

BEFORE THE FEDERAL TRADE COMMISSION

**COMPLAINT SEEKING ACTION AGAINST THE
CALIFORNIA MILK ADVISORY BOARD
FOR DECEPTIVE ADVERTISING IN ITS
“HAPPY COWS” ADVERTISEMENTS**

Submitted to:

**Federal Trade Commission
CRC-240
600 Pennsylvania Ave. N.W.
Washington, DC 20580**

Submitted by:

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NATURE OF THE COMPLAINT

1. This is a complaint requesting that the Federal Trade Commission (Commission) take action against the California Milk Advisory Board (CMAB) for ongoing deceptive advertising practices in the false representations of the California dairy industry made in its “Happy Cows” advertisements. The theme of these advertisements is to portray spacious, grassy pastures on beautiful, rolling hills with a few cows grazing and wandering about and “enjoying” the ease, luxury, and contentment of life as a dairy cow in California. The tag line for each of the ads is “Great Cheese comes from Happy Cows. Happy Cows come from California.” In reality, however, the vast majority of California’s dairy cows live anything but easy lives. They routinely spend their lives in “dry” lots of grassless dirt (which becomes and remains mud throughout some months of the year), far removed from the idyllic setting of the CMAB ads. They are repeatedly impregnated and milked throughout their pregnancies, their calves are taken away and turned into veal, they commonly suffer from painful maladies from their intensive rearing, and when their worn bodies can no longer meet the inordinately high production demands of the industry, they are slaughtered. While the complainant does not ask the Commission to rule on whether California cows are truly “happy,” the nature of this complaint is that the conditions under which most California dairy cows are kept are so materially different (and worse) than those depicted in the ads as to render them unlawfully deceptive and, therefore, proper for Commission action.

PARTIES

2. People for the Ethical Treatment of Animals (PETA), is an international nonprofit membership corporation organized under the laws of Virginia, where it is headquartered at

501 Front St., Norfolk, VA 23510. PETA and its members are committed to ameliorating the suffering of animals and ensuring their humane treatment. PETA has conducted investigations into and campaigned extensively on the dairy industry and the miserable conditions under which the majority of dairy cows are kept. PETA maintains several Web sites with information about the welfare of cows and the dairy industry, including DumpDairy.com, GoVeg.com, CowsAreCool.com, and its main site, PETA.org. PETA files this complaint on its own behalf and on behalf of its members.

3. The CMAB, 400 Oyster Point Blvd. #214, South San Francisco, CA 94080, is an association that was formed to promote California dairy products and exists for, among other things, the profit of its members, California's dairy farmers (as defined and specified in the Calif. Dept. of Food and Agriculture's "Marketing Order for Research, Education, and Promotion of Market Milk and Dairy Products in California," Dec. 1, 1969). It is funded by its members through a special assessment based on milk production and is supervised by the California Department of Food and Agriculture. Its activities are governed by a board of directors comprised of twenty-four dairy farmers.

JURISDICTION

4. Jurisdiction is appropriate in this matter pursuant to the Federal Trade Commission Act, 15 U.S.C. § 41, *et seq.* The Commission has already determined that it has jurisdiction over the activities of the CMAB, specifically. See California Milk Producers Advisory Board, 94 F.T.C. 429 (1979).

5. The advertisements in question have been disseminated, and continue to be disseminated, in various states and in various mediums, including via television, radio, the Internet, print ads, and merchandise sales.

