

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

ANIMAL OUTLOOK,
6930 Carroll Avenue, Suite 439
Takoma Park, Maryland 20912

Plaintiff,

v.

AMERICAN HEART ASSOCIATION, INC.
7272 Greenville Avenue
Dallas, Texas 75231

and DOES, 1-20,

Defendants.

Case No. _____

COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiff Animal Outlook (“Animal Outlook”), a national nonprofit, charitable organization, in its own and in a representative capacity on behalf of the general public, brings this Complaint against Defendant American Heart Association, Inc. (“AHA”) for damages and to enforce its rights pursuant to the District of Columbia Consumer Protection Procedures Act (“CPPA”), D.C. Code §§ 28-3901 to 28-3913, and for common law claims for negligent misrepresentation and unjust enrichment. At its core, for its own benefit, AHA is knowingly and actively misleading consumers through its Heart-Check Certification program and through its website and promotional materials regarding the cardiovascular effects of eating beef, as the following allegations detail:

INTRODUCTION

1. AHA is a non-profit, charitable organization whose stated mission is to help people “build[] healthier lives, free of cardiovascular diseases and stroke.” It is a noble mission, and, in 1995, AHA started the Heart-Check Certification program in an apparent attempt to fulfill it. The Heart-Check Certification program professes to guide consumers towards making nutritional choices by recommending to consumers products that are “heart healthy.” As part of this program, AHA makes such recommendations through its Heart-Check Certification mark (“Heart-Check Mark” or the “AHA Mark”), in which AHA endorses certain food products as “heart healthy” by allowing manufacturers to affix the AHA Mark on their products. AHA also makes statements about the nutritional value of certain food products on its website, on social media, and in other promotional materials.

2. AHA advertises its Heart-Check Certification program on its website by assuring consumers that they can “[t]rust the Heart-Check Mark” because AHA is “the nation’s oldest, largest voluntary health organization devoted to fighting cardiovascular diseases and stroke,” and

because it bases its criteria for the program on “[AHA]’s scientific statements and recommendations.”¹ AHA assures consumers that the Heart-Check Certification program works, claiming that people who “report eating foods that meet the Heart-Check certification requirements are more likely to eat healthier and have fewer heart disease risk factors.”²

3. But what AHA does not tell the public is that, in exchange for a fee, AHA allows purveyors of beef to display the AHA Mark on their products and market them as “heart healthy,” even though doing so runs directly counter to AHA’s stated mission and its own admissions that eating beef is not, in fact, heart healthy. Indeed, AHA does not disclose anywhere on or near the AHA Mark that companies, including purveyors of beef, pay AHA to place the AHA Mark on their products. Nor does AHA require that beef purveyors paying to use the AHA Mark disclose to consumers on their packaging that they have paid for use of the mark. Not only do manufacturers and producers of beef buy the approval of this widely-trusted organization in order to tout AHA’s Heart-Check Mark on their meat products, but the omission of any disclosure on or near the AHA Mark is materially deceptive and misleading to consumers.

4. In addition, AHA promotes its organization and, in particular, its Heart-Check Certification program to consumers as employing AHA’s own independent scientific and nutritional guidelines. AHA tells consumers that “[t]he Heart-Check Food Certification Program’s nutrition requirements for certification are based on the sound science of the [AHA] regarding healthy dietary recommendations including food categories, specific product ingredients and nutrient values,” and that “[a]ll products must *also* meet government regulatory

¹ *Why You Can Trust the Heart-Check Mark*, Am. Heart Ass’n (Apr 30, 2018), <https://www.heart.org/en/healthy-living/company-collaboration/heart-check-certification/why-you-can-trust-the-heart-check-mark> (last visited August 24, 2022).

² *Id.*

requirements for making a coronary heart disease health claim.”³ (Emphasis added.) In such a way, AHA misleads the public into believing that beef products bearing the AHA Mark adhere to AHA’s own independent scientific and nutritional guidelines, in addition to the government’s minimum guidelines. However, with respect to beef, AHA’s Heart-Check Certification program relies on nothing more than the government’s minimum guidelines.

5. Further, AHA has made numerous claims on its website and in its promotional materials stating that beef is “heart healthy,” despite full knowledge that these claims are false. At least two official peer-reviewed medical journals published on behalf of AHA, *Journal of the American Heart Association* (JAHA) and *Arteriosclerosis, Thrombosis, and Vascular Biology* (ATVB), as well as independent scientific studies and health and nutrition experts alike, have long-recognized that beef is not “heart healthy.” By way of example and not limitation, scientific studies reflect that eating only a small portion of beef presents a higher risk of cardiovascular disease.⁴ AHA is aware of these studies, and their results, and has acknowledged

³ *Heart-Check Food Certification Program Nutrition Requirements*, Am. Heart Ass’n, <https://www.heart.org/en/healthy-living/company-collaboration/heart-check-certification/heart-check-in-the-grocery-store/heart-check-food-certification-program-nutrition-requirements#:~:text=The%20Heart%20Check%20Food%20Certification,product%20ingredients%20and%20nutrient%20values> (last visited August 24, 2022).

⁴ See, e.g., *Study strengthens links between red meat and heart disease*, European Society of Cardiology (April 15, 2021), [https://www.escardio.org/The-ESC/Press-Office/Press-releases/study-strengthens-links-between-red-meat-and-heart-disease#:~:text=Sophia%20Antipolis%20%E2%80%93%2015%20April%202021,Society%20of%20Cardiology%20\(ESC\);M.Paul,MeatConsumptionRaisesRiskofHeartDiseaseandDeath,180JAMAInternalMed.503\(Feb.3,2020\),https://news.feinberg.northwestern.edu/2020/02/meat-consumption-raises-risk-of-heart-disease-and-death/](https://www.escardio.org/The-ESC/Press-Office/Press-releases/study-strengthens-links-between-red-meat-and-heart-disease#:~:text=Sophia%20Antipolis%20%E2%80%93%2015%20April%202021,Society%20of%20Cardiology%20(ESC);M.Paul,MeatConsumptionRaisesRiskofHeartDiseaseandDeath,180JAMAInternalMed.503(Feb.3,2020),https://news.feinberg.northwestern.edu/2020/02/meat-consumption-raises-risk-of-heart-disease-and-death/); K. Paper, *Meat consumption and risk of 25 common conditions: outcome-wide analyses in 475,000 men and women in the UK Biobank study*, 19 *BMC Medicine* 53 (Mar. 2021), <https://bmcmmedicine.biomedcentral.com/articles/10.1186/s12916-021-01922-9>; *Cleveland Clinic Studies Reveal Role of Red Meat in Gut Bacteria, Heart Disease Development*, Newsroom (December 10, 2018), <https://newsroom.clevelandclinic.org/2018/12/10/cleveland-clinic-studies-reveal-role-of-red-meat-in-gut-bacteria->

them. For example, and contrary to AHA’s claims to consumers, AHA has published articles and peer-reviewed studies unrelated to the Heart-Check Certification program that state that beef is not heart healthy and recommend limiting beef intake or, in some cases, avoiding it altogether.⁵ In fact, ATVB published a study as recently as August 1, 2022, which reaffirmed that eating red meat causes a higher risk of cardiovascular disease than does fish, poultry, or eggs.⁶ AHA thus contradicts itself regarding the heart-health effects of beef, particularly when it stands to profit from licensing the AHA Mark to paying companies.

6. AHA’s practice of authorizing the use of the AHA Mark on beef products, while failing to disclose that the AHA Mark is paid for or that AHA only requires that beef products meet the government’s minimum standards to qualify for use of the AHA Mark, leads consumers to believe that these beef brands are “heart healthy” and possess some cardiovascular benefit(s) not enjoyed by products that have not been certified by AHA. This, however, is false. By allowing the use of the AHA Mark on certain beef products and making claims on its website and in its promotional materials about the Heart-Check Certification program and the health

heart-disease-development/#:~:text=In%20concurrent%20studies%2C%20Cleveland%20Clinic,Stanley%20Hazen%2C%20M.D.%2C%20Ph (last visited May 18, 2022).

