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Via Registered Mail

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To Whom It May Concern:

Re: Safeway's "Certified Humane" Chicken Meat Violates False Advertising Legislation

I am writing on behalf of Animal Justice, a national organization dedicated to securing legal protection for animals. Our work includes ensuring businesses that use animals do not engage in deceptive marketing practices that induce consumers to unwittingly harm animals with their consumer purchases.

Pursuant to section 9 of the *Competition Act*, I am also writing on behalf of six Canadian adults who believe an offence has been committed.

Safeway has been heavily advertising its "Certified Humane" chicken meat. The advertising is on its website, in its stores in the form of signage and brochures, and on flyers delivered directly to people's homes, including my own home at least twice.

The advertising materials claim the animals sold as chicken meat at Safeway are treated with respect and dignity, handled gently in low-stress environments, and are provided ample space to engage in natural behaviours. Safeway claims to take the care and welfare of chickens very seriously by ensuring their good health and well-being at all times.

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Polls show that 71 percent of Canadians are concerned about the humane treatment of animals raised for food, and 72 percent are willing to pay more for meat that is held to humane standards of care.¹ It is important to fully 81 percent of U.S.-based survey respondents that the chickens they eat have been raised humanely.²

As such, companies like Safeway have a clear economic incentive to represent that they are treating animals humanely, whether or not such representations are in fact true.

A Harris Poll conducted in the United States in October 2015 found that 69 percent of respondents say humane labelling is important to help them decide what meat and poultry products to buy. Sixty-five percent of respondents said a “humane” label on chicken should mean that animals have access to grass or other vegetation. Sixty percent of respondents thought the humane label should indicate that chickens should have sufficient indoor living space to move about freely.³

Evidently, chicken meat labelling is incredibly important in influencing consumer purchasing behaviour. It is also clear that an overwhelming majority of consumers view “humane” labelling on chicken to guarantee certain common-sense standards are being met.

The “Certified Humane” standards advertised by Safeway are established and audited by Humane Farm Animal Care (“HFAC”), a non-governmental US-based organization.

This complaint sets forth the false claims made by Safeway in its marketing materials, followed by an analysis of the laws of which these deceptive claims are in violation.

I. THE FALSE CLAIMS

Numerous claims made in Safeway’s marketing materials advertising “Certified Humane” chicken meat are false and misleading. Five claims in particular stand out as particularly egregious. The imagery is also deceptive and misleading.

¹ Shannon Moneo, “Conventional or Free Range?” *Farm Living* January 13, 2011. Available online at: http://www.chickenout.ca/2011news/wp_article.pdf.

² Faunalytics, “Eating Chickens in On the Rise, But Consumers Want Humane Options,” online at: <https://faunalytics.org/feature-article/eating-chickens-is-on-the-rise-but-consumers-want-humane-options/>.

³ Animal Welfare Institute, “Survey on Free Range and Humanely Raised Label Claims”, online at: <https://awionline.org/sites/default/files/uploads/documents/FA-AWI-FreeRangeHumanelyRaised-Poll-Dec2015.pdf>.

Claim #1: Chickens enjoy “ample space”

Safeway’s marketing materials state that chickens are provided “ample space.” In fact, HFAC’s standards provide only that producers may not exceed 30 kg/m², or approximately 15 birds per square metre. Chickens can be packed even more tightly with specific approval.

This is not “ample space” as the majority of average consumers understand it.⁴ The phrase “ample space” conjures at least enough room to move without bumping into someone or something. Indeed, even the imagery on Safeway’s materials communicates an air of spaciousness by showing a chicken barn set far back with plenty of green pasture in the foreground. Not pictured is the inside of the chicken barn where 15 birds per square metre spend their entire lives packed in together.

The Canadian poultry industry has issued its own code of practice, which applies to all producers, not just those ostensibly certified as humane. The poultry code of practice recommends stocking densities of 31 kg/m². That is only one additional kilogram—amounting to only half a bird—per square metre.