THE DECEPTIVE ADVERTISEMENTS

6. The following descriptions are representative samples of advertisements disseminated through the Happy Cows campaign:
 - a. An advertisement featuring two bulls standing atop a hill overlooking a beautiful, grass-covered valley that, from various angles, permeates every shot in the advertisement. One bull asks the other, "You're from back East, right?" "Huh?" asks the other. "Yeah, trust me on this one, man. The babes out here are different." The Easterner asks, "How come?" "I don't know. All the sunshine, I guess. Clean air, good food, something. They just really take care of them ...". Just then a dairy cow walks by and the bulls spot her. "Whoa." "Oh, yeah." "Hey, you work out?" As the shot widens to show more of the valley sparsely populated with grazing cows throughout, the following words appear in the foreground and a voice-over is heard speaking them, "Great Cheese comes from Happy Cows. Happy Cows come from California. Real California cheese. It's the cheese."
 - b. Two advertisements that appear on merchandise offered for sale by the CMAB. One of the advertisements features the head of a cow with a sunburst design behind it. Underneath the cow appear the words, "Heaven's come to Betsy." The other advertisement features an entire cow in front of a sunburst design. Underneath the cow appear the words, "72° and Sunny. I'm happy. How about you?" The merchandise also features the slogan, "Great Cheese comes from Happy Cows. Happy Cows come from California." (Beneath the slogan appears the Real California Cheese "It's The Cheese" logo.)
 - c. An advertisement featuring a small group of cows in a grass-covered pasture bordering a farmer's house, as if the dairy herd is being raised just outside of the farmer's home. One cow is humming and begins singing a song called, "It's a Sunshine Day." She sings, "I think I'll go for a walk outside now ...". More cows then join in, "The summer sun's calling my name ...". Even more cows join in until they are all singing along, "I hear you now. I just can't stay inside all day. I got to get out, get ...". An elderly woman appears on the front porch to fling the dust off a rug, and as she does, a cow "shooshes" the singing. The woman pauses on the porch as if she might have heard something unusual, but all she hears is "mooing," so she turns and goes back inside. As soon as the coast is clear, the singing starts again. "Everybody's smiling. Sunshine day. Everybody's laughing. Sunshine day. Everybody's smiling." The following words then appear in the

foreground and a voice-over is heard speaking them, “Great Cheese comes from Happy Cows. Happy Cows come from California. Real California cheese. It’s the cheese.”

- d. An advertisement featuring two bulls standing atop a hill overlooking a breathtakingly beautiful, grass-covered valley that, from various angles, permeates every shot in the advertisement. As a dairy cow approaches, the bulls speak to each other, “Oh yeah, here she comes.” How are my horns?” “Relax. Sunshine, clean air have been good to her, boy ...” There are more exchanges between the cows as the dairy cow speaks to them and then wanders off. As the shot widens to show more of the valley, the following words appear in the foreground and a voice-over is heard speaking them, “Great Cheese comes from Happy Cows. Happy Cows come from California. Real California cheese. It’s the cheese.”
- e. An advertisement featuring an old-fashioned wooden barn in the middle of an empty, green field. Two cows are inside, lying on a bed of hay and awakening to the sound of a rooster. One cow yawns and sighs. The other says, “Morning. So what do you think then ... get an early start on that alfalfa on the back forty?” The other responds, “What’s the hurry, hit the snooze.” As the rooster is kicked out of the barn, the following words appear in the foreground and a voice-over is heard speaking them, “Great Cheese comes from Happy Cows. Happy Cows come from California. Real California cheese. It’s the cheese.”
- f. An advertisement featuring several groups of cows grazing in a beautifully expansive green pasture with rolling hills and shade trees. A new cow wanders toward one of the groups. Upon seeing her, members of the group say, “Hey, here’s the new girl.” “This could be interesting.” [Then to the new cow] “Hi. How ya doing?” The new cow, speaking with an intentionally overdone Wisconsin-like accent, says, “Oohhhh ... I love it here. No snow on the grass ...” The other cows are obviously puzzled (implying that California cows have no clue what snow is). “...cause I hate big snow drifts, don’t ya know.” More silence. “Okay, see ya,” she says and wanders off. “Bye,” is the response, and then the California cows wonder aloud, “What’s snow?” “I don’t know.” “She’s been tipped one time too many.” The scene cuts to a wide shot of the cows in the field and the following words appear in the foreground and a voice-over is heard speaking them, “Great Cheese comes from Happy Cows. Happy Cows come from California. Real California cheese. It’s the cheese.”
- g. An advertisement featuring a “grandmother” cow alone with her two grandchildren in a beautiful, spacious field with rolling hills and shade trees. One calf asks, “Hey Grandma? You weren’t born here like we were, right grandma?” The grandmother groans in response. A calf then says, “Hey grandma, how come you never talk about where you come from?” The scene cuts to a closeup of the older cow and then to “flashback” scene of her struggling in a winter blizzard. There is a quick cut back to the older cow as she shakes her head (in an apparent attempt to rid herself of the memory of her unpleasant past). One calf then whispers, “I told you not to ask her that.” “Grandma?” The following words then appear in the foreground and a voice-over is

heard speaking them, “Great Cheese comes from Happy Cows. Happy Cows come from California. Real California cheese. It’s the cheese.”

