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SUPERIOR COURT OF CALIFORNIA (UNLIMITED JURISDICTION) COUNTY OF SAN FRANCISCO

PEOPLE FOR THE ETHICAL TREATMENT OF ANIMALS, INC.,

a Virginia nonprofit corporation;
JOHN ROBBINS, an individual,
 Plaintiffs,

v.

CALIFORNIA MILK ADVISORY BOARD, and **DOES 1 through 50**, inclusive,
 Defendants.

COMPLAINT FOR INJUNCTIVE RELIEF

(Business and Professions Code § 17200 et seq.; § 17500 et seq.; § 17800 et seq.)

INTRODUCTORY STATEMENT

1. This is a complaint seeking a permanent injunction against the defendants to prevent ongoing deceptive advertising practices in the false representations of the California dairy industry made in its "Happy Cows" advertisements. The theme of these advertisements is to portray spacious, grassy pastures on beautiful, rolling hills with a few cows grazing and wandering about and "enjoying" the ease, luxury, and contentment of life as a dairy cow in California. The tag line for each of the ads is "Great Cheese comes from Happy Cows. Happy Cows come from California." In reality, however, the vast majority of California's dairy cows live anything but easy, comfortable lives. They routinely spend their lives in "dry" lots of grassless dirt (which becomes and remains mud throughout some months of the year), in sharp contrast to the "fictional," idyllic setting of the ads. They are repeatedly impregnated and then milked throughout their pregnancies. Their calves are taken away shortly after birth, many of whom are then condemned to veal crates. They commonly suffer from painful maladies from their intensive rearing. And when their worn bodies can no longer meet the inordinately high production demands of the industry, they are slaughtered. While plaintiffs do not ask the Court to rule on whether California cows are truly "happy," the nature of this complaint is that the conditions under which most California dairy cows are kept are so materially different (in a way that matters to, and misleads, consumers) than those depicted in the ads as to render them unlawfully deceptive and, therefore, subject to injunctive relief under California law.

PARTIES

2. Plaintiff PEOPLE FOR THE ETHICAL TREATMENT OF ANIMALS, INC. ("PETA") is,

CAMPAIGN UPDATES



PETA Launches "You Decide" Ad Campaign



Now Showing on PETA TV



Meet Your Meat: Dairy Production



California's Dairy Industry



THE HIDDEN LIVES OF COWS

Cows are intelligent, loyal animals who enjoy solving problems. Read more.

PHOTO GALLERY

Photos Submitted With Lawsuit



TAKE OUR POLL

Are you a California resident?

- Yes
- No

Do you believe that the government should be able to lie to you?

- Yes
- No

After witnessing the reality for cows in California, do you believe California cows are "happy"?

- Yes

and at all times herein mentioned was, an international nonprofit membership corporation organized under the laws of the State of Virginia, with its corporate headquarters located in Norfolk, Virginia. PETA and its members are committed to ameliorating the suffering of animals. Toward this end, PETA has conducted investigations into and campaigned extensively with respect to the dairy industry and the difficult conditions under which the majority of dairy cows are kept. PETA maintains several Web sites with information about the welfare of cows and the dairy industry, including UnhappyCows.com, DumpDairy.com, GoVeg.com, and its main site, PETA.org. PETA counts among its membership approximately 60,000 California residents. PETA has several employees based in California, as well.

3. Plaintiff John Robbins is a resident of Santa Cruz County, California. Mr. Robbins has an extensive personal knowledge of the treatment of the state's dairy cows and their calves. He has written and spoken extensively on these and other issues dealing with factory farming and its impact on animals and the environment.

4. Defendant CALIFORNIA MILK ADVISORY BOARD ("CMAB") is, and at all times herein mentioned was, a California agricultural advisory board, created by a marketing order issued by the California Department of Food and Agriculture, which supervises CMAB's operations. CMAB has its principal place of business in South San Francisco, San Francisco County, California.

5. The true names and capacities of the defendants sued herein as Does 1 through 50, inclusive, are unknown to plaintiffs at this time, and plaintiffs sue the said defendants by such fictitious names. Plaintiffs will ask leave of court to amend this complaint to show their true names and capacities when the same have been ascertained. Each of the fictitiously named defendants is responsible in some manner for the conduct alleged herein.

GENERAL ALLEGATIONS

6. For approximately the last two years, CMAB has been running an advertising campaign that is commonly referred to as the "Happy Cows" campaign ("Happy Cows"). The theme of these advertisements is to portray spacious, grassy pastures on beautiful, rolling hills with a few cows grazing and wandering about and "enjoying" the ease, luxury, and contentment of life as a dairy cow in California. The tag line for each of the ads is "Great Cheese comes from Happy Cows. Happy Cows come from California." The campaign has been marketed through, among other methods, television and radio commercials, T-shirts, stuffed toys, and an Internet site.

