

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

<p>ORGANIC CONSUMERS ASSOCIATION, a non-profit corporation, 6771 South Silver Hill Drive, Finland, MN 55603,</p> <p style="text-align:center">Plaintiff,</p> <p style="text-align:center">v.</p> <p>NOBLE FOODS, INC., d/b/a THE HAPPY EGG CO. USA, 701 South Horsebarn Road #200, Rogers, AR 72758,</p> <p style="text-align:center">Defendant.</p>	<p>Case No.</p> <p><b>COMPLAINT</b></p> <p><u>DEMAND FOR JURY TRIAL</u></p>
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**COMPLAINT**

On behalf of itself and the general public, Plaintiff Organic Consumer Association (“OCA”) brings this action against Defendant The Happy Egg Co. USA (“Happy Egg”) regarding the deceptive labeling, marketing, and sale of eggs sold under the Happy Egg brand and marketed as “pasture raised” (the “Eggs”),<sup>1</sup> and alleges the following based upon information, belief, and investigation:

**INTRODUCTION**

1. Concerns about sustainability, nutrition, and animal welfare are leading an increasing number of consumers to consider how the animals who produce their food are raised.
2. A wide segment of consumers seeks to purchase eggs produced by hens raised according to advanced animal-welfare standards. On information and belief, this fact is known to Happy Egg.

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<sup>1</sup> Discovery may demonstrate that additional Happy Egg Co. products are within the scope of this Complaint. OCA reserves the right to amend this Complaint to include additional food items identified through the course of discovery.

3. These consumers, additionally, are more willing to purchase products that meet higher levels of animal-welfare standards. For example, many meat and poultry products that meet advanced animal-welfare standards are rated according to the Global Animal Partnership (“GAP”) rating standard from 1 to 5; the higher the number, the more the animals’ environment mimics their natural environment.<sup>2</sup>

4. On information and belief, Happy Egg knows that consumers concerned with animal welfare and sustainability are more willing to purchase products that meet higher levels of animal-welfare standards.

5. Regarding eggs also, certain agreed-upon industry standards exist to inform consumers about how the hens who produce those eggs are treated. These standards have gained prominence and importance over the last decade, as consumers have become increasingly aware of how eggs were produced, including the life-long confinement of hens in battery cages with less than one square foot of space per bird, and no room to stretch their wings or exhibit natural behaviors.

6. In the United States today, concerned consumers can select from eggs produced according to several differentiated levels of advanced animal-welfare standards, namely, from “cage-free” (lowest, though still preferred to battery cages) to “pasture raised” (the highest level for eggs that are widely available commercially).

7. As with meat and poultry, consumers concerned with animal welfare and sustainability are more willing to purchase eggs raised according to higher levels of animal-welfare standards. For example, consumers concerned with animal welfare and sustainability are more willing to purchase eggs from “pasture raised” hens than eggs from hens who are not “pasture

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<sup>2</sup> See generally <https://globalanimalpartnership.org>.

raised.” On information and belief, Happy Egg knows these facts.

8. Happy Egg markets and sells eggs that purportedly come from “free range” hens. “Free range” is an animal welfare standard that is higher than “cage-free” but lower than “pasture raised.” On information and belief, no Happy Egg product meets the standards for “pasture raised” eggs, which is the most attractive standard to consumers concerned with animal welfare and sustainability.

9. Happy Egg, however, deliberately sows consumer confusion about which animal-welfare standard its Eggs meet. Happy Egg labels its Eggs “free range” but *also*, on the same label, states that the hens are “pasture raised,” *e.g.*, “PASTURE RAISED ON OVER 8 ACRES” and “HENS LIVING ON OVER 8 ACRES OF PASTURE.” Happy Egg changes its packaging frequently but makes such representations consistently. An example of current packaging is below.

See Figures 1 & 2.



Figure 1.



Figure 2.

