

BEFORE THE UNITED STATES FEDERAL TRADE COMMISSION

ANIMAL PARTISAN,
Petitioner,

The NATIONAL PORK BOARD and LUKE BRYAN,
Proposed Respondents,

Complaint for Action to Stop False or Deceptive Advertising

April 30, 2024

I. INTRODUCTION

On the left is a stock photo of what many consumers might envision when imagining a luxury hotel.¹ On the right, a depressed and defeated mother pig languishes in a gestation crate so small that she cannot turn around while flies and maggots infest the food splayed out before her on the ground.² In a recent advertisement intended to promote the pork industry, the National Pork Board (“NPB”) and Luke Bryan (“Bryan”) want consumers to believe these two concepts are comparable. They are not.



This complaint challenges a video advertisement released in late 2022 by the NPB—which is still in circulation—that features and was widely promoted by Bryan. The advertisement compares the treatment of pigs in pork farms to the treatment guests receive at a 5-star hotel. Contrary to the advertisement’s representations, pigs bred and raised in industrial pork factory farms are often intensively confined, mutilated, mistreated, and ultimately killed. The deplorable conditions they exist within bear no resemblance to a luxury hotel. The claims made in the advertisement are material to consumer purchasing decisions, misleading, and deceptive. Accordingly, these claims violate the Federal Trade Commission Act (“FTCA”). The Federal Trade Commission (“FTC”) should take action to prevent the further dissemination of this video.

II. PARTIES

A. Animal Partisan

Animal Partisan is a legal advocacy organization whose mission is to end the suffering of animals in slaughterhouses, farms, and laboratories by discovering, exposing, and challenging unlawful conduct in all its forms.³ Animal Partisan is headquartered in Virginia but engages in actions across the country, including those aimed at preventing false and deceptive advertising.⁴

¹ Stock photo only; not from advertisement challenged in this complaint, Adobe Stock, stock.adobe.com.

² *EATS Act Exposed*, Mercy for Animals, <https://mercyforanimals.org/investigations/#:~:text=United%20States-Released%20in%202023,mad%20by%20boredom%20and%20stress>.

³ *Home*, Animal Partisan, <https://www.animalpartisan.org/>.

⁴ *Consumer Protection complaint filed against American Humane alleges deceptive trade practices*, Animal Partisan, <https://www.animalpartisan.org/news/consumer-protection-complaint-filed-against-american-humane-alleging-deceptive-trade-practices>.

B. National Pork Board

The NPB is a “quasi-governmental” body established by the Pork Promotion, Research and Consumer Information Act of 1985, 7 U.S.C. §§ 4801, et seq.⁵ The goal of the NPB is “to develop and expand markets for pork and pork products.”⁶ The NPB “is comprised of 15 pork producers or importers, nominated by Pork Act Delegates at the National Pork Forum and appointed by the U.S. Secretary of Agriculture.”⁷ The NPB collects funds from pork producers via a program known as the Pork Checkoff and “uses those dollars to implement programs of promotion, research and consumer information designed to enhance the marketing of U.S. pork and pork products.” The NPB is funded by a mandatory assessment of \$0.35 of \$100 market value of all pigs sold in the United States, as well as an equivalent amount on imported pigs, pork, and pork products.⁸

C. Luke Bryan

Bryan is a country musician whose personal website describes him as a “legendary singer songwriter and celebrity.”⁹ According to an online profile, Bryan has amassed 25 Number 1 hits, sold 12.5 million albums and amassed 13.8 billion streams.¹⁰ Bryan was named Billboard's Top Country Artist of the 2010s¹¹, has been named Entertainer of the Year twice by both the Country Music Association and the Academy of Country Music, and has been honored as a CMT (formerly “Country Music Television”) Artist of the Year six consecutive times.¹² Bryan has won over 40 major music awards and has performed for nearly 12 million fans in the last decade.¹³

In addition to his musical endeavors, Bryan appears as a judge on American Idol, a singing competition television show, that is watched by over 5 million viewers each week¹⁴ and was ranked as the “#1 social media TV series of 2023” with 400 million views¹⁵ and 24.7 social media interactions.¹⁶

⁵ *Greenblatt v. Nat'l Pork Board*, No. ELH-15-00054, 2015 U.S. Dist. LEXIS 145921, at *1 (D. Md. Oct. 27, 2015).