CALIFORNIA’S “UNHAPPY” COWS

7. As set forth in its policy statement on deception, the “Commission will find an act or practice deceptive if there is a misrepresentation, omission, or other practice, that misleads the consumer acting reasonably in the circumstances, to the consumer’s detriment.” Before this issue can be addressed in the instant case, it is first necessary to examine the actual conditions under which California’s real dairy cows are routinely kept.
8. Contrary to the depictions in the Happy Cows ads, the vast majority of California dairy cows do not live easy lives. They are not typically permitted to roam freely in grass-covered, pastures of rolling hills and shade trees, but are kept on dry lots of urine- and dung-fouled dirt (urine- and dung-fouled mud at some times of the year), and sometimes concrete. According to a University of California-Davis study, because of the expense of real estate in California, dry lot farming was developed and is the predominate method of keeping dairy cows today. “Dry lots allow for a more intensive system of milk production than traditional pasture-based systems.” (Dairy Care Practices, University of California-Davis, 2d Edition, June 1998.)
9. The result of dry lot farming is that California dairy cows are kept in larger numbers in smaller areas than anywhere else in the country. In 1998, the national average dairy herd size was 60 cows; California herds averaged 650 cows. And the herd sizes are growing; by last year, the average had ballooned to 720 cows. Currently, a number of operations in the state milk as many as several thousand cows each day.

10. Dairy cows are pushed hard; California dairy cows are pushed even harder. In 1997, the nationwide annual average milk production per cow was 16,915 pounds; in California, the average was 20,851 pounds. This inordinately demanding level of milk production, which is significantly higher than a cow would naturally produce, is not achieved as a result of California dairy cows being “happier” than others across the country; it is the result of bovine growth hormones or other drugs, intensive milking regimens, and high-energy feed concentrates, all designed to stimulate the cows into producing as much milk as possible before being sent to slaughter.
11. The regular administration of growth hormones and other drugs, feed concentrates, and unduly intensive daily regimens and living conditions often result in California dairy cows suffering from painful maladies, such as laminitis (a painful hoof condition), mastitis (a bacterial infection of the cow’s udder), milk fever (caused by inadequate levels of calcium in the cow’s blood), and Johne’s disease (a bacterial infection that can result in severe weight loss, diarrhea, and even death).
12. In order to produce milk, cows must be impregnated. California dairy cows are repeatedly impregnated, most often by artificial means, throughout their lives, and continue to be milked during most of their pregnancies. They generally deliver a calf every twelve to thirteen months, and when they can no longer deliver calves or produce milk, they are sent to slaughter; in other words, their bodies are treated like machines to be used until they can’t keep up. Slaughter occurs at only a fraction of what a cow’s natural lifespan would otherwise be.
13. The most widely used method of artificial insemination involves a process called rectal palpation. In this method, which is typically first employed when the cow is barely more

than a year old, an immobilization device is used (often a restraint stanchion), a “farmer” puts a plastic sleeve (that runs all the way to the shoulder) on his arm, and then inserts his arm into the dairy cow’s rectum. The farmer then feels through the rectal walls and directs a catheter as it is pushed into the cow’s cervix and uterus where the semen is deposited. As with any invasive procedure, the risk of injury is always present. And for each of California’s 1.6 million dairy cows who are repeatedly impregnated throughout their lives, with minimal “dry” time between pregnancies, the injury risks (both to mother and calf) are significant and severe. In fact, the difficulties associated with calving often results in crippling paralysis or worse for mother dairy cows. Calving problems are the leading cause of death on the farm for dairy cows. And the calves are at great risk as well. Fetal deaths among California dairy cows number in the tens of thousands every year. And of the hundreds of thousands of calves that are born alive each year, as many as ten percent die before they even reach weaning. When cows are treated as mere milk machines, injury and death risks, such as those just detailed, are calculated simply in terms of economics, rather than welfare.

