

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

<p>ANIMAL OUTLOOK, 7304 Carroll Avenue, Suite 228, Takoma Park, MD 20912,</p> <p style="text-align:center">Plaintiff,</p> <p style="text-align:center">v.</p> <p>HARVEY’S MARKET OF MARYLAND, LLC, 1309 5th Street, NE, Washington, DC 20002,</p> <p style="text-align:center">Defendant.</p>	<p>Case No. _____</p> <p style="text-align:center">COMPLAINT</p> <p style="text-align:center">DEMAND FOR JURY TRIAL</p>
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Plaintiff Animal Outlook brings this action against Defendant Harvey’s Market of Maryland, LLC, (“Harvey’s Market”), and alleges the following based on personal knowledge, information, and belief. This Complaint is on behalf of Animal Outlook and District of Columbia consumers, and is brought under the District of Columbia Consumer Protection Procedures Act, D.C. Code Section 28-3901, *et seq.* (“CPPA”).

INTRODUCTION

1. Defendant Harvey’s Market, a butcher shop with a location in the District of Columbia, has been deceptively advertising the cruelly produced foie gras it sells as humane. This is a consumer protection action to remedy that misleading advertising.

2. Harvey’s Market sells foie gras, which is made by force-feeding ducks multiple times a day for up to three weeks in order to enlarge each duck’s liver up to ten times its normal size.

3. Harvey’s Market displays the foie gras under an advertising banner with the phrases “HUMANELY RAISED STOCK,” “ALL NATURAL,” and “FREE RANGE.” These

terms are false or misleading as applied to the foie gras Defendant sells.

4. Plaintiff Animal Outlook is a non-profit, public interest organization. Animal Outlook does not seek monetary damages, only an order declaring that certain of Harvey's Market's representations are unlawful under the CPPA, and an injunction against the marketing practices at issue.

PARTIES

5. Plaintiff Animal Outlook is a national nonprofit organization that works to help consumers understand how their food is made and make informed purchasing decisions. Animal Outlook does this by: exposing inhumane, unsustainable, and unhealthy practices in animal agribusiness; combatting false and misleading advertising of animal-based food products; and promoting humane, environmentally friendly, and healthy food options.

6. Industrial farming is one of Animal Outlook's priority issues. Animal Outlook works to increase the transparency of the animal agriculture industry, including foie gras production, to consumers.

7. For example, Animal Outlook, then known as Compassion Over Killing, conducted an undercover investigation of Hudson Valley Foie Gras in 2008. Animal Outlook then publicized its video footage to inform consumers of the producer's practices.

8. In 2012, Animal Outlook joined in a lawsuit against the United States Department of Agriculture arguing that foie gras is an adulterated product under the Poultry Products Inspection Act and should not be permitted for sale to consumers.

9. Animal Outlook organized a consumer petition to the District Attorney and Sheriff of Sullivan County, New York, calling on the officials to prosecute Hudson Valley Foie Gras and the other New York-based foie gras producer, La Belle Farm, for illegal animal cruelty.

10. Animal Outlook has also posted various stories on its website updating the public about foie gras-related news.

11. Animal Outlook has sought to protect D.C. consumers from deceptive advertising of animal products by bringing CPPA cases against three other merchants in the District.

12. Animal Outlook is a “public interest organization” within the meaning of the CPPA, D.C. Code Section 28-3901(a)(15), as it promotes the interests of consumers in having truthful information about how animal-based food products are produced and in having humane food options.

13. Animal Outlook is incorporated in Delaware and transacts business in the District of Columbia and throughout the United States.

14. Animal Outlook has hundreds of thousands of supporters nationwide, with hundreds living in the District of Columbia. These supporters include consumers who seek to purchase food products that are better for their health, for animal welfare, and for the environment.

15. Defendant Harvey’s Market of Maryland, LLC is incorporated in Maryland and lists a Clarksville, Maryland address as its principal office in its Maryland registration.

16. Harvey’s Market of Maryland, LLC is also registered in the District of Columbia with the business address 1309 5th Street NE, Washington, DC 20002, which is the Union Market building.

17. Defendant operates a meat counter at Union Market under the name “Harvey’s Market.” On information and belief, this is the only physical location from which Harvey’s Market sells its products.

18. Harvey’s Market is a “person” and a “merchant” that provides “goods” within the

meaning of D.C. Code Sections 28-3901(a)(1), (3), and (7).

JURISDICTION AND VENUE

19. This Court has subject matter jurisdiction over this action pursuant to the CPPA, D.C. Code Section 28-3905(k), and D.C. Code Section 11-921(a).