10. On the Happy Egg product recently purchased for evaluation by Plaintiff OCA (*see infra*, ¶ 29), the words “pasture raised” are large, written in red, and underlined for emphasis: “**PASTURE RAISED ON OVER 8 ACRES.**” In addition, and further sowing consumer confusion, the packaging bears a purported scale of standards suggesting that the Eggs are better than “free range,” or meet some higher standard, because they are “FREE-EST OF THE FREE RANGE.”

11. Happy Egg also advertises that the conditions in which it raises hens are “American Humane Certified.”<sup>3</sup> In the past, Happy Egg has used an “American Humane Association” (AHA) logo on its cartons to represent this certification process. This has sown additional consumer confusion, because AHA certifies both “free range” eggs and “pasture raised” eggs (according to those respective standards). When this logo appeared on the Egg packaging, Happy Egg deliberately obscured whether the AHA standard being met was “free range” or “pasture raised.”

<sup>3</sup> *Free Range*, Happy Egg Co. USA, <https://happyegg.com/free-range/> (last visited Mar. 23, 2020).

12. As of the filing of this Complaint, Happy Egg has removed the AHA logo from some of the Egg packaging but continues (1) to trade upon the consumer good will it built by using the logo deceptively on its packaging, without correcting the confusion; and (2) to use the term “pasture raised” alongside “free range” on its packaging, confusing or misleading consumers about which standard the Eggs meet.

13. Plaintiff OCA is a public-interest non-profit organization dedicated to protecting the rights of consumers, including consumers within the District of Columbia. Plaintiff OCA seeks no monetary recovery, but (1) a declaration that Happy Egg has engaged in conduct that misrepresents the qualities of the Eggs and also tends to mislead consumers about a material fact, and therefore violates the District of Columbia Consumer Protection Procedures Act (“CPPA”), D.C. Code § 28-3901, *et seq.*; and (2) an injunction against further violation of the CPPA.

### **JURISDICTION AND VENUE**

14. This Court has personal jurisdiction over the parties in this case. Plaintiff OCA, by filing this Complaint, consents to this Court having personal jurisdiction over it.

15. Plaintiff OCA has members in the District of Columbia and has long served to advocate for the rights of consumers within the District.

16. This Court has personal jurisdiction over Happy Egg pursuant to D.C. Code § 13-423. Happy Egg has sufficient minimum contacts with the District of Columbia to establish personal jurisdiction of this Court over it because, *inter alia*, Happy Egg is engaged in deceptive schemes and acts directed at persons residing in, located in, or doing business in the District of Columbia, or otherwise purposefully avails itself of the laws of this District through its marketing and sales of the Eggs in this District.

17. This Court has subject matter jurisdiction over this action pursuant to D.C. Code §§ 28-3905(k)(1)(B), (k)(1)(C), (k)(1)(D), and (k)(2).

### **PARTIES**

18. Happy Egg is an Arkansas corporation that maintains its principal place of business and headquarters in Fayetteville, Arkansas.

19. Upon information and belief, Happy Egg is a wholly owned subsidiary of Noble Foods, Inc.

20. At all times mentioned herein, Noble Foods, Inc. was and is a Texas corporation that maintains its principal place of business and headquarters in Austin, Texas.

21. Happy Egg markets and distributes the Eggs in retail outlets in the District of Columbia and throughout the United States.

22. Upon information and belief, Happy Egg has caused harm to the general public of the District of Columbia by tending to mislead consumers and by introducing confusion into the marketplace.

23. OCA is a § 501(c)(3) non-profit public-interest organization that deals with crucial issues of truth in advertising, accurate food labeling, food safety, children's health, corporate accountability, and environmental sustainability.

24. OCA performs its work throughout the United States, including in the District of Columbia. Some of OCA's staff, including its political director, reside and work in or near the District. OCA has members who reside in the District.

25. OCA formed in 1998 in the wake of backlash by consumers against the U.S. Department of Agriculture's proposed national regulations for organic food. In its public education, network-building, and mobilization activities, OCA works with a broad range of public

interest organizations to challenge industrial agriculture and corporate globalization, and to inspire consumers to “Buy Local, Organic, and Fair Made.” OCA focuses on promoting the views and interests of consumers, including the United States’ estimated 50 million organic and socially responsible consumers. OCA’s media team provides background information, interviews, and story ideas to media producers and journalists on a regular basis.