14. Dairy cows are milked several times a day for nearly their entire lives, which, as indicated above, last only as long as they can continue to meet the inordinately high production demands of the dairy industry. Because California dairy herds are so large, typically, giant mechanical “milking wheels” are used to milk many cows simultaneously. These wheels serve to make the lives of dairy cows even more difficult because, at any given operation, they enable operations to milk each cow a higher number of times per day. The cows are hooked by their udders to electronic milking machines, which can cause the cows to suffer electrical shocks, painful lesions, and mastitis.

15. As an example of just how hard dairy cows are pushed, consider the case of “downer” cows. A significant number of cows arrive at slaughterhouses throughout the country unable to stand. Whether it is because they are injured, diseased, crippled, or simply too weak to support themselves, these cows suffer greatly as a result of their difficult lives. Invariably, the highest percentage of downer cows arriving at slaughterhouses are dairy cows. Among the reasons for this are the intense difficulties and dangers associated with a life of constant milk production. Dairy cows are forced to produce significantly larger amounts of milk than their bodies are designed for. Nutrients, such as calcium and magnesium, that would otherwise be used for the cows’ own nutritional needs, are diverted to the milk the cows produce. As a result, cows often suffer from brittle, broken bones, milk fever or other diseases, or emaciation and weakness to the point that they cannot even stand up. Also, poor sanitation and housing conditions on many farms result in bacterial infections and injuries from falling on wet, slippery ground. California dairy cows hardly live lives of comfort and ease.
16. Further, whether downers or not, because of the repeated calvings (which are physically demanding for the mother and are accompanied by constant risk of complications, such as paralysis), the steady administration of hormones and other drugs, and the constant depletion of desperately needed nutrients throughout their lives, dairy cows are severely debilitated by the time they are sent to slaughter. As a result, much of the meat used to make hamburgers in this country, meat which is typically considered too tough to be used for “prime” beef, comes from the worn out bodies of dairy cows.
17. As further evidence of how much harder California dairy cows are pushed than those in the rest of the country, the percentage of dairy cows selected for slaughter each year is higher in

California than anywhere else. According to statistics taken from the United States Department of Agriculture and the University of California-Davis study, the national average of dairy cows “culled” from large herds each year is just over twenty-five percent; in California, the average is one-third, which translates to a significantly higher number of cows, considering California’s average herd size is more than ten times the national average. Of the cows culled from the herd, *more than half* are suffering from debilitating medical conditions, lameness or injury, disease, or reproductive distress. Rather than treat these conditions, many of which are intensely painful, or retire the cows to pastoral fields where they can live out their lives in the type of comfortable surroundings depicted in the ads, these cows are sent to auctions, markets, and stockyards where they are sold for slaughter. In more than twenty percent of cases, they are sold directly to a meat packer or slaughter plant. Unlike the luxurious depictions in the Happy Cows ads, the majority of California dairy cows endure hard lives of pain, disease, suffering, and work. They are worked until they cannot possibly work anymore, and then their lives are ended prematurely. California dairy cows do not die of old age; the ones who don’t die prematurely on the “farm” or during transport inevitably end up at slaughterhouses, where they are hung upside down by one leg and have their throats slit, most without ever having seen a field, a blade of grass, or a shade tree.

18. The Happy Cows ads show young calves roaming in the fields with adult cows; this simply does not happen. In fact, nearly all calves born on dairy operations in California are removed forever from their mothers within twenty-four hours of their births, causing their mothers obvious documented distress. Dr. Temple Grandin, consultant to many of the biggest corporations in the meat and dairy industry and widely recognized as one of the foremost

experts on animal welfare and handling, has spoken about the intensely traumatic experience of separating calves from their mothers. In his book *An Anthropologist on Mars* (Alfred A. Knopf 1995), Oliver Sacks wrote of a visit he and Dr. Grandin made to a cattle farm, which is usually a quiet place even on large operations, and of the great tumult of bellowing they heard when they arrived:

“They must have separated the calves from the cows this morning,” Temple said, and, indeed, this was what had happened. We saw one cow outside the stockade, roaming, looking for her calf, and bellowing. “*That’s not a happy cow,*” Temple said. “*That’s one sad, unhappy, upset cow.* She wants her baby. Bellowing for it, hunting for it. She’ll forget for a while, then start again. It’s like grieving, mourning—not much written about it. People don’t like to allow them thoughts or feelings.” (Emphasis added.) p. 267.

