deceptive.

104. Not one, but multiple former members of Defendant’s staff have provided firsthand accounts of how Defendant’s common practice is to place profits over the most basic standards of animal welfare and the essential needs of the ostriches.

105. These former staffers have also revealed that not only does Defendant cut costs at the expense of the welfare of the ostriches, but it also systematically subjects the ostriches to plain cruelty, neglect, deprivation, and abuse.

³⁰ *Id.*

i. Defendant's Common Practice is to Place Profits Over the Most Basic Standards of Animal Welfare and the Essential Needs of Ostriches

106. Despite Defendant's advertising, Defendant's priority is to cut costs, at the expense of the welfare of the ostriches it raises for consumption and use.

107. Defendant fails to provide the ostriches at its farm with, among other essential needs, adequate housing, shelter to protect them from the elements, feeding, air quality, and veterinary care.

108. Defendant has routinely ignored recommendations from its staff on how to properly care for the ostriches. Defendant's CEO—who has no background in agricultural farming or ostrich welfare—has turned a blind eye and stated that “he [does] not know how to solve some of the facility's problems.”

109. Notably, Defendant CEO has even publicly admitted that American Ostrich Farms has failed to maintain adequate records of ostrich mortality, in direct contradiction with Defendant's representations in its “Humane Handling Program.”

Inadequate Housing and Shelter

110. As a prime example of placing profits over the most basic standards of animal welfare and the essential needs of the ostriches, Defendant has failed to provide adequate housing and shelter to the ostriches, which has led to needless and preventable pain and suffering in the form of multiple injuries and fatalities.

111. As illustrated by the photograph below, Defendant has confined the ostriches it raises for consumption and use to muddy, flooded pens that have nowhere for them to dry off, dust bathe, or seek shelter from rain, snow, and wind.



112. The Boise, Idaho metropolitan area, in which Defendant's facilities are located, experiences sub-zero temperatures during the winter,³¹ which intensifies the suffering and injuries inflicted by Defendant's failure to provide adequate housing and shelter to the ostriches, who are native to Africa. During the winter, tired birds looking to rest have had to sit on freezing mud and have suffered from frostbite.

113. As illustrated by the photograph below, the ostriches kept by Defendant have also frozen to the ground, and many have died this way.



³¹ National Weather Service, NOWData, Boise Area, Temperature Graphs, Winter (Dec. 2023 – Feb. 2024), <https://www.weather.gov/wrh/Climate?wfo=boi>.

114. Defendant's management has also refused to open available greenhouses to provide shelter and heat to all birds due to the cost of the propane required to heat them, which has resulted in many birds dying during the winter either starved or frozen, as illustrated by the photograph below.



115. Defendant's shelters and pens are too small for the size of the ostriches and the number of ostriches contained in them.

116. Additionally, rain and snow have blown into Defendant's inadequate shelters due to a lack of appropriate walls. Dirt floors inside the shelters have also become wet, and there have been several inches of feces and mud right outside of these shelters.

117. Moreover, many of Defendant's pens have been inadequately fenced. For example, birds have often gotten their legs caught in the fence due to large gaps between the fence wires. Defendant has had to cut the wires to get the birds out, and many birds have been injured or died as a result of inadequate fencing.

118. The fencing at Defendant's facility has also become detached from the posts when birds ran into it, which often happens after the birds are startled by or experience aversive stimuli from Defendant's staff.

119. At times, birds have hit the fencing with force, detached it, and escaped their pen.

120. Defendant's CEO has refused to correct the deficiencies in the fencing despite receiving recommendations from a former staffer.

121. Defendant's "chick barn," a small multiple room facility where chicks often go 48 hours after hatching, has also been in a state of disrepair.

122. Defendant has maintained the barn with little sunlight, causing mold to grow on the walls and maggots, the larva of flies, to hatch on the ground. This has, upon information and belief, resulted in higher rates of splayed legs (a developmental abnormality that causes the legs of birds to extend to the side of the body), poor health, depression, huddling, and suffocating, among other behaviors that commonly indicate distress, diminished psychological and physical wellbeing, and poor health.

