

**RICHMAN**  
LAW GROUP

8 W. 126th St., New York, NY 10027 / T: 718.705.4579 | F: 718.228.8522  
[www.RichmanLawGroup.com](http://www.RichmanLawGroup.com)

July 30, 2020

Serena Viswanathan  
Acting Associate Director, Division of Advertising Practices  
Bureau of Consumer Protection  
Federal Trade Commission  
600 Pennsylvania Avenue N.W.  
Washington, D.C. 20580

**VIA ELECTRONIC MAIL AND U.S. POSTAL SERVICE**

**Re: Complaint requesting action to enjoin the dissemination of false or deceptive advertising by Tyson Foods, Inc., in re: labor practices**

Dear Acting Associate Director Viswanathan:

The attached complaint is submitted by Richman Law Group on behalf of non-profit organizations Venceremos and Food & Water Watch (“FWW”).

On behalf of these organizations, we write to request that the Federal Trade Commission investigate and take action to enjoin Tyson Foods, Inc. (“Tyson”) from making false and misleading claims about the labor practices involved in the production of its chicken products. As set forth in the complaint, Tyson is egregiously misleading consumers with marketing and advertising representations that falsely suggest that Tyson’s treatment of farmers and other workers involved in the production of Tyson Products is materially superior to standard industry practices.

Such representations, which are widely disseminated via Tyson’s website, as well as via myriad other media, indicate to consumers that Tyson’s chickens are raised on “independent” family farms and processed by workers in a safe environment, free from injuries, toxins, and other dangerous conditions. These representations are untrue. In reality, Tyson uses chicken from large corporate-controlled farms and utilizes dangerous practices that are inconsistent with what reasonable consumers expect based on the company’s representations. The coronavirus pandemic has further exposed the gulf between Tyson’s advertisements and the reality of its production practices. Rather than creating a safe work environment, Tyson’s negligence has led to some of the highest reported workplace illness rates in the United States.

Tyson’s baseless “safe working environment” and “independent” family farm claims are part of a sophisticated marketing strategy launched by Tyson at a time when a large and growing number of consumers are keenly interested in avoiding purchasing products that are the result of inhumane

labor practices. However, it is virtually impossible for consumers to gauge for themselves whether a labor claim is accurate, because consumers do not have access to the producers' and processors' facilities, nor do they have the technical knowledge necessary to assess these claims via the information available to them. Thus, FTC oversight and enforcement are consumers' best hopes for avoiding deception regarding these production practices.

Claims regarding "independent" family farms and a "safe and healthy workplace" are material to consumers, a majority of whom wish to avoid products that are derived from socially irresponsible practices. As the attached complaint explains in detail, these representations amount to unlawful consumer deception in violation of the FTC Act. Therefore, we ask the Commission to provide oversight and enforcement to assist consumers in avoiding deceptive marketing that seeks to unlawfully influence their purchasing behavior.

We appreciate your prompt attention to this matter and are available to assist your office in investigating Tyson.

Very Truly Yours,



---

Kim E. Richman  
Richman Law Group  
8 W. 126<sup>th</sup> Street  
New York, NY 1127  
(718) 705-4579  
[krichman@richmanlawgroup.com](mailto:krichman@richmanlawgroup.com)

BEFORE THE UNITED STATES FEDERAL TRADE COMMISSION

---

---

VENCEREMOS and FOOD & WATER WATCH  
Petitioners,

TYSON FOODS, INC.,  
Proposed Respondent

---

---

COMPLAINT FOR ACTION TO STOP  
FALSE OR DECEPTIVE ADVERTISING

---

Kim E. Richman  
D.C. Bar No. 1022978

RICHMAN LAW GROUP  
8 W. 126<sup>th</sup> Street  
New York, NY 1127  
(718) 705-4579 (phone)  
(718) 228-8522 (fax)

## **EXECUTIVE SUMMARY**

Venceremos and Food & Water Watch (collectively, “Petitioners”) submit this complaint requesting that the Federal Trade Commission (“FTC”) investigate false and misleading representations made by Tyson Foods, Inc. (“Tyson”) relating to its labor practices. Relatedly, Petitioners request that the FTC take action against Tyson’s misrepresentation of its labor practices as involving a “safe work environment” and “independent” family farms. Consumers regularly rely on these material misstatements, which directly affect their purchasing decisions with respect to Tyson products.

As a large and growing number of consumers become keenly interested in avoiding purchasing products that are produced by way of unsafe or unethical labor practices, producers like Tyson have sat up and taken note. Tyson has set out to capitalize on these consumer values by making deceptive claims about the safety, health, and wellbeing of their slaughterhouse workers and the fair treatment of their contract poultry growers. However, Tyson’s actual practices are inconsistent with how consumers perceive its claims that the company provides a “safe” workplace and sources from “independent” family farms. Because it is virtually impossible for consumers to determine for themselves whether such claims are accurate as to a given product, FTC oversight and enforcement are consumers’ best hope to avoid falling prey to this deception regarding Tyson’s production practices.

For example, on its website, social media accounts, and in its Sustainability Report, Tyson falsely claims its contract growers are “independent farmers”<sup>1</sup> and “family farmers”<sup>2</sup> working in a

---

<sup>1</sup> Tyson Foods, Inc., *Farmers*, <https://www.tysonfoods.com/who-we-are/our-partners/farmers> (last visited July 8, 2020).

<sup>2</sup> Tyson Foods, Inc., *Tyson Poultry Farmers*, YouTube (Jan. 6, 2014), <https://www.youtube.com/watch?v=LTh7z79GKWA>.

system that is “transparent and offers long-term stability to farmers.”<sup>3</sup> Tyson also falsely claims that it is “committed to improving the health and safety”<sup>4</sup> of its slaughterhouse workers, and that “[e]nsuring all of these tasks are done in the safest manner is [its] utmost priority.”<sup>5</sup> In reality, however, Tyson’s contract growers have little to no freedom to make decisions for their chickens and barns, and are kept “in a state of indebted servitude”<sup>6</sup> while under contract. In terms of worker safety, Tyson ranks fifth among companies of any type in terms of severe injuries reported to the Occupational Safety and Health Administration (“OSHA”).<sup>7</sup>

Petitioners’ complaint details these and other false and deceptive statements made by Tyson and contrasts them with the industrialized practices that Tyson actually employs. Tyson’s marketing paints a picture of families working on small farms free from corporate control and of workers operating in safe conditions when, in reality, Tyson products are the result of exploitative and dangerous industrialized farming practices that treat its farmers and processing workers as expendable units of production. Petitioners have included descriptions that demonstrate the grievousness of Tyson’s conduct and the need for FTC action.

In light of the foregoing, Petitioners request that the FTC investigate Tyson’s claims, described in more detail below, and take appropriate action to enjoin the company from continuing to make misleading claims pertaining to its labor practices.

---

<sup>3</sup> Alison Moodie, *Fowl play: the chicken farmers being bullied by big poultry*, The Guardian (Apr. 22, 2017, 09:00 AM), <https://www.theguardian.com/sustainable-business/2017/apr/22/chicken-farmers-big-poultry-rules>.

<sup>4</sup> Tyson Foods, Inc., 2018 Sustainability Report: Health and Safety, <https://www.tysonsustainability.com/workplace/health-safety> (last visited July 8, 2020).