26. OCA represents and advances the rights and interests of consumers by educating consumers on food safety, industrial agriculture, genetic engineering, corporate accountability, and environmental sustainability issues. OCA uses funds it raises to protect the environment by promoting regenerative, organic, and/or sustainable agriculture. As part of this work, OCA has engaged in efforts to educate consumers about the realities of industrial egg production.

27. OCA also uses its funds and member base to pressure food companies to adopt honest labeling practices to benefit consumers.

28. OCA’s website, publications, public education, research, network building, and mobilization activities provide an important service to consumers and community activists every month.

29. Happy Egg has been changing, and continues to change, the packaging of its Eggs. On March 13, 2020, Plaintiff OCA purchased Happy Eggs at Harris Teeter, 401 M Street SE, Washington, D.C., in order to evaluate which version of the label is currently being offered to District consumers, and whether the label has a tendency to mislead consumers. Upon examining the packaging, Plaintiff OCA found that packaging of the Eggs for sale to District consumers (1) continues to bear the AHA logo, (2) underlines and emphasizes the words “PASTURE RAISED,” and (3) bears a purported scale of standards suggesting that the Eggs are better than “free range” because they are “FREE-EST OF THE FREE RANGE.”

30. In filing this litigation, OCA acts on behalf of itself and the general public pursuant to D.C. Code § 28-3905(k)(1).

31. OCA is a non-profit organization as defined in D.C. Code § 28-3901(a)(14). OCA brings this action under D.C. Code § 28-3905(k)(1)(C), seeking relief from the use of a trade practice in violation of a law of the District, including a violation involving Eggs that OCA purchased in order to evaluate their qualities pertaining to use for personal, household, or family purposes.

32. OCA is a public-interest organization as defined in D.C. Code § 28-3901(a)(15). OCA also brings this action under D.C. Code § 28-3905(k)(1)(D), seeking relief from Happy Eggs' use of a trade practice in violation of a law of the District, which action a consumer also could bring under D.C. Code § 28-3905(k)(1)(A). Based on its history of representing the rights of District consumers, including consumers concerned with purchasing higher-standard and sustainable food, OCA has sufficient nexus to the interests involved of the consumers to adequately represent those interests.

### **FACTUAL ALLEGATIONS**

33. American consumers increasingly seek out products with higher sustainability and animal-welfare standards. Once making up a small niche market, such foods are now sold by conventional retailers, with sales continuing to soar.

34. In the specific context of eggs, consumers value the "pasture raised" standard for myriad health, environmental, and political reasons, including attaining health and wellness, helping the environment and animals, and financially supporting companies that share these values.

**I. “Free Range” and “Pasture Raised” Are Markedly Different Standards, as Recognized by Both Industry Organizations and Consumers Who Seek Eggs Produced According to Higher Animal-Welfare Standards.**

35. As public awareness has grown regarding the inhumane treatment of animals raised for food, and especially the conditions in which many egg-laying hens are kept, consumers’ demand has also grown for humanely produced eggs.

36. A 2015 Consumer Reports survey found that it is important to consumers that food not be produced via standard factory-farm methods. For example, 84% of consumers said it was “important” or “very important” to improve living conditions for animals.<sup>4</sup>

37. American Humane, the certifier of Happy Egg’s products, confirms this trend with the following statement on its website<sup>5</sup>:

American Humane’s most recent survey shows overwhelming popular support for the humane treatment of farm animals. Its Humane Heartland™ Farm Animal Survey polled 5,900 Americans and more than nine in ten (94.9%) said they are “very concerned” about farm animal welfare, up from 89 percent in American Humane’s 2013 study. More than three-quarters (75.7%) stated that they are very willing to pay more for humanely raised eggs, meat, and dairy products, up from 74 percent in 2013.