123. In addition, Defendant's CEO has insisted on the farm being a "feedlot-type" of facility that denies the birds the opportunity to be housed on grass, despite recommendations by his staff on the need for ostriches to be housed on grass, and despite abundant available guidance to this effect.

124. As described above, ostrich welfare industry standards concerning ostrich management, handling, and fences and hedges provide, among other things, that ostriches must be given protection from adverse weather conditions and risks to their health and be housed in well-maintained facilities on a size and scale suitable for ostriches and free of conditions that may injure

the birds, such as gaps in fencing. Defendant's practices fall well below these standards, causing the ostriches in Defendant's care to endure needless and preventable pain and suffering.

Inadequate Feeding

125. Moreover, Defendant has failed to adequately feed the ostriches it raises for consumption and use, causing needless and preventable pain and suffering, including by neglecting to feed them in a manner which prevents proper ingestion and nutrition.

126. Defendant has fed the ostriches by dumping their feed pellets in the mud, resulting in wet, contaminated feed that the birds could not eat. Defendant's facility has feed troughs for some pens, but some have been broken or filled up with water, and birds could not eat the pellets when they turned to mush.

127. As a result of Defendant's feeding practices, many birds become malnourished and underweight, which has led to fatalities.

128. As described above, ostrich welfare industry standards regarding ostrich feeding provide, among other things, that ostriches must be fed a wholesome diet that satisfies their nutritional needs, and feed must be free of contaminants and of palatable and good quality.

129. Defendant's feeding practices fall well below these standards, causing the ostriches in Defendant's care to endure needless and preventable pain and suffering.

Inadequate Air Quality

130. Furthermore, some ostriches kept by Defendant have had no access to healthy air quality, causing further needless and preventable pain and suffering. Ammonia levels at Defendant's greenhouses have been so high that ostriches kept by Defendant have gone temporarily blind. At times, ailing chicks have huddled in distress, causing some, upon information and belief, to suffocate due to the ammonia levels.

131. As described above, ostrich welfare industry standards concerning air quality provide, among other things, that good ventilation is required to prevent an accumulation of ammonia, which may cause injury to the ostriches.

132. Defendant's housing practices fall well below these standards, resulting in inadequate air quality for the ostriches in Defendant's care, which cause these birds to endure needless and preventable pain and suffering.

Inadequate Veterinary Care

133. Further, birds in need of veterinary care are often overlooked by Defendant's staffers tasked with caring for them, causing further needless and preventable pain and suffering.

134. Defendant often ignores obvious injuries and underweight birds, which results in unnecessary pain, further injury, suffering, and death.

135. Defendant has also gone without a veterinarian on staff at times, which has also resulted in a number of incidents in which ostriches did not receive adequate or necessary care.

136. As described above, ostrich welfare industry standards regarding ostrich health provide, among other things, that ostriches who appear to be ill or injured shall be cared for appropriately without delay and when they do not respond to such care, veterinary advice shall be obtained as soon as possible.

137. In addition, handlers should not cause or allow unnecessary pain or distress by leaving ostriches who do not respond to treatment to suffer.

138. Defendant's practice of withholding veterinary care falls well below these standards, causing the ostriches in Defendant's care to endure needless and preventable pain and suffering.

High Mortality

139. As a result of Defendant's inadequate practices and failures, ostriches have died at alarmingly high rates. For example, the chick death rate has at some points surpassed 75%.

140. Among other reasons, this high mortality rate may have been caused by yellow liver syndrome, which is a nutritional deficiency. Defendant's CEO expressed ignorance of this condition when raised to him by a former staffer despite the availability of guidance concerning the condition in Defendant's internal files.

141. In addition, approximately 20% of the adult birds at the facility died during a one-year period as a result of Defendant's inadequate practices and failures. These birds were only a few years old and much younger than their natural lifespan.