<sup>5</sup> *Id.*

<sup>6</sup> Dan Charles, *Is Tyson Foods’ Chicken Empire A ‘Meat Racket’?*, NPR (Feb. 19, 2014, 03:44 AM), <https://www.npr.org/sections/thesalt/2014/02/19/276981085/is-tyson-foods-chicken-empire-a-meat-racket>.

<sup>7</sup> See United States Department of Labor, OSHA, *Severe Injury Reports*, <https://www.osha.gov/severeinjury/> (last visited July 8, 2020).

## I. INTRODUCTION

Pursuant to Sections 2.1 and 2.2 of the Federal Trade Commission (“FTC” or “Commission”) regulations, 16 C.F.R. §§ 2.1 & 2.2, Petitioners Venceremos and Food & Water Watch (“FWW”) (collectively, “Petitioners”) hereby request that the Commission investigate and commence an enforcement action against Tyson Foods Inc. (“Tyson”) for engaging in false or misleading advertising or marketing in violation of the Federal Trade Commission Act, 15 U.S.C. § 41 *et seq.* (“FTC Act”).

As detailed below, Tyson has unlawfully issued, and is continuing to unlawfully issue, false and/or misleading representations about the nature of its labor practices and the treatment of its contract poultry growers and slaughterhouse workers. In marketing and advertising materials on Tyson’s websites and social media accounts, Tyson represents to consumers that its production practices are “safe” for workers (collectively, the “Safe Work Environment Claims”). Tyson’s “family farm” representations suggest that the chickens used for its products are raised on small, independent, and traditional farms that maintain environmental protection and animal welfare practices that are superior to those of large corporate-controlled factory farms (collectively, the “Independent Family Farm Claims”).

Contrary to these claims however, Tyson’s actual production practices fall far below the standards represented in its marketing materials and far below reasonable consumer expectations based those claims. Some of Tyson’s unsafe practices include the use of toxic chemicals in everyday processing and impossibly fast slaughter and processing line speeds that lead to everything from repetitive motion injuries to accidental amputations to COVID-19 outbreaks. Contract growers, far from being “independent,” are locked into contracts with provisions that are

often impossible to meet, involving things like mandatory barn upgrades that put growers deeply in debt.

Several extensive reports, which include interviews with current and former Tyson slaughter and production-line workers and contract growers, show that Tyson’s practices are still vastly different from those it claims to uphold.<sup>8</sup> Interviews conducted by Human Rights Watch show Tyson slaughter and production line workers who experience numerous chronic and acute illnesses and injuries, dangerously fast line speeds, and toxic chemical spills and gas leaks.<sup>9</sup> The organization Rural Advancement Foundation International-USA (“RAFI-USA”) has noted that Tyson’s system involves “bullying [growers], causing many of them economic hardship, and ever worse—suicide.”<sup>10</sup> The representations Tyson makes on its websites, social media pages, YouTube channels, advertisements, and other marketing media cannot be reconciled with the company’s actual practices.

Consumers want to avoid products that are harmful to workers but lack technical knowledge regarding poultry industry practices and the enforcement of labor laws and fair labor standards. Tyson capitalizes on this knowledge gap by misrepresenting its labor practices and the treatment of the workers and contract growers in its supply chain to the detriment of their consumers and competitors.

In this time of unprecedented consumer concern for the wellbeing of farmers and meatpacking workers, Tyson has only doubled down on its misleading claims. Therefore, we

---

<sup>8</sup> Tyson Foods, Inc., *Commitments for Continuous Improvement in the Workplace*, <https://www.tysonfoods.com/sites/default/files/2018-03/Commmitments%20for%20Continuous%20Improvement%20in%20the%20Workplace.pdf> (last visited July 8, 2020).

<sup>9</sup> Human Rights Watch, “*When We’re Dead and Buried, Our Bones Will Keep Hurting*” *Workers’ Rights Under Threat in US Meat and Poultry Plants* (Sept. 4, 2019), <https://www.hrw.org/report/2019/09/04/when-were-dead-and-buried-our-bones-will-keep-hurting/workers-rights-under-threat#page>.

<sup>10</sup> Tyler Whitley, *The Truth is Out. Again.*, RAFI-USA Blog (Mar 7, 2018), <https://rafiusa.org/blog/the-truth-is-out-again/>.

respectfully request that the Commission intervene and take prompt action to prevent Tyson from deceiving consumers with false claims regarding the treatment of its farmers and processing workers.

## **II. PARTIES**

### **A. Venceremos**

Venceremos is a worker rights-based organization headquartered in Springdale, Arkansas, whose mission is to ensure the human rights of poultry workers. Venceremos is fiscally sponsored by NEO Philanthropy.

### **B. Food & Water Watch**

FWW is a national non-profit, public-interest organization based in Washington, D.C. that champions healthy food and clean water for all by standing up to corporations that put profits before people and advocating for a democracy that improves people's lives and protects the environment.

### **C. Tyson Foods, Inc.**

Tyson is incorporated in Delaware and has its principal executive office in Springdale, Arkansas. Tyson produces, processes, markets, and distributes fresh, frozen, and value-added chicken products, as well as several lines of pre-packaged chicken products. Tyson's chicken products are available in a wide variety of national supermarket chains, regional stores, and other retail outlets.

Tyson markets these products under its own name (including, but not limited to, "Tyson," "Tyson Naturals," and "Tyson Premium Selects") as well as under various other brand names.

### III. STANDARD OF REVIEW

The FTC is the primary federal agency charged with thwarting unfair and deceptive trade practices.<sup>11</sup> Under Section 5 of the FTC Act, unlawful deception will be found “if there is a representation, omission or practice that is likely to mislead the consumer acting reasonably in the circumstances, to the consumer's detriment.”<sup>12</sup> A representation is thus unlawfully deceptive if it is (1) material to a consumer's decision-making; and (2) likely to mislead the consumer.<sup>13</sup>

To ensure that their advertisements are not deceptive, marketers must identify all express and implied claims that the advertisement reasonably conveys. A claim that is literally true but nonetheless deceives or misleads consumers by its implications can be considered a deceptive practice under the FTC Act.<sup>14</sup> Marketers must ensure that all reasonable interpretations of their claims are truthful, not misleading, and supported by a reasonable basis before they make the claims.<sup>15</sup> If a particular consumer group is targeted, or likely to be affected by the advertisement, the advertisement should be examined from the perspective of a reasonable member of that group.<sup>16</sup> Moreover, the advertisement should be evaluated as a whole, including its visual

---

<sup>11</sup> See 15 U.S.C. § 45(a)(2) (“The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations . . . from using unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce.”).

<sup>12</sup> FTC, Policy Statement on Deception,  *appended to Cliffdale Assocs., Inc.*, 103 FTC 110, 174 (1984), available at [https://www.ftc.gov/system/files/documents/public\\_statements/410531/831014deceptionstmt.pdf](https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf) (hereinafter “FTC Policy Statement on Deception”); see 15 U.S.C. § 45.

<sup>13</sup> FTC, Policy Statement on Deception,  *appended to Cliffdale Assocs., Inc.*, 103 FTC 110, 174 (1984), available at [https://www.ftc.gov/system/files/documents/public\\_statements/410531/831014deceptionstmt.pdf](https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf) (hereinafter “FTC Policy Statement on Deception”); see 15 U.S.C. § 45.

<sup>14</sup> See *Kraft, Inc. v. F.T.C.*, 970 F.2d 311, 322 (7th Cir. 1992) (“[E]ven literally true statements can have misleading implications.”).