20. Plaintiff Animal Outlook consents to this Court's jurisdiction by filing this Complaint.

21. The Court has personal jurisdiction over Harvey's Market pursuant to D.C. Code Sections 13-422, 13-334(a), and 13-423(a)(1), because Harvey's Market's principal place of business is its physical location in the District, and because the claims arise from Harvey's Market transacting its business in the District of Columbia, namely Defendant's advertising and offering foie gras for sale at its physical location in the District.

22. Venue is proper in this Court pursuant to D.C. Code Section 28-3905(k)(2) because Harvey's Market's advertising at issue is displayed in the District of Columbia, because Harvey's Market sells the foie gras at issue in the District of Columbia, and because Animal Outlook seeks to represent District of Columbia consumers.

FACT ALLEGATIONS

Harvey's Market Advertises its Foie Gras as "Humanely Raised," "All Natural," and "Free Range."

23. Harvey's Market runs a butcher shop in a food hall known as Union Market in Washington, DC.

24. There, Defendant Harvey's Market displays foie gras and other meat for sale in a glass display case.

25. Harvey's Market promotes the items in the glass display case via a banner along the top of the case with words and phrases describing the products within. These phrases include

“HUMANELY RAISED STOCK,” “ALL NATURAL,” and “FREE RANGE.”

26. There is nothing on the banner or elsewhere at the Harvey’s Market shop indicating that certain products Harvey’s Market sells are excluded from these phrases.

27. Reasonable consumers would therefore assume that these phrases apply to all of the products Harvey’s Market sells, or at least all of the products in the glass display case.

28. As mentioned above, one of the products Harvey’s Market keeps in that display case is foie gras.

29. Reasonable consumers would thus assume that Harvey’s Market’s foie gras comes from humanely raised stock, is all natural, and is free range.

30. The foie gras is labeled as “Foie Gras Pieces A&B Grade, Hudson Valley, NY.”

31. Defendant Harvey’s Market has expressed its intention to continue its deceptive advertising of foie gras. Defendant Harvey’s Market’s conduct can thus be expected to continue indefinitely absent a court order.

32. Specifically, on July 30, 2024, Plaintiff Animal Outlook, via counsel, sent Harvey’s Market a letter asking it to cease and desist its false advertising of foie gras as humane. In response, on September 5, 2024, Harvey’s Market owner George Lesznar told Plaintiff Animal Outlook, via counsel, that Harvey’s Market has no plans to change anything.

Advertising Foie Gras from Force-Fed Birds with the Phrase “Humanely Raised Stock” is Deceptive.

33. Foie gras is the unnaturally fattened liver of a duck or goose.

34. In order to create foie gras, U.S. producers use a process called gavage to forcibly increase each bird’s food intake.

35. During gavage, a person inserts a feeding tube into the bird’s mouth and down the bird’s throat, pumping food directly to the end of the bird’s esophagus to be digested. This

happens two or three times a day for up to three weeks.

36. This process enlarges the bird's liver up to ten times its usual size in just a few weeks. As a result, the liver reaches a diseased state.

37. (In the wild, ducks may increase their food intake before migration, and a duck's liver can increase at most to twice its normal size. The extreme liver enlargement seen in foie gras production, on the other hand, is dangerous and unnatural.)

38. On information and belief, there are only two commercial foie gras producers in New York's Hudson Valley: Hudson Valley Foie Gras, LLC and La Belle Farm, Inc. (together, the "Producers").

39. Harvey's Market's foie gras therefore must come from one of these two Producers.

40. In 2019, New York City passed an ordinance that would have prohibited in-city sales of foie gras made by force-feeding birds.

41. The Producers both challenged the New York City ordinance in court, alleging that force-feeding is essential to producing foie gras, and the ordinance therefore would have prevented them from selling their foie gras in the city.

42. Both Producers use the gavage feeding method, force-feeding their male ducks two or three times per day for up to twenty-one days leading up to the ducks' slaughter.

43. The foie gras that Harvey's Market sells therefore comes from ducks who were force-fed through tubes forced down their throats up to three times per day for up to three weeks, until their livers reached a diseased state.

44. It is misleading to advertise such a product as coming from humanely raised stock.

45. Merriam-Webster’s dictionary defines “humane” as “marked by compassion, sympathy, or consideration for humans or animals.”

46. A 2021 poll of U.S. adults by The Harris Poll for the Animal Welfare Institute found that 84% of respondents expect that poultry products labeled “humanely raised” come from an animal who “received a higher level of care than products that do not have this label,” and 80% believed that the term “humanely raised” should not be allowed on a poultry product unless the producer exceeds minimum industry animal care standards.