142. These deaths are likely the result of Defendant's systemic inadequacies and failures as set forth herein.

143. Furthermore, underweight adults have died during the winter, either from apparent starvation or hypothermia.

144. Defendant has also piled dead adult birds near where live animals are housed at Defendant's farm, which may adversely impact the live birds' psychological wellbeing and attract scavengers, insects, vectors of disease, and put ostriches of various ages at risk of injury and disease. The corpses of the birds have remained there for as long as a week and decomposed because Defendant has refused to spend the resources to properly dispose of them.

145. Crucially, Defendant has failed to properly record and investigate the deaths of the ostriches under its care.

146. Despite an alarmingly high death rate and the possibility of contagious diseases at Defendant's facilities, Defendant has refused to send samples from dead birds to laboratories for testing to determine the cause of death because it is "a waste of money."

147. In complete disregard for the wellbeing of the ostriches, Defendant's CEO has publicly admitted that he does not have the exact number of bird deaths for the 2023-2024 winter period.

148. As described above, ostrich welfare industry standards concerning ostrich stockmanship and health provide, among other things, that stockmen should be aware of the welfare needs of the stock under their care and be capable of safeguarding them under all foreseeable conditions.

149. In addition, where the stockman is able to identify the cause of ill health, he or she should take immediate remedial action, and records of the number of mortalities found on each inspection of the animals shall be maintained by ostrich farmers.

150. Defendant's practices are plainly inconsistent with these standards, and as a result cause the ostriches in Defendant's care to endure needless and preventable pain and suffering and premature death.

ii. Not Only Does Defendant Place Profits over the Welfare of the Ostriches, but Defendant also Subjects the Ostriches to Intentional Cruelty and Abuse

151. Defendant's production practices go beyond failing to meet basic standards of animal welfare to cut costs—Defendant also subjects the ostriches it raises for consumption and use to intentional cruelty and abuse that serves no purpose other than barbarity, causing further needless and preventable pain and suffering.

152. Defendant's CEO condones these practices and is an active participant in the cruelty and abuse of the ostriches.

Violent and Forceful Handling

153. Defendant's staff have grabbed the birds' heads and held them to the ground to subdue them, kicked them, and struck male birds with large, metal shepherd hooks in purported attempts to force compliance and control over the birds.

154. Defendant's staff have also inserted their boots into the external opening of the birds' cloaca to shock the birds and force them to move, while making statements such as "I'm going to f**k you in the a*s."

155. At times, the birds have become so stressed that they have run and hit Defendant's fences with excessive force, breaking their wings and toes, skinning their legs, and ripping their chests open.

156. Moreover, Defendant's staff have pulled sitting birds by the tail into a standing position, which can dislocate or otherwise harm their vertebrae.

157. All of these practices cause needless and preventable pain and suffering.

158. Defendant's CEO is aware of these practices and is an active participant in the cruelty and abuse of the ostriches.

159. For example, when handling the ostriches, Defendant's CEO has grabbed them around the throat and pulled their head down. On one occasion, Defendant's CEO tried to demonstrate to his staff "the correct way" to handle birds, but the birds became so stressed that they broke out of their pen while running from him.

160. Defendant's CEO refused to revise the farm's official handling protocols to prohibit this abusive handling despite feedback received from a member of his staff.

161. As described above, ostrich welfare industry standards regarding stockmanship provide, among other things, that stockmen should be capable of safeguarding the ostriches under

all foreseeable conditions and handle them as calmly as possible. Moreover, stockmen must not use sticks to hit ostriches.

162. Defendant's practices fall well below these standards, and as a result, the ostriches in Defendant's care endure needless and preventable pain and suffering.

Cruel Breeding Practices

163. Defendant often engages in cruel breeding practices.

164. For example, in or around late December 2023, Defendant's CEO ordered that one young, underweight female bird be taken to the breeder pen.

165. This young, underweight female bird was attacked by other birds who abraded the skin on the back of her neck, which was left raw.

166. The bird did not get enough feed due to larger birds crowding her out, and a large male in the pen mated with her.

167. A member of Defendant's staff had to argue to get the bird transported to a greenhouse for the winter. At such point, the bird was so weak that she had to be carried into an animal trailer to transport her to a greenhouse.