7. The ads, in various mediums, make explicit and implied representations, both visually and verbally, about the California dairy industry's treatment of cows and calves, and the supposedly easy and luxurious lives they live. These representations include, but are not limited to, visual depictions of sparsely populated herds of cows and calves grazing together in lush, grassy fields of rolling hills or bedded down inside barns filled with straw, and verbal references to California's dairy cows being "pampered" and enjoying clean air, good food, and plenty of grass for grazing. The defendants even market a T-shirt that shows a "Happy Cow" and the words, "Heaven's Come to Betsy."

8. While the Happy Cows campaign creates an impression for consumers that California cows and their calves routinely live easy lives of comfort in lush, grassy fields, the reality, for the vast majority of California's cows, is very different. California's dairy cows and their calves live short lives of intense production demands, after which they are slaughtered.

9. The treatment of animals used in agricultural industries is an important issue for many consumers. The Happy Cows ad campaign is likely to mislead the public in its perception of the state of the California dairy industry and its treatment of cows and their calves. The defendants, and each of them, know, or by the exercise of reasonable care should know of this likelihood.

10. Contrary to the depictions in the Happy Cows ads, the vast majority of California dairy cows do not live easy lives. They are not typically permitted to roam freely in grass-covered pastures of rolling hills and shade trees but are predominantly kept on "dry lots" of urine- and dung-fouled dirt (urine- and dung-fouled mud at some times of the year). The result of dry-lot farming is that, on average, California dairy cows are kept in larger numbers in smaller areas than anywhere else in the country. In 1998, the national average dairy herd size was 60 cows; California herds averaged

No

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650 cows. And the herd sizes are growing; by last year, the average had ballooned to 720 cows. Currently, a number of operations in the state milk as many as several thousand cows each day.

11. California dairy cows are pushed to produce more milk per cow than nearly all other states, so any reference or implication by the Happy Cows campaign that California cows live easier lives than other states is also misleading. In 2000, the nationwide annual average milk production per cow was 18,204 pounds; in California, the average was nearly 3,000 pounds greater at 21,169 pounds per cow.

12. Adding to their discomfort, California dairy cows suffer in significant numbers from painful maladies, such as laminitis (a painful hoof condition), mastitis (a bacterial infection of the cow's udder), milk fever (caused by inadequate levels of calcium in the cow's blood), and Johne's disease (a bacterial infection that can result in severe weight loss, diarrhea, and even death).

13. In order to produce milk, cows must be impregnated. California dairy cows are repeatedly impregnated throughout their lives, most often by artificial means, and generally deliver calves every twelve to thirteen months, with minimal time in between pregnancies. They continue to be milked several times a day throughout their pregnancies. And when they can no longer deliver calves or produce milk, they are sent to slaughter. Slaughter occurs at an average age of four or five, just a fraction of what a dairy cow's natural lifespan would otherwise be.

14. The injury risks associated with repeated pregnancies are significant and severe. According to the United States Department of Agriculture, calving problems are among the leading causes of death on the farm for the nation's dairy cows. And calves are at great risk as well. California dairy cows experience inordinately high numbers of fetal deaths and pre-weaning mortalities every year.

15. Further, because of the repeated calvings (which are physically demanding for the mother and are accompanied by constant risk of complications, such as paralysis), the steady administration of hormones and/or other drugs, and the constant depletion of desperately needed nutrients throughout their lives, dairy cows are commonly severely debilitated by the time they are sent to slaughter. As a result, much of the meat used to make hamburgers in this country, meat which is typically considered too tough to be used for "prime" beef, comes from the worn out bodies of dairy cows.

16. Further evidence of the difficulties endured by dairy cows is demonstrated by the large number of "downers," a term used for cows who are unable to walk. Whether it is because they are injured, diseased, crippled, or simply too weak to support themselves, these cows suffer greatly as a result of their incapacity. Invariably, the highest percentage of downer cows arriving at slaughterhouses throughout the country are dairy cows. Among the reasons for this are the intense difficulties and dangers associated with a life of constant milk production. Dairy cows are made to produce significantly larger amounts of milk than their bodies are designed for. Nutrients, such as calcium and magnesium, that would otherwise be used for the cows' own nutritional needs, are diverted to the milk the cows produce. As a result, dairy cows often suffer from brittle, broken bones, milk fever or other diseases, or emaciation and weakness to the point that they cannot even stand up. California dairy cows hardly live lives of comfort and ease.