⁶ *National Pork Board*, United States Department of Agriculture-Agriculture Marketing Service, <https://www.ams.usda.gov/rules-regulations/research-promotion/pork>.

⁷ *Pork Board Members*, Pork Checkoff, <https://porkcheckoff.org/about/pork-board-members/>.

⁸ *National Pork Board*, United States Department of Agriculture-Agriculture Marketing Service, <https://www.ams.usda.gov/rules-regulations/research-promotion/pork>.

⁹ Internet search preview, Luke Bryan, <https://www.lukebryan.com/home>.

¹⁰ *American Idol*, ABC, <https://abc.com/shows/american-idol/cast/luke-bryan>.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *American Idol: Season 21 Ratings*, TV Series Finale, <https://tvseriesfinale.com/tv-show/american-idol-season-21-ratings/> (last viewed Aug. 18, 2023).

¹⁵ D. Davidson, *American Idol is #1 social media TV series of 2023; proves it's still the pop culture phenomenon we can't stop talking about*, Yahoo Finance, https://finance.yahoo.com/news/american-idol-1-social-media-140024854.html?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2x1LmNvbS8&guce_referrer_sig=AQAAAJ6Ozf9dvrN3d9VS2YAjM8aocdWa8Akt3a6833Y5cLZO3145Nqj0KVOwRU7SAU7jmH-TSK3VIOLNhRKJczvldjkSDOnArm0xxpc7rFaubZmfOt4xCWzH-hnifhVAmgcEsoZhsdW2AK9ghuKLD-cZvWiv7x5do4eHmSdBIN8SUpo.

¹⁶ B. Bell, *American Idol Penultimate Episode Scores Season High Ratings*, Variety, <https://variety.com/2023/tv/news/american-idol-may-15-episode-ratings-1235624567/>.

III. STANDARD OF REVIEW

The FTC is the primary federal agency charged with combatting unfair and deceptive trade practices.¹⁷ The FTC’s mission is to “protect[] the public from deceptive or unfair business practices and from unfair methods of competition through enforcement, advocacy, research, and education.”¹⁸ Whenever the FTC has reason to believe a person has engaged in unfair or deceptive practices in or affecting commerce, and a proceeding would be in the interest of the public, it shall file a complaint against that person.¹⁹

A. General Standard

This matter is governed by the FTCA. Section 5 of the FTCA declares “unfair or deceptive acts or practices in or affecting commerce” unlawful.²⁰ Relevant here, Section 12 prohibits the dissemination of false advertising likely to induce the purchase of food products.²¹ The term “false advertisement” as used in both Sections 5 and 12 means one which is “misleading in a material respect.”²²

To further define “deceptive acts or practices” under Sections 5 and 12 of the FTCA, the FTC published a Policy Statement on Deception (“The Policy Statement”).²³ According to the Policy Statement, the FTC “will find deception 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.”²⁴

When assessing whether an advertisement violates the FTCA, the FTC first asks whether there is a representation, omission, or practice that is “likely to mislead the consumer.”²⁵ Importantly, actual deception is not required, only a likelihood that a consumer will be deceived.

Second, the FTC looks at the advertisement from the perspective of a “consumer acting reasonably under the circumstances.”²⁶ In doing so, the FTC looks at the “totality” of the advertisement, and asks whether the consumer’s “interpretation or reaction [to it] is reasonable.”²⁷ The test has been articulated as “whether the interpretation is reasonable in light of

¹⁷ See 15 U.S.C. § 45(a)(2) (“The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations . . . from using unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce.”).

¹⁸ *Mission*, FED. TRADE COMM’N, <https://www.ftc.gov/about-ftc/mission>.

¹⁹ 15 U.S.C. § 45(b).

²⁰ 15 U.S.C. § 45(a)(1).

²¹ 15 U.S.C. § 52(a)(1).

²² 15 U.S.C. § 55.

²³ Letter from James C. Miller III, Chairman, FTC, to Hon. John D. Dingell, Chairman, House Comm. on Energy & Commerce (Oct. 14, 1983), https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf [hereinafter FTC Policy Statement on Deception].

²⁴ *Id.* at 1.

²⁵ *Id.*

²⁶ *Id.*; see also *Advertising FAQ's: A Guide for Small Business*, FED. TRADE COMM’N, <https://www.ftc.gov/business-guidance/resources/advertising-faqs-guide-small-business> (Jan. 2022).