⁵ See, e.g., *Picking Healthy Proteins*, Am. Heart Ass’n (November 1, 2021), [https://www.heart.org/en/healthy-living/healthy-eating/eat-smart/nutrition-basics/meat-poultry-and-fish-picking-healthy-proteins#:~:text=In%20general%2C%20red%20meats%20\(such,skinless%20poultry%2C%20and%20unprocessed%20forms;SaturatedFat,Am.HeartAss’n\(November1,2021\),https://www.heart.org/en/healthy-living/healthy-eating/eat-smart/fats/saturated-fats;CardiovascularHarmFromEggYolkandMeat:MoreThanJustCholesterolandSaturatedFat,JournaloftheAm.HeartAss’n\(March15,2021\),https://www.ahajournals.org/doi/10.1161/JAHA.120.017066](https://www.heart.org/en/healthy-living/healthy-eating/eat-smart/nutrition-basics/meat-poultry-and-fish-picking-healthy-proteins#:~:text=In%20general%2C%20red%20meats%20(such,skinless%20poultry%2C%20and%20unprocessed%20forms;SaturatedFat,Am.HeartAss’n(November1,2021),https://www.heart.org/en/healthy-living/healthy-eating/eat-smart/fats/saturated-fats;CardiovascularHarmFromEggYolkandMeat:MoreThanJustCholesterolandSaturatedFat,JournaloftheAm.HeartAss’n(March15,2021),https://www.ahajournals.org/doi/10.1161/JAHA.120.017066) (last visited May 18, 2022).

⁶ *Dietary Meat, Trimethylamine N-Oxide-Related Metabolites, and Incident Cardiovascular Disease Among Older Adults: The Cardiovascular Health Study*, Arteriosclerosis, Thrombosis, and Vascular Biology (August 1, 2022), <https://www.ahajournals.org/doi/10.1161/ATVBAHA.121.316533> (last visited August 9, 2022).

benefits of eating beef, AHA is actively and knowingly misleading consumers regarding the cardiovascular risks associated with eating beef. These deceptive practices present substantial health risks to consumers, including the more than five million American consumers suffering from congestive heart failure for whom consumption of beef is particularly detrimental.

7. Ultimately, AHA's deceptive, false, and misleading advertising and marketing practices constitute an unlawful trade practice, and therefore violate the CPPA. *See* D.C. Code §§ 22-1511 and 28-3904(a), (d), (e), (f), (f-1), (h).

8. This deceptive, false and misleading advertising and marketing is also unlawful under the Federal Trade Commission Act ("FTCA"), 15 U.S. C. §§ 41-58, and therefore constitutes a further unlawful practice under the CPPA. *See id.* § 45(a)(1); D.C. Code § 28-3904(x).

9. All such statutory violations are actionable by way of the cause of action available to organizational plaintiffs, such as Animal Outlook, under the CPPA. D.C. Code § 28-3905(k)(1). Specifically, Animal Outlook, an animal protection and public interest nonprofit organization, has standing to sue AHA on behalf of the interests of Animal Outlook and consumers because it has a "sufficient nexus" to "adequately represent those interests" in preventing AHA from misleading the public by failing to disclose that the AHA Mark is a paid endorsement of certain beef products; by failing to disclose that AHA only follows the minimum federal guidelines in deciding which beef products may display the AHA Mark; and for falsely claiming that beef products are "heart healthy" when they are demonstrably not. *See* D.C. Code § 28-3905(k)(1)(D).

10. Additionally, Animal Outlook, a national nonprofit organization, has standing pursuant to D.C. Code § 28-3905(k)(1)(A)(C), on behalf of itself and on behalf of the general

public, to bring an action seeking relief from the use of any AHA trade practice in violation of a law of the District of Columbia. *See* D.C. Code § 28-3905(k)(1)(D).

11. Animal Outlook also has the requisite standing because AHA's actions cause a "concrete and demonstrable injury to the organization's activities." *Equal Rights Ctr. v. Properties Intern.*, 110 A.3d 599, 604 (D.C. 2015) (quoting *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982)). In addition, there is a "direct conflict between the defendant's conduct and the organization's mission." *D.C. Appleseed Ctr. for Law and Justice v. Dist. of Columbia Dep't of Ins.*, 54 A.3d 1188, 1209 (D.C. 2012) (quoting *Nat'l Treasury Emps. Union v. United States*, 101 F.3d 1423, 1430 (D.C. Cir.1996)). Moreover, AHA's unlawful activities have "frustrated" Animal Outlook's purpose of promoting the truth about animal agribusiness and animal consumption, and Animal Outlook has had to use its resources to "counteract the negative message." *Molovinsky v. Fair Employment Council of Greater Wash., Inc.*, 683 A.2d 142, 147 (1996).

12. Among other objectives, Animal Outlook intends to raise awareness as to the falsity and deception surrounding AHA's advertising and endorsement of beef products, as doing so will inform consumers of the true risks of eating beef, decrease the number of animals slaughtered for food, promote heart-healthier diets, and challenge the status quo of animal agribusiness through food system reform.

PARTIES

13. Plaintiff Animal Outlook is a national nonprofit animal advocacy organization whose mission is to challenge the status quo of animal agribusiness through investigations, legal advocacy, corporate and food system reform, and to empower consumers to make more informed decisions about the consumption of animal products, including beef. Animal Outlook is a

Delaware corporation that transacts business in the District of Columbia and throughout the United States. Animal Outlook's principal place of business is 6930 Carroll Avenue, Suite 439, Takoma Park, Maryland 20912.

14. Since 1995, Animal Outlook has worked to fulfill its mission by revealing the truth to consumers about agribusiness, the misleading marketing of animal products and unfair business practices through education, investigation, litigation, legislation, advocacy, and outreach on behalf of thousands of constituents in the District of Columbia and nationwide. Through its work, Animal Outlook has already inspired thousands to make compassionate and healthy choices by helping to ensure consumers are provided with accurate information about meat and dairy production and marketing, so that they can make informed decisions about whether to consume animal products.

15. Defendant AHA is a non-profit corporation. AHA is incorporated in New York, New York and headquartered in Dallas, Texas. According to its website, AHA is the nation's oldest and largest voluntary organization dedicated to fighting cardiovascular diseases, and AHA's purported mission is "[b]uilding healthier lives, free of cardiovascular diseases and stroke."⁷ AHA claims its "mission drives everything we do."⁸ AHA includes the American Stroke Association, which was created in 1997 as a division of AHA, to bring together the stroke-related activities of the organization. AHA purportedly seeks to improve Americans' health through various efforts, including public education and the Heart-Check Certification

⁷ *About the American Heart Association & American Stroke Association*, Am. Heart Ass'n, https://www2.heart.org/site/SPageServer/?jsessionid=00000000.app30115b?NONCE_TOKEN=F72C475DE5350449307C1A4954AFB445&pagename=funraiser13_aboutus (last visited August 24, 2022).

⁸ *Id.*

program, which “is designed to help consumers make informed choices about the foods they purchase.”⁹

16. Animal Outlook is unaware of the true names and capacities, whether individual, corporate, associate, or otherwise, of defendants DOES 1 through 20, inclusive, or any of them, and therefore sues these defendants, and each of them, by such fictitious names. Animal Outlook will seek leave of this Court to amend this Complaint when the status and identities of these defendants are ascertained.

JURISDICTION AND VENUE

17. This Court has subject matter jurisdiction over statutory claims in this matter pursuant to D.C. Code § 28-3905(k)(1). The Court has personal jurisdiction over AHA pursuant to D.C. Code §§ 13-334(a) and 13-423(a)(1) because the allegations and claims for relief herein arise from AHA’s “doing business” and “transacting . . . business” in this District. In addition, AHA has been registered to do business in this District since 1998 and has a registered agent for service of process in the District.

18. As a result of AHA’s purposeful and substantial promotion of beef and beef products in the District of Columbia, through products sold in retail stores that are located in the District, as well as through websites, social media, and other promotional materials available in the District, AHA has established sufficient contacts with this District such that it is reasonable for AHA to anticipate being subject to action in the courts of this District.