19. Once taken from their mothers, many of the calves are sent (through auctions, stockyards, and the like) to beef feedlots or directly to slaughter. Of the others, the females are raised to replace their mothers (often in cramped, solitary pens). The males are condemned to another fate—to be killed for veal. These calves are kept in wooden stalls or metal crates barely larger than their bodies to limit their movement only to standing or kneeling down on the bare, hard floors (some are even tied to the walls of their enclosures to restrict their movement even further). For nearly their entire lives, they are unable to lie down, turn around, or experience anything close to the pastoral fields featured so prominently in the Happy Cows ads. After suffering through as many as seventeen weeks of being handled this way, the calves are removed from their enclosures, their sore legs often too painful and swollen from lack of movement and from balancing on slatted or grated floors to even permit them to walk properly, and then shipped in all weather to the slaughterhouse, where they are killed. There is not a moment in the lives of these calves or, for that matter, most

other calves born on dairy farms, that remotely resembles the idyllic depictions in the Happy Cows ads.

20. The conditions described above are just a sampling of the facts surrounding the lives of dairy cows and calves. Contrasting pictures of CMAB ad screen shots and actual California dairy cows and calves are attached to this complaint as Composite Exhibit “A(1)-(4),” and are incorporated as if fully set forth herein.
21. The CMAB ads conceal the truth by painting an artificially “Utopian” existence for dairy cows in order to increase dairy sales, and so are unlawfully deceptive to consumers. The Commission must take action to prevent such deception.

STANDARD OF REVIEW

22. For the Commission to find an ad unlawfully deceptive, there must be a material representation, omission, or practice that is likely to mislead the reasonable consumer. Further, if a particular consumer group is targeted, or likely to be affected by the ad, the Commission will examine an ad from the perspective of a reasonable member of that group. The CMAB ads are not directed at, nor are they likely to affect, health-conscious consumers, as they make no claims, nor could they, of any superior nutritional value of California cheese. They are not directed at, nor are they likely to affect, consumers who purchase dairy products for the taste, as they make no claims that California cheese tastes better than any other particular kind. The consumers most likely to be affected by the ads are those conscientious and compassionate people who would reasonably be concerned that cows might suffer to produce dairy products, and who are misled by the ads. Being misled by the ads is a reasonable response by such consumers, as the only claims, express or implied,

made in them operate to create a broad impression as to the “well-being” of California dairy cows and the clean air and sunshine they are portrayed as constantly enjoying, an impression that is certainly not representative of the majority of the industry.

23. As set forth in the Commission’s policy statement on deceptive advertising, the test for materiality is “whether the act or practice is likely to affect the consumer’s conduct or decision with regard to a product or service.” In this case, the method matters. The process under which a product is manufactured is important to consumers and, therefore, a material element of the product itself. Thus, misrepresentations as to the method of production can be as injurious to consumers as misrepresentations about the product itself. If, for example, a consumer buys a shirt labeled “Made in the USA,” and the shirt is actually made in a foreign country, possibly even by children or in sweatshops, then despite having received the shirt purchased, the consumer is nevertheless injured by the fact that he or she was deceived into unwittingly supporting an abusive and immoral industry. In short, consumers purchase more than just the product itself, they purchase the method of production as well.
24. The method of production is even more critical when the representations about it implicate animal welfare issues. It is simply common sense that conscientious consumers would prefer to purchase a product that is more compassionate toward animals than competing products.
25. Dr. Grandin has written that “the public is becoming increasingly concerned about how animals are treated.” (Grandin, Temple. “Animal Welfare is a Public Concern,” *at* <http://www.grandin.com/welfare/public.welfare.html>.) That sentiment has been echoed not only among traditionally animal welfare-oriented consumers and groups, but more recently among those in the “food” animal industry itself. Certainly, the federal Humane Methods of

Livestock Slaughter Act and state animal cruelty laws demonstrate that the American public takes very seriously issues relating to the treatment of animals.

