

BEFORE THE UNITED STATES FEDERAL TRADE COMMISSION

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THE HUMANE SOCIETY OF THE UNITED STATES,  
Petitioner,

SEABOARD FOODS/SEABOARD CORPORATION  
Proposed Respondent.

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**COMPLAINT REQUESTING ACTION TO ENJOIN THE DISSEMINATION OF  
FALSE OR DECEPTIVE ADVERTISING**

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THE HUMANE SOCIETY  
OF THE UNITED STATES  
2100 L Street, NW  
Washington, DC 20037  
Telephone: (202) 452-1100  
Facsimile: (202) 676-2357

## INTRODUCTION

Pursuant to sections 2.1 and 2.2 of the Federal Trade Commission (“Commission” or “FTC”) regulations, 16 C.F.R. §§ 2.1 and 2.2, Complainant The Humane Society of the United States (“The HSUS”) hereby requests that the Commission investigate and commence enforcement action against Seaboard Foods and Seaboard Corporation (“Seaboard”) for engaging in false or misleading advertising in violation of the Federal Trade Commission Act, 15 U.S.C. §§ 41-58, *as amended*.

As described herein, Seaboard is issuing unlawfully false or misleading representations about the animal welfare practices of its wholly owned subsidiary Seaboard Foods, one of the largest pork producers in the country. Seaboard Foods’ “Sustainability & Stewardship Report,” accessible through both the Seaboard Corporation and Seaboard Foods websites,<sup>1</sup> and videos and other statements available on the Seaboard Foods website are replete with false and/or misleading representations about Seaboard’s animal welfare practices, claims that animals raised to produce Seaboard products are raised “free from cruelty” and only in accordance with the “most humane practices.” These unqualified claims are not only irreconcilable with the documented findings of a recent investigation of Seaboard, but also with the overwhelming majority of consumer opinion data that shows that the company’s routine practices—such as intensive, isolated confinement of sows and castration without pain killers—are unacceptable. These claims are material and misleading to consumers concerned about corporate social responsibility (“CSR”), and, through the above-mentioned report, and identical statements contained in videos and

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<sup>1</sup> See Attachment 1, “Sustainability & Stewardship Report,” Seaboard Foods (April 2008), *at* <http://www.seaboardcorp.com/companies-foods.html> *and* [http://www.seaboardfoods.com/FileLibrary/FileImage/Seaboard\\_Foods\\_Sustainability\\_Report\\_04-08.pdf](http://www.seaboardfoods.com/FileLibrary/FileImage/Seaboard_Foods_Sustainability_Report_04-08.pdf).

pages on the Seaboard Foods website, Seaboard has actively marketed to CSR-conscious consumers.<sup>2</sup>

Seaboard is deceiving consumers concerned about the suffering of animals with false assurances of care. FTC intervention is particularly important here because there are virtually no market restraints on this type of deception. Consumers are unable to determine upon receiving the product that they have been deceived about the level of animal care provided because production practices are not readily apparent in the final product. For many consumers, company representations may be their only source of information about the treatment of animals during production. The result is that repeat purchasers may continue to be deceived if the representations continue without FTC scrutiny or demand for substantiation.

Accordingly, The HSUS respectfully requests that the Commission exercise its investigation and enforcement authority to stop Seaboard from misleading consumers through unlawful statements and omissions about Seaboard Foods' animal welfare practices.

## **PARTIES**

### 1. The HSUS

The HSUS is the nation's largest animal protection organization, with nearly eleven million members and constituents. The HSUS is based in Washington, D.C., and works to protect all animals through education, investigation, litigation, legislation, advocacy, and

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<sup>2</sup> See Attachment 2, "Our Vision and Values" and "Our Commitment to Quality;" available at <http://www.seaboardfoods.com/About-SSVision/Index.htm> and <http://www.seaboardfoods.com/About-SSQuality/Index.htm>.

field work. Amongst other issues, The HSUS campaigns to eliminate the most egregious factory farming practices.

## 2. Seaboard Foods/Seaboard Corporation

Seaboard Foods is one of the largest pork producers in the United States, producing more than four million pigs annually. Seaboard Corporation is the parent company of Seaboard Foods. Seaboard's common stock is listed on the New York Stock Exchange AMEX Equities and trades under the ticker symbol "SEB." Its corporate headquarters are located at 9000 West 67th Street, Merriam, KA 66202.