²⁷ *Id.* at 2-3.

the claim,” and places primary importance on “the net impression that it is likely to make on the general populace.”²⁸ When a specific audience is targeted by the representations, the FTC determines how a practice would effect a “reasonable member of that group.”²⁹ To discern the consumer’s perspective, the FTC will view “the entire mosaic [of an advertisement], rather than each tile separately.”³⁰ This includes “scrutiniz[ing] the “visual and aural imagery” within the ad.”³¹

Finally, the FTC determines materiality—whether the act is “likely to affect the consumer’s conduct or decision with regard to a product or service.”³² In practice, the FTC looks to whether the information is “important to consumers” or not.³³ If the misleading statement or omission is about material information, injury to the consumer is considered “likely.”³⁴ Injury is said to have occurred “if consumers would have chosen differently but for the deception.”³⁵

B. Endorser Standards

In recognition of the impact statements of approval from influential persons may have on consumer behavior, the FTC has published specific guidance regarding endorsements. In 2009, the FTC revised its guidelines relating to advertising endorsements, called The Guides Concerning the Use of Endorsements and Testimonials in Advertising (“The Guides”). The Guides are “administrative interpretations” of Section 5 of the FTCA “for the guidance of the public in conducting its affairs in conformity with legal requirements.”³⁶ Specifically, the Guides discuss the application of Section 5 of the FTCA to advertising that uses endorsements and testimonials³⁷ and expressly contemplate endorsements made by celebrities.³⁸ The Guides are an evaluation tool for both the public and the FTC.³⁹ Advertising practices that do not conform with these guidelines are subject to action if the FTC “has reason to believe” the practices are unlawful under Section 5.⁴⁰

According to the Guides, “an endorsement may not convey any express or implied representation that would be deceptive if made directly by the advertiser.”⁴¹ The term “endorsement” means:

... any advertising, marketing, or promotional message for a product that consumers are likely to believe reflects the opinions, beliefs, findings, or experiences of a party other

²⁸ *Id.* at 3 (citing *Nat’l Dynamics*, 82 F.T.C. 488, 524, 548 (1973) and *Grolier*, 91 F.T.C. 315, 430 (1978)).

²⁹ *Id.* at 2-3

³⁰ *Id.* at 4. (citing *FTC v. Sterling Drug*, 317 F.2d 669, 674 (2d Cir. 1963)).

³¹ *Id.*

³² *Id.* at 1.

³³ *Id.* at 5.

³⁴ *Id.*

³⁵ *Id.*

³⁶ 16 C.F.R. § 255.0(a).

³⁷ *Id.*

³⁸ 16 C.F.R. § 255.1(b, h).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ 16 C.F.R. § 255.1(a).

than the sponsoring advertiser, even if the views expressed by that party are identical to those of the sponsoring advertiser.”⁴²

The term “product” is not limited to any specific brand or item, but also includes any “service, company, or *industry*.”⁴³ Importantly, the Guides state that endorsers, not just advertisers themselves, may be held liable for “statements made in the course of their endorsements.”⁴⁴ An “endorser” is defined as “the party whose opinions, beliefs, findings, or experience the message appears to reflect.”⁴⁵

Thus, under the FTCA, *celebrity endorsers such as Bryan, are equally accountable for deceptive representations* and such liability is not limited only to specific products, but may apply to representations regarding an entire industry, such as the pork industry.

IV. REPRESENTATIONS AT ISSUE

On September 12, 2022, the NPB posted a video online entitled “Five-Star Hotel Concept Shocks Focus Group” on YouTube.⁴⁶ When originally posted, the video contained an extensive appearance by Bryan. On May 26, 2023, a revised version of the video—that remains publicly accessible as of the date of this complaint—was posted online that removed Bryan’s appearance.⁴⁷ As explained below in an October 14, 2022 pork industry email obtained by Animal Partisan, the video was apparently modified to exclude Bryan’s appearance due to the expiration of rights that allowed promotion of assets with his likeness beyond April 2023.

Hey there. I’m not familiar with the tours, but you would be more than welcome to play the focus group video with the Luke message at the end from YouTube: <https://youtu.be/D7zEh2IIxtYWe>. We only have rights to promote assets containing his likeness through April next year, but as long as you are using our link, you’ll be good and you could continue showing the focus group video after April, it would just be the version without the cut with Luke at the end.