26. Conscientious, or “compassionate,” consumers, reasonably relying on the fact that the representations made in the advertisements are true (lest the advertisers be in violation of federal law), are more likely to purchase California cheese and dairy products over others, not based on nutritional value or taste, but rather for the satisfaction that such a choice would not contribute to any discomfort to cows or degradation of the environment.
27. Consumers would have to conduct extensive research to uncover the inaccuracies of the ads and discover the intensive conditions under which so many of California’s real dairy cows are actually kept, research which, even if they were able to do, they would be deterred from doing because the ads operate to create a false sense of ease and comfort about the industry that the consumer would have no reason to believe is untrue. As a result, the consumer suffers both monetary and psychic injury and *does not*, in fact, receive the product being purchased, that is, a dairy product produced from cows enjoying comfortable, easy lives, such as those depicted in the ads.
28. By claiming that California dairy cows are “Happy Cows,” the CMAB is making an explicit representation not necessarily of the cows’ state of mind, but unquestionably of their state of *being*. The representation that California cows are kept under conditions of ease and comfort is a fiction in the majority of California’s dairies.
29. It should be noted that while intent to mislead is not required to make a final determination that an ad is unlawfully deceptive, it can be a factor for the Commission's consideration. The Commission has acknowledged in its policy statement that an interpretation of an ad claim will be deemed both reasonable and material if it is the claim the advertiser intended to

convey. In this case, the CMAB knew that one of the messages conveyed by the ads was that California dairy cows were beautiful and healthy (which is implicitly a result of their "happy" lives). In a March 31, 2001, article in the *Santa Rosa Press Democrat*, a Happy Cows ad writer is quoted as stating that he was looking for a new way to view cows. "We thought one could be from a guy's point of view, *like how healthy and beautiful California cows look,*' he said. 'And *maybe we could get that message across* in a fresh perspective by looking at it from a male bovine point of view.'" (Emphasis added.) That the method of spreading the message of the health and beauty of California's dairy cows and their surroundings was carried out in a humorous and light-hearted way does not diminish the fact that the ads mislead consumers in a material way. That a false message is funny or entertaining is not a defense to illegal deception.

30. The Commission has held that omissions of material fact can be as unlawfully deceptive as affirmative misrepresentations, particularly where the omitted information is needed to evaluate the product or discover that the ads' claims are false. Whatever the Commission's opinion as to the intensive conditions suffered by the majority of California's dairy cows, at the very least, it must acknowledge that concerned consumers would want and, in fact, require, truthful information as to the actual conditions under which the majority of cows are kept, rather than the falsely overstated implications of the idyllic depictions in the advertisements, so that they can make informed decisions as to whether they wish to support such an industry. While the Commission can't force the CMAB to depict the actual conditions under which the majority of California's dairy cows are kept, it can, and in this case it must, prevent the organization from making overly broad and misleading, unqualified implications on animal welfare and environmental issues.

MISREPRESENTATION VERSUS “PUFFING”

31. While, in its policy statement, the Commission makes an exception for what it terms as merely business “puffing” in advertisements, the Happy Cows ads are not covered by this exception. The CMAB has created, through the Happy Cows ads, a broad depiction of the California dairy industry that reasonable, but uninformed, consumers are likely to believe is accurate.
32. Certainly, one might dismiss as “puffing” the claim that either the quality or flavor of cheese produced by a “happy” or humanely treated cow is any different than that produced by an “unhappy” one. And while nobody would reasonably conclude that cows talk to each other or sing songs because they are so content, it *is* reasonable to conclude that because the pastoral beauty and luxury of California are so prominently portrayed in the ads, as are references to “clean air,” “good food,” and “sunshine,” that they accurately portray the typical “high quality” housing and raising conditions of a California dairy cow. For the vast majority of cows in the state, however, this is simply not the case.
33. PETA recognizes that, despite the statement (in paragraph 29) made by the ad writer, the CMAB might claim that the Happy Cows advertisements are primarily intended as a light-hearted attempt to promote the California dairy industry in general and not as a specific representation as to the conditions under which its cows are kept. Assuming, for the sake of argument, that this is true (although it is difficult to imagine that the CMAB neither intended nor foresaw that a reasonable and natural interpretation of the ads would be that they depict a typical representation of the California dairy industry), whether or not a particular representation, or misrepresentation, is an intended effect of an advertisement is

not authoritative for a final determination of whether the ad is unlawfully deceptive. As set forth in the Commission's policy statement, if a seller's representation conveys more than one meaning to reasonable consumers, one of which is false, the seller is liable for the misleading interpretation. From a consumer's perspective, an unintended deception is as misleading and injurious as an intended one, and so both are impermissibly unlawful.