### STANDARD OF REVIEW

Unlawful deception will be found "if there is a representation, omission or practice that is likely to mislead the consumer acting reasonably in the circumstances, to the consumer's detriment."<sup>3</sup>

### FALSE OR MISLEADING CLAIMS RELATING TO PRODUCTION PRACTICES

#### 1. Seaboard Foods Statements and Videos Presented as Factual, Accurate, and Material

In April 2008, Seaboard Foods issued a press statement announcing the release of the company's first "Sustainability & Stewardship Report."<sup>4</sup> The 28-page report provides information about the company's six key core commitments, including animal care. In the

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<sup>3</sup> FTC Policy Statement on Deception, appended to *Cliffdale Assocs., Inc.*, 103 F.T.C. 110, 174 (1984).

<sup>4</sup> Press Release: Seaboard Foods showcases commitment to sustainability and stewardship (April 24, 2008), *available at* <http://www.seaboardfoods.com/About/PressRelease.asp?ItemKey=84&=&None>

press statement, Seaboard Foods president Rod Brenneman claimed that the report acts as a “showcase” relating to ways that Seaboard acts as a good corporate citizen.<sup>5</sup>

The information contained in Seaboard’s “Sustainability & Stewardship Report,” which is repeated verbatim in statements and videos on the Seaboard Foods web site,<sup>6</sup> is presented as factual, accurate, and material. In addition to being presented in the form of an official company “report,” the information is laid out in a format that first describes Seaboard Foods’ values and policies as they relate to a particular CSR topic (the “core commitments”) and then explains what the company does to implement those policies. With respect to animal care, which is one of Seaboard Foods’ six “core commitments,” assurances relating to the humane treatment of animals are combined with statements implying that Seaboard has created its animal care program using the best available science, adding further weight to these assurances. Statements contained in the report and made by Seaboard Foods President & CEO Rod K. Brenneman also frame these issues as key to the success of the company.<sup>7</sup> The commitment to the CSR policies asserted in the report and website, including the humane treatment of animals, are “what separates Seaboard from other companies.”<sup>8</sup>

Seaboard, then, expressly represents these assertions as being a deciding factor on which consumers can rely in their purchase decisions relating to products produced by humane methods. Regarding animal care specifically, the report directly speaks to

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<sup>5</sup> *Id.*

<sup>6</sup> See Seaboard Foods, “Sustainability & Stewardship: Our Never-Ending Commitment,” at <http://www.seaboardfoods.com/About-SSHHome/Index.htm>; Seaboard Foods, Videos “For Retailers” and “For Food Service,” at <http://www.seaboardfoods.com/About-QualityCircle/Index.htm>.

<sup>7</sup> Press Release: Seaboard Farms sets new industry standard with animal welfare audit system (June 24, 2003), available at <http://www.seaboardfoods.com/33.03.htm>. See also See Attachment 1, “Sustainability & Stewardship Report,” Seaboard Foods (April 2008) (“Our commitment to do the right thing makes Seaboard Foods a preferred supplier among our customers and has led to the overall success of our company.”).

<sup>8</sup> See Attachment 1, *Sustainability and Stewardship*, p. 2.

consumers concerned about animal care by assuring them that the company believes its animals “can and should be raised, transported and processed using procedures that are safe and free from cruelty and neglect.”<sup>9</sup> It would be hard to imagine representations that more directly speak to CSR-minded consumers concerned about animal welfare than those at issue here.

## **2. False and Misleading Assertions About Standards of Animal Care and Treatment**

The Seaboard Foods “Sustainability & Stewardship Report” is rife with assertions relating to the humane treatment of pigs that create the impression that Seaboard’s pigs are given the very highest level of care and treated in the most humane manner possible. Among the representations that contribute to this are the following:

- a) “*We use the most humane practices throughout the animal’s life.* Not only is this the right thing to do, but it’s scientifically proven to provide better pork quality.”
- b) “We believe food animals can and should be raised, transported and processed using procedures that are safe and *free from cruelty* and neglect.”
- c) “Treating our animals humanely is a moral and ethical obligation everyone at Seaboard Foods takes seriously.”
- d) Seaboard is “committed to proper animal care” and has “a moral and ethical obligation to the humane treatment of animals.”
- e) “Our extensive animal care program is based on the fundamental belief that food animals should and can be treated humanely.”