19. Venue is proper in the District of Columbia pursuant to D.C. Code § 28-3905(k)(2) because Animal Outlook seeks to represent consumers and residents of this District

⁹ *How the Heart-Check Food Certification Program Works*, Am. Heart Ass’n, (May 1, 2018), <https://www.heart.org/en/healthy-living/company-collaboration/heart-check-certification/how-the-heart-check-food-certification-program-works> (last visited August 24, 2022).

who have purchased beef products displaying the AHA Mark, and/or been subject to AHA's promotional materials. These transactions occurred in grocery and other stores located in Washington, D.C. Further, AHA transacts business and has caused injury in Washington, D.C., this action relates to AHA's activities within this District, and AHA is subject to the Court's personal jurisdiction with respect to this action.

FACTUAL ALLEGATIONS

A. Despite its Noble Mission, AHA Misleads Consumers by Using the AHA Mark to Promote Beef but Failing to Disclose It Is a Paid Endorsement

20. AHA is a non-profit, charitable organization with a noble mission: helping people “to build healthier lives, free of cardiovascular diseases and stroke.” Each year, AHA receives hundreds of millions of dollars in donations by portraying itself as the premier charity leading the crusade against heart disease.¹⁰ AHA promotes itself as “the nation’s oldest and largest voluntary organization dedicated to fighting heart disease and stroke” with a long history of “striving to save and improve lives.”¹¹ AHA encourages the public’s trust in its mission, purporting to be “the trusted authority on fighting heart disease and stroke.”¹²

21. In 1995, AHA launched the Heart-Check Certification program to help guide shoppers toward making “healthier choices” by helping them choose certain products for consumption, based on AHA’s guidance. As part of this program, AHA allows certain

¹⁰ *American Heart Association, Inc. Financial Highlights: Fiscal Year July 1, 2019 through June 30, 2020*, Am. Heart Ass’n, <https://www.heart.org/-/media/Files/Finance/20192020-Financial-Highlights.pdf> (last visited May 18, 2022).

¹¹ *About Us*, Am. Heart Ass’n, <https://www.heart.org/en/about-us> (last visited August 24, 2022).

¹² *CEO Welcome Video*, Am. Heart Ass’n YouTube Channel (December 22, 2017), <https://www.youtube.com/watch?v=MqSw3yM6StA> (last visited May 18, 2022).

companies to affix a mark to their products that says, “[AHA] Certified – Meets Criteria for Heart Healthy Food [or Meal].” According to AHA, affixing this mark to certain products, but not others, “is designed to help consumers make informed choices about the foods they purchase.”¹³

22. AHA assures consumers that they “can trust the Heart-Check Mark” because AHA is a “trustworthy organization” that is “devoted to fighting cardiovascular diseases and stroke.”¹⁴ AHA advises consumers on its website and in its promotional materials that the AHA Mark means a product is “heart healthy,” and that buying products with the AHA Mark will help guide them toward making healthy, nutritional food choices. Indeed, AHA tells consumers that “[t]he Heart-Check mark makes it easy to spot heart-healthy foods in the grocery store. Simply look for the name of the [AHA] along with our familiar red heart with a white check mark on the package or menu.”¹⁵

23. AHA also assures consumers that the criteria it uses for its Heart-Check Certification program is based on sound science. Specifically, AHA tells consumers that they can trust the AHA Mark because AHA uses “Science-based Criteria” in determining which

¹³ *How the Heart-Check Food Certification Program Works*, Am. Heart Ass’n (May 1, 2018), <https://www.heart.org/en/healthy-living/company-collaboration/heart-check-certification/how-the-heart-check-food-certification-program-works> (last visited August 24, 2022).

¹⁴ *Why You Can Trust the Heart-Check Mark*, Am. Heart Ass’n (Apr 30, 2018), <https://www.heart.org/en/healthy-living/company-collaboration/heart-check-certification/why-you-can-trust-the-heart-check-mark> (last visited August 24, 2022).

¹⁵ *How the Heart-Check Food Certification Program Works*, Am. Heart Ass’n (May 1, 2018), <https://www.heart.org/en/healthy-living/company-collaboration/heart-check-certification/how-the-heart-check-food-certification-program-works> (last visited August 24, 2022).

products to endorse through its Heart-Check Certification program, and that the “Heart-Check program criteria are based on [AHA] scientific statements and recommendations.”¹⁶

24. AHA further advises consumers that only the AHA Mark has the approval of this trusted organization; no other mark does. AHA warns consumers that “not all heart-healthy claims you see are from [AHA]; look for the AHA name to be sure. When you spot [AHA’s] Heart-Check mark, you’ll instantly know the food has been certified to meet our nutrition requirements.”¹⁷ AHA cites studies in support of the efficacy of its Heart-Check Certification program, including “[a] 2014 research study [that] found that people who report eating foods that meet Heart-Check certification requirements are more likely to eat healthier and have fewer heart disease risk factors.”¹⁸ The message conveyed to consumers by AHA is clear: AHA-certified foods comply with AHA’s own scientific nutritional standards, which are higher than those of government standards or that of other organizations.

25. AHA’s efforts appear to be working. AHA itself acknowledges that “consumer research shows that ‘the AHA is the authority most trusted by consumers to decide if a product may display a nutrition message or mark.’”¹⁹ According to AHA, “3 out of 4 consumers say

¹⁶ *Why You Can Trust the Heart-Check Mark*, Am. Heart Ass’n (Apr 30, 2018), <https://www.heart.org/en/healthy-living/company-collaboration/heart-check-certification/why-you-can-trust-the-heart-check-mark> (last visited August 24, 2022).

¹⁷ *How the Heart-Check Food Certification Program Works*, Am. Heart Ass’n (May 1, 2018), <https://www.heart.org/en/healthy-living/company-collaboration/heart-check-certification/how-the-heart-check-food-certification-program-works> (last visited August 24, 2022).

¹⁸ *Heart-Check: A Small Check That Can Make a Big Difference*, Am. Heart Ass’n (May 22, 2018), <https://www.goredforwomen.org/en/healthy-living/healthy-eating/heart-check-foods/heart-check-a-small-check-that-can-make-a-big-difference> (last visited May 19, 2022).

¹⁹ *Why You Can Trust the Heart-Check Mark*, Am. Heart Ass’n (Apr. 30, 2018), <https://www.heart.org/en/healthy-living/company-collaboration/heart-check-certification/why-you-can-trust-the-heart-check-mark> (last visited August 24, 2022).

they are more likely to purchase foods that feature the Heart-Check mark, regardless of age or kids in household.”²⁰

26. But what AHA does not tell consumers is that AHA sells the AHA Mark to beef purveyors for placement on their beef products. Indeed, at the same time that AHA assures consumers that they can trust the independent scientific and nutritional standards that the Heart-Check Certification program and AHA Mark represent, AHA markets the Heart-Check Certification program to companies, including purveyors of beef, telling them that, in exchange for a fee to AHA, they can use the AHA Mark on their products to market them as certified by AHA as “heart healthy.”

27. AHA’s pitch to manufacturers emphasizes the benefits to a company of displaying the AHA Mark on their products, and how such a mark will be perceived and used by consumers. Specifically, AHA promotes its Heart-Check Certification program to companies by telling them that using the AHA Mark will “connect your company and brand with consumers’ interest in heart health.”²¹ AHA tells food manufacturers that the “Heart-Check certification provides added credibility for your brand, boosts your product’s visibility and helps your company connect with health-conscious consumers. Seeing the Heart-Check mark assures shoppers they are making a smart choice.”²² Beef purveyors are taking notice. According to a

²⁰ *Heart-Check Food Certification Program Guide*, Am. Heart Ass’n, p. 2 (Dec. 2019) (citing Healthy Living rewards Concept Test Report, May 2016), <https://recipes.heart.org/-/media/Files/Healthy-Living/Company-Collaboration/Heart-Check-Certification/Heart-Check-Food-Certification-Guide.pdf> (last visited May 19, 2022).