17. The Happy Cows campaign is also likely to mislead the public because of its false depiction of young calves freely roaming in pastures with adult cows. This simply does not happen. In fact, nearly all calves born on dairy operations in California are removed forever from their mothers within twenty-four hours of their births, which, experts have documented, causes their mothers noticeable distress. Once taken from their mothers, many of the calves are sent—through auctions, stockyards, and the like—to beef feedlots or directly to slaughter. Of the others, the females are raised to replace their mothers, often in small, solitary pens. The males are condemned to veal crates—these calves are routinely kept in wooden stalls or metal crates barely larger than their bodies so that they cannot even turn around; they can only stand or kneel down on the bare, hard floors. Some are even tied to the walls of their enclosures to restrict their movement even further. For nearly their entire lives, they are unable to lie down, turn around, or experience anything close to the pastoral fields featured so prominently in the Happy Cows ads. After suffering through as many as seventeen weeks of being handled this way, the calves are removed from their enclosures, their

sore legs often too painful and swollen from lack of movement and from balancing on slatted or grated floors to even permit them to walk properly, and then shipped in all weather to the slaughterhouse, where they are killed. The lives of these calves or, for that matter, most other calves born on dairy farms, stands in stark and completely opposite conflict with the misrepresentations of the idyllic depictions in the Happy Cows ads.

18. Another misleading aspect of the Happy Cows campaign is its portrayal of the environmental implications of the dairy industry. The ads make express and implicit representations that California's dairy industry is friendly to the environment through, for example, its depictions of lush, grassy dairy pastures and references to the clean air and sunshine that dairy cows enjoy. In fact, the California dairy industry is one of the state's worst polluters.

19. According to the United States Environmental Protection Agency (EPA), a single dairy cow expels 120 pounds of wet manure every day, an amount of waste equal to that of 20-40 people. At that rate, California's 1.6 million dairy cows expel more than 35 million tons of manure each year. As a result, manure "lagoons" are common sites at large dairies. These lagoons can be as long as four football fields set end to end.

20. In 1998, the California State Water Resources Control Board reported that nine rivers and 49 ground water basins were impaired from animal operations. Among the impaired water basins, several listed dairies as the exclusive source of animal operation impairment. Among the pollutants contaminating the water from these dairies are nitrates, which, according to the EPA, can contaminate drinking water supplies drawn from ground water. Nitrates have been linked to cancer and birth defects.

21. Air, water, and ground pollution have become so bad in some areas of the state, in fact, that some counties have issued moratoriums on the building of any new dairies because of environmental concerns.

22. The conditions described above are just samples of the real conditions for the majority of California dairy cows and calves—conditions that are drastically and materially contrary to the depictions and representations made in the Happy Cows campaign. Contrasting pictures of the defendant's Happy Cows ad screen shots and those of actual California dairy cows and calves are attached to this complaint as Composite Exhibit "A(1)-(5)," and are incorporated as if fully set forth herein.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

(False or Deceptive Advertising)

23. Paragraphs 1-22 are incorporated herein by reference as though fully set forth.

24. In carrying out the Happy Cows campaign for the purpose of promoting the state's dairy industry and increasing dairy sales, defendants, and each of them, publicly disseminated, and are continuing to publicly disseminate, representations related to that purpose, both express and implied, that they knew, or in the exercise of reasonable care should have known, were, and are, untrue or misleading, and so acted in violation of California Business & Professions Code Section 17500, et seq.

25. Plaintiffs have no adequate remedy at law in that the defendants, and each of them, unless enjoined by this court, will continue to engage in untrue and misleading advertising, as alleged above, in violation of California Business & Professions Code Section 17500, et seq.

SECOND CAUSE OF ACTION

(Unfair Competition)

26. Paragraphs 1-22 are incorporated herein by reference as though fully set forth.

27. In carrying out the Happy Cows campaign, defendants, and each of them, have engaged and continue to engage in unfair competition, as set forth in California Business & Professions Code Section 17200, et seq.

28. The actions of defendants, and each of them, as alleged above, violate California's Unfair Competition Law, California Business & Professions Code Section

17200, et seq., which authorizes the enjoining of an entity from any past, current, or future engagement in unfair competition.

THIRD CAUSE OF ACTION
(Environmental Misrepresentation)

29. Paragraphs 1-22 are incorporated herein by reference as though fully set forth.

30. In carrying out the Happy Cows campaign, defendants, and each of them, made and disseminated representations, both express and implied, regarding the environmental implications of the dairy industry that were, and are, untrue, deceptive, or misleading, and so acted in violation of California Business & Professions Code Section 17580, et seq.

31. Plaintiffs have no adequate remedy at law in that the defendants, and each of them, unless enjoined by this court, will continue to engage in untrue and misleading advertising, as alleged above, in violation of California Business & Professions Code Section 17580, et seq.

PRAYER FOR RELIEF

WHEREFORE, the plaintiffs seek judgment as follows:

1. For permanent injunctive relief enjoining defendants from making, disseminating, or causing to be made or disseminated before the public in any manner whatsoever, the unlawful representations of the Happy Cows ad campaign, as specified within this complaint;
2. For costs of suit incurred herein;
3. For an award of reasonable attorney's fees;
4. For such other further relief as this Court may deem appropriate.

Respectfully Submitted,

Dated: December 11, 2002
Bruce Wagman
Matthew Penzer
Attorneys for Plaintiffs

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