

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

)	CASE NO. 19-6158
)	
VOTERS FOR ANIMAL RIGHTS,)	
a nonprofit corporation,)	COMPLAINT
Plaintiff,)	
)	JURY TRIAL DEMANDED
v.)	
)	
D'ARTAGNAN, INC. and)	
D'ARTAGNAN, LLC.,)	
Defendants.)	

On behalf of itself, Plaintiff Voters For Animal Rights (“VFAR”) brings this action against Defendants D’Artagnan, Inc. and D’Artagnan, LLC (collectively, “D’Artagnan”), regarding the deceptive marketing and advertising of foie gras products as humane despite the objectively inhumane practices utilized in raising and slaughtering the ducks used in D’Artagnan’s products. Plaintiff VFAR alleges the following based upon personal knowledge, information and belief, and the investigation of its counsel.

INTRODUCTION

1. D’Artagnan markets and sells gourmet food products, including foie gras, under its own name.
2. D’Artagnan makes marketing and advertising representations conveying to consumers that the animals used in its products, including its foie gras products (“the Products”), are treated humanely.
3. Contrary to those representations, ducks used for the Products are raised in inhumane conditions that include:

- force-feeding birds using methods that result in bruising, bleeding, lesions, pain, stress, and suffering;
- force-feeding birds to such a degree that they develop brittle and broken bones, thermoregulatory disorders, respiratory disorders, liver disease, lameness, and difficulty walking;
- housing ducks in such a way that they are prevented from expressing their natural behaviors, like foraging, bathing, and preening;
- the crowding of birds in massive warehouse-like facilities with no access to the outdoors; and
- improper and painful handling of ducks at the time of slaughter, transport, and at the time of feeding, leading to distress.

4. D'Artagnan's marketing and advertising representing that D'Artagnan employs humane production practices is therefore false and misleading.

5. D'Artagnan's false and misleading representations violate New York General Business Law §§ 349 and 350.

6. Plaintiff VFAR is a nonprofit organization dedicated to advancing the interests of citizens who support animal protection. Plaintiff VFAR seeks no monetary damages, only declaratory relief and an injunction to end D'Artagnan's deceptive marketing and advertising practices.

FACT ALLEGATIONS

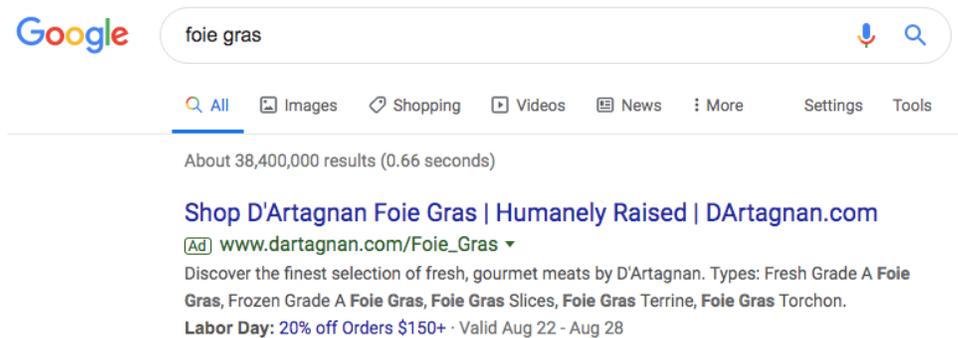
I. D'Artagnan's Marketing and Advertising Represents That the Birds Used in The Products Are Treated Humanely.

7. D'Artagnan markets and advertises the Products in the Eastern District of New York and throughout the State of New York. It seeks to reach New York consumers through search engine advertising; social media, such as Facebook and Instagram; and its company website and blog.

8. Throughout its advertising and marketing materials, D’Artagnan makes representations regarding the well-being, treatment, care, handling, and living conditions of the ducks used in the Products (the “Animal Welfare Representations”).

9. For example, D’Artagnan targets New York consumers with paid search engine advertisements marketing its foie gras as “humanely raised.”¹

Figure 1:



10. On its D’Artagnan brand website and blog, both of which are easily accessible by New York consumers, D’Artagnan repeatedly represents that it uses “humane farming practices”² and produces “humanely-raised meats.”³

¹ See Figure 1 *infra*.

² See D’Artagnan, *D’Artagnan Philosophy*, <https://www.dartagnan.com/dartagnan-philosophy.html?fid=company-information> (last visited Oct. 23, 2019); D’Artagnan, *Corporate Gifts*, <https://www.dartagnan.com/dartagnan-corporate-gifts.html?fid=company-information> (last visited Oct. 23, 2019); see also, D’Artagnan (@Dartagnanfoods), *Our Story*, Facebook (March 28, 2018), <https://www.facebook.com/pg/Dartagnanfoods/about/>.

³ D’Artagnan, *D’Artagnan Founder: Ariane Daguin*, <https://www.dartagnan.com/dartagnan-founder-ariane-daguin.html?fid=company-information> (last visited Oct. 23, 2019).

Figure 2:

The screenshot shows the D'Artagnan website header with navigation links: SERVE/SELL D'ARTAGNAN | CUSTOMER SERVICE | MY ACCOUNT | CART (0). A red banner below the header features the D'Artagnan logo, a 20% OFF All Charcuterie promotion, and a search bar. A secondary navigation bar includes links for Meat & Game, Duck & Poultry, Foie Gras & Caviar, Charcuterie, Truffles & Mushrooms, Pantry, Gifts, Collections, New, SALE, and Explore & Learn.

ABOUT US >
D'Artagnan Philosophy

We believe food raised right tastes better. Before such buzz words existed, and for more than 30 years, D'Artagnan has been committed to free-range, natural production and sustainable, humane farming practices.

We partner with small farms and ranches that have the strictest standards; to never use added antibiotics or hormones, and sign affidavits to that effect.

We support these methods so that we can offer you the best-tasting, conscientiously-raised meat possible.

We are passionate about quality from the farm to your fork, which is why our products hold pride of place in professional and home kitchens alike.

We educate consumers about the importance of understanding and appreciating how food is raised and harvested.

YOU MIGHT LIKE

- 
Mouillard Magret Duck Breast
BUY THIS PRODUCT
- 
D'Artagnan Rohan Duck, Whole
BUY THIS PRODUCT

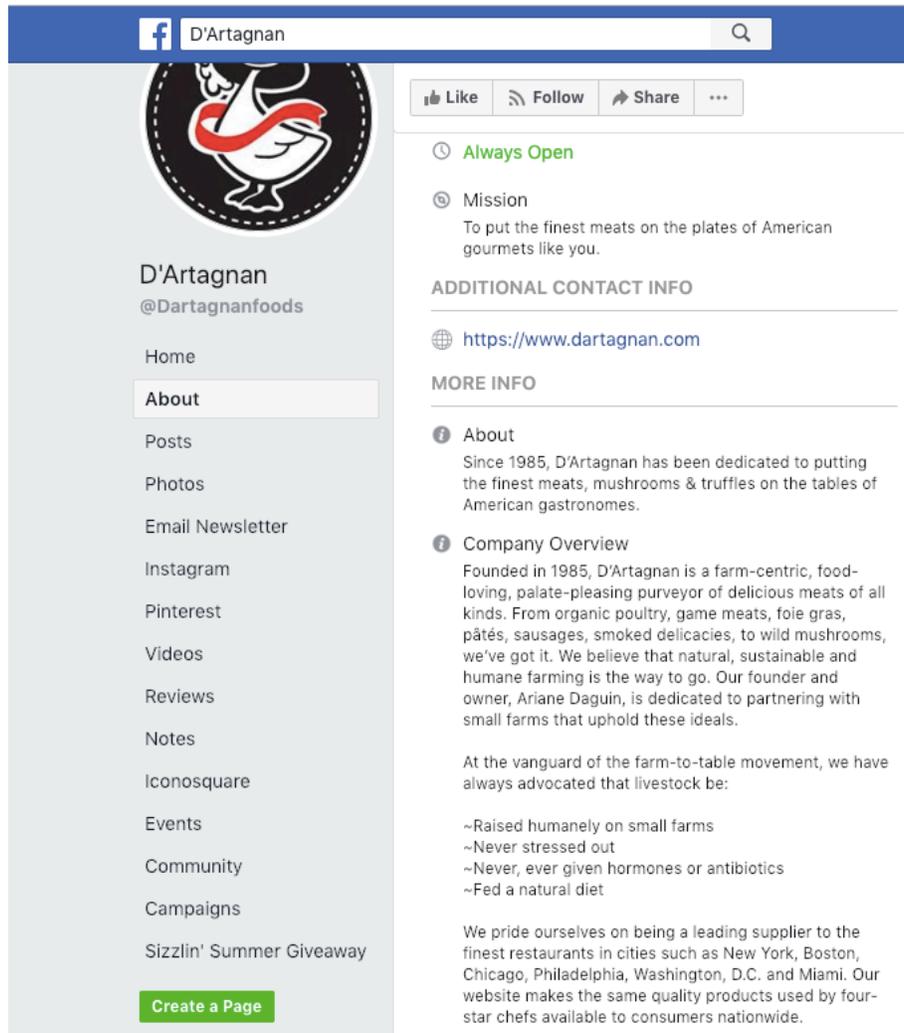
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We partner with small farms and ranches that have the strictest standards; to never use added antibiotics or hormones, and sign affidavits to that effect.