²¹ *Id.*

²² *Id.*

representative of the Beef Checkoff, a national marketing and research program designed to increase the demand for beef:²³

The reinforcement to consumers that beef offers not only a delicious eating experience but one the [AHA] has specifically identified as “heart-healthy” is positive news for the checkoff . . . We are definitely seeing the [AHA]-certified beef cuts gaining awareness among consumers and retailers are recognizing the value they bring in the meat case. It’s exciting to literally see our checkoff dollars at work in the meat case, providing return on investment to producers, but also providing that visible affirmation to consumers that they are making a nutritious purchase for mealtime. Beef can do a heart good!²⁴

28. But AHA’s failure to include or disclose that the AHA Mark is a paid endorsement on or anywhere near the mark, or to require such a disclosure, is not only materially misleading, it is also in direct contravention of federal food labeling laws. In order to protect consumers from being misled, laws regulating food labeling require disclosure in any instance where a company has paid to receive an endorsement that is placed on a product label.

29. According to the FDA’s 1993 Final Rule: Food Labeling, General Requirements for Health Claims for Food:

The agency recognizes that endorsements made for compensation by private organizations or individuals may be misleading to consumers. The agency is advising that when such endorsements are made, a statement should be included in close proximity to the claim, informing consumers that the organization or individual was compensated for the endorsement. Failure to divulge this information on a label that bears a paid endorsement would cause the product to be misbranded under sections 403(a) and 201(n) of the act for failure to reveal a fact that is material.

²³ *What is the Beef Checkoff?*, BEEF, <https://www.beefboard.org/checkoff/#:~:text=The%20Beef%20Checkoff%20program%20is%20a%20national%20marketing%20and%20research,beef%20at%20home%20and%20abroad.&text=Under%20the%20program%2C%20producers%20and,equivalent%20on%20beef%20they%20import> (last visited May 19, 2022).

²⁴ *Heart-Check Mark Continues to Drive Beef Sales*, Hoard’s Dairyman (July 9, 2013), <https://hoards.com/article-9507-heartcheck-mark-continues-to-drive-beef-sales.html> (last visited May 19, 2022).

30. The failure to disclose that an endorsement was a paid endorsement also violates 21 C.F.R. § 1.21, which mandates that it is unlawful to fail to reveal a material fact on the label of a food product.

31. The failure to disclose that the endorsement is a paid endorsement further violates 16 C.F.R. § 255.1(d), which states that “[a]dvertisers are subject to liability for false or unsubstantiated statements made through endorsements, or for failing to disclose material connections between themselves and their endorsers. . . . [and that] [e]ndorsers also may be liable for statements made in the course of their endorsements.”

32. In addition, the failure to disclose that the endorsement is a paid endorsement violates 16 C.F.R. § 255.5, which states that, “[w]hen there exists a connection between the endorser and the seller of the advertised product that might materially affect the weight or credibility of the endorsement (i.e., the connection is not reasonably expected by the audience), such connection must be fully disclosed.”

33. In direct violation of labeling laws and the FDA rules, AHA receives compensation from meat producers to display the AHA Mark on their beef products without disclosing that it is a paid endorsement anywhere on or near the mark.

34. While AHA benefits from the fees paid to it by beef manufacturers and the advertising and name recognition that comes from having its logo emblazoned on millions of food containers, and manufacturers benefit through increased sales and premium pricing for AHA-certified products, consumers end up only with falsely labeled products which they would have viewed differently—or not have purchased at all—had they been told the truth about those products.

35. AHA's Heart-Check certification scheme thus runs directly counter to AHA's own guidance and stated mission. Instead of aiding the consuming public, AHA's Heart-Check Certification program detrimentally misleads them. Specifically, placement of the AHA Mark on beef products falsely leads consumers to believe these products benefit their cardiovascular health. Moreover, AHA fails to disclose to consumers anywhere on or near the AHA Mark that companies pay for the use of the mark. AHA therefore creates the false impression that those products have been endorsed by AHA solely because they meet AHA's independent nutritional guidelines, when, in fact, this is not the case.

B. AHA Misleads Consumers By Suggesting that the Heart-Check Certification Program Has Standards Higher than the Government's Minimum Standards

36. AHA's Heart-Check Certification program is materially misleading for another reason: AHA tells consumers that it uses its own independent scientific standards to evaluate the products it endorses under the program. With respect to beef, however, AHA only uses the government's minimum standards.

37. Indeed, AHA tells consumers, "the Heart-Check Food Certification Program's nutrition requirements for certification are based on the sound science of the [AHA] regarding healthy dietary recommendations including food categories, specific product ingredients and nutrient values."²⁵ AHA further claims, "To be certified, a product must meet specific nutrition requirements. The Heart-Check program has seven different categories of certification, and each

²⁵ *Heart-Check Food Certification Program Nutrition Requirements*, Am. Heart Ass'n, <https://www.heart.org/en/healthy-living/company-collaboration/heart-check-certification/heart-check-in-the-grocery-store/heart-check-food-certification-program-nutrition-requirements#:~:text=The%20Heart%2DCheck%20Food%20Certification,product%20ingredients%20and%20nutrient%20values> (last visited July 25, 2022).

category has a different set of nutrition requirements. All products must *also* meet government regulatory requirements for making a coronary heart disease health claim.”²⁶ (Emphasis added.)

38. Through such representations, AHA signifies to consumers that AHA-certified products have cardiovascular benefits above and beyond that which is enjoyed by non-certified products that are merely in compliance with the government’s minimal heart-health regulations. But this is false. Instead, the criteria AHA uses when selling its AHA Mark to beef manufacturers are nothing more than the government’s minimum criteria, not AHA’s own advertised higher standards.

39. For example, AHA advertises on its website that its “Standard Certification” for “Extra Lean” meat and seafood is less than 2 g per 100 g for saturated fat, less than 0.5 g per label serving for trans fat and less than 95 mg per reference amount customarily consumed (“RACC”) and per 100 g for cholesterol.²⁷ But AHA does not make clear to consumers that these are only the government’s minimum requirements for these categories. *See, e.g.*, 21 C.F.R. §§ 101.62(c), (e)(4) (“extra lean” meats must have less than 2 grams saturated fat, 0.5 trans fat and 95 mg cholesterol per RACC and per 100 g), 101.75. Similarly, AHA advertises that, to be AHA certified, meat must have beneficial nutrients (naturally occurring) of 10% or more of the Daily Value of 1 of 6 nutrients (vitamin A, vitamin C, iron, calcium, protein or dietary fiber).²⁸ Again, however, AHA does not make clear to consumers that these requirements are only the

²⁶ *Id.*

²⁷ *Heart-Check Food Certification Program Nutrition Requirements*, <https://www.heart.org/en/healthy-living/company-collaboration/heart-check-certification/heart-check-in-the-grocery-store/heart-check-food-certification-program-nutrition-requirements#:~:text=The%20Heart%20Check%20Food%20Certification,product%20ingredients%20and%20nutrient%20values> (last checked July 25, 2022).

²⁸ *Id.*

government's minimum requirements. *See* 21 C.F.R. § 101.65(d)(2)(i) ("healthy" meat must contain at least 10% of the reference daily intake or daily reference value per retinol activity of one or more of vitamin A, vitamin C, iron, calcium protein or dietary fiber).

40. Through AHA's representations about its Heart-Check Certification program, and the AHA Mark in particular, AHA represents and conveys to consumers that an independent third party has certified the healthiness, and specifically, the heart-healthiness of the beef products in question. But AHA does not make clear to consumers that, in reality, AHA only relies on the government's minimum standards for certain categories in deciding whether to allow the mark on beef products, and not AHA's own advertised independent dietary and nutritional standards (and that, even then, the AHA Mark is obtained only after meat producers pay for its placement). Had AHA clearly disclosed that the Heart-Check Certification program relies only on the government's minimum standards, consumers would not view the certification as independent or legitimate and would not view the product as being healthier and more beneficial than other alternatives.