The European Commission’s respected Scientific Committee on Animal Health and Animal Welfare (SCAHAW) recommends stocking densities of 25 kg/m² or lower. According to SCAHAW, “It is clear from the behaviour and leg disorder studies that the stocking density must be 25 kg/m² or lower for major welfare problems to be largely avoided and that above 30 kg/m², even with very good environmental control systems, there is a steep rise in the frequency of serious problems.”⁵

Safeway’s guarantees that chickens are given “ample space” translates into only 15, rather than 15.5, animals crammed into each square metre of floor space, thus barely surpassing the poultry industry’s own recommended minimum standard and allowing a stocking density that is associated with major welfare problems.

Claim #2: Chickens are kept in “cage-free environments”

Safeway’s marketing materials boast that certified humane chickens are raised in “cage-free environments.” However, while egg-laying hens are confined to cages, virtually all broiler (meat) chickens in Canada are raised in cage-free environments.⁶ That is the norm, yet Safeway’s emphasis on this factor implies to consumers that its cage-free environments are special.

⁴ *Ibid.*

⁵ European Commission, “The Welfare of Chickens Kept for Meat Production (Broilers): Report of the Scientific Committee on Animal Health and Welfare”, 21 March 2000, SANCO.B.3/AH/R15/2000.

⁶ Code of practice s. 3.2.11, “Broilers are not normally reared in cages in Canada.”

The poultry industry's practice of putting animals in cages or not is an economic decision, not a welfare-based one. Broiler birds raised in cages under experimental conditions suffered from significantly more breast blisters than floor-reared birds, which consumers find unattractive and which therefore impacts price.⁷

Stating that chickens are raised in cage-free environments takes advantage of consumers' lack of knowledge about farming practices. An overwhelming majority of Australian consumers—four out of five—incorrectly believe that chickens raised for meat are farmed using cages, while less than three percent are aware that cages are not used at all for meat chickens.⁸

Safeway is capable of communicating that a practice they're advertising as being humane is in fact an industry norm. In the very same materials, Safeway makes a point of including a footnote on their claim about animals being raised without the use of antibiotics and hormones to clarify that *all* chickens are raised without the use of hormones in Canada. The deceptive claim that certified chickens are raised in cage-free environments would require similar clarification to comply with the law.

Claim #3: Chickens are “handled gently in low stress environments”

For the most part, chickens will not be handled by humans. The notable exception to this is when they are caught for slaughter and thrown into transport crates. At the slaughterhouse, they are again handled when they are removed by workers and shackled upside down on the rapidly moving slaughter line.

The industry's own code of practice acknowledges that holding chickens upside down is stressful and should be minimized.⁹ Despite this instruction, the industry norm is for workers to carry multiple animals in each hand, upside down. The confused, terrified birds experience extreme stress, and are frequently physically harmed with bruises, broken bones, dislocated joints, and other injuries.¹⁰

Despite all of these serious welfare concerns associated with handling, HFAC's standards require only three things: lighting must be low, birds must be caught individually and carried by both legs, and no more than three birds should be

⁷ F.N. Reece, J.W. Deaton, J.D. May, and K.N. May, “Cage Versus Floor Rearing of Broiler Chickens,” *Poultry Science* (1971) 50 (6): 1786-1790.

⁸ WorldPoultry, “Australian chicken consumers unaware of production methods, September 24, 2010, online at: <http://www.worldpoultry.net/Broilers/Markets--Trade/2010/9/Australian-chicken-consumers-unaware-of-production-methods-WP007955W/>.

⁹ National Farm Animal Care Council, Code of Practice for the care and handling of Chicken, Turkeys and Breeders from Hatchery to Processing Plant, online at: https://www.nfacc.ca/pdfs/codes/chickens_turkeys_breeders_code_of_practice.pdf.