11. According to the “About” section of the official D’Artagnan Facebook page, the company represents that “natural, sustainable and humane farming is the way to go,”⁴ and notes that it has “always advocated that livestock be . . . [r]aised humanely on small farms.”⁵

Figure 3:



⁴ D’Artagnan (@Dartagnanfoods), *About*, Facebook, <https://www.facebook.com/pg/Dartagnanfoods/about/>.

⁵ *Id.*

12. D'Artagnan's website further describes how the company "partnered with small, family-owned farms" that "focused on the welfare of the animals,"⁶ and "adhere to strict standards and share our commitment to . . . free-range, natural production; and sustainable, humane farming practices."⁷

13. Founder, CEO, and owner Ariane Daguin has also made a number of publicly available statements on the company's practices. These statements appear in national news publications that are available to New York consumers who seek more information about the Products. Further, the articles in which these statements are made are all promoted on the D'Artagnan website.⁸ Some have also been shared on Facebook via the official D'Artagnan page⁹ and blog.¹⁰ In one such article, Daguin is quoted as saying "There isn't one thing we have that hasn't been humanely raised."¹¹

14. D'Artagnan elaborates upon its claims of "humane" treatment with other representations, including that animals used for its products:

- "feel no stress" and are raised in "low-stress" conditions;¹²

⁶ D'Artagnan, *D'Artagnan Story*, <https://www.dartagnan.com/dartagnan-story.html> (last visited Oct. 23, 2019).

⁷ *Corporate Gifts*, *supra* note 2.

⁸ D'Artagnan, *D'Artagnan In the News*, <https://www.dartagnan.com/dartagnan-in-the-news.html> (last visited Oct. 23, 2019).

⁹ See D'Artagnan (@Dartagnanfoods), Facebook (June 21, 2019), https://www.facebook.com/Dartagnanfoods/posts/10156106654076946?__tn__=-R; D'Artagnan (@Dartagnanfoods), Facebook (June 23, 2019), https://www.facebook.com/Dartagnanfoods/posts/10156111546751946?__tn__=-R; D'Artagnan (@Dartagnanfoods), Facebook (May 14, 2010), <https://www.facebook.com/Dartagnanfoods/posts/an-article-on-cnn-today-covers-the-continuing-saga-of-foie-gras-which-dartagnan-/117216124982838/>.

¹⁰ See D'Artagnan, *What One Writer Found at a Foie Gras Farm*, Center of the Plate: D'Artagnan Blog (Aug. 11, 2018), <https://center-of-the-plate.com/2018/08/11/what-one-writer-found-at-a-foie-gras-farm/>.

¹¹ Gabrielle Saulsbery, *Ducky idea leads to meaty business*, NJBIZ (February 19, 2018, 2:55 PM) <https://njbiz.com/ducky-idea-leads-to-meaty-business/>.

¹² See D'Artagnan, *Mousse of Duck Foie Gras*, <https://www.dartagnan.com/mousse-of-duck-foie-gras/product/PTEFG020.html> (last visited Oct. 23, 2019); D'Artagnan, *Hudson Valley Grade-A Duck Foie Gras*, https://www.dartagnan.com/hudson-valley-grade-a-duck-foie-gras/product/FDUF002-1.html?cgid=foie-gras&dwvar_FDUF002-1_freshFrozenWeight=fresh-FDUF002#start=1 (last visited Oct. 23, 2019); D'Artagnan, *Foie Gras Cubes*, https://www.dartagnan.com/foie-gras-cubes/product/ZDUF008-1.html?cgid=foie-gras&dwvar_ZDUF008-1_freshFrozenWeight=frozen-ZDUF008#start=7 (last visited Oct. 23, 2019); D'Artagnan, *Grade-A Duck Foie Gras Slices*, <https://www.dartagnan.com/grade-a-duck-foie-gras->

- are “free-range,”¹³ “never caged”¹⁴ and have “space to roam”;¹⁵
- are allowed to exhibit “natural behaviors,”¹⁶ follow “natural instincts,”¹⁷ and eat a “natural diet”;¹⁸ and
- are fed through “hand-feeding.”¹⁹

15. D’Artagnan makes several representations on its website and Facebook page that ducks used for its foie gras products are raised in a “low-stress” environment.²⁰ This exact language, including the statement “every measure is taken to ensure the ducks feel no stress,”²¹ is included on multiple pages that advertise foie gras products on the D’Artagnan website.²² Multiple pages include identical statements attesting to the “low-stress open barns” in which ducks used for D’Artagnan foie gras are raised.²³

slices/product/FDUF007-1.html?cgid=foie-gras&dwvar_FDUF007-1_freshWeight=frozen-FDUF007#start=5 (last visited Oct. 23, 2019); D’Artagnan, *Individually Quick Frozen Foie Gras Medallions*, https://www.dartagnan.com/individually-quick-frozen-foie-gras-medallions/product/ZDUF001-1.html?cgid=foie-gras&dwvar_ZDUF001-1_freshFrozenWeight=frozen-ZDUF001#start=4 (last visited Oct. 23, 2019).

¹³ See *Corporate Gifts*, *supra* note 2; D’Artagnan (@Dartagnanfoods), *Our Story*, *supra* note 2.

¹⁴ See, *Foie Gras Cubes*, *supra* note 12; *Grade-A Duck Foie Gras Slices*, *supra* note 12; *Individually Quick Frozen Foie Gras Medallions*, *supra* note 12; *Hudson Valley Grade-A Duck Foie Gras*, *supra* note 12; *Mousse of Duck Foie Gras*, *supra* note 12.

¹⁵ *Supra* note 6.

¹⁶ *Id.*

¹⁷ *Mousse of Duck Foie Gras*, *supra* note 12.

¹⁸ *Supra* note 4.

¹⁹ *Hudson Valley Grade-A Duck Foie Gras*, *supra* note 12.

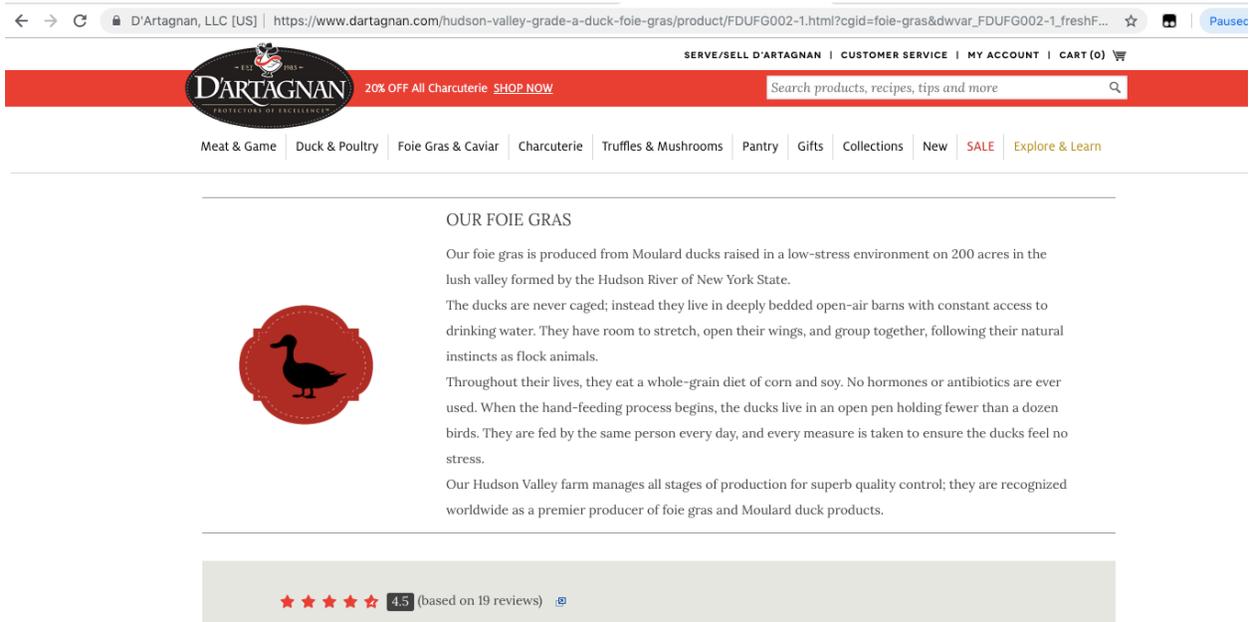
²⁰ See, e.g., *Mousse of Duck Foie Gras*, *supra* note 12.