38. Happy Egg knows that consumers seek out and wish to purchase humanely produced eggs, and that currently the highest and most attractive standard for eggs that are widely available commercially is “pasture raised.”

39. Widely available commercial eggs that do not come from hens kept in battery cages can meet one of three animal-welfare standards: “cage free,” “free range,” or “pasture range.” With only small variations (such as stocking density or inches between feeders), these standards have

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<sup>4</sup> See <https://foodpolitics.com/wp-content/uploads/Consumer-Reports-Natural-Food-Labels-Survey-Report.pdf> (last visited Mar. 23, 2020).

<sup>5</sup> *Handsome Brook Farm Achieves American Humane Certification For Pasture Raised Eggs*, American Humane (Mar. 31, 2016), <https://www.americanhumane.org/press-release/handsome-brook-farm-achieves-american-humane-association-certification-for-pasture-raised-eggs/>.

become agreed-upon in the egg industry, including by AHA and other certifying organizations, such as Humane Farm Animal Care (HFAC, creator of the “Certified Humane” label) or A Greener World (AGW, creator of the “Certified Animal Welfare Approved” label). In addition, consumers who are concerned with animal welfare and sustainability understand that these standards are differentiated, and that “pasture raised” is most desirable for widely available commercial eggs.

40. These three standards, as agreed-upon within the industry and understood by consumers who seek to educate themselves on animal welfare and sustainability, can be described as follows:

- “Cage free” husbandry is similar to the battery-cage system, except that the birds are not housed in cages.<sup>6</sup> Cage-free birds spend no time outdoors, and may be painfully debeaked without anesthesia. Birds may still be provided with less than a single square foot of space apiece,<sup>7</sup> and provisions for enrichment are minimal or non-existent.<sup>8</sup>
- “Free range” hens generally receive provisions similar to “cage free” hens—for example, only a square foot of space apiece, or sometimes two square feet—plus some form of outdoor access. “Outdoor access” can mean as little as birds living in a windowless barn but with access to a small door, which might lead to a field or might lead to only a caged porch with concrete or dirt flooring. Hens may choose never to utilize the doorway, given their natural inclination to spend time in the

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<sup>6</sup> See The Humane Society of the United States, *How to decipher egg carton labels*, <https://www.humanesociety.org/resources/how-decipher-egg-carton-labels> (last visited Mar. 23, 2020).

<sup>7</sup> However, birds are still provided with less than one square foot of space each. See, Toby Amidor, *What Are Pasture raised Eggs?*, Food Network (Aug. 2019), <https://www.foodnetwork.com/healthyeats/healthy-tips/2019/08/pasture-raised-eggs>.

<sup>8</sup> See HFAC, *What makes Certified Humane cage-free eggs different from other cage-free eggs?*, Certified Humane (Apr. 10, 2017), <https://certifiedhumane.org/makes-certified-humane-cage-free-eggs-different-cage-free-eggs/>.

shade near their food and water sources.<sup>9</sup>

- “Pasture raised” hens—according, for example, to AHA, HFAC, and others—must have at least 108 square feet of open field *per bird* to roam, and sometimes must meet minimum requirements for time spent outdoors.<sup>10</sup> Accordingly, “pasture raised” is a markedly different standard from “free range” or “cage free.”

## II. Happy Egg Labels the Eggs Both “Free Range” and “Pasture Raised” in Order to Sow Confusion and Capture Consumers Who Seek “Pasture Raised” Eggs.

41. The representations that Happy Egg makes on its Egg packaging tend to mislead District consumers about the standard by which the Happy Egg hens are kept. According to AHA, Happy Egg products are certified as “free range” and no more—certainly not “pasture raised.” Yet Happy Eggs uses both “free range” *and* “pasture raised” to describe its Eggs, even going so far on some packaging (as the Eggs recently purchased and evaluated by OCA) as to underline the words “PASTURE RAISED” and to accent them in red typeface.