168. In addition, young male birds have been mistakenly identified by Defendant as females and put into breeder pens with large males, who attack and injure them, causing puncture wounds and cuts.

169. Defendant's pairing of the ostriches confined in breeder pens has caused ostriches to peck out their own feathers, as well as other birds' feathers.

170. At some point, approximately 40% of the birds in the breeder pens were missing a high percentage of their feathers due to feather predation—Defendant's CEO refused to change the breeder pen's setup because "he wanted to know the specific genetics of the birds' offspring."

171. As described above, ostrich welfare industry standards concerning breeding provide, among other things, that no ostriches shall be bred in a way that would cause a detrimental effect on their health or welfare. Defendant's breeding practices fall well below these standards, and as a result, the ostriches in Defendant's care endure needless and preventable pain and suffering.

Inhumane Treatment and Killing of Ostriches

172. Defendant has also caused and condoned the infliction of undue and preventable pain and suffering to ostriches slaughtered for consumption and use.

173. For example, when the ostriches have been transported by Defendant in preparation for slaughter, Defendant has left them crammed in a small muddy pen, often for weeks at a time before being slaughtered, which has caused the birds to suffer, including from frostbite.

174. In one instance, Defendant's CEO sold a live bird and allowed him/her to be "sport killed" by the buyer.

175. Ostriches requiring euthanasia are also subject to undue and preventable pain and suffering.

176. For example, Defendant's handlers often step on ailing birds' necks and hold their head onto the ground to shoot them with a captive-bolt gun.

177. Further, in 2024, an underweight ostrich's bone was exposed after suffering frostbite, as illustrated by the photograph below. Defendant's CEO had previously refused to transport the bird to a greenhouse.

178. Despite the injury, Defendant's CEO decided not to kill the bird immediately because the bird was a "valuable breeder" and he had "seen birds recover from serious injury."

179. The bird received no veterinary care or evaluation for 24 hours, at which point his wound appeared to be infected and he had to be shot.



180. As described above, ostrich and animal welfare industry standards regarding slaughter and euthanasia provide, among other things, that the methods for slaughtering and euthanizing ostriches must be effective, cause the sudden and painless death for the bird, and conducted in a calm and reassuring manner where animals are accustomed to the presence of humans.

181. In addition, handlers should not cause or allow unnecessary pain or distress by leaving ostriches who do not respond to treatment to suffer. Defendant's end of life practices fall well below these standards, and as a result, the ostriches in Defendant's care endure needless and preventable pain and suffering.

CAUSE OF ACTION

VIOLATIONS OF THE DISTRICT OF COLUMBIA CONSUMER PROTECTION PROCEDURES ACT (D.C. Code § 28-3901 to -3913)

182. PETA incorporates by reference all of the allegations of the Complaint.

183. PETA is a “person,” a “non-profit organization,” and a “public interest organization” within the meaning of D.C. Code § 28-3901(a)(1), (14) and (15).

184. Pursuant to D.C. Code § 28-3905(k)(1)(D)(i), “a public interest organization may, on behalf of the interests of a consumer or a class of consumers, bring an action seeking relief from the use by any person of a trade practice in violation of a law of the District if the consumer or class could bring an action under subparagraph (A) of this paragraph for relief from such use by such person of such trade practice.”

185. PETA brings this action on behalf of the Consumer Class who are targeted, and have been, are, could or will be misled, by Defendant’s false, misleading, and deceptive advertising concerning the way in which the ostriches it raises for consumption and use are treated, including Defendant’s representations that it raises the ostriches “ethically,” “humanely,” with the “highest standards of care and respect,” and in accordance with Defendant’s “Humane Handling Program.”

186. PETA has a sufficient nexus to the interests of the Consumer Class to adequately represent their interests because PETA has long sought to ensure that consumers have accurate information about farming conditions and practices so they can make more informed decisions about meat consumption and use of animal by-products.