²¹ *Id.*

²² See D’Artagnan, *Foie Gras*, <https://www.dartagnan.com/buy/foie-gras/> (last visited Oct. 23, 2019).

²³ See *Hudson Valley Grade-A Duck Foie Gras*, *supra* note 12; *Foie Gras Cubes*, *supra* note 12; *Grade-A Duck Foie Gras Slices*, *supra* note 12; D’Artagnan, *Individually Quick Frozen Foie Gras Medallions*, *supra* note 12.

Figure 4:



OUR FOIE GRAS

Our foie gras is produced from Moulard ducks raised in a low-stress environment on 200 acres in the lush valley formed by the Hudson River of New York State.

16. Furthermore, on the “About” page of the official D’Artagnan Facebook account, D’Artagnan claims “[w]e have always advocated that livestock be . . . [n]ever stressed out.”²⁴

17. D’Artagnan bolsters these “low-stress” and “no stress” claims with a variety of representations that lead consumers to believe that animals used in its products are provided with ample space to move freely. This includes D’Artagnan’s claims that it is “committed to free range”²⁵ practices and that it requires its suppliers to provide animals with “space to roam,”²⁶ in

²⁴ See *supra* note 4.

²⁵ *D’Artagnan Philosophy*, *supra* note 2.

²⁶ See *supra* note 6.

addition to a number of specific claims about the allegedly expansive environment provided for ducks used in the Products.

Figure 5:

The screenshot shows the D'Artagnan website's product page for Hudson Valley Grade-A Duck Foie Gras. The page features a large image of a whole raw foie gras lobe on a wooden cutting board. To the right of the image, the product title is "Hudson Valley Grade-A Duck Foie Gras" with a 5-star rating and "READ 19 REVIEWS | WRITE A REVIEW". The total price is listed as \$129.99, with a note that it is for "Fresh / 1 Whole Raw Lobe (2 lb avg)". The availability is "In Stock". Below the price is a quantity selector set to "1" and an "ADD TO CART" button. A "DESCRIPTION" section is partially visible, showing the start of a paragraph: "Our Grade-A foie gras comes from Moulard ducks, raised in low-stress open barns on a farm in New York State, recognized as a premier producer of high-quality foie gras. The ducks are never caged, and no antibiotics or hormones are administered. This foie gras a favorite among our chef clientele for its naturally sweet taste and silky texture."

DESCRIPTION

Our Grade-A foie gras comes from Moulard ducks, raised in low-stress open barns on a farm in New York State, recognized as a premier producer of high-quality foie gras. The ducks are never caged, and no antibiotics or hormones are administered. This foie gras a favorite among our chef clientele for its naturally sweet taste and silky texture.

18. According to D'Artagnan's website, the ducks are "never caged; instead they live in . . . open-air barns with . . . room to stretch, open their wings, and group together."²⁷ D'Artagnan further suggests that ducks enjoy access to a vast bucolic landscape, noting that the ducks are raised on "on 200 acres in the lush valley formed by the Hudson River."²⁸

19. D'Artagnan leads consumers to believe that spacious "open-air" farms allow the ducks used in the Products to "follow their natural instincts" throughout their lives.²⁹ This narrative that the ducks are raised in a "natural" environment is supported by marketing claims on other D'Artagnan webpages along with the claim that D'Artagnan suppliers must adhere to high animal welfare standards that "allow animals their natural behaviors."³⁰

20. D'Artagnan makes additional claims that animals used in its products are fed in ways that are natural and appropriate for each animal. For example, the website claims that its suppliers must "feed animals a clean, natural, and appropriate diet."³¹

21. Specifically, D'Artagnan uses the term "hand-feeding" to describe how ducks used for the Products are fed.³²

II. Contrary to D'Artagnan's Animal Welfare Representations, Ducks Raised for the Products Are Treated Inhumanely.

22. Contrary to D'Artagnan's Animal Welfare Representations, the ducks used for the Products are routinely: (1) force-fed in an inhumane manner than causes extreme suffering and disease; and (2) raised, fed, handled, and slaughtered in inhumane, crowded, and stressful conditions of confinement that prevent the expression of their natural behaviors.

²⁷ *Mousse of Duck Foie Gras*, *supra* note 12.

²⁸ *Id.*

²⁹ *Id.*

³⁰ See *D'Artagnan Story*, *supra* note 6.

³¹ *Id.*

³² See *Hudson Valley Grade-A Duck Foie Gras*, *supra* note 12.

23. Numerous veterinarians, scientists, and government-appointed research bodies have determined that the force-feeding practices utilized by D’Artagnan foie gras suppliers—regardless of other on-farm conditions—are severely harmful and cause painful liver disease in ducks.

24. Videos produced by one of D’Artagnan’s own foie gras suppliers—as well as multiple undercover investigations—reveal crowded conditions and ongoing mistreatment of ducks raised for the Products.³³

25. This reality of D’Artagnan’s production practices is inconsistent with how a reasonable consumer would understand D’Artagnan’s Animal Welfare Representations.

A. D’Artagnan Foie Gras Suppliers Use an Inhumane Force-Feeding Procedure That is Widely Condemned by Animal Welfare Experts.

26. Contrary to D’Artagnan’s representations, there is nothing humane, natural, or appropriate about how ducks used for the Products are fed. Although D’Artagnan misleadingly describes it as “hand-feeding” (which suggests a gentle and consensual process), its suppliers use³⁴

³³ Mercy For Animals (@mercyforanimals), *Amazon Cruelty – Mercy For Animals Exposes Suffering Behind Foie Gras*, YouTube (Aug. 30, 2013), https://m.youtube.com/watch?v=9ECEf0_nQcl; Compassion Over Killing (@tryveg), *COK Goes Undercover Inside Hudson Valley Foie Gras*, YouTube (Dec. 16, 2008), https://m.youtube.com/watch?ebc=ANyPxKqKW0rxBxPvGOCCgPa3OCgDHNE_EcxWwEtfvfez11W4pboYlupM2ymot1K71VS1gqKILo39ZslblpRyiW1QOVottBowmw&v=XNJDZm1bgVA; People for the Ethical Treatment of Animals (@PETA (People for the Ethical Treatment of Animals)), *Kate Winslet Exposes Foie Gras Cruelty*, YouTube (Mar. 16, 2015), https://m.youtube.com/watch?v=DyOu-GVtgPQ&ebc=ANyPxKqKW0rxBxPvGOCCgPa3OCgDHNE_EcxWwEtfvfez11W4pboYlupM2ymot1K71VS1gqKILo39ZslblpRyiW1QOVottBowmw; People for the Ethical Treatment of Animals (@PETA (People for the Ethical Treatment of Animals)), *Ducks Cruelly Force-Fed for Foie Gras*, YouTube (May 8, 2013), https://m.youtube.com/watch?ebc=ANyPxKqKW0rxBxPvGOCCgPa3OCgDHNE_EcxWwEtfvfez11W4pboYlupM2ymot1K71VS1gqKILo39ZslblpRyiW1QOVottBowmw&v=uW2uiw-p_js; Animal Protection and Rescue League (@aprlvideo), *Foie Gras: A Decade of Cruelty Exposed*, YouTube (Dec. 23, 2011), https://m.youtube.com/watch?v=B-EDBdGU5fA&ebc=ANyPxKqKW0rxBxPvGOCCgPa3OCgDHNE_EcxWwEtfvfez11W4pboYlupM2ymot1K71VS1gqKILo39ZslblpRyiW1QOVottBowmw; Hudson Valley Foie Gras (@Hudson Valley Foie Gras), *Hudson Valley Foie Gras*, YouTube (Nov. 2, 2013), https://m.youtube.com/watch?v=uOGxd_fcSk&ebc=ANyPxKoybeP_yRmikTzdBKV--BUFhmq1IctX9iSb3088N1qZCIFOaKyo4RP9kZAiX-kCf_HjlZ3xdxEZTe3PGE_bEPb9Jx5b_w.