42. Over the past few years, Happy Egg has changed its product packaging a number of times. It appears that in February 2018,<sup>11</sup> Happy Egg introduced packaging that called its eggs the “Free-est of the Free Range,” a trademarked phrase,<sup>12</sup> and went on to use “pasture raised” terminology: “hens loving life outdoors on 8 acres,” “loving life outdoors/over 8 acres of pastures,” and “learn why we’re the free-est.”<sup>13</sup> These containers had an “Always Choose Happy Certified” seal and an “American Humane Certified” seal on the front side of the packaging.

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<sup>9</sup> Anders Kelto, *Farm Fresh? Natural? Eggs Not Always What They're Cracked Up To Be*, NPR (Dec. 23, 2014), <https://www.npr.org/sections/thesalt/2014/12/23/370377902/farm-fresh-natural-eggs-not-always-what-they-re-cracked-up-to-be>.

<sup>10</sup> See *supra* note 6.

<sup>11</sup> See Ryan Parkinson, *Happy Egg Co. Changes It's Look, But Not Its Strict Animal Welfare Standards*, Happy Egg Co. USA (Feb. 8, 2018), <https://happyegg.com/news/strict-animal-welfare-standards/>.

<sup>12</sup> See *screenshot of Happy Egg Co. Website from December 18, 2019*, Wayback Machine (snapped Jan. 23, 2020), <https://web.archive.org/web/20191218021128/https://happyegg.co/>.

<sup>13</sup> See Riley Brown Art, *Happy Egg Carton Renders*, <https://rileybrownart.com/happy-egg-carton-renders> (last visited Mar. 23, 2020).

43. In addition, Happy Egg used its webpage to bolster the “pasture raised” confusion created by its product packaging. Until very recently, Happy Egg’s website used the AHA certification logo, without specifying that the Eggs were certified only “free range,” not “pasture raised.” More recently,<sup>14</sup> Happy Egg appears to have changed the website and added a “Free Range Eggs” banner below the AHA certification logo.<sup>15</sup> Happy Egg, however, does not appear to have taken any action to correct the confusion created by its packaging, neither the past nor the present packaging.

44. Unfortunately, during the same time period, Happy Eggs has also *removed* from its website the limited information that might have helped consumers discover the misuse of the term “pasture raised” on Happy Eggs’ packaging. An older version of Happy Eggs’ website featured a blog post<sup>16</sup> with the actual number of birds (presumably, the truthful number) who are on the “8 acres of pasture,” so that a consumer with the time and willingness to explore the website, and do some calculations, could discover that Happy Eggs provides far less than the 108 square feet per bird of the “pasture raised” standard. Recently, Happy Egg has removed that information from its website, further obscuring the fact that the Eggs are produced only according to the “free range” standard, not the also-advertised “pasture raised” standard.

45. Happy Eggs has likewise removed from its website a section on “Egg Aisle ‘Terms,’” which previously featured definitions of “free range” versus “cage free” eggs but, notably, omitted reference to “pasture raised,” which might have helped consumers understand that Happy Eggs are not certified as “pasture raised.”<sup>17</sup>

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<sup>14</sup> At some point between Jan. 14, 2020 and Jan. 22, 2020 Happy Egg Co. revised its website, making many new representations and featuring different egg cartons.

<sup>15</sup> See Happy Egg Co. USA, <https://happyegg.com> (last visited Mar. 23, 2020).

<sup>16</sup> Parkinson, *supra* note 11.

<sup>17</sup> See *Screenshot of Happy Egg Website from Dec. 18, 2019*, Wayback Machine (snapped Mar. 12, 2020), <https://web.archive.org/web/20191218021128/happyegg.co/>. Specifically, “Free-est of the Free Range,” “Organic,” “Standard Free Range,” “Cage Free,” and “Caged.”