C. AHA's Actions Harm Animal Outlook and Its Mission

41. Animal Outlook is a non-profit organization that works to advocate for animals and protect consumers through education, investigation, litigation, legislation, advocacy, and outreach. In particular, Animal Outlook advocates against government policies that encourage or allow cruelty to farmed animals, conducts public education on the realities of animal agriculture and dietary choices, coordinates public campaigns to encourage the adoption of vegan diets, and conducts undercover investigations to expose cruelty at factory farms and slaughterhouses.

42. Part of Animal Outlook's mission is to educate consumers and protect them from being misled by deceptive claims about the health benefits of meat products. As such, Animal

Outlook engages consumers, corporations, and policymakers to spur reform in the treatment of animals raised for food and in the marketing and advertising of animal products, including beef. Animal Outlook has worked in numerous ways to outline the harm to human health caused by beef products, including through public education, such as blogs and social media posts, and events, such as “DC Veg Fest,” which it hosts every year in the District of Columbia to promote vegan eating and its benefits (<https://dcvegfest.com/>). These efforts are intended to educate consumers about the true health effects of beef and other animal products, so that individuals can make informed purchasing decisions and use the information to compare facts about meat consumption against marketing claims.

43. Animal Outlook regularly engages in initiatives that advance consumer protection and enhance transparency in advertising. As representative examples, Animal Outlook has brought lawsuits or advocated for policy changes against the Food and Drug Administration (“FDA”), Federal Trade Commission (“FTC”), United States Department of Agriculture (“USDA”) and its Food Safety and Inspection Service (“FSIS”), Simple Truth (Kroger, Co.’s store brand), Cooke Aquaculture, Hormel, Butterball, and numerous others.

44. Animal Outlook has frequently submitted public comments to federal agencies on food labeling regulations, especially those that touch upon beef product claims.²⁹ Animal Outlook also engages major corporations to help educate them about systematic mistreatment of animals in agribusiness and campaigns for the introduction of plant-based food options. For

²⁹ See, e.g., *Re: Petition 18-01, United States Cattlemen's Association Petition for the Imposition of Beef and Meat Labeling Requirements*, https://www.fsis.usda.gov/sites/default/files/media_file/2020-07/18-01-Animal-Opposition-Ltr-040918.pdf; see also *COK Asks Federal Agencies: Don't 'Kill' Slaughter-Free Meat*, <https://animaloutlook.org/cok-asks-federal-agencies-dont-kill-slaughter-free-meat/> (last visited May 19, 2022) (Animal Outlook was formerly known as Compassion Over Killing).

example, after more than six years of campaigning by Animal Outlook, Starbucks finally acknowledged a shift to plant-based eating and released its Chickpea Bites and Avocado Protein Box nationwide in March 2021.³⁰ Moreover, in the wake of Animal Outlook's shocking investigation,³¹ Nestlé launched a vegan bacon cheeseburger for major restaurant chains and ditched its U.S. ice cream business after hearing from the more than 20,000 consumers who spoke up against the cruelty Animal Outlook documented in Nestlé's dairy supply chain.³²

45. Animal Outlook seeks to raise awareness to the falsity and deception surrounding AHA's advertising and endorsement of beef products in order to decrease the number of animals slaughtered for food, promote heart-healthier diets and encourage veganism. Indeed, AHA's deceptive advertising and promotion of beef products thwarts Animal Outlook's efforts to educate consumers, including corporate outreach targets, about the health risks of consuming beef. This deception by AHA also directly impairs Animal Outlook and its work to engage and convince retailers, restaurants, and others that beef is not heart healthy.

46. Moreover, due to deceptive advertising such as that engaged in by AHA, Animal Outlook has had to divert human and financial resources to increase and supplement its corporate and consumer outreach concerning the health risks of beef products. But for AHA's conduct, Animal Outlook would use those important resources in other ways. These injuries will be

³⁰ *VICTORY: Starbucks Launches Vegan Food Option Nationwide*, Animal Outlook (March 1, 2021), <https://animaloutlook.org/victory-starbucks-launches-vegan-food-option-nationwide/> (last visited August 8, 2022).

³¹ *Nestlé's Nightmare: The Hard-to-Swallow Truth*, Animal Outlook, <https://animaloutlook.org/investigations/nestles-nightmare/> (last visited August 8, 2022).

³² *Nestlé Drops Ice Cream Business*, Animal Outlook (December 12, 2019), <https://animaloutlook.org/nestle-drops-ice-cream-after-cok-investigation-reveals-cruelty-in-dairy-supply-line/> (last visited August 8, 2022).

redressed if Animal Outlook prevails in this action because AHA's false and misleading advertisements would cease and consumers would be spared the harm that AHA's deceptive conduct has caused.

47. Animal Outlook has recently documented products affixed with the Heart-Check Certification at stores and markets in several jurisdictions across the United States, including in the District of Columbia. For example, the following images were captured on March 16, 2022 at Harris Teeter, 1631 Kalorama Road NW, Unit 100, Washington, D.C. 20009:



48. In addition, the following images were captured on March 11, 2022, at the Harris Teeter located at 401 M Street SE Washington, DC 20003:



49. AHA drives sales of beef in the District of Columbia by endorsing beef products with the AHA Mark, as shown above. Consumers in this District and elsewhere who trust AHA's brand are induced by the AHA Mark to purchase beef in the false belief that it will foster and promote heart health.

D. AHA Induces Trusting Consumers to Believe that Eating Beef Products Leads to "Healthy Hearts" Despite Knowing Its Representations Are False

50. While much of AHA's work is commendable, its endorsement of beef is misleading and contrary to the organization's mission. Indeed, AHA recommends beef throughout its website, on social media and in promotional materials, despite knowing that these claims are false.

1. AHA Promotes Beef on Its Website

51. On its website, AHA conveys the meaning of the Heart-Check Certification program to consumers through a series of broad and unqualified representations suggesting that consumption of products marked with the AHA Mark or otherwise approved through the Heart-Check Certification program, including beef, lead to a healthy heart. By way of example, and not (nearly) limitation, AHA states the following on its website:

- "One heart. Hundreds of heart-healthy options."³³
- "Foods bearing the heart-check mark are building blocks that make it easier for shoppers to construct a heart-healthy diet."³⁴

³³ *American Heart Association Heart-Check Certification*, Am. Heart Ass'n, <https://www.heart.org/en/healthy-living/company-collaboration/heart-check-certification> (last visited May 19, 2022).

³⁴ *Heart-Check in the Grocery Store*, Am. Heart Ass'n, (May 1, 2018), <https://www.heart.org/en/healthy-living/company-collaboration/heart-check-certification/heart-check-in-the-grocery-store> (last visited May 19, 2022).

- “The Heart-Check mark makes it easy to spot heart-healthy foods in the grocery store. Simply look for the name of the [AHA] along with our familiar red heart with a white check mark on the package or menu.”³⁵
- “Use the Heart-Check Certified Product List when creating your shopping list to make smart, heart-healthy choices easier at the grocery store!”³⁶
- “The Heart-Check mark is a simple tool to help you Eat Smart. When you see it, you can be confident that a product aligns with the [AHA]’s recommendations for an overall healthy eating pattern.”³⁷
- “When you spot the [AHA]’s Heart-Check mark, you’ll instantly know the food has been certified to meet our nutrition requirements.”³⁸
- Page: “Heart-Check Certified Recipes”³⁹
 - “The American Heart Association’s Heart-Check mark is an easy way to cut through the clutter and find foods that can be part of a healthy dietary pattern.”
 - “The Heart-Check mark is also helping everyone find heart-healthy recipes they can make at home.”
 - Lists 20 beef recipes under the National Cattlemen’s Beef Association heading.

³⁵ *How the Heart-Check Food Certification Program Works*, Am. Heart Ass’n, (May 1, 2018), <https://www.heart.org/en/healthy-living/company-collaboration/heart-check-certification/how-the-heart-check-food-certification-program-works> (last visited August 24, 2022).

³⁶ *Check for the Heart-Check Mark Infographic*, Am. Heart Ass’n, (March 25, 2021), <https://www.heart.org/en/healthy-living/healthy-eating/heart-check-foods/check-for-the-heart-check-mark-infographic> (last visited May 19, 2022).