¹⁰ The Humane Society of the United States, “An HSUS Report: Welfare Issues with Conventional Manual Catching of Broiler Chickens and Turkeys,” 2009, *HSUS Reports: Farm Industry Impacts on Animals*. Paper 9.

carried in one hand. Carrying six birds upside down—a position that is known to cause distress—cannot accurately be referred to as “gentle” or “low stress.” There is nothing gentle or low stress about being thrown into a transport crate.

Claims #4 & #5: Chickens can engage in “natural behaviours”; Safeway ensures animals’ “good health and well-being at all times”

These claims communicate that the chickens live a happy life in an environment that meets their needs. They do not. In addition to the overcrowding and rough handling to which they will be subjected, the animals suffer from the following:

- No access to the outdoors. The chickens will never feel sunshine, see natural light, peck in the dirt and grass, breathe fresh air, or run freely—all basic freedoms that at minimum characterize a chicken’s natural life. Sixty-five percent of American consumers believe that when chicken meat is certified humane, the chickens should have had access to the outdoors.¹¹
- No fresh air. In fact, the HFAC standards allow up to 25 ppm of ammonia,¹² a toxic byproduct of chicken waste, which even the poultry industry concedes is in the harmful range.¹³ Harmful levels of ammonia can cause eye, skin and respiratory problems.¹⁴ Canada’s draft code of practice for chickens states that: “The ammonia concentration to which birds are exposed should ideally be less than 10 ppm. Measures should be taken to control ammonia levels from exceeding 20 ppm.”
- No natural family structures. In nature, chicks spend their first few weeks literally under their mother’s wing or at least at her side.¹⁵ Chickens raised for meat will never meet their mothers. They are born at a hatchery and sent in large batches to farms,¹⁶ where they spend their entire lives in the company of thousands of other babies having their peeps ignored.¹⁷

¹¹ Animal Welfare Institute, “Survey on Free Range and Humanely Raised Label Claims”, online at: <https://awionline.org/sites/default/files/uploads/documents/FA-AWI-FreeRangeHumanelyRaised-Poll-Dec2015.pdf>.

¹² Humane Farm Animal Care, “Standards for Chickens,” August 2014, p. 7. Available: <http://certifiedhumane.org/wp-content/uploads/2015/11/Std14.Chickens.1A.pdf>.

¹³ National Farm Animal Care Council, Draft Code of Practice for the Care and Handling of Hatching Eggs, Breeders, Chickens, and Turkeys, online at: https://www.nfacc.ca/resources/codes-of-practice/chickens-turkeys-and-breeders/pcp/DRAFT_poultry_code.pdf.

¹⁴ The Humane Society of the United States, “An HSUS Report: The Welfare of Animals in the Chicken Industry,” December 2013, online:

http://www.humanesociety.org/assets/pdfs/farm/welfare_broiler.pdf.

¹⁵ See e.g. Tamara Kenneally, “A Mother At Last,” *Free From Harm*, online:

<http://freefromharm.org/animal-rescue-stories/mother-hen/>.

¹⁶ Mercy For Animals Canada, online at: <http://canadahatchery.mercyforanimals.org/>.

¹⁷ Mercy For Animals, online: <http://www.tysontorturesanimals.com/Tyson>.

- Unnatural lighting duration and intensity. The HFAC standards do not require access to natural light. In each 24 hour period the chickens are assured just six hours of darkness. When the lights are on, they are permitted to be extremely dim,¹⁸ which causes eye and vision problems.¹⁹
- No limits on genetic selection for rapid growth. Chickens produced commercially today are four times larger than they were in the 1950s,²⁰ which leads to lameness, heart failure and compromised immunity.²¹ Professor Emeritus and husbandry expert John Webster has called such genetic manipulation “the single most severe, systematic example of man’s inhumanity to another sentient animals.”²²
- Slaughter by electric immobilization, despite that less inhumane methods are available and in use in other countries.²³

On chicken meat farms certified as humane by Safeway, chickens cannot engage in natural behaviours and their health and well-being are compromised, contrary to Safeway’s marketing claims.