³⁴ Erin Mosbaugh, *Debunking Foie Gras, America’s Most Controversial Luxury Ingredient*, FIRST WE FEAST (Apr. 23, 2014), <https://firstwefeast.com/eat/everything-you-need-to-know-about-foie-gras/>.

a brutal and dangerous procedure referred to by veterinarians as “force-feeding.” For the force-feeding procedure used by D’Artagnan’s suppliers, a long rigid tube (known as a “gavage tube”) is forcibly inserted into ducks’ throats and an unnaturally large quantity of corn and/or grain is literally funneled into the birds’ stomachs.³⁵

27. Force-feeding leads to myriad health issues from the feeding itself, including neck, throat, and lung damage from the insertion of the gavage tube, as well as broken bones and wings from handling birds that struggle to avoid force feeding.³⁶

28. Additional health issues arise from the unnatural quantity of food and inappropriate diet, including hepatic lipidosis (“fatty liver disease”); liver swelling that causes difficulty breathing and impairs the functioning of other vital organs; nutritional deficiencies that lead to broken bones, lameness, various other illnesses; and higher mortality rates.³⁷

29. The following statements from numerous veterinarians, scientists, and government-appointed research bodies confirm that force-feeding birds for foie gras causes significant pain, suffering, and distress:

- “Substantial scientific evidence suggests that force-feeding can cause pain and injury from feeding tube insertion, fear and stress during capture and handling, gait abnormality due to distended livers, pathologies in liver function, and increased mortality. Force-feeding birds to produce foie gras is detrimental to their welfare.”³⁸
- “This practice causes unacceptable suffering to these animals It causes pain during and as a consequence of the force feeding, feelings of malaise as the body struggles to cope with extreme nutrient imbalance, and distress due to the forceful handling. The most extreme distress is caused by loss of control of the birds’ most

³⁵ The Humane Society of the U.S., *An HSUS Report: The Welfare of Animals in the Foie Gras Industry* 1 (2012), <https://www.humanesociety.org/sites/default/files/docs/hsus-report-welfare-foie-gras-industry.pdf> [hereinafter *An HSUS Report*].

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

basic homeostatic regulation mechanism as their hunger control system is overridden.”³⁹

- “In my opinion, the force feeding of ducks and geese, for the production of foie gras is a cruel and inhumane practice that should be banned.”⁴⁰
- “The practice of force feeding a duck to produce a fatty liver is inherently cruel.”⁴¹
- “The Scientific Committee on Animal Health and Animal Welfare concludes that force feeding, as currently practiced, is detrimental to the welfare of the birds.”⁴²
- “Animals in this condition would experience constant pain . . . I consider the production of foie gras to be inhumane as it deliberately harms the duck . . .”⁴³
- “[T]he short tortured lives of ducks raised for Foie Gras is well outside the norm of farm practice.”⁴⁴
- “[T]here is absolutely no doubt, that force-feeding subjects them to physiological and behavioural [*sic*] suffering which dramatically reduces their well-being.”⁴⁵

30. According to these experts, there are myriad injuries and illnesses that result from the force-feeding process itself. Birds are often left with “pain and injury from handling caused by the tubing of the force-feeding funnel; trauma caused by injecting a high-temperature corn mash; bruising or perforation of the esophagus when the pipe is inserted; hemorrhaging and inflammation of the neck resulting from too forcible an introduction of the pipe to the throat; or asphyxia caused by food improperly forced into the trachea.”⁴⁶

³⁹ *Id.* at 6-7 (Statement of Christine Nicol, Animal welfare scientist and Professor of Animal Welfare at the School of Veterinary Science at the University of Bristol).

⁴⁰ The Humane Society of the U.S., *Scientists and Experts on Force-Feeding for Foie Gras Production and Duck and Goose Welfare* 4, https://thehill.com/sites/default/files/HSUS__ForceFeedingForFoieGrasProductionandDuckandGooseWelfare_0.pdf [hereinafter *Scientists and Experts on Force-Feeding*] (Statement of Ian J.H. Duncan, Emeritus Chair in Animal Welfare, University of Guelph, Ontario, Canada).

⁴¹ *Id.* (Statement of Lynn R. Dustin, Veterinarian, Bay Area Bird Hospital, San Francisco, California).

⁴² *Id.* at 6 (Statement of the European Union Scientific Committee on Animal Health and Animal Welfare).

⁴³ *Id.* at 7 (Statement of Tatty M. Hodge, Veterinarian, East Greenbush, New York).

⁴⁴ *Id.* at 8 (Statement of Ward B. Stone, Wildlife Pathologist, New York State Department of Environmental Conservation, Wildlife Pathology Unit, Delmar, New York).

⁴⁵ *Id.* (Statement of Christine Van Berchem, Veterinarian, Brussels, Belgium and René Zayan, Professor of Ethology, Université Catholique de Louvain, Louvain-la-Neuve, Belgium).

⁴⁶ *An HSUS Report, supra* note 35, at 3.

31. Inspections at D'Artagnan supplier Hudson Valley Foie Gras⁴⁷ confirm that D'Artagnan foie gras is no exception. Upon inspection, one veterinarian determined that multiple ducks had “died of aspiration pneumonia, a painful condition resulting from food being pushed into the birds’ lungs during the force-feeding process.”⁴⁸ In necropsy reports conducted on duck corpses from Hudson Valley Foie Gras, further evidence was found that ducks were “severely congested, demonstrated signs of bronchiolitis and aspiration pneumonia, and had food material in their lungs.”⁴⁹

32. Further detrimental health effects of force-feeding include “pathological”⁵⁰ impairment of liver function, major nutritional deficiencies, breathing issues from enlarged livers, difficulty walking from injuries and enlarged livers, skin disorders and lesions, skeletal disorders and broken bones, difficulty regulating body temperature, exhaustion, general feelings of malaise, among many other health issues.⁵¹

33. Fatty liver disease is a very common result of force-feeding. Statements from multiple scientists, veterinarians, and government-appointed research bodies demonstrate that hepatic lipidosis is detrimental to the health and welfare of ducks, and it is a direct result of force-feeding practices:

- “Force feeding quickly results in birds that are obese and in a pathological state, called hepatic lipidosis or fatty liver disease. There is no doubt, that in this pathological state, the birds will feel very ill.”⁵²
- “[N]o normal animal has steatosis of the liver to the extent which occurs in all force fed birds. During the force feeding period, liver function is impaired”⁵³

⁴⁷ *An HSUS Report*, *supra* note 35.

⁴⁸ *Id.* at 5.

⁴⁹ *Id.* (Taken from necropsy reports written on December 27, 2002 and January 24, 2003 by Anne Kincaid, DVM, Antech Diagnostics, Lake Success, New York).

⁵⁰ *See An HSUS Report*, *supra* note 35, at 2-3; *Scientists and Experts on Force-Feeding*, *supra* note 40, at 1, 4-8.

⁵¹ *See An HSUS Report*, *supra* note 35; *Scientists and Experts on Force-Feeding*, *supra* note 40.

⁵² *An HSUS Report*, *supra* note 35, at 2.

⁵³ *Id.*

- “At the end of force-feeding, the liver is indeed a diseased organ. The bird is killed before collapsing on its own.”⁵⁴

34. D’Artagnan suppliers subject ducks to unnatural diets, both in terms of quantity and nutritional content. Ducks are “natural omnivores,” yet they are fed “nutritionally incomplete” corn-based diets.⁵⁵

35. Statements from numerous scientists, veterinarians, and government-appointed research bodies confirm that this diet is “unnatural” and results in a separate set of health and welfare issues including skin disorders,⁵⁶ lethargy,⁵⁷ and fragile, deformed, and broken bones.⁵⁸

36. One analysis reported that “[d]uring the force-feeding period, the frequency of fractures to the humeral (wing) bones repeatedly reaches 54%.”⁵⁹

37. Inadequate dietary conditions have been specifically documented at D’Artagnan supplier Hudson Valley Foie Gras. According to one report, “A chemical analysis of the corn mash

⁵⁴ *Id.*

⁵⁵ See *An HSUS Report*, *supra* note 35, at 2 (Statement from Yvan Beck Veterinarian, Brussels, Belgium that “The food given to palmipeds [waterfowl] does not cover the physiological needs of this species. It is an unbalanced diet, designed to artificially cause hepatic lipidosis.”).

⁵⁶ See *An HSUS Report*, *supra* note 35, at 4 (“Bone and skin disorders linked to the nutritional deficiencies in the diet of force-fed birds may exacerbate the problem [of bumblefoot].” and Statement from Greg Harrison, Diplomate of the American Board of Veterinary Practitioners and the European College of Avian Medicine and Surgery that “[Nutritional] imbalances also lead to a skin disorder known as hyperkeratosis (thinning, flaking, excess callus formation, slow healing).”).

⁵⁷ See *An HSUS Report*, *supra* note 35, at 6-7 (Statement from Christine Nicol, Animal welfare scientist and Professor of Animal Welfare at the School of Veterinary Science at the University of Bristol that ““This practice causes unacceptable suffering to these animals.... feelings of malaise as the body struggles to cope with extreme nutrient imbalance ... The most extreme distress is caused by loss of control of the birds’ most basic homeostatic regulation mechanism as their hunger control system is over-ridden [*sic*].”).