³⁷ *Heart-Check Foods*, Am. Heart Ass’n, <https://www.heart.org/en/healthy-living/healthy-eating/heart-check-foods> (last visited May 19, 2022).

³⁸ *How the Heart-Check Food Certification Program Works*, Am. Heart Ass’n, (May 1, 2018), <https://www.heart.org/en/healthy-living/company-collaboration/heart-check-certification/how-the-heart-check-food-certification-program-works> (last visited August 24, 2022).

³⁹ *Heart-Check Certified Recipes*, Am. Heart Ass’n, <https://www.heart.org/en/healthy-living/company-collaboration/heart-check-certification/heart-check-certified-recipes> (last visited May 19, 2022).

52. Apart from statements made through the Heart-Check Certification program, AHA makes additional statements on its website representing that meat is healthy:

- Page: “Making the healthy cut: Fish, Poultry and Lean Meats”⁴⁰
 - Lists out options for red meat under the title of “the healthy cut” (although the page does include statements about how to select lean cuts and how to cook them).
- Page: “Industry Nutrition Forum”⁴¹
 - “Through the Industry Nutrition Forum, we’re convening food system industry leaders and academic experts to find common ground and to act together to improve public health. Members of all sizes and from sectors across the food system support the AHA’s Foodscape InnovationTM Initiative vision of a healthier, more equitable and more sustainable food system.”
 - Industry Nutrition Forum Members include meat producers, such as The Beef Checkoff.⁴²

2. AHA Promotes Beef on Its YouTube Account

53. AHA also uses its YouTube account to post videos which contain a mix of false and misleading statements that either imply that beef is “healthy,” or expressly explain that products marked with the Heart-Check Certification are “healthy.” By way of but one example:

- October 17, 2014 YouTube Video, entitled: “What is the American Heart Association’s Heart-Check Food Certification Program?”⁴³

⁴⁰ *Making the Healthy Cut: Fish, Poultry and Lean Meats*, Am. Heart Ass’n, <https://www.heart.org/en/healthy-living/healthy-eating/cooking-skills/preparing/making-the-healthy-cut-fish-poultry-and-lean-meats> (last visited May 19, 2022).

⁴¹ *Industry Nutrition Forum*, Am. Heart Ass’n, <https://www.heart.org/en/healthy-living/company-collaboration/food-system-strategy/aha-industry-nutrition-forum> (last visited May 19, 2022).

⁴² *Industry Nutrition Forum Members*, Am. Heart Ass’n, <https://www.heart.org/en/healthy-living/company-collaboration/food-system-strategy/aha-industry-nutrition-forum/industry-nutrition-forum-members> (last visited May 19, 2022).

⁴³ *What is the American Heart Association’s Heart-Check Food Certification Program*, Am. Heart Ass’n YouTube Channel (Oct. 17, 2014), https://www.youtube.com/watch?v=E-OwX_xf_Ck (last visited May 19, 2022).

- In both the video and the text description of the video, AHA states: “Backed by sound science, foods bearing the Heart-Check mark are building blocks that make it easier for shoppers to construct a heart-healthy diet.”
- “As America’s health concerns continue to evolve, and the need for trust information grows, the Heart-Check Mark will continue to lead the way and serve up smart, heart-healthy choices.”
- June 6, 2018 YouTube Video, entitled: “Eat Smart with the Heart-Check Mark”⁴⁴
 - “So you know when you add this little check to other healthier choices, you’ll be making a big difference in your health and you’ll be one step closer to being healthy for good.”
- November 10, 2017 YouTube Video, entitled: “Eat Smart with South Dakota Beef”
 - “So, one of the main questions I typically get asked is whether beef can be part of a heart-healthy diet. And the answer is yes, there’s a lot of research that continues to show that beef can be part of a heart healthy diet. Clinical research has shown over and over that lean beef included in a heart-healthy diet can actually help lower your cholesterol levels as well as blood pressure. And both of these are great because they help reduce your risk for cardiovascular disease.”⁴⁵
 - (Text description of video) “Eating smart doesn’t mean you have to give up heart-healthy beef . . . it just means you have to be smarter about how you’re choosing, preparing and pairing it. We love these tips from the South Dakota Beef Industry Council’s Holly Swee.”⁴⁶
- April 6, 2015 YouTube Video, entitled: “Burger Soup”⁴⁷
 - (Presenter) “I also like it, because it proves if you have a well-stocked pantry and freezer, you can make healthy and inexpensive meals in a snap. So, let’s talk about healthier choices when it comes to meat. For our burger

⁴⁴ *Eat Smart with the Heart-Check Mark*, Am. Heart Ass’n YouTube Channel (Jun. 6, 2018), <https://www.youtube.com/watch?v=MsOosGsi4Bw> (last visited August 24, 2022).

⁴⁵ *Eat Smart with South Dakota Beef*, Am. Heart Ass’n-Midwest YouTube Channel (Nov. 10, 2017), <https://www.youtube.com/watch?v=hbex06M1qyM> (last visited May 19, 2022).

⁴⁶ *Id.*

⁴⁷ *Burger Soup*, Am. Heart Ass’n YouTube Channel (Apr. 6, 2015), <https://www.youtube.com/watch?v=QZYCL3XX2Ls> (last visited May 19, 2022).

soup, I have one pound of 95% extra lean ground sirloin which is a good choice for burgers and meatloaf, too.”

- (Text description of video – also appears in several other videos) “This Simple Cooking with Heart, kid-friendly recipe is a great way to get kids into the kitchen to help out. Get this recipe and more heart-healthy recipes at heart.org/simplecooking.”
- October 14, 2016 YouTube Video, entitled: “How to Test Steak Tenderness/Doneness”⁴⁸
 - “How to Test Steak Tenderness/Doneness” (following video on how to cook beef), followed by graphic with the AHA Logo and “Healthy for Good” in text.

3. AHA Promotes Beef on Its Facebook Account

54. In addition, AHA uses its Facebook account to imply that beef is healthy. For example, it has posted the following:

- October 20, 2017 Facebook post, entitled, “Game On with Lean Protein Post”⁴⁹
 - Caption: “Make your next tailgate healthier with lean meats that are big on flavor. Lean and extra-lean beef, turkey and salmon burgers are perfect for game day grub. For more ways to be #HealthyforGood visit heart.org/EatSmart.”
- “Pot Roast Recipe” Facebook Post, captured on August 23, 2021⁵⁰
 - Caption: “Eating Healthy Can Still be Tasty” with picture and recipe of pot roast

⁴⁸ *How to Test Steak Tenderness/Doneness*, Am. Heart Ass’n YouTube (Oct. 14, 2016), <https://www.youtube.com/watch?v=yu1fm-9uUVc> (last visited May 19, 2022).

⁴⁹ *Game On with Lean Protein*, AHA Facebook (October 20, 2017), <https://www.facebook.com/AmericanHeart/photos/a.254785836138/10155125643691139> (last visited May 19, 2022).

⁵⁰ *Slow Cooked Pot Roast*, Am. Heart Ass’n Facebook, <https://www.facebook.com/AmericanHeart/posts/10152733618531139> (last visited May 19, 2022).

- “Steak Stroganoff Recipe” Facebook Post, captured on August 23, 2021⁵¹
 - Caption: “Flavorful, simple, and best of all, healthy. This slow-cooker stroganoff recipe satisfies busy schedules and picky palates” with picture and recipe of stroganoff.

55. In sum, AHA capitalizes on consumer trust to market beef products across the country. By advertising beef recipes on the Internet and partnering with beef producers to label their products in grocery stores with the AHA Mark, AHA actively and intentionally fosters consumer demand in beef.