<sup>15</sup> See 16 C.F.R. § 260.2 (citing FTC Policy Statement Regarding Advertising Substantiation, 104 FTC 839 (1984)) (hereinafter “FTC Policy Statement Regarding Advertising Substantiation”).

<sup>16</sup> FTC, Policy Statement Regarding Advertising Substantiation, 104 FTC 839 (1984), available at <https://www.ftc.gov/public-statements/1983/03/ftc-policy-statement-regarding-advertising-substantiation> (last visited Dec. 11, 2018).

elements, to account for “crafty advertisers whose deceptive messages were conveyed by means other than, or in addition to, spoken words.”<sup>17</sup>

Also, under Section 5 of the FTC Act, the Commission will find that a practice is unfair if the practice causes a substantial “unjustified consumer injury,” which is an injury not outweighed by any offsetting consumer or competitive benefits, and that could not reasonably have been avoided. 15 U.S.C. § 45(n).<sup>18</sup> While unjustified consumer injury alone “can be sufficient to warrant a finding of unfairness,” the Commission may also consider whether the practice “violates established public policy” and “whether it is unethical or unscrupulous.”<sup>19</sup> In the context of product endorsements or certifications, there must also be disclosure of unexpected material connections related to the product endorsements.<sup>20</sup> An “unexpected material connection” is defined as “any relationship that might materially affect the weight or credibility” of the certification and that would not reasonably be expected by consumers, such as a self-certification or excessive fee.<sup>21</sup> Failure to disclose adequately the material information constitutes a deceptive act or practice, in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

---

<sup>17</sup> FTC Policy Statement on Deception, *supra* note 12 (citing *Am. Home Products Corp. v. FTC*, 695 F.2d 681, 688 (3d Cir. 1982)).

<sup>18</sup> See also FTC, FTC Policy Statement on Unfairness, 104 F.T.C. 1070-76 (1984), appended to *International Harvester Co.*, 104 F.T.C. 949 (1984) (codified at 15 U.S.C. § 45(n)), <https://www.ftc.gov/public-statements/1980/12/ftc-policy-statement-unfairness> (last visited July 8, 2020).

<sup>19</sup> *Id.* (citing *FTC v. Sperry & Hutchinson Co.*, 405 U.S. 223, 244-45 n.5 (1972)).

<sup>20</sup> See 16 C.F.R. Part 255 (Guides Concerning the Use of Endorsements and Testimonials in Advertising), <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-publishes-final-guides-governing-endorsements-testimonials/091005revisedendorsementguides.pdf>.

<sup>21</sup> *Moonlight Slumber, LLC*, No. C-4634 at 6 (FTC Dec. 11, 2017); see also 16 C.F.R. § 255.5.

## **IV. FALSE OR MISLEADING CLAIMS**

### **A. Representations at Issue**

At issue in this complaint are representations in Tyson's advertisements on its websites and other media, in the form of attention-grabbing text and depictions regarding the safety and fair treatment of its farmers and processing workers involved in the production of Tyson chicken products.

Tyson markets and advertises its chicken products throughout the United States and seeks to reach an extensive consumer base through its digital marketing media, including company websites. Such marketing targets consumers who wish to support independent family farms and who are concerned with workers' rights and safety. Tyson's representations are unlawfully deceptive. In reality, Tyson's chicken products come from highly industrialized factory farm operations run by contract growers who are locked into unfair contracts that dictate every aspect of the production process. The birds from these farms are slaughtered and processed by workers subject to highly unsafe conditions working on production lines operating at dangerously fast speeds.

#### **1. Tyson's Independent Family Farm Claims**

Tyson represents that the chickens used for Tyson Brand Products are raised on "independent" family farms. Examples of Tyson's "independent" family farm advertising and marketing include representations on its websites and social media, such as:

- "We've been working with *independent* poultry farmers since the 1940s; it's important to us to work with those who care about the animals entrusted to their care. Some have been raising chickens for us for three generations. For them, it's a labor of love."<sup>22</sup>

---

<sup>22</sup> Tyson Foods, Inc., *Farmers*, *supra* note 1 (emphasis added).

- “There’s nothing factory farm about our farm, this is a family farm. It’s how we make a living, it’s how we teach important values to our children. There’s nothing factory about it.”<sup>23</sup>
- “We’re very fortunate to have a *relationship* with family farmers that helps us contract people that really care about food production”;<sup>24</sup>
- “[C]ooperation between Tyson Foods and family farms increases efficiency and quality”;<sup>25</sup>
- “Did you know that we rely on more than 3,700 *independent* farmers to raise chickens for us?”<sup>26</sup>
- “[W]e’ve always worked hard to build strong relationships with *independent* farms across America.”<sup>27</sup>

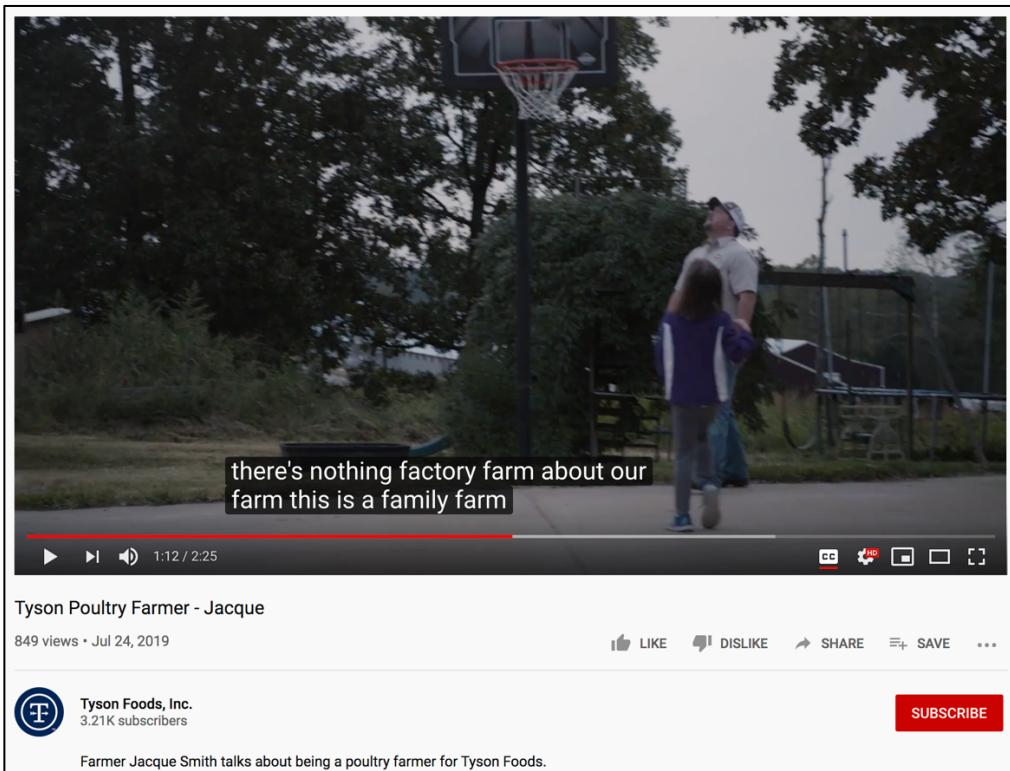


Figure 1. Screenshot from Tyson YouTube video with quote, “there’s nothing factory farm about our farm this is a family farm.”<sup>28</sup>

<sup>23</sup> Tyson Foods, Inc., *Tyson Poultry Farmer – Jacque*, YouTube (Jul. 24, 2019), <https://www.youtube.com/watch?v=yVuTRI7gxzk>.