46. Happy Eggs' current website (as of this Complaint) creates additional consumer confusion about whether the Eggs meet "pasture raised" standards or merely "free range" with representations like this: "Each day our happy hens head out of the henhouse and explore eight lovely acres of lush outdoor pasture. They hang out at water stations and play kits with their hen friends. Or hole up with their fellow hen hermits. Hover over the features below to learn more!"<sup>18</sup>

47. Happy Eggs makes similar "pasture raised" representations on social media, as well, and has gone so far to use the hashtag #PastureRaised in reference to the Eggs: "Green means go. Happy Egg Hens are Pasture raised with love on over 8 acres of lush green pasture. Protected & shaded by vegetation, trees, bushes, and tall grass! #PastureRaised #FreeRange #GrassFedGirls"<sup>19</sup>

48. Across social media and its web presence, Happy Egg tends to mislead consumers about whether its Eggs meet the "free range" standard, or something more, for example:

- "Because we raise hens on 8 acres of pasture on all of our small family farms, our eggs are the Free-est of the Free Range. We love our hens so you can feel great about loving eggs!"<sup>20</sup>
- "Happy Egg Co. is committed to raising our hens with love on over 8 acres of green leafy pasture."<sup>21</sup>

49. Happy Egg sponsors Google advertising that refers to the Eggs with these terms: "Hens Raised on 8 Acres. Eggs. Free Range. Pasture Raised Eggs."

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<sup>18</sup> *Supra* note 15 (Section features images of birds availing themselves of the following benefits, which are implied to be accessible to them on Happy Egg Co. contract farms: "flock size limits," "multiple barn access doors," "tree & vegetation coverage," "outdoor water drip system," "year-round outdoor access," "dust baths," and "play kits.").

<sup>19</sup> Happy Egg Co. USA (@HappyEggCoUSA), Facebook (May 8, 2019), <https://www.facebook.com/HappyEggCoUSA/photos/a.413692795361135/2315711658492563/?type=1&theater>.

<sup>20</sup> Happy Egg Co. USA (@HappyEggCoUSA), *About*, Facebook, <https://www.facebook.com/HappyEggCoUSA/> (last visited Mar. 23, 2020).

<sup>21</sup> Happy Egg Co., *Overview*, LinkedIn, <https://www.linkedin.com/company/happy-egg-company-usa/about/> (last visited Mar. 23, 2020).

50. In sum, on its Egg packaging and in its advertising, as well as on its website and social-media platforms, Happy Egg uses the term “pasture raised” and touts that its hens have access to “over 8 acres of pasture”—without clarifying how many birds are raised on that amount of space. This material omission is critical because, as Happy Egg certainly knows, one of the main differences between truly “pasture raised” eggs and simply “free range” eggs is the number of birds per acre. According to Happy Egg’s own certifying agency, and a standard accepted throughout the industry, “pasture raised” hens have access to 2.5 acres per 1,000 hens, while “free range” hens can have access to just 0.5 acres per 1,000 hens.<sup>22</sup> According to the blog post previously accessible on Happy Egg’s website, Happy Eggs maintains 0.5 acre per 1,000 hens, fulfilling “free range” requirements but certainly not “pasture raised” standards.

51. Happy Egg uses the “pasture raised” terminology in order to confuse consumers who wish to purchase eggs that meet the highest animal-welfare standard among the widely available choices.

### **III. Happy Egg’s Conduct Violates the CPPA.**

52. As set forth above, Happy Egg has been representing, and continues to represent, to consumers that its Eggs are “pasture raised” as well as “free range.”

53. Happy Egg’s conduct has violated, and continues to violate, D.C. Code § 28-3904, in that Happy Egg has:

- represented that the Eggs have certification and characteristics that they do not have;

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<sup>22</sup> American Humane Farm Program, *Laying Hens: Free Range and Pasture Animal Welfare Standards Audit*, Revised Oct. 2019, [http://humaneheartland.org/index.php?option=com\\_content&view=article&id=3&Itemid=106&jsmallfib=1&dir=JSROOT/Animal+Welfare+Audit+Tools&download\\_file=JSROOT/Animal+Welfare+Audit+Tools/Layers+Free+Range+%26amp%3B+Pasture+Audit+Tool.pdf](http://humaneheartland.org/index.php?option=com_content&view=article&id=3&Itemid=106&jsmallfib=1&dir=JSROOT/Animal+Welfare+Audit+Tools&download_file=JSROOT/Animal+Welfare+Audit+Tools/Layers+Free+Range+%26amp%3B+Pasture+Audit+Tool.pdf).