The promotional video—both the original and the [version currently available](#)—features a focus group being told about a hotel concept that “goes the extra mile in every single way to care for their guests”⁴⁸ and asked by a facilitator to give feedback on several of its qualities. These qualities fall under five categories: (1) staff, (2) cleanliness, (3) nutrition, (4) comfort, and (5) sustainability. An image of the focus group participants and facilitator is below.

⁴² 16 C.F.R. § 255.0(b).

⁴³ 16 C.F.R. § 255.0(d) (emphasis added).

⁴⁴ 16 C.F.R. § 255.1(e).

⁴⁵ *Id.*

⁴⁶ Original version - National Pork Board, *Five-Star Hotel Concept Shocks Focus Group*, YOUTUBE (Sept. 12, 2022), <https://www.youtube.com/watch?v=D7zEh2IIxtY&t=1s>.

⁴⁷ Current version - National Pork Board, *Five-Star Hotel Concept Shocks Focus Group*, YouTube (May 26, 2023), <https://www.youtube.com/watch?v=TVmvXe6eOsk>.

⁴⁸ *Id.* at 0:40.



The following statements and questions containing statements were made by the focus group facilitator (emphasis added):

Staff

1. “Staff members must go through an **extensive** training program to be certified in all of the **proper guest care** techniques.”⁴⁹
2. “So do you feel more comfortable knowing that a hotel gives their staff **that much** extensive training?”⁵⁰
3. “This staff is **incredibly attentive**, providing **5-star, individualized** service.”⁵¹
4. “This staff will actually **check in** with you two times per day, to make sure you’re being taken care of.”⁵²
5. “So have staff of hotels you’ve stayed at in the past ever checked in on you **actively**?”⁵³

Cleanliness

6. “This hotel goes **above and beyond** to create a **clean, well-maintained, and comfortable** environment.”⁵⁴

⁴⁹ *Id.* at 0:46.

⁵⁰ *Id.* at 0:51.

⁵¹ *Id.* at 1:01.

⁵² *Id.* at 1:05.

⁵³ *Id.* at 1:09.

⁵⁴ *Id.* at 1:22.

7. “So, it has a **rigorous** cleaning schedule, routinely **disinfecting everything on the property.**”⁵⁵
8. “Have you noticed that hotels these days aren’t even offering **daily room cleaning?**”⁵⁶
9. “Would you feel more comfortable in a hotel that disinfected **every single space very thoroughly?**”⁵⁷

Nutrition

10. “This hotel has an **incredible dedication** to delivering **balanced** meals that meet **each guest’s unique nutritional needs.**”⁵⁸
11. “So, we’re getting **quality** foods, specially formulated by **personal nutritionists.**”⁵⁹
12. “And the **goal** is for guests to eat **healthy nutritious** food in mindful portions.”⁶⁰

Comfort

13. “**Every single detail** of this hotel has been geared towards **individualized** comfort and **wellness.**”⁶¹
14. “So, they use the latest technology to keep you with **optimal** lighting, **optimal** 24/7 climate control, **advanced** air ventilation, and filtration.”⁶²

[After this statement, a focus group member excitedly asks, “Where is this hotel?” and everyone laughs as if they are wondering the same thing.⁶³ The moderator replies, “Don’t worry, I’ll tell you.”⁶⁴]

15. “The hotel requires regular doctor visits for all guests during their stay to **ensure** the **highest levels of health**, and to **avoid** any potential **injuries.**”⁶⁵
16. “Do you feel **safer** at a hotel that has regular doctor visits?”⁶⁶

Sustainability

17. “The hotel makes sure that **everything that can be reduced, reused, recycled, is.**”⁶⁷
18. “So how does it make you feel to know the hotel is **focused so much** on sustainability?”⁶⁸

⁵⁵ *Id.* at 1:25.

⁵⁶ *Id.* at 1:30.

⁵⁷ *Id.* at 1:38.

⁵⁸ *Id.* at 1:47.

⁵⁹ *Id.* at 1:55.

⁶⁰ *Id.* at 1:59.

⁶¹ *Id.* at 2:14.

⁶² *Id.* at 2:19.

⁶³ *Id.* at 2:27.

⁶⁴ *Id.* at 2:30.

⁶⁵ *Id.* at 2:33.

⁶⁶ *Id.* at 2:42.

⁶⁷ *Id.* at 2:51.

⁶⁸ *Id.* at 2:56.