<sup>24</sup> Tyson Foods, Inc., *Tyson Poultry Farmers*, YouTube (Jan. 6, 2014), <https://www.youtube.com/watch?v=L Tb7z79GKWA&>.

<sup>25</sup> Tyson Foods, Inc., *Farmers*, *supra* note 1.

<sup>26</sup> Tyson Foods (@TysonFoods), Facebook (Mar. 14, 2019), <https://www.facebook.com/TysonFoods/posts/2068844559837718> (emphasis added).

<sup>27</sup> Tyson Foods, Inc., *Our Story*, <https://www.tyson.com/our-story> (last accessed July 8, 2020) (emphasis added).

<sup>28</sup> Tyson Foods, Inc., *Tyson Poultry Farmer – Jacque*, *supra* note 23.

On Tyson's website, there is a page dedicated to "Farmers."<sup>29</sup> John Tyson, former CEO and current chairman of the board, talks about the "importance of building and nurturing relationships with independent farmers."<sup>30</sup> Tyson also claims, on its website and in statements to the media, to have been working with the same farming families for multiple generations.<sup>31</sup>

Tyson characterizes its connection to its growers as a "relationship that works well for everyone,"<sup>32</sup> one in which each party is "critical" to the other's success.<sup>33</sup> Tyson describes its relationship, or "cooperation," with contract growers as the following: "We supply the birds and feed, and provide technical advice, while the poultry farmer provides the labor, housing and utilities."<sup>34</sup>

## 2. Tyson's Safe Work Environment Claims

Tyson makes a range of deceptive marketing representations about the safety, health, and wellbeing of their slaughterhouse workers, including representations on its websites and social media, such as:

- "A Safe Work Environment";<sup>35</sup>
- "We help plant workers stay safe and healthy";<sup>36</sup>
- "We aim to prevent injuries from occurring by creating a safe place to work."<sup>37</sup>

---

<sup>29</sup> Tyson Foods, Inc., *Farmers*, *supra* note 1.

<sup>30</sup> *Id.*

<sup>31</sup> See Charles, *supra* note 6; Tyson Foods, Inc., *Our Story*, *supra* note 27.

<sup>32</sup> Tyson Foods, Inc., *Farmers*, *supra* note 1.

<sup>33</sup> See Tyson Foods, Inc., *John Tyson on Tyson Foods' relationship with Farmers*, YouTube (Feb. 14, 2014), [https://www.youtube.com/watch?time\\_continue=1&v=fiee6vSZ37U](https://www.youtube.com/watch?time_continue=1&v=fiee6vSZ37U); Tyson Foods (@TysonFoods), Facebook, *supra* note 26.

<sup>34</sup> Tyson Foods, Inc., *Farmers*, *supra* note 1.

<sup>35</sup> Tyson Foods, Inc., *2018 Sustainability Report: Health and Safety*, *supra* note 4.

<sup>36</sup> *Id.*

<sup>37</sup> Tyson Foods, Inc., *Sustaining Our World, Together: 2018 Sustainability Report*, [https://www.tysonsustainability.com/downloads/Tyson\\_2018\\_Sustainability\\_Report.pdf](https://www.tysonsustainability.com/downloads/Tyson_2018_Sustainability_Report.pdf) (hereinafter "2018 Sustainability Report").

- “Team members in our processing plants use their hands every day — harvesting animals, cutting meat, packaging food and performing other manual tasks. Ensuring all of these tasks are done in the safest manner is our utmost priority.”<sup>38</sup>
- “We commit to a goal of zero worker injuries and illnesses”,<sup>39</sup>
- “We are keeping team members safer than ever as a result of proactive measures to promote a culture of safety and caring in our plants.”,<sup>40</sup>
- “A safe and healthy workplace is something we take seriously and are committed to ensuring for all our employees.”<sup>41</sup>

### A Safe Work Environment

We aim to prevent injuries from occurring by creating a safe place to work. Tyson employs more than 550 health and safety team members across the company who focus on safety training, safety audits, ergonomics, health care and more.

*Figure 2. Safe work environment claims and text on Tyson’s website.*<sup>42</sup>

## B. The Reality of Tyson’s Practices

Contrary to Tyson’s representations, Tyson chicken does not come from “independent” family farmers, and the workers who manufacture its products are, as a matter of standard business practices, subject to dangerous working conditions. Tyson’s practices are contrary to how a reasonable consumer would understand Tyson’s marketing and advertising regarding such issues.

### 1. Contrary to its advertising and marketing, Tyson’s products do not come from “independent” family farms

Tyson’s operations are not independent family farms. In reality, the company relies almost exclusively on industrialized factory-style operations for the production of its chicken products. Tyson’s growers sign contracts that require them to meet a number of criteria and spend their own money to do so, but all the while farmers own the chicken barns alone, nothing more. Farmers

---

<sup>38</sup> Tyson Foods, Inc., *2018 Sustainability Report: Health and Safety*, *supra* note 4.

<sup>39</sup> Tyson Foods, Inc., *Commitments for Continuous Improvement in the Workplace*, *supra* note 8.

<sup>40</sup> *Engagement & Retention*, Tyson Foods, Inc., <https://www.tysonsustainability.com/workplace/engagement-retention> (last visited July 20, 2020).

<sup>41</sup> Tyson Foods, Inc., *2018 Sustainability Report: Health and Safety*, *supra* note 4.

<sup>42</sup> *Id.*

must take on the burdensome costs of electricity and water price increases in addition to the mandatory barn updates and equipment upgrades required by Tyson.

A report from the Small Business Administration Office of Inspector General (“SBA OIG”) concluded that “large chicken companies” exercise “comprehensive control” over the farmers that raise birds for their products and restrict “practically all of the [farmer’s] ability to operate their businesses independent of integrator mandates.”<sup>43</sup> Effectively, the SBA OIG concluded that the purportedly “independent” farmers, such as those used by Tyson, are not independent small businesses at all.

The testimony of countless farmers support that the SBA OIG’s finding pertains to Tyson. In 2001, farmer Alton Terry entered into an exclusive contract with Tyson to grow chickens for the company on his farm in Shelbyville, Tennessee.<sup>44</sup> After a few years, Tyson mandated he make updates to his chicken barns that he felt were unnecessary. The burden of cost was to fall on Terry. Afterwards, Terry claims that in retaliation for his choice to speak out, Tyson sent him sick chicks and prevented him from watching the weighing process—the process that determines how much a grower gets paid—while they incorrectly weighed his chickens.

Of the experience, Terry has said: ““If we are independent contractors, then why does the company have the right to tell us what equipment to use? We were independent in name only when it benefited the company.””<sup>45</sup>

Many other Tyson contract growers have similar stories. Organization RAFI-USA released an anonymous letter from a Tyson contract grower in North Georgia, which included the following quotes:

---

<sup>43</sup> *Evaluation of SBA 7(A) Loans Made to Poultry Farmers*, U.S. Small Business Administration Office of the Inspector General (March 6, 2018).

<sup>44</sup> Moodie, *supra* note 3.