E. AHA Knows Its Representations About the Health Benefits of Beef Are False

56. AHA claims to be “the trusted authority on fighting heart disease and stroke,”⁵² yet scientific studies routinely prove that its assertion that the consumption of beef products leads to a “healthy heart” is categorically misleading, deceptive, and false. Indeed, AHA’s representations through its Heart-Check Certification program and on its website and promotional materials that beef products contribute to a “healthy heart” are refuted by numerous independent scientific studies that prove the exact opposite:

- A study of nearly 20,000 individuals presented in April 2021 at the European Society of Cardiology found that “greater intake of red and processed meat was associated with worse imaging measures of heart health, across all measures studied.”⁵³ According to the study, “individuals with higher meat intake had smaller ventricles, poorer heart function, and stiffer arteries – all markers of worse cardiovascular health.”⁵⁴

⁵¹ *Slow-Cooker Steak Stroganoff*, Am. Heart Ass’n Facebook, <https://www.facebook.com/AmericanHeart/posts/10152733618531139> (last visited May 19, 2022).

⁵² *CEO Welcome Video*, Am. Heart Ass’n YouTube Channel (Dec. 22, 2017), <https://www.youtube.com/watch?v=MqSw3yM6StA> (last visited May 19, 2022).

⁵³ *See Study strengthens links between red meat and heart disease*, European Society of Cardiology (April 15, 2021).

⁵⁴ *Id.*

- A March 2020 study of nearly 30,000 individuals found that eating only a small portion of red meat and processed meat caused a higher risk of cardiovascular disease and premature death.⁵⁵
- A separate study of 475,000 adults in the United Kingdom that was published in March 2021 found that higher consumption of unprocessed red meat and processed meat was associated with a higher risk of heart disease.⁵⁶
- A 2019 study by the Cleveland Clinic found that “chronic red meat consumption enhanced the production of TMAO (trimethylamine N-oxide) . . . which has been linked to the development of atherosclerosis and heart disease complications.”⁵⁷

57. According to the Centers for Disease Control, “[c]onsumption of all meat and red meat was associated with a 27% and 30% higher risk, respectively,” of renal cancer and “[r]eduction of meat consumption is an important approach to decreasing the incidence of kidney cancer in the general population.”⁵⁸

58. Health research indicates that beef significantly raises cholesterol levels, a key negative component of cardiovascular and heart health. Indeed, beef, in addition to its contribution to obesity, has been linked as a cause of Type 2 diabetes. Additionally, multiple sclerosis is tied to diets high in saturated fats, as are cancers of the breast, colon and prostate.

59. In fact, AHA knows that its representations about the health benefits of beef are false. Indeed, AHA itself admits that beef is not healthy. For example, AHA has expressly

⁵⁵ M. Paul, *Meat Consumption Raises Risk of Heart Disease and Death*, 180 JAMA Internal Med. 503 (Feb. 3, 2020).

⁵⁶ K. Paper, *Meat consumption and risk of 25 common conditions: outcome-wide analyses in 475,000 men and women in the UK Biobank study*, 19 BMC Medicine 53 (Mar. 2021).

⁵⁷ *Cleveland Clinic Studies Reveal Role of Red Meat in Gut Bacteria, Heart Disease Development*, Newsroom (Dec. 10, 2018).

⁵⁸ *Consumption of different types of meat and the risk of renal cancer: meta-analysis of case-control studies*, The National Institute for Occupational Safety and Health (Jun. 15, 2021), <https://www.cdc.gov/niosh/nioshtic-2/20039011.html#:~:text=Consumption%20of%20all%20meat%20and,increase%20risk%20of%20kidney%20cancer> (last visited May 19, 2022).

admitted that, “[i]n general, red meats (such as beef, pork and lamb) have more saturated fat than skinless chicken, fish and plant proteins. Saturated fats can raise your blood cholesterol and increase your risk of heart disease.”⁵⁹ Furthermore, an official peer-reviewed journal of the AHA, called *Journal of the American Heart Association* (JAHA), has expressly stated that “red meat should be avoided, and meat intake limited, to prevent cardiovascular disease and stroke.”⁶⁰ In fact, as recently as August 1, 2022, another official peer-reviewed journal published on behalf of AHA called *Arteriosclerosis, Thrombosis, and Vascular Biology* (ATVB), reaffirmed that “higher meat intake [is] associated with incident ASCVD[,]” atherosclerotic cardiovascular disease.⁶¹ That same study found “biochemical links between dietary meat, gut microbiome pathways, and ASCVD.”⁶² AHA itself issues public communications – unrelated to the AHA Mark – advising consumers not to eat beef, or at least to limit beef intake.⁶³ Thus,

⁵⁹ *Picking Healthy Proteins*, Am. Heart Ass’n (November 1, 2021), <https://www.heart.org/en/healthy-living/healthy-eating/eat-smart/nutrition-basics/meat-poultry-and-fish-picking-healthy-proteins> (last visited May 19, 2022).

⁶⁰ *Cardiovascular Harm From Egg Yolk and Meat: More Than Just Cholesterol and Saturated Fat*, *Journal of the Am. Heart Ass’n* (March 15, 2021), <https://www.ahajournals.org/doi/10.1161/JAHA.120.017066> (last visited May 19, 2022).

⁶¹ *Dietary Meat, Trimethylamine N-Oxide-Related Metabolites, and Incident Cardiovascular Disease Among Older Adults: The Cardiovascular Health Study*, *Arteriosclerosis, Thrombosis, and Vascular Biology* (August 1, 2022), <https://www.ahajournals.org/doi/10.1161/ATVBAHA.121.316533> (last visited August 9, 2022).

⁶² *Id.*

⁶³ *See, e.g., id.; Picking Healthy Proteins*, Am. Heart Ass’n (November 1, 2021), [https://www.heart.org/en/healthy-living/healthy-eating/eat-smart/nutrition-basics/meat-poultry-and-fish-picking-healthy-proteins#:~:text=In%20general%2C%20red%20meats%20\(such,skinless%20poultry%2C%20and%20unprocessed%20forms;see%20also%20Saturated%20Fat,American%20Heart%20Association%20\(November%201,%202021\),https://www.heart.org/en/healthy-living/healthy-eating/eat-smart/fats/saturated-fats](https://www.heart.org/en/healthy-living/healthy-eating/eat-smart/nutrition-basics/meat-poultry-and-fish-picking-healthy-proteins#:~:text=In%20general%2C%20red%20meats%20(such,skinless%20poultry%2C%20and%20unprocessed%20forms;see%20also%20Saturated%20Fat,American%20Heart%20Association%20(November%201,%202021),https://www.heart.org/en/healthy-living/healthy-eating/eat-smart/fats/saturated-fats)

AHA claims that eating beef is “heart healthy” when it benefits the organization financially, but elsewhere admits that eating beef increases the risk of heart disease.

60. While some of the products that AHA endorses through the Heart-Check Certification program and AHA Mark are indeed “heart healthy,” the beef products that AHA endorses are not. AHA certifies beef products for the AHA Mark without revealing to consumers the true health consequences of consuming beef or that beef manufacturers have paid for AHA certification anywhere on or near the AHA Mark. In addition, AHA, through its Heart-Check Certification program and promotional materials, creates the false impression that beef products abide by AHA’s own nutritional guidelines when, in fact, they do not. AHA has proven that, for a fee, it abandons its purportedly scientific dietary and nutritional guidelines and agrees to certify as “heart healthy” products that are not in fact healthy and merely meet the minimum criteria for certain government-regulated health claims, rather than AHA’s own allegedly more demanding standards. In such a way, AHA’s Heart-Check Certification program runs directly counter to AHA’s own nutritional guidance. Instead of aiding the consuming public, the Heart-Check Certification program confuses and misleads consumers because the AHA Mark is a paid endorsement and the program employs only the government’s minimum standards. In concert with these actions, AHA makes statements on its website and in its promotional materials that promote beef as heart healthy, even though AHA knows these statements are false. Such deceptive practices induce consumers to purchase AHA-certified beef, and present substantial health risks to all consumers, including the more than five million American consumers suffering from congestive heart failure.

CLAIMS FOR RELIEF

First Claim for Relief

Violation of District of Columbia Consumer Protection Procedures Act

61. Animal Outlook incorporates and re-alleges the preceding paragraphs of this Complaint as if fully set forth herein.

62. Animal Outlook seeks to enforce its rights against AHA pursuant to the CPPA (*i.e.*, D.C. Code §§ 28-3901 to 28-3913), as AHA is in violation of D.C. Code § 28-3904, *et seq.*

63. Pursuant to D.C. Code § 28-3905(k)(1)(A)(C), Animal Outlook, a national nonprofit 501(c)(3) animal advocacy organization, may, on behalf of itself or on behalf of the general public, bring an action seeking relief from the use of any AHA trade practice in violation of a law of the District of Columbia.