187. Defendant is a “person” within the meaning of D.C. Code § 28-3901(a)(1), a merchant under § 28-3901(3), and provides “goods” within the meaning of § 28-3901(a)(7).

188. Defendant’s advertising of ostrich products represents to consumers, among other things, that Defendant raises the ostriches “humanely,” “ethically” with the “highest standards of care and respect,” and in accordance with Defendant’s “Humane Handling Program.”

189. Many consumers, including the Consumer Class, would buy, and on information and belief, have bought, Defendant’s products because of the representations on Defendant’s

website, online retailer Amazon, social media, and product packaging, reasonably believing that, at a minimum, “humanely” or “ethically” raised means that Defendant spares the ostriches under its care from undue and preventable pain and suffering. Likewise, many consumers, including the Consumer Class, would buy, and on information and belief, have bought, Defendant’s products reasonably believing that the advertising language guaranteeing the use of “highest standards” of care and respect and in accordance with Defendant’s “Humane Handling Program” means that Defendant treats the ostriches under its care in a manner that would avoid the abuse, and pain, and suffering caused by Defendant’s treatment of ostriches under its care as alleged in this Complaint.

190. The facts as alleged above demonstrate that Defendant has violated the DC CPPA, D.C. Code § 28-3901 *et seq.* Specifically, Defendant has violated D.C. Code § 28-3904, which makes it an unlawful trade practice to:

- a) “represent that goods . . . have . . . characteristics . . . that they do not have,”
D.C. Code § 28-3904(a);
- b) “represent that goods or services are of particular standard, quality, grade, style, or model, if in fact they are of another,” D.C. Code § 28-3904(d);
- c) “misrepresent as to a material fact which has a tendency to mislead,” D.C. Code § 28-3904(e);
- d) “fail to state a material fact if such failure tends to mislead,” D.C. Code § 28-3904(f); and
- e) “[u]se innuendo or ambiguity as to a material fact, which has a tendency to mislead,” D.C. Code § 28-3904(f-1).

191. Defendant’s misstatements and omissions are material and have the tendency to mislead.

192. The DC CPPA makes such conduct unlawful “whether or not any consumer is in fact misled, deceived, or damaged thereby.” D.C. Code § 28-3904.

193. Nevertheless, upon information and belief, reasonable consumers, including those belonging to the Consumer Class, would rely, or have relied, on Defendant’s misleading, deceptive, and false trade practices and have been deceived.

194. For example, statements from consumers who have reviewed Defendant’s products include: “[t]astier, healthier and more **humane** that beef. I should have made the switch years ago” and “[t]his farm has a fab story: . . . powered by solar, **humanely raising the ostrich**, best sanitary practices and full use of the animal in a plethora of products . . . [that] range from the obvious lean read ostrich meat to soap to pet treats! ” (emphasis added).

195. Defendant knows or has reason to know that reasonable consumers would believe that the ostriches it raises for consumption and use were treated “humanely,” “ethically,” with the “highest standards of care and respect,” and in accordance with its “Humane Handling Program” as advertised.

196. Because Defendant’s advertising misrepresents the characteristics of the ostrich products, and misrepresents, fails to state, and uses innuendo and ambiguity in ways which tend to mislead reasonable consumers with regard to material facts about the ostrich products, Defendant’s advertising violates D.C. Code § 28-3904 (a), (d), (e), (f), (f-1).

JURY DEMAND AND PRAYER FOR RELIEF

PETA demands a jury trial on all issues.

Plaintiff prays for relief as follows:

1. A declaration that Defendant has committed the violations of law alleged herein;
2. An order enjoining Defendant’s conduct found to be in violation of the DC CPPA, as well as corrective advertising;

3. An order granting PETA costs and disbursements, including reasonable attorneys' fees and expert fees, and prejudgment interest at the maximum rate allowable by law; and

4. Such further relief, including equitable relief, as this Court may deem just and proper.

Date December 2, 2024
Washington, D.C.

Respectfully submitted,

/s/ Bryan Reines

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* Application to appear *pro hac vice* forthcoming.

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