<sup>45</sup> *Id.*

- “Tyson over the last seven years has pushed the limits of their contract with independent poultry growers by bullying them, causing many of them economic hardship, and ever worse—suicide. Due to the large debt owed, these family farm growers will not speak out against company practices fearing retaliation or even contract termination.”
- “Many Tyson growers have been bullied into doing even more upgrades after their houses met the previous management’s specifications. If the grower does not do the additional upgrade(s) then they are threatened to have less birds placed into their houses, to have no birds placed into their houses, or to have their contract terminated.”
- “Utility increases over the last decade have not been offset in pay by Tyson. Tyson has also failed to offer any supplement for electricity usage during summer months. Heating fuels like propane used by poultry farms can be very volatile in price. Propane has doubled, and even tripled at times, over the years... The average sized family farm is now spending over an additional \$13,000 for utilities since upgrading their poultry houses to Tyson’s specifications.”<sup>46</sup>

For farmers like this one, anonymity is key, because they fear retaliation from Tyson.

RAFI-USA notes that farmers were willing to share their stories if their names, farm names and locations, and identifiable photographs were omitted. Other contract growers and reporters have also spoken out, stating the following:

- ““Our contract was terminated and we are facing possibly losing our farm””,<sup>47</sup>
- ““The situation in contract poultry growing is out of control. The companies have so much power that growers always end up at a disadvantage.””<sup>48</sup>
- “Tyson ‘keeps farmers in a state of indebted servitude, living like modern-day sharecroppers on the ragged edge of bankruptcy.””<sup>49</sup>

---

<sup>46</sup> Whitley, *supra* note 10.

<sup>47</sup> RAFI Staff, *USDA Moving in Right Direction with Farmer Fair Practice Rules*, RAFI-USA Blog (Dec. 13, 2016), <https://rafiusa.org/blog/usda-rules/> (Quote from Mitchell Crutchfield, former poultry farmer with Tyson Foods in Arkansas).

<sup>48</sup> RAFI Staff, *Growers Explain Injustices in Poultry Industry*, RAFI-USA Blog (May 20, 2010), <https://rafiusa.org/blog/growers-explain-injustices-in-poultry-industry/> (Quote from Andy Stone, Tyson contract poultry grower and board member of the Mississippi Agriculture Producers Association).

<sup>49</sup> Charles, *supra* note 6 (Quote from Christopher Leonard, author of *The Meat Racket*).

**2. Contrary to its advertising and marketing, Tyson does not provide a “safe work environment” for its employees**

*a. Workers are subject to dangerous chemical spills and leaks*

Contrary to Tyson’s representations, its employees do not work in a “safe work environment.” Over the years, chemical spills have sent dozens of Tyson plant workers to the hospital.

In 2011, a chlorine gas leak at a Tyson facility in Springdale, Arkansas sent 173 employees to the hospital. More than 600 people were evacuated from the building.<sup>50</sup> At the very same Springdale plant in the following year, an ammonia leak left 10 employees in the hospital following another complete evacuation.<sup>51</sup> As recently as June 2019, yet another chemical spill occurred at the same plant.<sup>52</sup> The cleaning agent spill caused respiratory issues and skin burns among workers. Five employees were hospitalized, one of whom was in critical condition.

In 2014, an ammonia spill at a facility in Rogers, Arkansas left 25 workers hospitalized with trouble swallowing and breathing.<sup>53</sup> That day 250 employees working in the building were evacuated following the chemical spill, which became airborne and traveled through the air conditioning ducts in the building. Months after the incident, an employee said, “Since [the spill] I have breathing problems, as you see, my chest tightens suddenly... They gave me a spray to open my lungs because sometimes it is hard to breathe, my chest is tight.”<sup>54</sup>

---

<sup>50</sup> Ron Wood, *173 hospitalized in chlorine gas leak at Tyson plant*, Arkansas Democrat Gazette (June 27, 2011 at 9:40 AM; updated June 27, 2011 at 8:09 PM), <https://www.arkansasonline.com/news/2011/jun/27/chlorine-leak-tyson-plant-hospitalizes-several/?latest>.

<sup>51</sup> *Ten Tyson Workers Hospitalized After Ammonia Leak*, Talk Business & Politics (Feb. 6, 2012, 3:37 PM), <https://talkbusiness.net/2012/02/ten-tyson-workers-hospitalized-after-ammonia-leak/>.

<sup>52</sup> *Five Injured After Cleaning Agent Spill At Tyson Foods Plant In Springdale*, 5 News (June 18, 2019, 9:02 AM), <https://5newsonline.com/2019/06/18/emergency-responders-answering-hazmat-call-at-tyson-in-springdale/>.

<sup>53</sup> *Ammonia leak at Tyson Foods Chick-N-Quick plant hospitalizes 25*, WATTAgNet.com (Dec. 11, 2014), <https://www.wattagnet.com/articles/20533-ammonia-leak-at-tyson-foods-chick-n-quick-plant-hospitalizes-25>.

<sup>54</sup> *Lives on the Line: The Human Cost of Cheap Chicken*, Oxfam (2015), [https://s3.amazonaws.com/oxfam-us/www/static/media/files/Lives\\_on\\_the\\_Line\\_Full\\_Report\\_Final.pdf](https://s3.amazonaws.com/oxfam-us/www/static/media/files/Lives_on_the_Line_Full_Report_Final.pdf).

In 2016, yet another ammonia leak sent eight employees to the hospital and evacuated 60 more from a poultry plant in Hope, Arkansas.<sup>55</sup>

As recently as September 17, 2019, there was an ammonia leak at a Tyson plant in Clarksville, Arkansas. After an evacuation, 18 workers were taken to the hospital.<sup>56</sup> Three days later, yet another ammonia leak occurred at Tyson's New Holland, Pennsylvania chicken plant. The plant's 1000 employees were evacuated, and one worker was taken to the hospital.<sup>57</sup>

Day-to-day exposure is a major health issue, as well. According to the Centers for Disease Control ("CDC") and the National Institute for Occupational Safety and Health ("NIOSH"), prolonged exposure to high concentrations of peracetic acid can cause respiratory and other health issues.<sup>58</sup> The Human Rights Watch exposé features testimony from workers at the Tyson plant in Albertville, Alabama: "'Sometimes I can't breathe and it just burns my eyes,' said Anna K., a worker at the plant, 'I'm always sick.'"<sup>59</sup>

#### ***b. Workers are subject to mutilation and repetitive motion injuries***

In addition to generally dangerous conditions in which workers are exposed to chemical hazards daily, workers suffer from debilitating mutilations and repetitive motion injuries<sup>60</sup> while

---

<sup>55</sup> *Ammonia leak at Tyson poultry plant sends 8 to hospitals, evacuates 60*, KSLA News 12 (Apr. 24, 2016, 2:54 PM), <https://www.ksla.com/story/31802269/ammonia-leak-at-tys...-evacuates-60/>.

<sup>56</sup> *Ammonia leak at Clarksville Tyson plant*, KARK.com (Sept. 17, 2019, 1:44 PM CDT), <https://www.kark.com/news/local-news/ammonia-leak-at-clarksville-tys...-plant/>.

<sup>57</sup> Tom Johnston, *Ammonia leak sends Tyson worker to hospital*, Meatingplace (Sept. 20, 2019), <https://www.meatingplace.com/Industry/News/Details/87836>.