64. Additionally, pursuant to D.C. Code §§ 28-3905(k)(1)(A)(D)(i) and (ii), Animal Outlook, a public interest organization, may, on behalf of the interests of a consumer or a class of consumers, bring an action seeking relief from the use by AHA of a trade practice in violation of a law of the District of Columbia if the consumer or class could bring an action under subparagraph (A) of this paragraph for relief from such use by AHA of such trade practice if it is determined that Animal Outlook has a “sufficient nexus to the interests involved of the consumer or class to adequately represent those interests.”

65. Animal Outlook, an animal protection organization that advocates for animals and seeks to challenge the status quo of animal agribusiness through food system reform, has an interest in informing consumers of deceptive marketing of meat and promoting healthier eating habits among consumers. Specifically, it seeks to either remove, or at least significantly lessen

the consumption of, beef from consumers' diets, saving the lives of countless animals slaughtered for food in the process.

66. AHA is in violation of multiple subsections of D.C. Code § 28-3904. First, AHA has violated § 28-3904(f) due to its failure to disclose, or require the disclosure, on or near the AHA Mark that it is being paid to allow certain meat purveyors to affix the AHA Mark on certain beef manufacturers' packaging. Therefore, unbeknownst to consumers, AHA is endorsing certain beef products for a fee, and profiting from the sale of these products. Furthermore, AHA is leveraging its reputation and trust among consumers to encourage them to purchase beef that has the AHA Mark affixed to the packaging without disclosing on or near the mark that AHA is paid by beef manufacturers for the use of its mark.

67. AHA is also in violation of § 28-3904(a) because it "represent[s] that goods" (i.e., beef) contain "accessories," "characteristics," "uses," and/or "benefits" that they do not have. Specifically, AHA represents that beef products are "heart healthy" through numerous express and implied statements, including, but not limited to, its allowance of the use of the AHA Mark on such products. In addition, AHA indicates that the use of the AHA Mark is based on AHA's own scientific statements and recommendations, which AHA represents are different or more substantial than the government's minimum standards, when, in fact, they are not.

68. AHA has also violated § 28-3904(b) because it "represent[s] that goods" (i.e., beef) are "of particular standard, quality, grade, style, or model," when in reality, "they are of another." Contrary to AHA's representations that beef is of a "heart healthy" standard, it is well-known that beef is known to increase cholesterol, heart disease, and have other deleterious effects on cardiovascular health.

69. AHA has also violated § 28-3904(e) because it has misrepresented a material fact about beef (i.e., that it is heart healthy), and such an assertion has a tendency to mislead consumers.

70. In addition, AHA has violated § 28-3904(f-1) through its use of “innuendo or ambiguity as to a material fact, which has a tendency to mislead.” Specifically, AHA vaguely states that beef is “heart healthy” without any facts or proof in support thereof. AHA also claims its Heart-Check Certification program uses AHA’s own scientific standards in endorsing beef, while failing to disclose that it actually uses only the federal government’s minimum standards.

71. AHA has also violated § 28-3904(h) by authorizing the advertising and offering of beef as endorsed by AHA through the sale of its AHA Mark. Indeed, AHA has violated this section by endorsing beef products as “heart healthy,” when in reality, AHA has expressly admitted that beef is not, in fact, heart healthy.

72. Lastly, AHA is “sell[ing] consumer goods in a condition or manner not consistent with that warranted . . . by operation or requirement of federal law.” D.C. Code § 28-3904(x). It has been proven that beef is not heart healthy, as AHA has expressly admitted, yet AHA continues to affix its “heart healthy” logo on packaging of beef nonetheless.

73. Accordingly, this deceptive, false, and misleading advertising is also unlawful under the FTCA, 15 U.S.C. § 41-58, and therefore constitutes a further unlawful practice under the CPPA. *See id.*; 15 U.S.C. § 45(a)(1); D.C. Code § 28-3904(x).

Second Claim for Relief

Negligent Misrepresentation

74. Animal Outlook incorporates and re-alleges the preceding paragraphs of this Complaint as if fully set forth herein.

75. AHA, which assumed a duty to supply information to Animal Outlook and members of the public who are concerned about heart health, failed to fulfill that duty to disclose to Animal Outlook and members of the public who are concerned about heart health the material facts alleged above, including that beef is not, in fact, heart healthy, a fact which AHA has expressly admitted in the past. *See Burlington Ins. Co. v. Okie Dokie, Inc.*, 329 F. Supp. 2d 45, 48-49 (D.C. Cir. 2004) (applying the law of the District of Columbia). In making representations of fact to health-conscious consumers about the “heart healthy” nature of beef products, AHA has also failed to disclose to consumers on or near the AHA Mark that it is, in fact, being paid to allow beef manufacturers to affix the mark atop of beef packages. AHA has also failed to inform these consumers that, in certifying beef as “heart healthy,” AHA does not use its own nutritional and scientific guidelines, which it advertises as being different than that of other products or third parties, but instead uses the government’s own minimum guidelines. Such failure to disclose on the part of AHA amounts to negligent misrepresentation.

76. Consumers concerned about heart health, as a direct and proximate cause of AHA’s negligent misrepresentations, have reasonably relied upon such material misrepresentations to their detriment. Consumers concerned about heart health have relied on these statements by AHA in purchasing beef products that they would have viewed differently or not have purchased had they known the true health effects of beef or that beef manufacturers, in fact, pay for use of the AHA Mark.

77. By reason thereof, Animal Outlook has suffered damages in an amount to be proven at trial.

Third Claim for Relief

Unjust Enrichment

78. Animal Outlook incorporates and re-alleges the preceding paragraphs of this Complaint as if fully set forth herein.

79. As a result of AHA's unlawful and deceptive actions described above, AHA has been unjustly enriched at the expense of Animal Outlook and/or consumers by receiving monies from certain beef manufacturers by way of misleading consumers who are deceived into believing that certain manufacturers' beef products are "heart healthy" due to AHA's endorsement of those products, without disclosing that the AHA Mark is a paid endorsement or that the Heart-Check Certification program, with respect to beef, is based on the government's minimum guidelines. In addition, AHA has also been unjustly enriched through AHA's express and implied statements on its website and in its promotional materials claiming that beef is heart healthy, even though AHA knows these statements are false. Thus, AHA has profited from its misleading, deceptive, and false representations about beef products.

80. Under these circumstances, it would be against equity and good conscience to permit AHA to retain the ill-gotten benefits that it has received, in light of the fact that the unlawfully advertised beef products purchased by Animal Outlook and/or consumers were not what AHA represented them to be. Thus, it would be unjust and inequitable to allow AHA to retain the benefit without restitution for the monies manufacturers paid to it.

PRAYER FOR RELIEF

WHEREFORE, Animal Outlook prays that the Court adjudge and decree and enter judgment in its favor and against AHA as follows:

1. The Court enjoin AHA from continuing the unfair, deceptive, and misleading

business practices alleged in this Complaint;

2. The Court order AHA to pay actual damages, plus treble damages, or \$1,500 per violation, whichever is greater, to Animal Outlook, on behalf of consumers, pursuant to § 28-3905(k)(1)(A)(i) of the CPPA;

3. The Court order AHA to pay punitive damages as are reasonable and necessary to identify, correct, or prevent the conduct which violated District law, pursuant to § 28-3905(g)(5) of the CPPA and common law;

4. That Animal Outlook, on behalf of consumers, is entitled to restitution in an amount to be proven at trial;

5. That Animal Outlook, on behalf of consumers, is entitled to costs of suit including attorneys' fees and costs;

6. For an order awarding pre-judgment and post-judgment interest; and

7. That Animal Outlook be afforded such other and further relief as the Court deems just and proper.

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Respectfully submitted,

Dated: August 24, 2022
Los Angeles, CA

WAYMAKER LLP

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