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<sup>9</sup> *Id.*, p. 3.

- f) “[W]e implement the latest technology and practices to ensure our animals remain calm and comfortable.”<sup>10</sup>

It is a reasonable interpretation of these assertions, both separately and collectively, to conclude that Seaboard uses the most humane practices that currently exist in caring for its animals, that it is a leader in humane animal care, that they employ analgesics and anesthetics whenever available for the comfort of the animal, that they do not transport animals in trucks that expose them to life-threatening weather extremes, and that they assure a virtually cruelty-free life for their pigs. However, Seaboard cannot substantiate such claims: the company offers the appearance of their truth and reliability by presenting them in the form of a “report” on the company’s CSR efforts, yet the claims are not reconcilable with the factual realities of Seaboard’s operations and material facts have been omitted that would prevent consumers from being misled in their interpretation.

**a. The HSUS Investigation of Inhumane Treatment at Seaboard Foods**

In contrast with the statements contained in Seaboard’s “Sustainability & Stewardship Report,” an HSUS investigation conducted during October and November 2011 revealed that the company’s pigs suffer systematic abuse and treatment that could not be considered humane under the most lenient of definitions. For thirty days in October and November of 2011, an HSUS investigator witnessed the day-to-day operations and activities at a Goodwell, OK, Seaboard pig breeding facility. The investigator documented the following findings:

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<sup>10</sup> See Attachment 1, “Sustainability & Stewardship Report,” Seaboard Foods (April 2008), pp. 7, 20-21 (emphasis added); *see also* Attachment 2.

- (1) Approximately 2,700 sows were individually confined in gestations crates, which are narrow metal cages over slatted floors that severely restrict movement;
- (2) Sows suffering from large pressure sores, golf ball-sized lumps, wounds, torn skin, and scabs. These sows never received any type of medical treatment for these problems, and the investigator never saw a veterinarian at the facility.
- (3) Sows with abnormally swollen and torn vulvas. One pregnant sow's vulva was so severely torn that it was steadily gushing blood. The farm manager told the investigator that the sow would not be euthanized because she was carrying piglets and they wanted her to give birth. When asked whether it would hurt the sow to give birth with an injured vulva, the farm manager responded "they're pretty tough, they can handle some pain." The sow eventually gave birth, and several days later, the same sow, who had not seen a veterinarian and whose wounds were still seeping, was transferred back to the breeding barn.
- (4) The investigator was instructed by Seaboard employees to wrap duct tape tightly around piglets born with splayed hind legs – taping the piglets' legs to its chest – in order to "correct" the splayed legs. The duct tape was removed and re-applied every day, and no gauze or any other type of padding was placed between the duct tape and the piglets' skin.
- (5) The investigator found dead pigs and piglets in crates and pens throughout the facility.<sup>11</sup>

It is impossible to reconcile Seaboard's statements that it uses "the most humane practices throughout the animal's life," that the lives of these animals are free of cruelty, or that the humane treatment of animals is something being implemented as a serious moral obligation with the acts of abuse exposed during the Goodwell facility investigation. It is

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<sup>11</sup> See Attachment 3, HSUS Investigation Report.



impossible to conclude that conscientious consumers would reasonably expect such cruelty could occur when making purchase decisions about Seaboard products based on the company's assurances of *the most humane, cruelty-free* animal care which "ensure" that "animals remain calm and comfortable."

## **b. Standard Practices at Seaboard**

While the egregious acts of cruelty uncovered during the HSUS' investigation at the Goodwell, OK, Seaboard facility are irreconcilable with Seaboard's representations to consumers that it employs "the most humane practices throughout the animal's life,"<sup>12</sup> even the routine practices at Seaboard, such as confinement of pigs in gestation crates, simply cannot be reconciled with its claims of providing the best possible care.

### 1. Gestation Crates

In its "Sustainability & Stewardship Report," Seaboard states that its "barns are designed to give pigs adequate room to eat, drink, rest, sleep, and move without injury."<sup>13</sup> However, the HSUS investigator found that Seaboard sows are, for the majority of their lives, confined in gestation crates, which are metal cages so small that the sows are unable to turn around or take more than one step forward or backward. During the time the investigator was at the facility, several gestation crates overflowed with feces and urine, which bubbled up from below the slatted floors due to a system clog, covering the pigs inside with waste and filth.