- represented that the Eggs are of a particular standard (both “pasture raised” and “free range”) when in fact they are of another (only “free range”);
- tended to mislead consumers as to a material fact, *i.e.*, as to which animal-welfare standard the consumers are supporting;
- failed to state a material fact—including that the number of hens on the “8 acres” vastly exceeds the number permitted for “pasture raised”—in a manner that tends to mislead;
- used innuendo and ambiguity as to a material fact—including the specific animal-welfare standard the Eggs meet—in a manner that tends to mislead; and
- advertised and offered Eggs as “pasture raised” without the intent to sell the Eggs as advertised and offered.

54. Happy Egg’s conduct has varied over the past two years but has been and continues to be in violation of the CPPA.

55. Happy Egg knows what representations it makes to District consumers about the Eggs, knows that it misrepresents the Eggs as “pasture raised,” and knows that using “pasture raised” terminology alongside “free range” terminology tends to mislead District consumers as to a material fact.

56. Happy Egg knows that the Eggs do not meet the “pasture raised” standard.

57. Happy Egg knows that by misrepresenting the qualities of the Eggs and/or tending to mislead consumers about the standard the Eggs meet, it can capture more of the market for egg consumers concerned with animal welfare. Happy Egg intends to profit from its actions in violation of the CPPA.

58. Happy Egg has failed to remedy its violation of the CPPA, causing ongoing harm to District consumers. District consumers are, and remain, at risk of real and continuing harm if Happy Egg's conduct is allowed to continue.

**CAUSE OF ACTION**

**VIOLATION OF THE DISTRICT OF COLUMBIA  
CONSUMER PROTECTION PROCEDURES ACT**

59. Pursuant to D.C. Code §§ 28-3905(k)(1) and 28-3905(k)(2), OCA brings this Count against Happy Egg on behalf of itself and the general public of the District of Columbia, for Happy Egg's violation of DC CPPA, D.C. Code § 28-3901, *et seq.*

60. OCA incorporates by reference all the allegations in the preceding paragraphs of this Complaint.

61. Happy Egg has labeled and advertised the Eggs as "pasture raised" and has otherwise presented an image and marketing materials suggesting that Eggs meet both the "pasture raised" and the "free range" standards, when in fact the Eggs are certified only "free range" and meet only that standard.

62. The facts as alleged in this Complaint demonstrate that Happy Egg has violated the CPPA, D.C. Code § 28-3901 *et seq.* Specifically, Happy Egg has violated D.C. Code § 28-3904, which makes it an unlawful trade practice to:

- (a) represent that goods or services have a source, sponsorship, approval, certification, accessories, characteristics, ingredients, uses, benefits, or quantities that they do not have; . . .
- (d) represent that goods or services are of particular standard, quality, grade, style, or model, if in fact they are of another;
- (e) misrepresent as to a material fact which has a tendency to mislead; . . .

- (f) fail to state a material fact if such failure tends to mislead;
- (f-1) [u]se innuendo or ambiguity as to a material fact, which has a tendency to mislead; ... [or]
- (h) advertise or offer goods or services without the intent to sell them or without the intent to sell them as advertised or offered.

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

64. Though OCA need not show proof of deception to succeed on its CPPA claim, District consumers were in fact deceived. Happy Egg knows and should have known that reasonable consumers would believe that the Eggs meet the “pasture raised” standard when Happy Egg used that terminology.

65. OCA has a sufficient nexus to District consumers who purchase products like the Eggs in order to represent their interests adequately.

66. Because Happy Egg misrepresents the characteristics of the Eggs; misrepresents the standard, quality, and grade of the Eggs; misrepresents, fails to state, and uses innuendo and ambiguity in ways that tend to mislead reasonable consumers with regard to material facts about the Eggs; and advertises the Eggs without the intent to sell them as advertised, Happy Egg’s marketing violates D.C. Code §§ 28-3904(a), (d), (e), (f), (f-1), and (h).