<sup>58</sup> See Association of Occupational and Environmental Clinics, *Comprehensive Occupational & Environmental Exposure Database*, <http://www.aoecdatal.org/ExpCodeLookup.aspx> (last visited July 13, 2019); Julie Crewe, et al., *A Comprehensive List of All Asthagens to Inform Health Interventions in the Australian Workplace*, 40 Australian & New Zealand Journal of Public Health 170 (2015), <https://onlinelibrary.wiley.com/doi/epdf/10.1111/1753-6405.12479>; see also National Institute for Occupational Safety and Health, US Centers for Disease Control and Prevention, *Request for Information: Health Risks to Workers Associated With Occupational Exposures to Peracetic Acid*, 82 FR 12819-12821, March 7, 2017, <https://www.federalregister.gov/documents/2017/03/07/2017-04319/health-risks-to-workers-associated-with-occupational-exposures-to-peracetic-acid-request-for>.

<sup>59</sup> "When We're Dead and Buried, Our Bones Will Keep Hurting", *supra* note 9.

<sup>60</sup> *Id.* ("cumulative trauma injuries like carpal tunnel or tendinitis that develop through repeated stress over time" and such musculoskeletal disorders are more prevalent among poultry workers than those in other sectors of the meat industry).

working on the slaughter and processing line. Tyson is ranked fifth among the thousands of companies reporting severe injuries to OSHA from January 2015 to July 2018—responsible for more injuries than any other meat company.<sup>61</sup> Regardless of industry, Tyson is one of the most dangerous places to work in the U.S., reporting more severe injuries than places “like sawmills, industrial building construction, and oil and gas well drilling.”<sup>62</sup>

In 2016 a worker suffered a ““gruesome”” accidental amputation at a Tyson plant in Center, Texas.<sup>63</sup> When OSHA inspectors visited the facility following the incident, they found 15 other health and safety violations, two of which were repeat offenses. These violations included other amputation hazards, exposure to carbon dioxide and peracetic acid, deficient PPE, slip-and-fall hazards, improper drainage, and improperly stored compressed gas cylinders that posed potential fire hazards. Tyson was fined \$263,000 for these violations.

Given the nature of the slaughter- and processing-line work, which typically involves repetitive motions done extremely quickly, workers experience cumulative trauma, which “damages internal parts of the body—muscles, tendons, bones, and nerves—[meaning] it may not be immediately apparent and is often not treated until damage is permanent and disabling.”<sup>64</sup> The following is from a worker interviewed by Human Rights Watch:

“You’ll be asleep and when your hands start hurting it wakes you up,” said Nicole Bingham, a worker at the Tyson plant in Albertville, Alabama. “Some days it’s like throbbing pain—it’s indescribable.”<sup>65</sup>

---

<sup>61</sup> “*When We’re Dead and Buried, Our Bones Will Keep Hurting*”, *supra* note 9.

<sup>62</sup> *Id.* (citing US Department of Labor, OSHA, *Severe Injury Reports*, *supra* note 7).

<sup>63</sup> Bryce Covert, *Tyson Foods Fined \$263,000 Over Unsafe Working Conditions In Poultry Plant*, Think Progress (Aug. 17, 2016), <https://archive.thinkprogress.org/tynson-osa-fine-7779fede763d/>.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.* (conducted February 14, 2019).

*c. The exposure of employees to illness, including COVID-19*

Tyson company policy essentially forces employees to come to work when they are sick. Not only are they denied full-paid leave, processing workers actually receive disciplinary points for calling in sick.<sup>66</sup> Since points lead to termination, many sick Tyson employees simply show up and suffer—and potentially infect others.<sup>67</sup>

In fact, there have been countless cases of processing plant workers testing positive COVID-19, many of whom ultimately died from the virus. Tyson's lack of swift action and continued negligence have been the direct cause of these outbreaks, which have been common across the meat industry as of late.<sup>68</sup> “More than 8,500 Tyson employees at 37 poultry, pork, and beef plants in seven states have been confirmed to have tested positive for COVID-19, an infection count more than double that of any other meatpacker.”<sup>69</sup>

Just last month a Tyson plant in Noel, Missouri had 371 employees test positive for COVID-19.<sup>70</sup> Also in June, Tyson's Springdale, Arkansas plant had 481 of 3,748 employees test positive.<sup>71</sup> As of the writing of this complaint, more than 25 Tyson workers have died from the

---

<sup>66</sup> Michael Grabell, *What Happens If Workers Cutting Up the Nation's Meat Get Sick?*, ProPublica (Mar. 28, 2020, 1:25 PM EDT), <https://www.propublica.org/article/what-happens-if-workers-cutting-up-the-nations-meat-get-sick>.

<sup>67</sup> *Id.*

<sup>68</sup> See Amelia Lucas, CDC says 9% of meatpacking plant workers have been diagnosed with Covid-19, CNBC (July 7, 2020 at 1:00 PM; updated July 7, 2020 at 7:07 PM), <https://www.cnbc.com/2020/07/07/cdc-says-9percent-of-meatpacking-plant-workers-have-been-diagnosed-with-covid-19.html>.

<sup>69</sup> Matt Zampa, *120+ Organizations Target Meatpacking Giant Tyson Foods for Failing to Protect Workers from COVID-19*, Sentient Media, <https://sentientmedia.org/120-organizations-target-meatpacking-giant-tyson-foods-for-failing-to-protect-workers-from-covid-19/> (last visited July 8, 2020).

<sup>70</sup> Harrison Keegan, *Tyson says 371 test positive for COVID-19 at facility in southwest Missouri*, Springfield News-Leader (June 26, 2020 at 3:49 PM; updated June 26, 2020 at 4:04 PM), <https://www.news-leader.com/story/news/local/2020/06/26/missouri-coronavirus-tyson-foods-positive-covid-19-noel-facility/3266269001/>.

<sup>71</sup> Tamara Lush, *Hundreds test positive for COVID-19 at Tyson Foods plant in Arkansas*, Boston (June 21, 2020), <https://www.boston.com/news/coronavirus/2020/06/21/hundreds-test-positive-at-tyson-foods-plant-in-arkansas>.

virus.<sup>72</sup> Family members of victims have brought wrongful death suits against Tyson.<sup>73</sup> A handful of the deceased's stories have been told online:

"These deaths include Juan Manuel Juarez Alonzo, a 63-year-old who planned retire later this year from his job at the Dakota City plant where 1,669 workers were infected. Guadalupe Olivera, a 60-year-old father of seven, was one of three workers from a Wallula, Washington plant to die of COVID-19. Jeronimo Anguiano was reportedly one of two workers at a Tyson plant in Goodlettsville, Tennessee to die of COVID-19, with a coworker telling the Nashville Post he remembered Anguiano telling colleagues 'God bless you' every morning."<sup>74</sup>

Despite all of the illnesses and deaths due to the virus, Tyson has decided to "reinstate[] its standards [sic] attendance policy, which includes punishing workers who stay home due to illness."<sup>75</sup> Even in the midst of the current COVID-19 pandemic, Tyson continues to refuse to offer fully compensated sick days to its workers.<sup>76</sup> Because many Tyson employees face financial instability as it is, workers are forced to choose between showing up for their shift (and possibly contracting a fatal disease from their coworkers or transmitting the disease to others), or falling behind on bills and going hungry.

Moreover, Tyson has not increased the distance between workstations to a minimum of 6 feet at its plants or reduced its plants' processing rates to accommodate worker protections. These are keys measures that the CDC and OSHA have recommended to stop the spread of COVID-19

---

<sup>72</sup> Keegan, *supra* note 70.

<sup>73</sup> See *Houston lawyer represents family in Tyson wrongful death claim*, ABC 13 (May 22, 2020), <https://abc13.com/covid-19-lawsuit-death-coronavirus-tyson/6204601/>; see also AP, Families of 3 dead workers sue Tyson Foods over coronavirus outbreak, Fortune (June 26, 2020 at 5:27 AM), <https://fortune.com/2020/06/26/tyson-foods-coronavirus-lawsuit/>.