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<sup>12</sup> See Attachment 1, "Sustainability & Stewardship Report," Seaboard Foods (April 2008) at 7; see also Attachment 2.

<sup>13</sup> *Id.* at 20.

For humane reasons, eight states<sup>14</sup> have already banned the use of gestation crates. Dr. Temple Grandin – who Seaboard praises on its website and in a press release relating to its animal welfare audits – has stated that gestation crates “are a real problem . . . Basically you’re asking a sow to live in an airline seat, . . . I think it’s something that needs to be phased out.” Dr. Grandin’s position is consistent with the findings of a 2007 survey funded by the American Farm Bureau and conducted by researchers at Oklahoma State University. That survey revealed that a majority of the public believe that housing pregnant sows in crates is not humane.<sup>15</sup>

In a case involving review of another industry’s housing practices – that of egg-laying hens in battery cages – the National Advertising Review Board affirmed that survey evidence showed that most consumers find such intense confinement to be “unacceptable.” In addressing industry claims that such confinement is humane, the board noted that “it is unimaginable that consumers would consider treatment they find ‘unacceptable’ to be humane treatment . . . .”<sup>16</sup> It would be equally unimaginable here that, with respect to gestation crates, consumers would consider treatment they find unacceptable to be “the most humane” care, especially where alternatives to gestation crates exist and have been successfully implemented.<sup>17</sup>

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<sup>14</sup> States with laws instituting prohibitions on gestation crates include Florida (2002), Arizona (2006), Oregon (2007), Colorado (2008), California (2008), Maine (2009), Michigan (2009), and Ohio (2010).

<sup>15</sup> Prickett, R.W., F.B. Norwood, and J.L. Lusk. “Consumer preferences for farm animal welfare: results from a telephone survey of U.S. households.” *Animal Welfare* 19.3 (2010): 335-347.

<sup>16</sup> *United Egg Producers, Inc. (Animal Care Certified Eggs)*, NARB Panel Report #122, (April 2004).

<sup>17</sup> For example, as of December 29, 2011, 488 pig farms have been certified under the Global Animal Partnership’s Welfare Rating Standards, which prohibit the confinement of sows in gestation and farrowing crates. See Global Animal Partnership, “The 5 Step Program,” available at <http://www.globalanimalpartnership.org/the-5-step-program/>.

## 2. Surgical Procedures

Seaboard routinely performs surgical procedures on three to five day old piglets, including cutting off their tails and castrating male piglets. These procedures are painful for the piglets, and are performed without any type of anesthetics or analgesics.

Castration is performed by cutting the piglet's scrotum with the hooked blade of a surgical scalpel and pushing the testicles through the incision, then cutting or pulling them free of connecting tissue.<sup>18</sup> Physiological and behavioral lines of evidence clearly demonstrate that castration without pain killer causes significant suffering for the piglets.<sup>19</sup> According to the American Veterinary Medical Association, “[c]astration is a painful procedure and animal welfare would be improved if it was performed under anesthesia and with analgesia, or replaced by a less invasive procedure.”<sup>20</sup> Yet at Seaboard, which claims to use “the most humane practices throughout the animal’s life,” and that it “ensure[s]” that “animals remain calm and comfortable” male piglets are castrated in this manner while fully conscious, and no form of painkiller is administered. Further, during the Goodwell facility investigation, the HSUS investigator witnessed multiple piglets dying from what Seaboard employees called “ruptures” – the piglets’ intestines spilled out from the opening where their testicles were removed during castration. The farm manager told the HSUS investigator that these “ruptures” were “part of the learning process” of new employees castrating piglets.

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<sup>18</sup> Prunier A, Bonneau M, von Borell EH, et al. 2006. A review of the welfare consequences of surgical castration in piglets and the evaluation of non-surgical methods. *Animal Welfare* 15:277-89; Holden PJ and Ensminger ME. 2006. *Swine Science*, 7th Edition (Upper Saddle River, NJ: Pearson Prentice Hall, pp. 365-6).

<sup>19</sup> EFSA Scientific Panel on Animal Health and Welfare. 2004. Opinion of the Scientific Panel on Animal Health and Welfare on a request from the Commission related to welfare aspects of the castration of piglets. *The EFSA Journal* 91:1-18. And Von Borell E, Baumgartner J, Giersing M, et al. 2009. Animal welfare implications of surgical castration and its alternatives in pigs. *Animal* 3(11):1488-96.