⁵⁸ See *An HSUS Report*, *supra* note 35, at 4 (Statement from Greg Harrison, Diplomate of the American Board of Veterinary Practitioners and the European College of Avian Medicine and Surgery that “The lack of sufficient protein, vitamins and minerals (calcium) leads the young birds’ rapidly growing bones to be structurally flawed (osteodystrophy). This leads to bending and breaking (rickets).”); *Scientists and Experts on Force-Feeding*, *supra* note 40, at 2 (Statement from Yvan Beck Veterinarian, Brussels, Belgium that “Deterioration of the musculoskeletal system resulting in fractures of bones is common [in force-fed ducks], in part because immobilization of animals in cages, nutritional imbalance of portions (deficiency in proteins and in minerals), hormonal disturbance and excessive weight which all affect bone growth.”).

⁵⁹ See *An HSUS Report*, *supra* note 35, at 4.

used at Hudson Valley Foie Gras in New York established the feed did not meet the nutrient requirements of ducks, being ‘too low in protein and too high in trace minerals.’”⁶⁰

38. Breathing issues are also a common issue among force-fed ducks. According to a report published by the European Food Safety Authority’s Panel on Animal Health and Welfare (formerly the European Union Scientific Committee on Animal Health and Animal Welfare (“SCAHAW”)),⁶¹ force-feeding causes overheating and panting due to excessive heat “generated by their forced over-consumption of grain.”⁶² Additionally, veterinary experts and research pathologists have concluded that force-fed birds’ massively overgrown livers put pressure on their lungs and affects respiration.⁶³

39. Difficulty walking and lameness are also common health and welfare detriments of force-feeding ducks for foie gras production. SCAHAW’s report notes that force-feeding causes “severely impaired” walking ability due to “expanded livers,” excess weight, and rapid growth.⁶⁴ Another research study on liver disease in birds used in foie gras production found that “some of the birds who died had such difficulty walking that they could not access drinking water.”⁶⁵

40. Illnesses and injury can compound, as in the case of bumblefoot, a “painful condition” that is exacerbated by poor nutrition and “can progress into the joint of the foot causing pain and difficulty walking.”⁶⁶

41. A whole host of other illnesses can arise from the force-feeding practices.⁶⁷

⁶⁰ *Id.* at 2.

⁶¹ *Id.* at 5; National Advertising Division, Case No. 4959, D’Artagnan, Inc. Foie Gras Case Report (Jan. 16, 2009) (“the SCAHAW report ... is the most comprehensive, objective and reliable review of foie gras production utilizing both scientific data and observations of actual foie gras production condition.”).

⁶² *Id.*

⁶³ See *Scientists and Experts on Force-Feeding*, *supra* note 40, at 2, 6-7.

⁶⁴ See *An HSUS Report*, *supra* note 35, at 4.

⁶⁵ *Id.* at 5.

⁶⁶ *Id.* at 4.

⁶⁷ See *An HSUS Report*, *supra* note 35, at 4-5 (“anoxemia, due to insufficient aeration; toxemia, which is an intoxication of the blood; cirrhosis of the liver; candidosis, which is provoked by a yeast which profits from esophageal

42. Analysis from multiple reports reflects the unnaturalness of the gavage process, as compared to natural eating habits of migratory birds, who consume large quantities of food prior to migration. Specifically, expert veterinarians have concluded that “There is however no comparison between what nature planned . . . and the extreme result which is imposed by force-feeding on the organism.”⁶⁸ Experts have further concluded that no duck species “gorge to the extent of causing illness or making themselves incapable of breathing or walking, which results from force feeding.”⁶⁹

43. Moreover, despite D’Artagnan’s claims that its ducks are raised in “low-stress” environments and “feel no stress,” severe distress is inevitably caused by the force-feeding of ducks used in foie gras production and the injuries and disease that accompany it. According to the SCAHAW research study, birds routinely try to escape and avoid force-feeding, indicating their “aversion” to the procedure.⁷⁰

44. As a result of the numerous ailments and injuries caused by force-feeding, ducks used for foie gras production suffer mortality rates that are 10 to 20 times higher during the force feeding period,⁷¹ which the SCAHAW report notes is “lethal when the procedures are continued.”⁷²

B. Video Evidence Confirms Systemic Mistreatment of Ducks in D’Artagnan’s Supply Chain.

inflammations (due to the feeding tube, for example); feeding tube injuries, caused by clumsiness, which can go as far as the bursting of the crop; ‘blue thigh,’ due to internal muscular hemorrhages provoked by a deficiency in vitamin K and poor manipulation of the animals.”), 5 (“diseases suffered by force-fed ducks and geese include ‘[i]njuries; bowel obstruction; indigestion; tympanism; parasitism; amidostimosis; epomidiostimosis; spirurosis; enteritis; intestinal indigestion; fibrosis of the liver; hypoglycemic coma; bronchial obstruction.”).

⁶⁸ See *Scientists and Experts on Force-Feeding*, *supra* note 40, at 2.

⁶⁹ *Id.* at 4.

⁷⁰ *Id.*

⁷¹ *Id.* at 1.

⁷² See *An HSUS Report*, *supra* note 36, at 5.

45. Videos posted by D’Artagnan’s own supplier demonstrate that ducks used for the products are raised in inhumane overcrowded conditions.

46. Despite D’Artagnan’s claims that ducks used for the Products have “room to stretch” in “low-stress” “open-air” barns,⁷³ videos filmed by Hudson Valley Foie Gras itself reveal that the birds are raised in densely-packed warehouse-like facilities that provide no access to the outdoors.⁷⁴

47. None of the footage promoted by Hudson Valley Foie Gras⁷⁵ shows that its ducks have meaningful “space to roam”⁷⁶ or that it adheres to a “commitment to . . . free-range”⁷⁷ practices. Furthermore, it does not reflect “a low-stress environment on 200 acres in the lush valley of the Hudson River.”⁷⁸

Figure 6:



⁷³ Hudson Valley, *Hudson Valley Foie Gras: Episode 3: The Practices - Part 1*, Vimeo (Aug. 9, 2015, 9:11 PM), <https://vimeo.com/135827595>.

⁷⁴ *Supra* note 33.

⁷⁵ See Hudson Valley Foie Gras (@Hudson Valley Foie Gras), *Hudson Valley Foie Gras*, *supra* note 33; Hudson Valley, *Hudson Valley Foie Gras: Episode 3: The Practices - Part 1*, *supra* note 73.

⁷⁶ *D’Artagnan Story*, *supra* note 6.

⁷⁷ *Corporate Gifts*, *supra* note 2.

⁷⁸ *Mousse of Duck Foie Gras*, *supra* note 12.

⁷⁹ Hudson Valley, *Hudson Valley Foie Gras: Episode 3: The Practices - Part 1*, *supra* note 73.

48. To the contrary, this footage reveals conditions that prevent ducks from expressing their natural, instinctual behaviors. In nature, ducks would “spend much of their time foraging and maintaining their plumage by bathing and preening,” but they are unable to do so when “housed at high densities,” as is the case at D’Artagnan suppliers.⁸⁰ Ducks used for the Products are unable to bathe and preen properly because they are not provided with access to water in which to swim. Foraging is an important instinctual behavior that is prevented during the force-feeding period because ducks are force-fed rather than allowed to forage for food.⁸¹ Researchers agree that “[t]he absence of opportunities to engage in such instinctual behavior is likely to cause frustration and stress.”⁸²

49. Moreover, despite D’Artagnan’s representations that ducks used for the Products are “never caged,” the reality is that ducks *are* crammed into crowded cages in groups, as shown below.

Figure 7:



83

⁸⁰ See *An HSUS Report*, *supra* note 35, at 5-6.

⁸¹ See *id.*; *Scientists and Experts on Force-Feeding*, *supra* note 40, at 4.

⁸² See *An HSUS Report*, *supra* note 36, at 6.

⁸³ Hudson Valley Foie Gras (@Hudson Valley Foie Gras), *Hudson Valley Foie Gras*, *supra* note 33.

50. Multiple undercover investigations of Hudson Valley Foie Gras provide further evidence of inhumane treatment of the ducks used for the Products.

51. A 2013 investigation conducted by nonprofit organization Mercy For Animals (“MFA”) revealed further abuses at Hudson Valley Foie Gras’s farms.⁸⁴

52. MFA’s video also shows blood-covered ducks awaiting slaughter in small cages, ducks being roughly grabbed by their wings and throats and pulled toward the gavage by handlers, and ducks being grabbed by their wings, shackled upside down, and having their throats slit for slaughter. Further abuses include ducks being crammed into transport crates ahead of slaughter and roughly yanked from cages.⁸⁵

53. During the MFA investigation ducks can be seen in dark, windowless, crowded sheds. The video shows birds panting and having difficulty breathing. A worker is filmed saying the following in Spanish following a force-feeding, “Sometimes the duck doesn’t get up and it dies. There have been times that 20 ducks were killed. When the duck starts doing this, they sometimes die right here.” The bodies of ducks who died before reaching slaughter are left in open garbage cans in plain view of the other birds still being raised and force-fed.⁸⁶

54. Nonprofit organization People for the Ethical Treatment of Animals (“PETA”) conducted undercover investigations into Hudson Valley Foie Gras farms, as well. They report the following on their website:

- “A PETA investigation at Hudson Valley Foie Gras in New York (previously called ‘Commonwealth Enterprises’) found that a single worker was expected to force-feed 500 birds three times each day. The pace meant that they often treated the birds roughly and left them injured and suffering. So many ducks died from ruptured

⁸⁴ Mercy For Animals (@mercyforanimals), *Amazon Cruelty – Mercy For Animals Exposes Suffering Behind Foie Gras*, *supra* note 33.