47. A 2016 poll of U.S. consumers by Lake Research for the American Society for the Prevention of Cruelty to Animals (“ASPCA”) found that 60% of respondents believed that the term “humane” on a meat product “means the animal had a better than average quality of life on the farm.”

48. The United States Department of Agriculture’s Food Safety and Inspection Service (“FSIS”) has recognized that the term “Humanely Raised” can mislead consumers on its own. On food labels that FSIS has jurisdiction over, FSIS permits the term “Humanely Raised” only if it is accompanied by a description of what the term means or is certified by a third-party certifying organization.¹

49. The FSIS guide on Humane Handling for inspectors in livestock slaughterhouses defines “Humane Handling” as “Handling and slaughter practices that cause a minimum of excitement, pain, injury, or discomfort to livestock.”

50. The American Veterinary Medical Association (“AVMA”) has noted that “[f]orce feeding overrides animal preference and homeostasis,” and that there is evidence it inflames the bird’s esophagus and may cause pain.

¹ FSIS does not have jurisdiction over the Harvey’s Market advertising at issue, but its judgment that the term can mislead consumers is instructive nonetheless.

51. The AVMA has also stated that the high accumulation of fat in a duck's liver reduces liver function to a point that could kill the duck if force-feeding continued beyond when the ducks are normally slaughtered. Further, the ducks experience complications of obesity such as panting to avoid overheating, lowered mobility, and potential inability to walk to drink water.

52. Force-feeding ducks has been associated with digestive issues in the ducks.

53. Duck mortality significantly increases during the gavage period.

54. Studies, reports, and other recorded observations have shown that force-fed ducks and geese try to avoid the person who force-feeds them or the area where they are forcibly fed. This suggests that the birds fear force-feeding or are otherwise negatively impacted by it.

55. The voluntary certification program American Humane Certified has an animal welfare standard for farmed ducks. The standard prohibits tube-feeding or gavage unless it is prescribed and supervised by a veterinarian who has determined that tube-feeding is necessary to treat an individual duck. Foie gras produced via force-feeding—and any other meat product from the ducks who were forcibly fed—therefore cannot be certified by American Humane.

56. The Responsible Down Standard, an international voluntary certification scheme for the down industry designed to “incentivize . . . humane treatment of ducks and geese” in the down supply chain, prohibits sourcing feathers from ducks who were force-fed. Feathers sold as a by-product of foie gras production therefore cannot be certified under the Responsible Down Standard.

57. In 2008, the Pew Commission on Industrial Farm Animal Production identified the “[f]orced feeding of fowl to produce foie gras” as one of the “most intensive and inhumane production practices” in animal agriculture. It recommended ending force-feeding “as soon as possible.”

58. In 2019, the Humane Society Veterinary Medical Association and fifty New York veterinary professionals signed a letter supporting New York City’s bill to ban sales of foie gras from force-fed birds.

59. The letter states:

Foie gras is a luxury food produced by inserting a pipe down the esophagus and inhumanely force-feeding ducks or geese up to several times daily, in order to intentionally induce hepatic lipidosis, a disease state of liver enlargement. The fatty livers, which can be enlarged 10 times past their normal size, are then sold as a delicacy. Serious health ramifications to the birds can include esophageal trauma, difficulty breathing, mobility problems, aspiration, liver hemorrhage, and even cardiac or renal failure.

60. Many consumers who know that foie gras is produced via force-feeding believe that it is so inhumane it should not be produced or sold.

61. Over 31,000 individuals have signed an online petition calling on DC restaurants to stop selling foie gras because “[t]he production of foie gras is inhumane and unnecessary.”

62. 81% of New York City residents who responded to a 2019 Mason-Dixon Polling and Strategy poll said that they would support a ban on the sale of foie gras produced by force-feeding.

63. The New York City Council, representing the will of its constituents, passed an ordinance prohibiting the sale of foie gras produced by force-feeding with an overwhelming majority of 42 votes in favor and only 6 opposed.

64. The ordinance was meant to “finally put an end to one of the cruelest and most inhumane practices in the food industry,” according to its sponsor.

65. In defending the ordinance to the New York State Department of Agriculture and Markets, the New York City Law Department explained that “[t]he law resulted from a policy decision that reflects the research of the City Council and testimony received at its public

hearings detailing what it concluded is a cruel and inhumane treatment of birds that are force-fed for the sole purpose of providing a culinary delicacy for human consumption.”

66. It is illegal in California to force-feed a bird to enlarge his liver, or to sell foie gras produced by force-feeding a bird.

67. California’s force-feeding ban was designed to establish a “standard[] of humane treatment” for birds.

68. In 2023, the Pittsburgh, Pennsylvania City Council banned food service and retail establishments in the city from selling any products made by force-feeding a bird.