After receiving repeated positive feedback regarding the focus group members' excitement about the hotel concept, the facilitator has the group close their eyes, and picture what the hotel they have been hearing about might look like. While their eyes are closed, video footage of pigs in what appears to be an industrial-looking building appears on the walls of the room.⁶⁹ The facilitator has the participants open their eyes, and reveals they have been hearing qualities of a "modern pig farm," not a hotel.⁷⁰ The facilitator says, "Everything we've been talking about today are the existing protocols pig farmers use to care for their animals."⁷¹

One group member immediately responds in a somewhat emotional tone, "That's really nice to hear."⁷² The focus group generally expressed initial confusion, then surprise, awe, and lastly excitement and happiness at the discovery. One focus group member remarks, "It's kind of put me more at ease as to what I choose to eat."⁷³ Another says, "These are animals that we are actually going to ingest. So, they should be taken care of very well, over anything else."⁷⁴ And another says, "Well it makes me feel better that they're being sustainable."⁷⁵ Finally, another person says, "There are a lot of documentaries about how animals are treated. Something that sounds so luxury and so thoughtful, almost contradicts the feelings that come up when I think of a pig farm."⁷⁶

The facilitator then asks the group, "And what was the most surprising thing you guys learned?"⁷⁷ One person replies, "Pigs are treated better than us."⁷⁸

The original video then faded to black and transitioned into a new scene which has since been removed from the current video. The scene depicted Bryan, smiling, holding an acoustic guitar wearing a denim jacket and jeans, and sitting in what appears to be the back of a truck holding musical tour equipment. Upbeat music played in the background. Images from the original video featuring Bryan are below.

⁶⁹ *Id.* at 3:15.

⁷⁰ *Id.* at 3:39.

⁷¹ *Id.* at 3:45.

⁷² *Id.* at 3:49.

⁷³ *Id.* at 3:51.

⁷⁴ *Id.* at 3:54.

⁷⁵ *Id.* at 4:05.

⁷⁶ *Id.* at 4:11.

⁷⁷ *Id.* at 4:25.

⁷⁸ *Id.* at 4:27.



During the video, Bryan made several statements while images alternated between him and idyllic-looking farm scenes:

1. “There are a lot of myths out there about pig farming, and unfortunately, most of it’s hog wash.”⁷⁹
2. “Pig farmers are committed to bringing **safe, nutritious** pork to your plate.”⁸⁰
3. “They, and other farm employees, are trained and certified to provide the **best care** for pigs, making sure they live in a **clean, comfortable** and **carefully-controlled** environment, to keep them **safe** and **healthy**.”⁸¹
4. “And pig farmers are **always** finding ways to **use less land, water, and energy**, to reduce their environmental impact.”⁸²
5. “It may be eye-opening to some, but modern pig farms are focused on delivering **five-star treatment of people, pigs, and the planet**.”⁸³

Bryan closed the original video by stating:

6. “I’m Luke Bryan, and that’s the whole hog truth.”⁸⁴

The video then faded into a simple white screen with the National Pork Board’s logo, their website address, their copyright ownership, and a note saying, “This message funded by

⁷⁹ Original version - National Pork Board, *Five-Star Hotel Concept Shocks Focus Group*, YOUTUBE, 4:34 (Sept. 12, 2022), <https://www.youtube.com/watch?v=D7zEh2IIXtY&t=1s>.

⁸⁰ *Id.* at 4:39.

⁸¹ *Id.* at 4:44.

⁸² *Id.* at 4:58.

⁸³ *Id.* at 5:06.

⁸⁴ *Id.* at 5:15.

America’s Pig Farmers.” As of March 12, 2023, the original ad had been viewed 44,670 times, and given 120 thumbs up.

The day after the original video was released—September 13, 2022—the National Pork Board issued a press release, through PR Newswire, announcing the partnership with Bryan for their “Mythbusting 2.0 Campaign”, shared the focus group video containing Bryan, and described the intention in creating it as part of an “ongoing effort to dispel common misconceptions about modern pig farming.”⁸⁵ Owing to the NPB’s reliance on Bryan’s celebrity influence, the release was entitled “Country Music Superstar Luke Bryan Goes Back to His Roots to Support Pig Farmers” and the secondary headline reads, “Five-time Entertainer of the Year invites people to visit metaphorical five-star hotel to address common myths about modern pig farming.”⁸⁶