⁸⁵ *Id.*

⁸⁶ *Id.*

organs resulting from overfeeding that workers who killed fewer than 50 birds per month were given a bonus. A worker told a PETA investigator that he could feel tumor-like lumps, caused by force-feeding, in some ducks' throats. One duck had a maggot-ridden neck wound so severe that water spilled out of it when he drank.

- “Another PETA investigation at Hudson Valley in 2013 documented that prior to the force-feeding period, young ducks were crammed by the thousands into huge warehouse-like sheds in conditions that are virtually identical to those for “broiler” chickens and turkeys on factory farms. Ducks who were being force-fed were confined, up to a dozen at a time, to a pen measuring just 4 feet by 6 feet. PETA’s investigator saw workers drag ducks by their necks along the wire floor and pin them between their legs before ramming the metal force-feeding tubes down their throats.”⁸⁷

55. A 2008 investigation conducted by nonprofit organization Compassion Over Killing (“COK”) revealed systemic abuse at D’Artagnan supplier Hudson Valley Foie Gras’s Ferndale, New York farm. During a scheduled tour of the farm, an investigator filmed birds during the force-feeding and slaughter processes.⁸⁸

56. In COK’s video ducks are seen being pulled by their wings by handlers during the feeding process in order to bring them closer to the gavage tube. Ducks were shown huddling in a corner of their pens while others were being force fed. Footage shows a duck bleeding from his or her neck while in a cage awaiting slaughter. Multiple ducks were shown in cages ahead of slaughter. Workers held ducks by their wings before shackling them upside down for slaughter.⁸⁹

III. D’Artagnan’s Animal Welfare Representations Are Materially Misleading to Consumers.

57. Consumers care about animal welfare. Many consumers are willing to pay more for products that they believe come from humanely treated animals, as several consumer studies have documented.

⁸⁷ People for the Ethical Treatment of Animals, *Foie Gras: Cruelty to Ducks and Geese*, <https://www.peta.org/issues/animals-used-for-food/factory-farming/ducks-geese/foie-gras/> (last visited Oct. 23, 2019).

⁸⁸ Compassion Over Killing (@tryveg), *COK Goes Undercover Inside Hudson Valley Foie Gras*, *supra* note 33.

⁸⁹ *Id.*

58. For example, a 2015 Consumer Reports survey found that consumers deem it important that food not be produced via standard factory-farm methods. For example, 84% of food shoppers said that it was “important” or “very important” to provide better living conditions for animals.⁹⁰

59. According to a 2013 survey conducted by the American Humane Association, 89% of consumers were very concerned about farm animal welfare, and 74% stated that they were willing to pay more for humanely raised meat products.⁹¹

60. A 2018 study published in the journal *Animals* found that the weighted average of consumers’ marginal willingness to pay for products from humanely treated animals was \$0.96 for one pound of chicken breast (a 48% premium).⁹²

61. There is ample evidence that these consumers’ concerns apply specifically to ducks raised for foie gras.

62. A 2004 Zogby poll found that 77% of U.S. adults believe the practice of force-feeding ducks and geese should be banned.⁹³

63. In 2019, a statewide ban on the sale of force-fed foie gras products in California went into effect.⁹⁴ A 2013 decision by the U.S. Court of Appeals for the Ninth Circuit determined that the law was passed because the State believed the practice was “cruel to animals.”⁹⁵

64. There is also substantial evidence that D’Artagnan’s Animal Welfare Representations are misleading to consumers.

⁹⁰ Consumer Reports, Natural Food Labels Survey (2015).

⁹¹ Am. Humane Ass’n, Humane Heartland Farm Animal Welfare Survey (2013), <https://www.americanhumane.org/app/uploads/2013/08/humane-heartland-farm-animals-survey-results.pdf>.

⁹² C. Victor Spain et al., *Are They Buying It? United States Consumers’ Changing Attitudes Toward More Humanely Raised Meat, Eggs, and Dairy*, 8 *Animals* 128 (2018).

⁹³ See *An HSUS Report*, *supra* note 35, at 7.

⁹⁴ *California foie gras ban goes into effect after Supreme Court rejects challenge*, Los Angeles Times (Jan. 7, 2019, 5:05 PM), <https://www.latimes.com/business/la-fi-foie-gras-prohibition-court-ruling-20190107-story.html>.

⁹⁵ *Ass’n des Eleveurs de Canards et d’Oies du Quebec v. Harris*, 729 F.3d 937, 952 (9th Cir. 2013).

65. For example, a 2016 Consumer Reports survey found that a majority of consumers believed the following about animal products marketed as “humanely raised”:

- the animals had adequate living space (77%)
- the animals went outdoors (68%)
- the animals were raised without cages (57%)
- the animals were slaughtered humanely (71%)
- the farm was inspected to verify this claim (82%).⁹⁶

66. Given that the ducks used for the Products do not have outdoor access or adequate living space; that they are confined in group cages during force-feeding; and that they are raised and slaughtered inhumanely, D’Artagnan’s Animal Welfare Representations are clearly misleading to consumers.

67. Furthermore, contrary to D’Artagnan’s website claim that their farms “adhere to strict standards and share our commitment to . . . humane farming practices,”⁹⁷ the National Advertising Division of the Better Business Bureau has previously determined that reasonable consumers would be misled by such statements by D’Artagnan because no such regulation of oversight standards exists regarding the “day-to-day animal husbandry practices for foie gras production.”⁹⁸ This is further evidence that D’Artagnan’s “humane” claims are false, in light of consumer expectations that meaningful inspections will take place at farms that raise animals for such products.

68. D’Artagnan’s suppliers’ practices are so clearly inhumane that its main supplier has been unwilling to stand by its own prior claims of “humane” treatment. Following the filing of a

⁹⁶ Consumer Reports, Food Labels Survey (2016).

⁹⁷ *Corporate Gifts*, *supra* note 2.

⁹⁸ National Advertising Division, *supra* note 61.

lawsuit against Hudson Valley Foie Gras, the company removed the word “humane” from its website.⁹⁹

69. D’Artagnan’s other Animal Welfare Representations, in addition to its “humane” claims, are also false and misleading.

70. For example, the first definition for “open-air” in Merriam-Webster dictionary is “outdoor” and second definition is “the space where air is unconfined *especially*: OUTDOORS.”¹⁰⁰ As set forth above, D’Artagnan’s suppliers’ purportedly “open-air” facilities are actually dark warehouse-like sheds that provide no access to the outdoors.

71. Moreover, despite D’Artagnan’s representations that ducks used for the Products are “never caged,” the densely-packed wire-sided enclosures (*see* Figure 7 *supra*) used by its suppliers during force-feeding conform to the definition of “cage” used by multiple dictionaries. For example, Merriam-Webster defines a “cage” as “a box or enclosure having some openwork for confining or carrying animals (such as birds).”¹⁰¹ The Oxford English dictionary defines “cage” as “a structure of bars or wires in which birds or other animals are confined.”¹⁰² Cambridge Dictionary defines “cage” as “a structure shaped like a box but with bars or wires as its sides, for keeping pets or for housing animals.”¹⁰³

⁹⁹ Animal Legal Defense Fund, *Foie Gras*, <https://aldf.org/issue/foie-gras/> (last visited Oct. 23, 2019).

¹⁰⁰ *Open-air*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/open-air> (last visited Oct. 23, 2019).

¹⁰¹ *Cage*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/cage?src=search-dict-hed> (last visited Oct. 23, 2019).

¹⁰² *Cage*, Lexico, <https://www.lexico.com/en/definition/cage> (last visited Oct. 23, 2019). (“Lexico.com is a new collaboration between Dictionary.com and Oxford University Press (OUP) to help users worldwide with everyday language challenges. Lexico is powered by Oxford’s free English and Spanish dictionaries”).

¹⁰³ *Cage*, Cambridge Dictionary, <https://dictionary.cambridge.org/us/dictionary/english/cage> (last visited Oct. 23, 2019).

72. Similarly, D'Artagnan's claims that its suppliers provide a "low-stress" environment and allow "natural" behaviors are demonstrably false in light of the scientific evidence to the contrary set forth above.

73. Thus, reasonable consumers are misled by D'Artagnan's Animal Welfare Representations, including that ducks raised for the Products are raised "humanely" in "low stress," "open-air" conditions where they can express "natural behaviors."