<sup>20</sup> “Welfare Implications of Practices Performed on Piglets,” American Veterinary Medical Association, March 26, 2010.

The tail docking is another procedure that causes “acute trauma and pain.”<sup>21</sup> The HSUS investigator did not witness the use of any local anesthetic or analgesic to prevent or manage pain for this procedure—indeed the industry norm is *not* to provide such relief for piglets.<sup>22</sup> The AVMA, however, recommends for such procedures the use of practices that reduce pain, including the use of effective medications whenever possible.<sup>23</sup> Yet Seaboard nonetheless asserts it uses the “most humane procedures” throughout the entire lives of its pigs, and it does this while simultaneously omitting the material welfare-related fact that it is willfully failing to meet the pig’s need for pain relief during an acutely painful procedure.

### **c. Material Omissions About National Pork Board Certification**

Seaboard touts the fact that all of its farm managers receive Pork Quality Assurance (PQA) Plus and Transport Quality Assurance (TQA) certification as “Animal Care Commitment Highlights” in its “Sustainability & Stewardship Report.” With respect to its PQA Plus certification, Seaboard states that “[t]his program, administered by the National Pork Board, includes training and certification of the managers’ responsibilities for all aspects of animal well-being, including proper housing, management, nutrition, disease prevention and treatment, responsible care, humane handling and when necessary, humane and timely euthanasia.”<sup>24</sup> Similarly, Seaboard describes the TQA program as “stress[ing] the importance of proper handling, loading, and transporting of hogs, with special attention paid to biosecurity and animal welfare.”<sup>25</sup>

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<sup>21</sup>Sutherland, M. A., P. J. Bryer, N. Krebs, and J. J. McGlone. 2008. Tail docking in pigs: Acute physiological and behavioural responses. *Animal* 2:292–297.

<sup>22</sup> *Id.*

<sup>23</sup> AVMA Policy: Tail Docking and Teeth Clipping of Swine. Oversight: AWC; Approved EB 04/2010, EB Revised 06/2011.

<sup>24</sup> See Attachment 1, “Sustainability & Stewardship Report,” Seaboard Foods (April 2008), p. 21.

<sup>25</sup> *Id.*

In flaunting its PQA Plus and TQA certifications as “highlights” displaying its commitment to animal care, however, Seaboard fails to disclose the material connection between itself and the endorser issuing these certifications. Both certifications are issued by the National Pork Board (NPB), a federally created organization that is funded and directed by pork producers and that is mandated by law to promote the pork industry.

Federal Trade Commission rules dictate that where there is a connection between the endorser and the seller of the advertised product that might materially affect the weight or credibility of the endorsement, that connection must be fully disclosed.<sup>26</sup> There is no such disclosure in Seaboard’s “Sustainability & Stewardship Report,” or elsewhere on the Seaboard Foods website, nor any way that the reasonable consumer can determine the extent to which the NPB is intertwined with producers, including Seaboard. Certainly, however, it must be concluded that such factors as the NPB mandate to increase pork sales and its funding provided entirely by producers themselves, including Seaboard, raises questions about the weight or credibility of the PQA Plus and TQA certification programs. After all, unlike independent certification businesses, NPB’s success does not depend on the integrity of its certifications, but on the degree to which it increases pork sales. Such incentive is exactly the type of material connection that the disclosure policies for endorsements were implemented to address. Without the full disclosure of NPB’s producer funding, producer direction, and industry promotion mandate, consumers are not able to fairly evaluate the integrity of the organization’s certification programs.

Were the connection between Seaboard and the NPB properly disclosed, reasonable consumers would be alerted to scrutinize the PQA Plus program more closely. Upon doing so, they would then discover that producer certification under the program is granted for

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<sup>26</sup> “Guides Concerning Use Of Endorsements And Testimonials In Advertising,” 16 CFR Part 255; 16 CFR 255.5 (2011).

simply attending a single *exam-free* training session once every three years. In other words, all it takes to receive this so-called seal of animal care assurance is simply to show up at a one-time session with an advisor. There is no test, no hands on training, no way to fail to receive certification at the end of the session, and no need to do anything else for more than a thousand days afterward.<sup>27</sup>

Seaboard's advertisement of the PQA Plus and TQA certifications of all of its farm managers and transporters as "highlights" of its commitment to animal care increases the likelihood of harmful reliance on the misleading information, which is unlawfully deficient in its material disclosure requirements, and which in this case would reveal to the consumer the lack of independence of the endorsement. Seaboard cannot tout its endorsements from NPB programs while failing to fully disclose its material connection with the endorser; NPB is producer-directed and producer-funded and any certification it issues to producers must fully disclose that connection to avoid violating federal law.