69. The Pittsburgh ordinance explicitly states that “the practice of force-feeding birds for foie gras production is widely considered by veterinary professionals to be inhumane.”

70. Many reasonable consumers would not consider the ducks who are force-fed and slaughtered for Harvey’s Market’s foie gras to be “humanely raised stock.” Defendant’s advertising is unlawfully deceptive.

Advertising Foie Gras From Force-Fed Birds with the Phrase “All Natural” is Deceptive.

71. It is also misleading to advertise foie gras produced by force-feeding a bird as all natural.

72. Merriam-Webster’s dictionary defines “natural” as “being in accordance with or determined by nature.”

73. Putting a tube down an animal’s throat to make him digest more food than he would voluntarily eat, to make his liver grow several times larger than it would in the wild, is not “in accordance with or determined by nature.”

74. The 2016 Lake Research poll for the ASPCA found that 46% of U.S. consumers believe that the term “natural” on a meat product “indicates that the animal had a better than

average quality of life on the farm.”

75. Contrary to having a better than average quality of life, the ducks raised for Defendant’s foie gras are subjected to one of the cruelest farming practices, force-feeding.

76. Harvey’s Market’s “ALL NATURAL” advertising is therefore unlawfully deceptive as applied to Defendant’s foie gras product.

Advertising Foie Gras from the Hudson Valley as “Free Range” Is Deceptive.

77. The 2016 Lake Research poll for the ASPCA found that 65% of U.S. consumers believe the term “free range” on a meat product “ensure[s] that the animal spent most of its time in a pasture.”

78. FSIS labeling guidelines for poultry products subject to FSIS review state that birds must have “continuous, free access to the outside throughout their normal growing cycle” in order for the resulting food product to be labeled “free range.”

79. The voluntary American Humane Certified Animal Welfare Standard for ducks permits certified products to be labeled as free range only if the ducks have continuous access to at least 5.45 square feet of outdoor ground space.

80. While Defendant’s marketing at issue was not subject to FSIS review and is not certified by American Humane, these guidelines and standards may still inform and reflect consumers’ understanding of the term “free range” as applied to ducks raised for foie gras.

81. On information and belief, neither Hudson Valley Foie Gras nor La Belle Farm give their ducks raised for foie gras any access to the outdoors.

82. In challenging New York City’s force-fed foie gras sales ban, both Producers stated that they keep their ducks raised for foie gras in coops and barns.

83. Videos that both Producers have posted online showing their production processes

show the ducks living entirely indoors.

84. Reasonable consumers who see the phrase “FREE RANGE” on the Harvey’s Market meat counter could be misled into thinking that Defendant’s foie gras comes from ducks who had continuous outdoor access, when the ducks actually never had outdoor access.

This Advertising is Materially Misleading to Consumers.

85. Many consumers who purchase animal products advertised as humane, natural, or free-range choose those products because they believe that the animals raised for those products had higher welfare than other animals in agriculture. Their shopping choices are influenced by these phrases.

86. In a 2021 poll of U.S. adults by The Harris Poll for the Animal Welfare Institute, 66% of respondents said that claims such as “humanely raised” help them decide which meat and poultry products to purchase.

87. A 2020 Lake Research Partners survey of 1,000 U.S. consumers found that of those respondents who reported purchasing an animal-based food product labeled as “humane,” 76% selected that product and 67% paid more for the product because they believed it was made using higher animal welfare practices.

88. The same survey found that 72% of consumers who bought a product labeled “natural” did so because they thought it was made using higher animal welfare practices, and 65% paid more for the product for the same reason.

89. The same survey reported that 77% of respondents who bought a product labeled “free-range” did so because they believed the product was made using higher animal welfare practices, and 65% paid more for the product for the same reason.

90. According to a 2018 report from the Food Marketing Institute and the Foundation

for Meat & Poultry Research & Education, of consumers who had seen meat or poultry products labeled “humanely-raised,” 67% were more likely to purchase items with that label over items without it. Fifty-seven percent of respondents who had seen meat or poultry products labeled “all natural” were more likely to purchase products so labeled. Fifty percent of respondents who had seen meat or poultry products labeled “free-range” were more likely to purchase products labeled as “free-range.”

91. The 2016 Lake Research poll for the ASPCA found that 77% of consumers “are concerned about the welfare of animals that are raised for human food.”

92. Harvey’s Market’s advertising about how animals were raised to create the products it sells is therefore materially misleading as applied to Defendant’s foie gras product.