On September 14, 2022, Bryan posted to his Instagram account—which has over 7 million followers—a companion video clip, with the caption “Grand opening or eye opening? Be my guest and you decide. Find out more about this unexpected luxury hotel by watching the video at the link in bio.”⁸⁷ The clip remains active on Bryan’s Instagram page as of April 25, 2024⁸⁸ as captured in the image below and has received over 10,000 likes:



⁸⁵ *Country Music Superstar Luke Bryan Goes Back to His Roots to Support Pig Farmers*, PR NEWswire, <https://www.prnewswire.com/news-releases/country-music-superstar-luke-bryan-goes-back-to-his-roots-to-support-pig-farmers-301622670.html>; *Country Music Superstar Luke Bryan Goes Back to His Roots to Support Pig Farmers*, NAT’L PORK BD. (Sept. 13, 2022), <https://www.multivu.com/players/English/9078251-national-pork-board-luke-bryan-supports-pig-farmers-busts-myths/>.

⁸⁶ *Id.*

⁸⁷ Luke Bryan (@lukebryan), *Grand Opening or Eye Opening?*, INSTAGRAM (Sept. 14, 2022), <https://www.instagram.com/p/CifbgJiD-WF/>.

⁸⁸ *Id.*

This same clip was posted on October 11, 2022, on the National Pork Board’s Facebook page as well, with the title “Reservations optional at unexpected hotel”.⁸⁹ This video starts off with a profile view of Bryan in a white bathrobe, reclining on a lounge chair with his feet up, and picking an acoustic guitar.⁹⁰ When Bryan begins talking, the view changes to more directly in front of him. He’s still holding the guitar, and now a side table with champagne in an ice bucket and two champagne glasses can be seen.

From this position, Bryan says, “Every hotel starts with a grand opening. This one starts with an eye-opening. Be my guest; tell ‘em Luke sent you.”⁹¹ As he says the final few words, he raises up a gold hotel room key card, which says “RM•411.” On top of the gold background of the card is the phrase “We Care” repeated over and over, covering the entire card, in a lighter shade of gold. The “We Care” message is also on the card in bigger, prominent, white letters in the bottom righthand corner.



While Bryan’s appearance has been removed from the focus group video, his appearance in the original video and his ongoing promotion of the video concept on social media reflects his continued endorsement of the express and implied statements made therein.

V. LEGAL ANALYSIS

The focus group advertisement by the NPB and Bryan violates the FTCA in that it contains material representations regarding the pork industry that are “likely to mislead the consumer acting reasonably in the circumstances, to the consumer’s detriment.”⁹² As evidenced by the

⁸⁹ National Pork Board, *Reservations optional at unexpected hotel*, FACEBOOK (Oct. 11, 2022), <https://www.facebook.com/watch/?v=1474781789662757>.

⁹⁰ *Id.*

⁹¹ *Id.* at 0:06. [Note: there are no timecodes visible on the Instagram video.]

⁹² *Id.* at 1.

reactions of the focus group participants, consumers exposed to such statements are likely to believe that pigs are treated like guests at a luxury hotel—precisely as the NPB and Bryan intended. These beliefs cannot be further from the truth.

As documented below, pigs used by the pork industry are frequently confined to metal cages so small they cannot exhibit natural behaviors, left to languish with open sores and wounds, deprived of veterinary care, forced to endure surgical mutilations without pain mitigation, and ultimately transported to be slaughtered by having their throats cut or being forced into gas chambers. The video representations violate the FTCA and require action by the FTC to prevent their further dissemination.

A. The claims made by the NPB and Bryan are likely to mislead consumers into believing that pigs used by the pork industry are pampered and indulged when substantial evidence shows they are kept in strict confinement, subjected to bodily mutilations, and ultimately shipped off to be brutally slaughtered, conditions antithetical to those experienced at a luxury hotel.

The evidence weighing against the claims made by the NPB and Bryan—especially those regarding animal care and sustainability—is immense. Numerous undercover investigations at pork industry establishments in the United States over the last decade have revealed conditions and treatment that directly contradict the representations made throughout the focus group advertisement. Even normalized standards widely accepted and promoted by the pork industry refute the representations. Not only are many of the statements made in the video misleading and inaccurate—they are highly deceptive to consumers. This deception is further amplified by the NPB’s reliance on Bryan’s celebrity status to influence consumer purchasing decisions.