#### **d. Not All Seaboard Pork is From Seaboard Pigs**

While Seaboard represents to consumers that animals it raises live free from cruelty and with the most humane practices throughout their lives, what it fails to warn is that not all pork sold under the Seaboard name actually comes from Seaboard pigs. This is because a Marketing Agreement was entered with Triumph Foods, pursuant to which "all of the product produced at [Triumph's] St. Joseph facility is marketed under the Seaboard Foods name and brand."<sup>28</sup> That facility processes more than five million hogs a year,<sup>29</sup> none of which are raised by Seaboard under its animal care system. Yet, all products produced from

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<sup>27</sup> See Attachment 4, National Pork Board, PQA Plus Certification Manual, p. 103. <http://www.pork.org/filelibrary/PQAPlus/PQAPlusEdBook.pdf>.

<sup>28</sup> See Triumph Foods: Product Sales, [http://www.triumphfoods.com/product\\_sales/](http://www.triumphfoods.com/product_sales/).

<sup>29</sup> See Welcome to Triumph Foods, <http://www.triumphfoods.com/index.php>.

these animals will be marketed to consumers with the same branding and appearance as those produced from animals raised under the cruelty-free system that Seaboard claims sets it apart from other companies. The product would appear essentially the same to consumers and those looking to purchase only products produced in accordance with the core Seaboard CSR commitments will not know if they're actually purchasing a product produced by another company altogether, a company that has professed no such commitment to ideal care practices.

At the very least, the discrepancy demands either substantiation or qualification. Other than general claims of PQA Plus and TQA certifications—no material connection disclosures are made here, either<sup>30</sup>—Triumph makes no specific claims regarding humane care of animals on its website. The issue is all the more concerning in light of a USDA auditor finding that a truckload of pigs arrived at the Triumph plant in St. Joseph last winter with wet bedding and frostbite so severe that euthanasia was required. If Seaboard asserts, however, that pigs raised by Triumph (and presented to consumers as its own) are raised free from cruelty and in accordance with the most humane practices, substantiation should be produced. If such claims cannot be substantiated by Seaboard or Triumph, then Seaboard's claims regarding how pigs are raised should be clearly qualified and the products distinguished to ensure consumers seeking Seaboard-raised pork aren't unknowingly buying pork from a less humane producer.

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<sup>30</sup> See Triumph Foods: Hog Procurement, [http://www.triumphfoods.com/hog\\_procurement/](http://www.triumphfoods.com/hog_procurement/).

**ANALYSIS OF REPRESENTATIONS UNDER  
THE FEDERAL TRADE COMMISSION ACT**

**1. Unlawful Deception Relating to Animal Care**

Unlawful deception will be found “if there is a representation, omission or practice that is likely to mislead the consumer acting reasonably in the circumstances, to the consumer's detriment.”<sup>31</sup> Further, if a particular consumer group is targeted, or likely to be affected by the ad, the Commission will examine an ad from the perspective of a reasonable member of that group.<sup>32</sup>

As noted above, an element of unlawful deception is that it is likely to cause detriment to the consumer. The test for establishing this element—referred to as materiality—is whether the deception “is likely to affect the consumer’s conduct or decision with regard to a product or service.”<sup>33</sup> The NAD has firmly recognized that social issues, such as the treatment of animals, matter to consumers and have an important bearing on purchasing decisions:

Advertising claims which tout that the advertiser is addressing particular social or ethical concerns can provide consumers with important information about their purchasing choices.<sup>34</sup>

Here, the Seaboard representations in its “Sustainability and Stewardship Report” and the identical statements made on its website are directed at those consumers most likely to be misled by them: conscientious and compassionate people who are concerned that pigs and other animals might suffer during production operations.