PARTIES

74. Defendants D'Artagnan, Inc. and D'Artagnan, LLC are incorporated in New Jersey and has their principal executive offices in Union, New Jersey. D'Artagnan produces, processes, markets, and distributes foie gras products, as well as other products.

75. D'Artagnan's foie gras Products are marketed to and available to be shipped to New York consumers, including in this District. The Products are also sold to restaurants and retailers in the District and surrounding areas.

76. Plaintiff Voters For Animal Rights ("VFAR") is a 501(c)(4) nonprofit organization that helps elect candidates who support animal protection, lobbies for laws to stop animal cruelty, and promotes the interests of citizens and consumers who support the humane treatment of animals.

77. Plaintiff VFAR is headquartered in the Eastern District of New York and performs work in New York. All of Plaintiff VFAR's staff reside and work in or near the Eastern District. Plaintiff VFAR has over 60,000 supporters who reside in New York State.

78. In its public education, lobbying, network-building, and mobilization activities, Plaintiff VFAR works with a broad range of public interest organizations to challenge inhumane

practices and to encourage consumers, citizens, and government officials to promote animal welfare.

79. Plaintiff VFAR represents and advances the rights and interests of animals by educating consumers, voters, and state and local representatives on animal cruelty, food safety, industrial agriculture, and environmental sustainability issues. For example, Plaintiff VFAR engages in extensive efforts to educate consumers, voters, and state and local representatives about the realities of foie gras production. For example, Plaintiff VFAR is one of the leading organizations working to ban the sale of foie gras in New York City and the production of foie gras in New York State.

80. D'Artagnan is the largest distributor of foie gras in the United States and its marketing and advertising has exercised unparalleled influence on consumer perception of its Products and the foie gras industry more broadly.¹⁰⁴

81. D'Artagnan's misleading advertising has directly decreased the effectiveness of Plaintiff VFAR's efforts to reduce foie gras consumption and its work to prohibit the sale and production of foie gras.

82. D'Artagnan admits that its Animal Welfare Representations are, in part, intended to “debunk the claims” made by advocates working on “a potential ban on foie gras.”¹⁰⁵

83. D'Artagnan's misleading Animal Welfare Representations predictably undermine Plaintiff VFAR's efforts to reduce consumption of foie gras—in addition to decreasing public support for Plaintiff's legislative efforts to ban foie gras production. For example, research commissioned by the foie gras industry suggests that a majority of consumers who are informed

¹⁰⁴ See *supra* note 34.

¹⁰⁵ Ariane Daguin, *Au revoir foie gras? The facts say non*, Crain's New York Business (June 18, 2019), <https://www.craigslist.com/op-ed/au-revoir-foie-gras-facts-say-non>.

about cruel foie gras production practices will support a ban on foie gras production.¹⁰⁶ This research further shows that if those same consumers are exposed to misleading pro-industry messaging, including that ducks used for foie gras are “hand-fed” and treated “humanely”, then a majority will oppose legislation to ban foie gras production.¹⁰⁷ Thus, D’Artagnan’s false and deceptive Animal Welfare Representations—which promote these same false narratives of humane, natural, low stress and “hand-fed” production to New York consumers—have directly decreased the effectiveness of Plaintiff VFAR’s public education efforts regarding the cruel reality of foie gras production. This has necessitated increased educational efforts to counteract this deceptive marketing in order to ensure the success of its efforts to decrease foie gras consumption and to prohibit its sale and production.

84. As a result of D’Artagnan’s legal violations, Plaintiff VFAR has suffered injury in fact and has lost money or property. Specifically, Plaintiff VFAR has expended its resources to counteract D’Artagnan’s misrepresentations.

85. Plaintiff VFAR has drafted and promoted online action alerts, email blasts, blog posts and social media posts;¹⁰⁸ created and distributed educational flyers; and conducted outreach to journalists to counter the falsehoods spread by D’Artagnan’s marketing that leads consumers to believe that foie gras sold in New York comes from animals raised in conformance with

¹⁰⁶ Change Research, 2019 New York City Voters Poll, https://drive.google.com/file/d/1HWXt7_DXNX2Ja67wS9jslGEvCyLUdoNJ/view.

¹⁰⁷ *Id.*

¹⁰⁸ See e.g., *Foie Gras Myths Busted*, NYC Foie Gras (Feb. 26, 2019), <https://www.nycfoiegras.com/blog/2019/2/11/foie-gras-myths-busted> (Contains variety of information, including quotes from animal welfare experts regarding the “inhumane” and “distressing” conditions of foie gras production); Voters For Animal Rights (@votersforanimalrights), Facebook (Sept. 4, 2019, 8:00 AM), https://www.facebook.com/votersforanimalrights/posts/1137784929738636?_tn__=R (Describing stressful and inhumane conditions observed in barns at D’Artagnan supplier Hudson Valley Foie Gras); Voters For Animal Rights (@theanimalvoters), Twitter (Sept. 3, 2019, 12:06 PM), <https://twitter.com/theanimalvoters/status/1168918070812925952> (Sharing photograph depicting the force-feeding of ducks used for foie gras).

D'Artagnan's Animal Welfare Representations. Specifically, Plaintiff VFAR has drafted and disseminated materials that demonstrate that, contrary to D'Artagnan's "humane" marketing, birds used by commercial foie gras producers like D'Artagnan are force-fed and raised in "inhumane,"¹⁰⁹ painful,¹¹⁰ "stressful" conditions¹¹¹ of extreme confinement¹¹² that restrict the birds from exhibiting their natural behaviors.¹¹³

¹⁰⁹ See e.g., Voters For Animal Rights (@theanimalvoters), Twitter (July 25, 2019, 07:31 PM), <https://twitter.com/theanimalvoters/status/1154534701421518848> ("The #foiegras industry can try to spin this any way they want, but the reality is that there is no 'humane' way to shove a pole down a duck's throat. <https://newfoodeconomy.org/new-york-city-foie-gras-ban-gavage/#banfoiegras>"); *Veterinary Professional Support for New York City's Intro 1378 to Prohibit Sale of Foie Gras from Force-Fed Birds*, NYC Foie Gras (Feb, 26, 2019), <https://www.nycfoiegras.com/blog/veterinary-professionals> ("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."); *Hudson Valley Foie Gras: An Industrial Foie Gras Factory Farm*, NYC Foie Gras (July 31, 2019), <https://www.nycfoiegras.com/blog/2019/7/31/hudson-valley-foie-gras-an-industrial-foie-gras-factory-farm> ("[D'Artagnan supplier Hudson Valley Foie Gras] tried to define itself as 'The Humane Choice' in its promotional materials while brutalizing ducks for gourmet profits. Their false advertising violated state and federal laws by telling consumers force-fed foie gras was 'humane.' HVFG removed its deceptive 'humane' language.").

¹¹⁰ See e.g., Voters For Animal Rights (@votersforanimalrights), Facebook (Aug. 2, 2019), https://www.facebook.com/votersforanimalrights/posts/1115014288682367?__tn__=R ("Our Political Advisor, Matt Dominguez: 'Foie gras produced through force-feeding and ducks suffer greatly from ruptured organs, esophagus trauma, broken bones, illnesses, and diseases as a result of having a foot-long metal feeding pipe violently shoved down their throats (three times a day) for the sole-purpose of swelling and diseasing their liver to ten times its normal, healthy size.'"); NYC Foie Gras, <https://www.nycfoiegras.com/> (last visited Oct. 23, 2019) ("Force-feeding causes a number of injuries: bruising or perforation of the esophagus; hemorrhaging and inflammation of the neck resulting from the repeated insertion of the pipe to the throat; and asphyxia caused by food improperly forced into the trachea.").

¹¹¹ See e.g., NYC Foie Gras, <https://www.nycfoiegras.com/> (last visited Oct. 23, 2019) ("Like all animals, including humans, ducks and geese experience great fear, as well as acute and chronic stress from the multiple daily force-feedings and the pain associated with them."); *Veterinary Professional Support for New York City's Intro 1378 to Prohibit Sale of Foie Gras from Force-Fed Birds*, NYC Foie Gras (Feb, 26, 2019), <https://www.nycfoiegras.com/blog/veterinary-professionals> ("The practice of force-feeding amounts of food far beyond the limits of the duck's need to eat causes pain and suffering. Ducks are highly capable of feeling pain, especially in the throat area. They have a gag reflex that would be overcome by the tube insertion, and this would cause distress in the bird.' - Dr. Debra Teachout, DVM, MVS").

¹¹² See e.g., *Hudson Valley Foie Gras Factory Farm Investigations*, NYC Foie Gras (Aug. 1, 2019), <https://www.nycfoiegras.com/blog/hudson-valley-foie-gras-factory-farm-investigations> (Discussing investigation at D'Artagnan supplier Hudson Valley Foie Gras in which birds were shown in close confinement in their pens).