CLAIM FOR RELIEF

Violation of the District of Columbia Consumer Protection Procedures Act

93. Animal Outlook incorporates by reference and realleges all of the proceeding allegations of this Complaint.

94. The CPPA makes it unlawful “for any person to engage in an unfair or deceptive trade practice.” D.C. Code § 28-3904.

95. The term “person” includes a corporation or legal entity. D.C. Code § 28-3901(a)(1).

96. Defendant is therefore a “person” within the meaning of the CPPA.

97. The CPPA “establishes an enforceable right to truthful information from merchants about consumer goods and services that are or would be purchased, leased, or received in the District of Columbia.” D.C. Code § 28-3901(c). The law “shall be construed and applied liberally to promote its purpose.” *Id.*

98. Deceptive trade practices violate the CPPA “whether or not any consumer is in fact misled, deceived, or damaged thereby.” D.C. Code § 28-3904.

99. Advertising statements that are false or misleading violate the CPPA. For example, the CPPA explicitly states that it is unlawful to “represent that goods or services have . . . characteristics . . . [or] benefits . . . that they do not have,” to “represent that goods or services are of particular standard [or] quality . . . if in fact they are of another,” or to “misrepresent as to a material fact which has a tendency to mislead.” D.C. Code §§ 28-3904(a), (d), (e).

100. Harvey’s Market represents that its foie gras comes from humanely raised and free-range ducks, and is all natural.

101. These are characteristics, benefits, or qualities that Harvey’s Market’s foie gras does not have, or standards that the foie gras does not meet. As explained above, the foie gras comes from ducks who were inhumanely force-fed, contrary to their natural behaviors, and who were raised without access to the outdoors.

102. As explained above, these misrepresentations are material to consumers and tend to mislead them.

103. Harvey’s Market therefore violates the CPPA by these affirmative misrepresentations.

104. Advertising that leaves out information or is ambiguous in a way that can mislead consumers also violates the CPPA. For example, the CPPA states that it is unlawful to “fail to state a material fact if such failure tends to mislead” and to “use innuendo or ambiguity as to a material fact, which has a tendency to mislead.” D.C. Code §§ 28-3904(f), (f-1).

105. Harvey’s Market violates the CPPA by advertising its products generally as humanely raised, all natural, and free range, without stating that those terms do not apply to

Harvey's Market's foie gras. This omission or ambiguity misleads consumers into believing that the advertising statements apply to all of Harvey's Market's products, including foie gras.

106. Under the CPPA, "a public interest organization may, on behalf of the interests of a consumer or a class of consumers, bring an action seeking relief from the use by any person of a trade practice in violation of a law of the District if the consumer or class could bring an action" and the organization has a "sufficient nexus to the interests involved of the consumer or class to adequately represent those interests." D.C. Code § 28-3905(k)(1)(D).

107. A class of D.C. consumers could bring an action against Harvey's Market for its unlawfully deceptive advertising.

108. Animal Outlook is a public interest organization with a strong nexus to D.C. consumers' interest in receiving truthful information, and not receiving misleading information, about meat products such as foie gras.

109. Animal Outlook may therefore bring this action on behalf of D.C. consumers.

110. An action for injunctive and/or declaratory relief brought pursuant to Section 28-3905(k)(1)(D) on behalf of an organization and D.C. consumers does not require class certification and is not subject to the Class Action Fairness Act. *See Animal Legal Def. Fund v. Hormel Foods Corp.*, 258 A.3d 174, 190 (D.C. 2021).

111. This Action does not seek damages or restitution. Animal Outlook seeks to end unlawful marketing by Harvey's Market.

112. Remedies available under the CPPA include "[a]n injunction against the use of the unlawful trade practice" and "[a]ny other relief which the court determines proper." D.C. Code §§ 28-3905(k)(2)(D), (F).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Animal Outlook respectfully prays for judgment against Harvey's Market and requests that the Court:

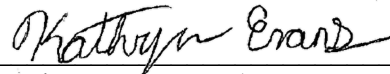
- (a) Declare that Harvey's Market's marketing of its foie gras violates the CPPA;
- (b) Order Harvey's Market to cease its deceptive advertising practices;
- (c) Award Plaintiff its costs and disbursements, including reasonable attorneys' fees and expert fees, and prejudgment interest at the maximum rate allowable by law; and
- (d) Award Plaintiff any other relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiff Animal Outlook hereby demands a jury trial.

Dated: October 15, 2024

Respectfully submitted,



Kathryn K. Evans (D.C. Bar No. 1736120)

Alene Anello (D.C. Bar No. 1616610)

Legal Impact for Chickens

2108 N Street, #5239

Sacramento, CA 95816

(888) 581-8797

kathryn@legalimpactforchickens.org