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<sup>31</sup> *FTC Policy Statement on Deception*.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Starbucks Corporation (Free Trade Certified Coffee)*, Report #4592, NAD CASE REPORTS (November 2006); *see also United Egg Producers, Inc. (Animal Care Certified Eggs)*, Report #4108, NAD CASE REPORTS (November 2003); *D’Artagnan, Inc. (Foie Gras)*, Report #4959, NAD CASE REPORTS (January 2009).



There can be no reasonable dispute that many consumers are concerned enough about animal welfare to alter their purchasing habits on the basis of representations such as those made by Seaboard here. Consumer polls have shown that the humane treatment of animals is an important issue to the majority of consumers,<sup>35</sup> and even Seaboard Foods' President/CEO has stated that "[a]nimal welfare is an important issue . . . It makes good business sense . . . ."<sup>36</sup> It was the recognition of the importance of CSR issues, including animal welfare, that led to Seaboard's publishing of the "Sustainability & Stewardship Report" and has prominently posted the report, along with videos and web pages containing identical statements, on its website. The representations in the report have remained continuously posted and openly accessible to consumers since its issue in 2008. It is Seaboard's focal point for consumers looking for information on which to rely for framing their understanding of the company's CSR policies. The accuracy of this report and the web content, therefore, is of the highest significance to conscientious consumers concerned about making responsible choices relating to the humane care of animals.

## **2. Lack of Substantiation for Reasonable Interpretations of Express and Implied Claims**

"Before disseminating an ad, advertisers must have reasonable support for all express and implied objective claims that the ad conveys to consumers. When an ad lends itself to more than one reasonable interpretation, there must be substantiation for each interpretation."<sup>37</sup>

Inherent in express or implied claims of advertisers is the representation that the

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<sup>35</sup> See Context Marketing, "Ethical Food: A Research Report on the Ethical Claims That Matter Most to Food Shoppers and How Ethical Concerns Influence Food Purchases" (March 2010), *available at* <http://www.contextmarketing.com/ethicalfoodreport.pdf> (finding that 91% of consumers consider "ethical food" to be produced in a way that "avoids inhumane treatment of animals" and that 69% of consumers will pay more for food brands they see as "ethical").

<sup>36</sup> Press Release: Seaboard Farms sets new industry standard with animal welfare audit system (June 24, 2003), *available at* <http://www.seaboardfoods.com/33.03.htm>.

<sup>37</sup> *Dot Com Disclosures*, p.20.

advertiser can substantiate such claims. The Commission has made expressly clear that such representations are material to consumers and that it will vigorously enforce the substantiation requirement.<sup>38</sup> Seaboard has made express and implied claims on its site and in print materials that are false and for which there can be no reasonable substantiation.

Seaboard's representations that it uses only the most humane practices and that it ensures its animals live in comfort and free from cruelty is not only contrary to the direct evidence revealed by HSUS' undercover investigation of the company, but also irreconcilable with the great weight of data regarding consumer perception as it relates to the company's routine practices, as well.<sup>39</sup> Because Seaboard would be liable for all interpretations of its claims, what the company would have to substantiate here is that consumers believe, for example, that the gestation crates it uses are considered cruelty-free or the most humane type of sow housing system. In fact, the company would have to maintain that no reasonable consumer could find otherwise. Since poll after poll shows that consumers overwhelmingly believe that gestation crates are not humane or acceptable, Seaboard's unqualified description of its "practices" that suggests otherwise simply cannot be substantiated.

There can be no reasonable basis for labeling a practice that consumers consider unacceptable with language that suggests general acceptance, like "humane," "cruelty-free," or the like, particularly when there is no clear and conspicuous disclosure that lets consumers know that the company intends only one specific meaning from a claim that is capable of multiple interpretations. There can be no reasonable basis for the representation

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<sup>38</sup> *FTC Policy Statement Regarding Advertising Substantiation*, Appended to *Thompson Medical Co.*, 104 F.T.C. 648, 839 (1984), *aff'd*, 791 F.2d 189 (D.C. Cir. 1986), *cert. denied*, 479 U.S. 1086 (1987).

<sup>39</sup> Prickett, R.W., F.B. Norwood, and J.L. Lusk. "Consumer preferences for farm animal welfare: results from a telephone survey of U.S. households." *Animal Welfare* 19.3 (2010): 335-347.

that animals castrated without pain-killers somehow live free from cruelty—given all reasonable interpretations of that term, which Seaboard leaves undefined and open to consumer perception. There can be no reasonable basis for the representation that Seaboard uses the latest technology to “ensure” pigs are comfortable, given that gestation crates do not even provide enough space for sows to lie down comfortably or take more than a single step in any direction.