Pastoral Imagery Does Not Represent Reality

Finally, the expansive green grassy fields depicted on the brochure, including specifically in the section on chicken meat, are misleading. The chickens will never see the light of day or feel grass beneath their feet. The outdoor pastoral imagery alongside text about how chickens are treated strongly suggests that the chickens enjoy this bucolic landscape. In reality, it is the windowless warehouse-like barn that takes up just a quarter of the small image that the chickens will spend their entire lives in.

Considering 65 percent of people believe humane certification does or should mean that animals have access to the outdoors,²⁴ this misleading imagery is material.

¹⁸ Humane Farm Animal Care, “Standards for Chickens,” August 2014, p 6. Available: <http://certifiedhumane.org/wp-content/uploads/2015/11/Std14.Chickens.1A.pdf>.

¹⁹ The Humane Society of the United States, “An HSUS Report: The Welfare of Animals in the Chicken Industry,” December 2013, online:

http://www.humanesociety.org/assets/pdfs/farm/welfare_broiler.pdf.

²⁰ Zuidhof MJ, Schneider BL, Carney VL, Korver DR, Robinson FE, “Growth, Efficiency, and Yield of Commercial Broilers from 1957, 1978, and 2005,” 2014 Poultry Science 93(12).

²¹ Compassion in World Farming Trust, “The Welfare of Broiler Chickens in the European Union,” 2005, online: <http://www.ciwf.com/media/1241298/welfare-of-broilers-in-the-eu-2005.pdf>.

²² John Webster, *Animal Welfare: A Cool Eye Towards Eden*, 1995 (Cambridge, MA: Blackwell Science, p. 156).

²³ Dr. Karen Davis, “The Need for Legislation and Elimination of Electrical Immobilization,” United Poultry Concerns, online: <http://www.upc-online.org/slaughter/report.html>.

II. THE LAW

Section 5 of the *Food and Drugs Act* prohibits labelling or advertising food in a manner that is “false, misleading or deceptive or is likely to create an erroneous impression regarding its character...”. This is a strict liability offence; that is, if the prohibited act has been performed, the offence is established, absent the defendant’s proving due diligence.²⁵

Stating that chickens enjoy “ample space” when 15 chickens are crowded into a square metre—a density that barely exceeds the industry standard—creates an erroneous impression regarding the amount of space afforded to the animals. This impression is reinforced with the pastoral imagery. Stating that chickens are not put in cages implies that this somehow differs from other chickens raised for meat, when it does not—chickens used for meat are not generally kept in cages in Canada. Chickens marketed as “Certified Humane” by Safeway are not handled gently in low-stress environments, they cannot engage in natural behaviours, and their health and well-being are comprised. In stating the contrary, Safeway is making false, misleading, and deceptive statements that are likely to create an erroneous impression in the minds of consumers.

Section 7 of the *Consumer Packaging and Labelling Act* prohibits labelling or advertising any prepackaged product containing any false or misleading representation.²⁶ “False or misleading representation” includes any description or illustration of the origin or method of production of a prepackaged product “that may reasonably be regarded as likely to deceive a consumer”.²⁷

Safeway’s claims that chickens enjoy “ample space,” that they are “handled gently in low-stress environments,” that they can engage in “natural behaviours,” and that they are assured “good health and well-being at all times” are grossly false and misleading. It is easy to see that these claims are likely to deceive consumers.

According to the Competition Bureau, a main purpose of the *Consumer Packaging and Labelling Act* is “to help consumers make informed purchasing decisions.”²⁸ Consumers who do not want to finance animal suffering with their purchases cannot make informed purchasing decisions when a company grossly misrepresents the conditions under which animals under its care are raised and killed.

²⁴ Animal Welfare Institute, “Survey on Free Range and Humanely Raised Label Claims”, online at: <https://awionline.org/sites/default/files/uploads/documents/FA-AWI-FreeRangeHumanelyRaised-Poll-Dec2015.pdf>.