¹¹³ See e.g., *Veterinary Professional Support for New York City's Intro 1378 to Prohibit Sale of Foie Gras from Force-Fed Birds*, NYC Foie Gras (Feb, 26, 2019), <https://www.nycfoiegras.com/blog/veterinary-professionals> (Contains detailed information from veterinary professionals, including the following statement: "The process overrides the natural system of hunger and satiety and the birds in the video appear to be frightened and distressed - they move immediately away from the handler as soon as they are released.' - Dr. Sara Shields, PhD, an animal welfare expert with an emphasis in poultry."); *Foie Gras Myths Busted*, NYC Foie Gras (Feb. 26, 2019), <https://www.nycfoiegras.com/blog/2019/2/11/foie-gras-myths-busted> ("Approximately 95% of the birds used in U.S. foie gras production are Muscovy or Muscovy/Mallard hybrid ducks. Because both breeds are dabbling ducks and not diving ducks, their natural, swallowed diet consists primarily of aquatic plants and insects, or sometimes small fish, but not 'large prey.'").

86. In order to correct public and consumer perceptions that were manipulated by false narrative of humane treatment spread by D'Artagnan, Plaintiff VFAR spent hundreds of hours and thousands of dollars on assessing and refining its educational outreach efforts, on disseminating its materials, and on conducting a poll of New York voters.¹¹⁴

87. D'Artagnan's successful "humane" marketing scheme has played a pivotal role in the creation and perpetuation of the foie gras industry in New York and the United States and has compelled Plaintiff VFAR to expend resources on lobbying to ban the sale and production of foie gras, which exists largely as a result of D'Artagnan's marketing efforts. Plaintiff VFAR has expended resources on lobbying including the development of written advocacy materials as well as organizing, scheduling, traveling to, and attending meetings with elected officials and hearings with state and local legislative bodies. Moreover, Plaintiff VFAR has diverted resources from its advocacy activities to litigation-related research and other efforts in anticipation of litigation regarding D'Artagnan's Animal Welfare Representations.

88. Plaintiff VFAR mobilized over 5,000 supporters in New York City to engage directly in foie gras-related advocacy, through lobbying trainings,¹¹⁵ holding rallies,¹¹⁶ and encouraging them to take action from home by calling, emailing, and Tweeting at their elected

¹¹⁴ Mason-Dixon Polling & Strategy, *New York City Voter Poll February 2019*, <https://static1.squarespace.com/static/5c5711b1da50d32f334c8116/t/5c7413b1652deae98e4da818/1551111089835/VFARNewYorkCity219Poll.pdf> (Polling results showed that 81% of New York City voters support a prohibition on the sale of foie gras from force-fed birds).

¹¹⁵ Voters For Animal Rights (@votersforanimalrights), Facebook, <https://www.facebook.com/events/350778415619418/> (last visited Oct. 23, 2019) (A Facebook event page titled "Lobbying For Animals Organizing Meeting" event held on June 12, 2019).

¹¹⁶ Voters For Animal Rights (@votersforanimalrights), Facebook, <https://www.facebook.com/events/452130295358045/> (last visited Oct. 23, 2019) (A Facebook event page titled "NYC Rally & Committee Hearing For Animal Rights Legislation" event held on June 18, 2019).

officials¹¹⁷ and educating their friends and family on the inhumane production of foie gras via social media.¹¹⁸

89. As the largest foie gras retailer in the United States, D'Artagnan's influential and far-reaching marketing representations have a compounding negative impact on Plaintiff VFAR's educational and advocacy efforts, in addition to the negative impacts caused by similar misrepresentations from other less influential companies that market foie gras products. Likewise, D'Artagnan's marketing representations have compelled and continue to compel Plaintiff VFAR to expend additional resources on education and advocacy, above and beyond that which Plaintiff VFAR would have expended in the absence of D'Artagnan's unlawful marketing scheme.

90. If D'Artagnan's unlawful marketing is not enjoined, Plaintiff VFAR will be required to expend additional resources in the future to reduce foie gras consumption and to prohibit the sale and production of foie gras. For example, Plaintiff VFAR will be required to and has begun efforts to expend additional resources to support the passage of foie gras-related legislation in jurisdictions across the country, including at the New York State level. Based on the documented effect of D'Artagnan's past unlawful marketing, Plaintiff VFAR anticipates that this campaign will be significantly undermined, requiring further expenditure of resources, if the unlawful marketing is not enjoined.

91. Plaintiff VFAR will also be required to spend additional resources on public advocacy regarding a foie gras sales ban recently passed by the New York City Council. Regardless of whether the ban is enacted, Plaintiff VFAR will also be compelled to expend additional resources on educating New York City restaurants and consumers about the truth of

¹¹⁷ Email from Voters For Animal Rights to listserv subscribers (Aug. 19, 2019, 10:02 AM) (Contains call to action).

¹¹⁸ Email from Voters For Animal Rights to listserv subscribers (Aug. 29, 2019, 09:35 PM) (Contains call to action and shares news article).

D'Artagnan's production practices at least until 2022—when the proposed ban would go into effect, if enacted. Based on the documented effect of D'Artagnan's past unlawful marketing, Plaintiff VFAR anticipates that this advocacy will be significantly undermined, requiring further expenditure of resources, if the unlawful marketing is not enjoined.

92. Moreover, if the New York City bill goes into effect, VFAR will be required to expend additional resources to ensure that the law is enforced (e.g., through identifying and reporting violations) and to ensure the law is upheld in the court of law¹¹⁹ and supported in the court of public opinion. Based on the documented effect of D'Artagnan's past unlawful marketing, Plaintiff VFAR anticipates that these efforts will be significantly undermined, requiring further expenditure of resources, if the unlawful marketing is not enjoined.

JURISDICTION AND VENUE

93. This Court has personal jurisdiction over the parties in this case.

94. Plaintiff VFAR's headquarters is located in the Eastern District of New York and it consents to this Court having personal jurisdiction over the organization.

95. This Court has personal jurisdiction over D'Artagnan because D'Artagnan has purposefully availed itself of the New York consumer market, and distributes the Products to locations and throughout New York, including in the Eastern District of New York, where the Products are purchased.

96. This Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 (diversity). Plaintiff VFAR is a citizen of the state of New York and Defendant D'Artagnan

¹¹⁹ D'Artagnan supplier Hudson Valley Foie Gras has stated that the company intends to file suit to overturn the New York City ban. Verena Dobnik, *New York City Lawmakers Pass Bill Banning Sale of Foie Gras*, the Washington Post (Oct. 30, 2019) https://www.washingtonpost.com/national/new-york-city-lawmakers-pass-bill-banning-sale-of-foie-gras/2019/10/30/21cb5cbc-fb81-11e9-9e02-1d45cb3dfa8f_story.html/.

is a citizen of the state of New Jersey. The matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

97. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b), because a substantial portion of the events or omissions giving rise to the claims occurred in this District. D'Artagnan aims its marketing and advertising at consumers within New York and in the Eastern District of New York. D'Artagnan advertising is accessible in New York and in the Eastern District of New York. D'Artagnan products can be, and are, purchased in stores and online by New York consumers and delivered to locations within the Eastern District. Plaintiff VFAR suffered an injury in the Eastern District of New York.

CAUSE OF ACTION

Violations of the New York General Business Law

98. Plaintiff VFAR incorporates by reference all the allegations of the preceding paragraphs of this Complaint.

99. This action is brought under New York General Business Law (“GBL”) § 349, which makes deceptive acts and practices unlawful. This action is also brought under GBL § 350, which makes false advertising unlawful.

100. D'Artagnan has advertised and marketed the Products with terms such as “humanely raised,” “hand-feeding,” “no stress,” “never caged,” “space to roam,” and “natural behaviors” when, in fact, the ducks used for the Products are routinely: (1) force-fed in an inhumane manner than causes extreme suffering and disease; and (2) raised, fed, handled, and slaughtered in inhumane, crowded, and stressful conditions of confinement that prevent the expression of their natural behaviors. Thus, D'Artagnan has violated GBL § 349 and § 350 by engaging in deceptive acts and practices and by engaging in false advertising.

JURY TRIAL DEMAND

101. Plaintiff VFAR hereby demands a trial by jury.

PRAYER FOR RELIEF

Wherefore, Plaintiff VFAR prays for judgment against D'Artagnan and requests the following relief:

- a. A declaration that D'Artagnan's conduct is in violation of GBL § 349 and § 350;
- b. An order enjoining D'Artagnan's conduct found to be in violation of GBL § 349 and § 350, as well as requiring corrective advertising;
- c. An order granting Plaintiff costs and disbursements, including reasonable attorneys' fees and expert fees, and prejudgment interest at the maximum rate allowable by law; and
- d. Any such further relief as this Court may deem to be just and proper.

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