34. In this case, the ads portray beautiful, healthy dairy cows roaming through grass-covered pastures of rolling hills and shade trees and make references to clean air, easy living, and the like. It is, therefore, reasonable for consumers to conclude, that this is representative of the California dairy industry and to, consequently, purchase California dairy products that they otherwise would not have purchased had they not been misled.
35. Thus, because the Happy Cows ads are likely to mislead reasonable consumers who care about the way cows are treated by the dairy industry, they are unlawfully deceptive.

TOTAL EFFECT OF ADS CREATES MISREPRESENTATION

36. In its policy statement, the Commission declared that representations do not have to be verbal to be unlawfully deceptive; visual misrepresentations are actionable, as well. The totality of the circumstances will be viewed in making a decision about the advertisement. In the Happy Cows advertisements, such verbal references as "clean air" and "sunshine" being good to cows, coupled with the visual representations of sparsely populated grass-covered pastures with rolling hills and shade trees work to create an image of the California dairy industry that is luxurious to cows. For the majority of California's dairy cows, this image is a non-existent fairy tale. The implications that California cows are "happier" than any other

state's dairy cows because, unlike the rest of the country's cows, a California dairy cow lives an easy life without suffering only further compounds the deception.

37. It is important to note that because the CMAB ads make no claims as to the superiority of the nutritional value or taste of its cheese, but rather make only a representation as to how much better the California dairy industry is than others and how "fortunate" its dairy cows are over other cows, the underlying theme of the ads is that superior production conditions lead to a superior product. It is reasonable, then, for consumers to form conclusions based on the representations made in the CMAB ads and choose California dairy products simply because of their mistaken belief that the conditions in the ads are fairly representative of the industry. Such conclusions, however, would be false and, importantly for this complaint, would be injurious in that such consumers would be purchasing a product based on the inaccurate belief that California cows are treated luxuriously and live better lives than dairy cows anywhere else. Given the focus of the ads at issue, such a conclusion is not only reasonable and possible, it is, in fact, *probable*.

CALIFORNIA DAIRY COWS ARE NOT BETTER OFF THAN OTHERS

38. To the extent that the Happy Cows ads imply that California dairy cows are kept in better conditions than anywhere else in the country, for reasons detailed in this complaint, such an implication is false. Higher production levels, higher "cull" rates, diseases and other painful medical conditions, hormones, and dry lots are some of the things California cows endure during their hard lives at dairy operations. In some cases, California dairy cows endure exactly the same intensive conditions the rest of the country's dairy cows do; in many cases, the conditions are much worse. In almost no case is it a life of ease and luxury. The

implication that California dairy cows have it better off than the rest of the country, which is certainly likely to induce a reasonable, but uninformed, conscientious consumer to purchase California dairy products, is simply untrue, and unlawfully deceptive.

CMAB'S INCENTIVE TO HIDE THE TRUTH

39. The Commission has stated that before issuing a complaint, it will examine more closely products that depend on repeat purchases for business, as market incentives for such products place constraints on the likelihood of deception. In the instant case, however, where it is the method of production, rather than the final product, that is the subject of controversy, the effect is exactly the opposite—to encourage repeat business, the seller is more likely, rather than less likely, to be deceptive about such manufacturing methods in order that repeat purchasers will not be dissuaded.
40. Just as, for example, a certain company that produces apparel under sweatshop conditions would want to hide its method of production from its customers, so too does the California dairy industry have strong incentives to cover up the actual conditions under which cows are kept. Unlike the constraints associated with advertising the final product, the sweatshop company would have strong incentives, were it able to get away with it, to disseminate ads featuring a state of the art facility with “happy” workers in lush surroundings in order to hide its darker reality and avoid dissuading consumers from repeat purchases. Similarly, the reality of the California dairy industry, for the majority of cows, is one of difficult, unattractive surroundings that would certainly not conjure the beauty of the CMAB ads or do anything to encourage repeat purchases.