²⁵ R.S.C., 1985, c. F-27, s. 31.1. See also: *R. v. Rube*, 1991 CanLII 517 (BCCA).

²⁶ R.S.C., 1985, c. C-38, s. 7.

²⁷ R.S.C., 1985, c. C-38, s. 7(2)(c).

²⁸ Competition Bureau, “Our Legislation,” online at:

http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/h_00148.html#packaging.

Section 52(1) in Part VI (“Offences in relation to competition”) of the *Competition Act* prohibits “knowingly or recklessly make a representation to the public that is false or misleading in a material respect” in the course of promoting, directly or indirectly, a product.²⁹

Section 74.01(1) in Part VII.1 (“Deceptive marketing practices”) of the *Competition Act* further deems representations made to the public that are “false or misleading in a material respect” to be reviewable conduct.

It is not necessary to prove that any person has in fact been deceived or misled for either offence to be made out.³⁰

In determining whether a representation is false or misleading in a material respect, the general impression as well as the literal meaning must be considered.³¹ This general impression is created by the materials as a whole, including both words and imagery.

A representation is material if it is sufficiently essential that it could affect the decision to purchase.³² To put it another way, a representation is material if it conveys a false or misleading impression to an average consumer who would “likely be influenced by that impression in deciding whether or not he would purchase the product being offered.”³³

Taken together, Safeway’s claims paint a picture of happy chickens enjoying a natural life. In reality, the chickens sold under Safeway’s “Certified Humane” label lived and died under circumstances of deprivation, artificiality, suffering, and fear. Safeway’s misrepresentations are material: they claim the chickens have been treated humanely when nothing could be further from the truth. This goes to the heart of the representation, and will influence consumers in their purchasing decisions; indeed, that is exactly what the “Certified Humane” marketing is designed to do.

In 2013, chicken meat companies in Australia were found guilty of false advertising for claiming that the chickens under their care were “free to roam,” when it was clear that this would create a false impression in consumer’s minds.³⁴ The Federal

²⁹ R.S.C., 1985, c. C-34, s. 52.

³⁰ R.S.C., 1985, c. C-34, ss. 52(1.1) and 74.03(4)(a).

³¹ *Competition Act*, R.S.C., 1985, c. C-34, ss. 52(4) and 74.03(5)..

³² *R. v. Stucky*, 2006 CanLII 41523.

³³ See e.g. *R. v. Kenitex Canada Ltd.* (1980), 51 C.P.R. (2d) 103 at 107 (Ont. Co. Ct.) rev’d in part on other grounds, sub nom *R. v. Fell* (1981), 1981 CanLII 1949 (ON CA), 34 O.R. (2d) 665 (C.A.); see also *Bell Mobility Inc. v. Telus Communications Company*, 2006 BCCA 578.

³⁴ Animals Australia, “ACCC takes chicken industry to court,” online: <http://www.animalsaustralia.org/features/accc-takes-chicken-industry-to-court.php>; see also

Court ordered the companies to pay a total of \$400,000 in civil pecuniary penalties.³⁵

The crowding in Australian chicken farms is no different from the crowding in Canadian chicken barns. Canadian regulators should follow the lead of their Australian counterparts and hold Safeway accountable for its deceptive marketing practices.

Animal Justice is available to assist your offices in investigating this matter.

Yours truly,

A handwritten signature in blue ink, appearing to read 'Anna Pippus', with a stylized flourish at the end.

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Australian Competition and Consumer Commission v. Turi Foods Pty Ltd (No 4), [2013] FCA 665.

³⁵ Animals Australia, "Court orders chicken companies to pay \$400,000 for 'free to roam' misleading claims," 31 October 2013, online: <https://www.accc.gov.au/media-release/court-orders-chicken-companies-to-pay-400000-for-%E2%80%98free-to-roam%E2%80%99-misleading-claims>.