Another claim for which Seaboard offers no qualification for its sweeping assertion is that using the most humane treatment practices throughout the life of the animal is scientifically proven to improve the quality of the pork. While there does exist research data that demonstrates a relationship between some animal practices—castration, for example—and the quality of the end product, complainant is aware of no substantiating science for the broad implied claim in Seaboard’s assertion that the all humane practices throughout the life of the animal lead to improved pork quality. The language distinction is small, but the potential for misinterpretation on this important issue is great. The reason is that the implicit assertion in the company’s claim is that consumers need not simply accept that a profit-driven entity is doing the right thing for moral reasons. By tying an economic incentive to providing the most humane practices throughout the life of the animal, Seaboard is attempting to remove a significant barrier of consumer skepticism and scrutiny over its practices. In doing so, Seaboard can make a claim based in humane treatment for castrating pigs and mislead consumers from scrutinizing the routine practice of performing the procedure without pain killers—the latter policy having no bearing on the ultimate quality of the pork. Such practice would also run afoul of the company’s claim that it implements the latest technology for the animal’s comfort, particularly in light of the AVMA’s position that analgesics be used. Seaboard simply cannot produce substantiating data to support the sweepingly broad applications of these assertions.

While Seaboard would be free to advertise the specifics of its housing systems and production practices, it is not free to only generally describe them as ensuring the most humanely treated, comfortable pigs. Given the well-established majority of consumers who find gestation crates unacceptable, as well as the unqualified consumer assurances that mistreated animals produce a poorer quality of pork, the Commission's policy of vigorously enforcing unsubstantiated claims is needed here to stop Seaboard's consumer deception. As the Commission has expressly declared, a company's failure to rely upon a reasonable basis to substantiate its representations "constitutes an unfair and deceptive act or practice in violation of Section 5 of the Federal Trade Commission Act."<sup>40</sup>

### **3. Lack Of Market Restraints on Deception Regarding Production Methods and Conditions**

The Commission has stated that where a product or service is easily evaluated by consumers, the likelihood of deception is low because sellers would want to encourage repeat business. In the instant case, however, where it is the method of production, rather than the final product, that is the subject of controversy and that method is nearly impossible for consumers to directly evaluate, the effect is exactly the opposite—to encourage repeat business, the seller is more likely, rather than less likely, to be deceptive about such manufacturing methods in order that repeat purchasers will not be dissuaded.

Just as, for example, a company that produces apparel under sweatshop conditions would want to hide its method of production from its customers, so too does Seaboard have strong incentives to misrepresent the actual conditions under which breeding sows are kept. In neither case would the consumer be able to examine the production process by examining just the product purchased. The sweatshop company, then, would have strong

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<sup>40</sup> *Id.*

incentives, were it able to get away with it, to disseminate ads featuring a state-of-the-art facility with “happy” workers in lush surroundings in order to hide its darker reality and avoid dissuading consumers from repeat purchases. Similarly, the reality of gestation crate housing systems is one of intensive confinement, unnatural surroundings and a lifetime of cruelty by commission and omission. And so there are strong incentives for Seaboard and other producers to mislead consumers about these conditions in order to prevent repeat purchasers from being dissuaded.

There are virtually no market restraints on the likelihood of deception in this instance because consumers are unable to tell upon receiving the product that they have been deceived. Production practices are not readily apparent in the final product. The result is that repeat purchasers may continue to be deceived if the advertisements continue.

Choosing to remain silent about the miserable lives of breeding sows is one thing, but making unqualified, affirmative misrepresentations about them is something else entirely. It is unethical. It is deceptive. It is unlawful.

**RELIEF REQUESTED**

The actions described above constitute unlawful conduct, unfair methods of competition, and unfair and deceptive practices under the Federal Trade Commission Act, 15 U.S.C. § 41 et seq. Accordingly, The HSUS respectfully requests that the Commission take prompt action to stop Seaboard from deceiving consumers with false claims as described herein.

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Matthew Penzer  
Special Counsel

Peter Brandt  
Senior Attorney  
The Humane Society of the United States  
2100 L St. NW  
Washington, DC 20037