1. Undercover Investigations

In recent years, multiple undercover investigations conducted by animal protection groups have documented the deplorable conditions inherent to pork production. These conditions, memorialized in graphic pictures and videos, are diametrically opposed to the claims made by the NPB and Bryan that compare pork farms to luxury hotels.

i. Minnesota (2023)

In 2023, Animal Outlook released an investigation of a Minnesota pork factory farm that documented the immense suffering of both mother pigs and their piglets bred for pork.⁹³ The investigation documented botched attempts to gas to death sick or injured piglets using carbon dioxide poisoning, piglets subjected to castration by having their testicles being ripped out by hand without any pain relief, widespread neglect, including open sores and prolapses where internal organs hang from live pigs’ bodies, and numerous other forms of mistreatment.

⁹³ *Holden Farms: The Problem With Pork*, ANIMAL OUTLOOK, <https://animaloutlook.org/investigations/holden-farms-the-problem-with-pork/>.

The images below, taken during the investigation, depict the bodies of piglets and pigs who died because of conditions at this pork factory farm. These images bear no resemblance to a luxury hotel.



ii. Nebraska (2023)

A Mercy for Animals investigation at a Nebraska pig farm that was released in 2023 revealed similar conditions.⁹⁴ The investigation documented pregnant pigs “confined to cramped individual gestation crates where they experienced depression-like states and were driven mad by boredom and stress,” pigs with exposed and prolapsed organs, and other pigs deprived of veterinary care.

The image below depicts a pig with bloody wounds from the bars of the metal crate who is biting the metal feeder out of frustration and boredom:



⁹⁴ *The New York Times and Mercy for Animals Expose the Pork Industry*, MERCY FOR ANIMALS, https://eatsactexposed.com/?_ga=2.84107930.2041580254.1714058811-1687342186.1712328874.

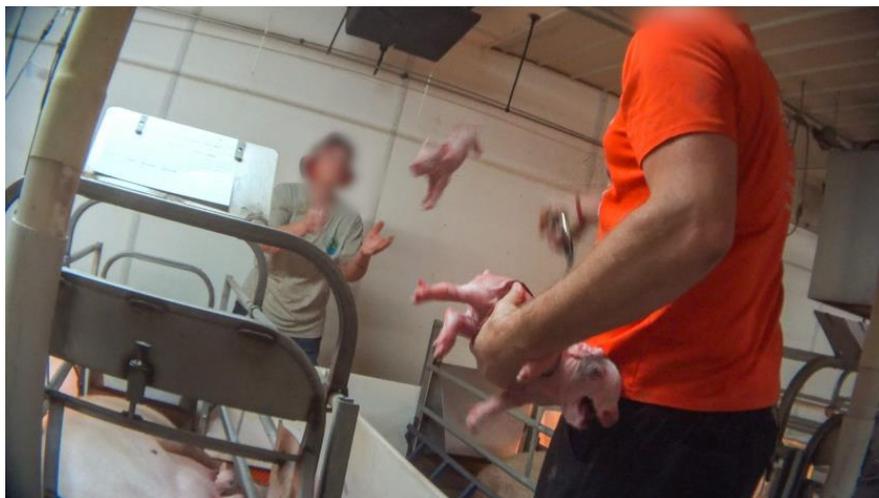
The following image depicts a pig who was deprived of veterinary care and left to suffer and die in her own waste:



iii. Undisclosed Location (2022)

A 2022 Mercy for Animals investigation of an unnamed factory farm housing approximately 2,500 female pigs documented mother pigs confined to gestation crates driven mad by boredom and stress.⁹⁵ The investigation further documented piglets castrated without pain medication, mother pigs with bulging organs denied veterinary care, and dozens of dead piglets.

The image below depicts a piglet being thrown through the air while another is castrated without pain medication:



The image below depicts the carcasses of dead piglets:

⁹⁵ *Breaking Investigation: Horrific Conditions Drive Mother Pigs Mad*, MERCY FOR ANIMALS, <https://mercyforanimals.org/blog/investigation-mother-pigs/>.