41. Choosing to remain silent about the harsh methods of California dairy production is one thing, but making unqualified, affirmative misrepresentations about it is entirely something else. It is unethical. It is deceptive. It is unlawful.

ENVIRONMENTALLY “UNFRIENDLY” DAIRY OPERATIONS

42. Inseparable from the animal welfare issues concealed by the CMAB ads is their environmental implications. The sprawling pastures and rolling hills suggest an environmental friendliness associated with the California dairy industry that, in reality, is far from accurate. California dairies are among the worst contributors to pollution. In fact, because of the severe pollution problem they are now facing, and amidst concerns voiced by its citizens and animal welfare and environmental groups, the state’s three largest dairy counties have been forced to make moves toward imposing strict environmental guidelines—a development that dairies have openly expressed displeasure with and which prompted the scrapping of plans, in one of the counties, to build the largest dairy in the state—45,000 cows on several farms. (“Got Milk? Got Problems Too.” *Los Angeles Times*, August 20, 2000.)
43. The *Times* article further reports that in Tulare County, the heart of California’s dairy industry, lagoons of liquid manure from dairies can be “as big as four football fields laid end to end. The stench can be overwhelming and the flies thick on a hot day.”
44. In the CMAB ads, the manure lagoons are replaced with beautiful pastures. It is an ideal setting that undoubtedly would satisfy cows and consumers alike. But for the majority of California’s dairy cows, it is a setting of fiction, and for the unsuspecting consumer, it is an injuriously misleading sales pitch.

45. A dairy cow will expel 120 pounds of fecal waste every day, as much as two dozen people (conservatively estimated). Multiply that times the 650 cows that are in the average California herd and the result is a daily waste output for each herd equivalent to that of 17,550 people. That means that California's dairy cows expel more waste every day than the entire human population of the state!
46. One can certainly understand why the CMAB would not want to create a depiction in its ads of smelly cow lots and vast manure lagoons, but it cannot avoid this reality by deceptively misleading consumers into believing that the problem doesn't exist, which is exactly what it has attempted to do.

CONCLUSION

47. The public has the right to make informed decisions about their product purchases. Indeed, that is the very essence of the "deceptive practices" laws. The CMAB ads induce consumers to make decisions based not on information, but on misinformation. It is not simply that the ads do not accurately represent the conditions under which California dairy cows are kept, it is that they so grossly misrepresent such conditions that they mislead reasonable consumers into buying a product that they otherwise would not have bought.
48. Certainly, the CMAB *could* lawfully create an accurate portrayal of the dairy industry by depicting large herds of cows in dirty, barren dry lots next to large manure lagoons. But, of course, the likelihood of it ever producing such an advertisement is about equal to the likelihood of a dairy cow dying peacefully of old age—none. And that's exactly the point; real depictions of California's large dairy operations would not be an attractive selling point,

but creating a fictional dairy Utopia and presenting that as reality is an unacceptable, and unlawful, solution.

49. This is a different situation than, say, elves baking cookies in trees. Unlike that sort of situation, consumers have no way of knowing that the conditions portrayed in the CMAB ads are far better than the actual conditions under which the majority of dairy cows are kept. And at a time when manufacturing assurances, such as “Made in the USA” and “Dolphin-Safe Tuna,” mean so much to consumers, material misrepresentations as to the treatment of dairy cows cannot be overlooked, either by the CMAB or by the Commission.
50. Consumers have the right to be informed; advertisers do not have the right to misinform. While PETA would prefer the conditions of the dairy industry change to meet the depictions of the ads, it has no way of forcing the CMAB to make this happen. What it can do, however, is ensure that the CMAB cannot continue to represent that such are the typical conditions of the industry, when they are not.
51. The CMAB is disseminating deceptive advertisements that injure compassionate consumers, and PETA formally requests that the Commission take all appropriate action to ensure such advertisements are not permitted to continue.

Respectfully submitted,

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