<sup>74</sup> Kate Taylor, *Tyson reverts to its pre-pandemic absentee policy. More than 7,100 workers have tested positive for COVID-19, including hundreds in recent weeks*, Business Insider (June 8, 2020 at 11:32 AM), <https://www.businessinsider.com/tyson-ends-covid-19-policy-as-more-workers-get-sick-2020-6>.

<sup>75</sup> *Id.*

<sup>76</sup> Tyson's recent announcement that it will provide expedited limited short-term disability pay is insufficient to allow economically vulnerable workers to safely quarantine at home because it covers only a fraction of workers' normal wages. See also, Deena Shanker and Lydia Mulvany, *Threat of Sick Workers at U.S. Meat Plants Forces Policy Changes*, Bloomberg Business (Mar. 20, 2020, 4:00 AM PDT; updated Mar. 20, 2020, 10:52 AM PDT), <https://www.bloomberg.com/news/articles/2020-03-20/threat-of-sick-workers-at-u-s-meat-plants-forces-policy-changes>.

among workers in meat and poultry processing plants.<sup>77</sup> To the contrary, a new report from the National Employment Law Project (“NELP”) details how numerous Tyson plants have recently begun to “squeeze workers even closer together on production lines and increase line speeds.”<sup>78</sup> The report explains that this “will endanger the health and lives of poultry workers and the people in their communities, who are already being hit hard by COVID-19.”<sup>79</sup> The report further notes that “[o]verwhelming evidence shows that allowing poultry processing plants to operate with faster line speeds will dramatically worsen the already unsafe working conditions in poultry plants.”<sup>80</sup> According to NELP’s analysis, every Tyson plant that has sought to increase its line speeds “had reports of severe injuries, a history of OSHA violations, or [was] the site of a COVID-19 outbreak.”<sup>81</sup>

## **ANALYSIS UNDER THE FEDERAL TRADE COMMISSION ACT**

For a representation to be unlawfully deceptive under Section 5 of the FTC Act, it must be both “material” and “deceptive.”<sup>82</sup> As described below, Tyson’s representations about the chicken products it sells satisfy both elements.

### **A. Tyson’s Representations Are Likely to Mislead**

Many consumers will find Tyson’s marketing and advertising representations misleading if the realities of the company’s production practices are illuminated. As a threshold matter, a company is responsible for all reasonable consumer interpretations of its advertisements, so it does

---

<sup>77</sup> *Meat and Poultry Processing Workers and Employers: Interim Guidance from CDC and the Occupational Safety and Health Administration (OSHA)*, Centers for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/meat-poultry-processing-workers-employers.html>, (updated July 9, 2020).

<sup>78</sup> *USDA Allows Poultry Plants to Raise Line Speeds, Exacerbating Risk of COVID-19 Outbreaks and Injury*, National Employment Law Project (June 2020) <https://s27147.pcdn.co/wp-content/uploads/Policy-Brief-USDA-Poultry-Line-Speed-Increases-Exacerbate-COVID-19-Risk.pdf>.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> FTC Policy Statement on Deception, *supra* note 12.

not matter that the company’s representations may convey differing meanings to different consumers.<sup>83</sup> “To be considered reasonable, the interpretation or reaction does not have to be the only one.”<sup>84</sup> Instead, “[w]hen 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.”<sup>85</sup> When a particular consumer group is targeted, or likely to be affected by the advertisement, the advertisement should be examined from the perspective of a reasonable member of that group.<sup>86</sup>

Here, Tyson’s labeling and advertising representations target consumers most likely to be misled: consumers who are concerned about the ethical impacts of the foods they eat and/or about the welfare of Tyson’s employees, and who look to companies’ advertising to identify goods that are produced in ways that comport with those values. Many such consumers, and the general public more broadly, will reasonably interpret Tyson’s representations as saying just that.

But Tyson’s actual practices do not match a reasonable consumer’s expectations for poultry products advertised and marketed as coming from a “safe work environment” or “independent” family farms. Therefore, Tyson’s representations are unlawfully deceptive in violation of the FTC Act.

### **1. Tyson’s Independent Family Farms Claims are likely to mislead.**

No reasonable consumer would consider Tyson’s farmers to be “independent” in light of the findings that companies like Tyson exercise “comprehensive control” over them and restrict “practically all of [their] ability to operate their businesses independent of [corporate] mandates.”<sup>87</sup>

---

<sup>83</sup> See *id.* at 2-3.

<sup>84</sup> *Id.* at 3.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.* at 1-3. (FTC Policy Statement on Deception)

<sup>87</sup> *Evaluation of SBA 7(A) Loans Made to Poultry Farmers*, U.S. Small Business Administration Office of the Inspector General (March 6, 2018).

Reasonable consumers would likewise not consider Tyson's farmers to be independent in light of the farmers' own admissions that they are "independent in name only."<sup>88</sup>

Moreover, consumers believe that food from "family farms" does not come from such large-scale corporate-controlled farms. They further believe that "family farmed" food has numerous beneficial attributes. A variety of consumer surveys show:

- "71% of respondents believe small scale family farms are more likely to care about food safety than large scale industrial farms";<sup>89</sup>
- "Family farms are considered to be viewed as "better stewards of the environment and as doing more to ensure the protection of [resources], and the welfare of livestock than corporate farms";<sup>90</sup>
- "69% of respondents believe animals have better lives on 'small' farms than 'corporate' farms."<sup>91</sup>

All of the above are important associations. One study put it simply: "By these statements alone, it can be concluded that these respondents assume that family farms = better care = safer food."<sup>92</sup>

In sum, reasonable consumers believe that family farms are the polar opposite of "large," "industrial," "corporate" farms. Accordingly, Tyson farms—which are corporate-controlled and may house millions of birds at a single facility—are precisely the large corporate farms consumers turn to "family farmed" products to avoid.

## **2. Tyson's Safe Work Environment Claims are likely to mislead.**

When Tyson advertises that it provides a "Safe Work Environment," or that it ensures that processing workers complete their tasks in the "safest manner," or that it is "keeping team members

---

<sup>88</sup> Moodie, *supra* note 3.

<sup>89</sup> Bob Scowcroft, *Roper Poll Shows Consumers Trust Family Farms*, Institute for Agriculture and Trade Policy (May 4, 2004), <https://www.iatp.org/news/roper-poll-shows-consumers-trust-family-farms>.

<sup>90</sup> Richard W. Rathge & Cheryl J. Wachenheim, *Societal Perceptions of Agriculture*, Agribusiness and Applied Economics Report 449 (2000), 10.22004/ag.econ.23541.

<sup>91</sup> Jayson L. Lusk et al., *Consumer Preferences for Farm Animal Welfare: Results of a Nationwide Telephone Survey*, (Aug. 17, 2007), <http://cratefreefuture.com/pdf/American%20Farm%20Bureau-Funded%20Poll.pdf>.