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

68. Pursuant to D.C. Code § 28-3905(k)(1)(C), “[a] nonprofit organization may, on behalf of itself or any of its members, or on any such behalf and on behalf of the general public, bring an action seeking relief from the use of a trade practice in violation of a law of the District,

including a violation involving consumer goods or services that the organization purchased or received in order to test or evaluate qualities pertaining to use for personal, household, or family purposes.”

69. OCA is a nonprofit organization pursuant to D.C. Code § 28-3905(k)(1)(C) that on March 13, 2020, purchased Happy Eggs in order to evaluate which version of the label is currently being offered to District consumers, and whether the label has a tendency to mislead consumers.

70. Happy Egg’s conduct violates the DC CPPA regardless of whether “any consumer is in fact misled, deceived or damaged thereby.” D.C. Code § 28-3904. Pursuant to D.C. Code § 28-3905(k)(1)(A), “[a] consumer may bring an action seeking relief from the use of a trade practice in violation of a law of the District.”

71. Any consumer has the right to bring an action for redress of Happy Egg’s unlawful behavior, *see* D.C. Code § 28-3905(k)(1)(A), and the statute does not limit consumer plaintiffs according to whether they purchased the product at issue. Nevertheless, as alleged in this Complaint, the Eggs are marketed and sold in the District, *see supra* ¶¶ 21, 29, and consumers within the District have purchased these Eggs under the representations made by Happy Egg. Therefore, a variety of purchasing and non-purchasing consumers could bring an action against Happy Egg based on the representations and omissions listed in this Complaint.

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

73. The only limitation on this power of a public interest organization to act on behalf of consumers is that the public interest organization must have “sufficient nexus to the interests involved of the consumer or class to adequately represent those interests.” D.C. Code § 28-3905(k)(1)(D)(ii). As set forth in this Complaint, *see supra* ¶¶ 23-28, Plaintiff OCA was founded with the purpose of advocating for and educating consumers, including consumers in the District of Columbia, in the arena of truth and transparency in food labeling and marketing. In addition, Plaintiff OCA has retained the undersigned counsel, with significant experience in litigating under the CPPA, to pursue this action, and OCA has previously represented District consumers in similar actions under the CPPA.

74. OCA is a public-interest organization pursuant to D.C. Code § 28-3905(k)(1)(D) and brings this action on behalf of consumers who could bring the action under D.C. Code § 28-3905(k)(1)(A).

75. Via §§ 28-3905(k)(1)(C) and (k)(1)(D)(i), the DC CPPA allows for non-profit organizational standing and public interest organizational standing to the fullest extent recognized by the D.C. Court of Appeals in its past and future decisions addressing the limits of constitutional standing under Article III.

76. OCA is a “person” within the meaning of D.C. Code § 28-3901(a)(1), and a “non-profit organization” within the meaning of D.C. Code § 28-3901(a)(14).

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff OCA prays for judgment against Happy Egg and requests the following relief:

A. a declaration that Happy Egg’s conduct has been and remains in violation of the DC CPPA;

B. an order enjoining Happy Egg's conduct found to be in violation of the DC CPPA, as well as corrective advertising;

C. an order granting Plaintiff OCA costs and disbursements, including reasonable attorneys' fees and expert fees, and prejudgment interest at the maximum rate allowable by law; and

D. such further relief, including equitable relief, as this Court may deem just and proper.

**JURY TRIAL DEMANDED**

Plaintiff OCA hereby demands a trial by jury.

DATED: March 24, 2020

**RICHMAN LAW GROUP**



By:

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Kim E. Richman  
krichman@richmanlawgroup.com  
8 West 126<sup>th</sup> Street  
New York, New York 10027  
Telephone: (718) 878-4707  
Facsimile: (212) 687-8292

*Attorney for Plaintiff*