<sup>92</sup> Rebecca J. Vogt et al., *Animal Welfare: Perceptions of Nonmetropolitan Nebraskans: 2011 Nebraska Rural Poll Results*, 11 Center Research Report (July 2011), <https://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1088&context=caripubs>.

safer than ever,” consumers reasonably expect that Tyson exceeds industry standards for worker safety and believe that its workers are not routinely subjected to dangerous conditions that predictably cause chronic illness and respiratory health issues. At a minimum, consumers exposed to these advertisements would reasonably believe that Tyson is not responsible for more severe injuries and more COVID-19 infections than any other meat company. Consumers could also reasonably interpret Tyson’s ads to mean that Tyson adheres to CDC and OSHA guidelines regarding worker safety, including guidelines related to COVID-19. Reasonable consumers would not expect that Tyson uses processing line speeds that are faster, and therefore **more dangerous**, than industry standard line speeds.

## **B. Tyson’s Representations Are Material**

Materiality is established when a representation “is likely to affect the consumer’s conduct or decision with regard to a product or service.”<sup>93</sup> Here, Tyson directs its “safe work environment” and “independent” family farms claims at those consumers most likely to find these representations material and those most likely to be misled by them: conscientious consumers inclined to purchase products that were ethically produced. It is beyond dispute that consumers care deeply about the workers who make their food; it is also undisputable that consumers rely on representations like those made by Tyson to identify products that they consider to be ethically produced. The FTC,<sup>94</sup> the Better Business Bureau, and even the poultry industry have each firmly recognized that social issues, including the treatment of workers, are of significant concern to consumers and have an important bearing on consumer purchasing decisions.<sup>95</sup>

---

<sup>93</sup> *Id.*

<sup>94</sup> See, e.g., FTC, Statement of Commissioner Rohit Chopra, *In re Truly Organic*, No. 1923077 (Sept. 19, 2019), [https://www.ftc.gov/system/files/documents/public\\_statements/1544655/commissioner\\_rohit\\_chopra\\_statement\\_on\\_truly\\_organic\\_sept\\_19\\_2019.pdf](https://www.ftc.gov/system/files/documents/public_statements/1544655/commissioner_rohit_chopra_statement_on_truly_organic_sept_19_2019.pdf).

<sup>95</sup> *Starbucks Corporation (Free Trade Certified Coffee)*, Report #4592, NAD Case Reports, at 1 (Nov. 8, 2006) (“Advertising claims which tout that the advertiser is addressing particular social or ethical concerns can provide consumers with important information about their purchasing choices.”); JBS, *Annual and Sustainability Report 2017*

## 1. Materiality of Safe Work Environment Claims

A 2008 study assessed U.S. “consumer willingness to pay for food embodying a living wage and safe working conditions for farmworkers” and found that “respondents were willing to pay substantially more” for ethically produced products.<sup>96</sup>

According to the 2015 Consumer Reports survey, 89% of respondents stated, when shopping for food, it was important or very important to support companies that provide “good working conditions/fair pay to workers.”<sup>97</sup>

In a 2006 study about consumer values across six different countries, including the U.S., “safe working conditions” ranked in the top six (of 16) important issues for consumers in every nation, and was in the top three issues for more than half of the countries.<sup>98</sup> “Safe working conditions” fell among the top four issues “rated higher than the average issue by individuals in all the countries studied.”<sup>99</sup> This demonstrates the high value that consumers place on this major ethical sourcing issue.

Tyson is well aware of the materiality of its representations. In 2016, Tyson’s Director of Sustainable Food Strategy wrote that “consumers look to food manufacturers to provide

---

8 (2017), <http://jbss.infoinvest.com.br/enu/s-7-enu-2018.html> (“We have focused on understanding consumer trends and demands. For example, we are the world’s largest producer of natural, organic chicken”); *see also* Context Mktg., *Ethical Food: A Research Report on the Ethical Claims That Matter Most to Food Shoppers and How Ethical Concerns Influence Food Purchases* 4, 6 (2010), <https://web.archive.org/web/20130928195843/http://contextmarketing.com/sources/feb28-2010/ethicalfoodreport.pdf> (reporting 69 percent of consumers will pay more for “food produced to higher ethical standards,” and 91 percent of consumers include animal welfare in their criteria for whether something is ethically produced).

<sup>96</sup> P.H. Howard & P. Allen, *Consumer willingness to pay for domestic ‘fair trade’: Evidence from the United States*, 23 Renewable Ag. and Food Systems 235 (June 30, 2008).

<sup>97</sup> *Id.* at 2.)

<sup>98</sup> Pat Auger et al., *Using Best–Worst Scaling Methodology to Investigate Consumer Ethical Beliefs Across Countries*, 70 J. Bus. Ethics 299 (2006), <https://link.springer.com/content/pdf/10.1007/s10551-006-9112-7.pdf>.

<sup>99</sup> *Id.*

transparency about policies, practices and performance for six key aspects of food production.

These aspects [include] . . . labor and human rights.”<sup>100</sup>

## **2. Materiality of Independent Family Farm Claims**

As set forth above, consumers associate Tyson’s Independent Family Farm Claims with a variety of positive attributes, including superior food safety, animal welfare, and environmental sustainability. Numerous consumer surveys<sup>101</sup> demonstrate that these attributes are material to consumers.

For the reasons discussed above, Tyson’s Independent Family Farm Claims and Safe Work Environment Claims are unlawfully deceptive under the FTC Act.<sup>102</sup>

## **V. Relief Requested**

The actions described above constitute unlawful conduct, unfair methods of competition, and unfair and deceptive practices under the FTC Act, 15 U.S.C. § 41 et seq.

Accordingly, the undersigned respectfully request that the Commission:

1. require Tyson to remove misleading claims from its website;
2. enjoin Tyson from making such misleading statements in the future;

---

<sup>100</sup> Leigh Ann Johnson, *Transparency in Sustainability: Key to Connecting with Consumers*, Nat'l Provisioner (Mar. 10, 2016), <https://www.provisioneronline.com/articles/103026-transparency-in-sustainability-key-to-connecting-with-consumers>.

<sup>101</sup> See e.g., Gay Y. Miller & Laurian J. Unnevehr, *Characteristics of Consumers Demanding and Their Willingness to Pay for Certified Safer Pork*, 19 J. Agribusiness 101, 109–10 (2001) (finding more than 80% of surveyed consumers indicated that they are willing to pay more for safer meat products); C. Victor Spain et al., *Are They Buying It? United States Consumers’ Changing Attitudes Toward More Humanely Raised Meat, Eggs, and Dairy*, 8 Animals 128 (2018) (finding the weighted average of consumers’ marginal willingness to pay for products from humanely treated animals was \$0.96 for one pound of chicken breast—a 48% premium); David Stanton, *In US, Willingness to Pay More for Environment-Friendly Products Grows*, Growth from Knowledge (Apr. 17, 2017), <https://www.gfk.com/en-us/insights/press-release/in-us-willingness-to-pay-more-for-environment-friendly-products-grows/> (last visited June 19, 2019) (finding 56% of consumers were willing to pay more to use “environment-friendly (‘green’) products.”).

<sup>102</sup> See generally FTC Policy Statement on Deception, *supra* note 12, at 2 (a claim is unlawfully deceptive if it is important to a consumer’s purchasing decision and is likely to mislead consumers acting reasonably under the circumstances).

3. require Tyson to disseminate corrective statements in all media in which the misleading statements were previously disseminated; and
4. impose all other penalties as are just and proper.

Respectfully submitted July 30, 2020,



---

Kim E. Richman  
Richman Law Group  
8 West 126<sup>th</sup> Street  
New York, NY 10027  
(718) 705-4579 (phone)  
(718) 228-8522 (fax)  
[krichman@richmanlawgroup.com](mailto:krichman@richmanlawgroup.com)