These investigations, each released in the past two years, serve as only a representative sample of the evidence contradicting the NPB and Bryan’s claims in the focus group advertisement. Other investigations have documented similar mistreatment and conditions:

- An Animal Outlook investigation at an Iowa pig breeding facility documented poorly performed castrations that resulted in herniated intestines, countless sick or injured piglets left to suffer without veterinary care, sows languishing with uterine prolapses and later dying, and layers of feces caked on the floor of crates and filthy, fly-infested conditions.⁹⁶
- A Direct Action Everywhere investigation of a separate Iowa pig farm documented thousands of pigs loaded into a shed and then having the vents sealed off while heat and steam were pumped inside to kill them in a mass “depopulation.” The pigs screamed in agony for hours as they died.⁹⁷
- A PETA investigation of an Oklahoma pig farm documented employees routinely throwing, beating, kicking, and slamming animals against concrete floors and bludgeoning them with metal gate rods and hammers.⁹⁸

Rather than validating the focus group’s assertions that pork farms focus on “individualized comfort and wellness,”⁹⁹ these investigations depict that pigs are treated as units of production, confined to cages that drive them mad, and regularly beaten and abused. Instead of supporting the video’s assertions that pork farms “ensure the highest levels of health” and “avoid any

⁹⁶ *Iowa Investigation: Hawkeye Sow Centers (Hormel Supplier)*, ANIMAL OUTLOOK, <https://animaloutlook.org/investigations/iowa-pigs/>.

⁹⁷ *Iowa Select Farms*, DIRECT ACTION EVERYWHERE, <https://righttorescue.com/iowa/>.

⁹⁸ *Pig Abusers Charged With Felony Cruelty to Animals at Seaboard Farms, Inc.*, PEOPLE FOR THE ETHICAL TREATMENT OF ANIMALS, <https://www.peta.org/about-peta/victories/pig-abusers-charged-felony-cruelty-animals-seaboard-farms-inc/>.

⁹⁹ Current version - National Pork Board, *Five-Star Hotel Concept Shocks Focus Group*, YOUTUBE, 2:14 (May 26, 2023), <https://www.youtube.com/watch?v=TVmvXe6eOsk> *Id.* at 2:14.

potential injuries,”¹⁰⁰ the investigations reveal that pigs’ reproductive systems are repeatedly exploited and they are frequently left to languish and suffer with open wounds and painful medical conditions.

2. Pork Industry Norms

Even without the disturbing images obtained through undercover investigations, an examination of standard pork industry practices reveals that methods commonly used on pork farms and endorsed by the pork industry are hardly comparable to anything found at a luxury hotel.

i. Gestation Crates

As depicted in the investigations above, a common practice in the pork industry is the use of gestation crates. During the period of pregnancy known as gestation, female pigs (sows) are commonly confined individually in what is known as a “gestation crate”—small stalls typically made of metal.¹⁰¹ These crates are barely larger than the sow herself, approximately 14 square feet.¹⁰² The sows can have trouble laying down, and because the crates are so small, the sows cannot all lie down at once, because their legs extend into other crates.¹⁰³ According to the Pork Checkoff itself, the system, which only allows the animal to stand up and lie down, “restricts movement and exercise, ability to perform foraging behaviors, and limit[s] social interaction between sows.”¹⁰⁴

The advertisement statements are belied by the use of gestation crates, a common fixture in many pork farms. Numerous statements in the video are directly contradicted by these pork industry standards. While the advertisement alleges that pork farms provide “individualized comfort,” “the best care for pigs, making sure they live in a clean, comfortable and carefully controlled environment, to keep them safe and healthy,” and “5-star treatment,” studies and opinions conclude that gestation crates are far from “comfortable.” For example, the American Veterinary Medical Association has stated that “[s]tall-housed sows may have a higher incidence of injuries such as pressure sores, ulcers, and abrasions” and that “[s]ows in stalls may perform more stereotypic behaviors such as biting, chewing, licking, and rubbing than sows housed in the other systems.”¹⁰⁵ Others have concluded that “[w]ithout any bedding materials, sows have no thermal protection, which can cause systemic and local cold stress, and may contribute to or exacerbate injuries to skin and limbs.”¹⁰⁶ A separate scientific study found that mortality is higher in

¹⁰⁰ *Id.* at 2:33.

¹⁰¹ *Farrowing and Gestation Crates*, OSBORNE LIVESTOCK EQUIPMENT (Apr. 16, 2019), <https://osbornelivestockequipment.com/news/farrowing-gestation-crates/>.

¹⁰² F. BAILEY NORWOOD & JAYSON L. LUSK, COMPASSION, BY THE POUND: THE ECONOMICS OF FARM ANIMAL WELFARE, 136 (Oxford Univ. Press, 2011), citing M. B. M. Bracke, et al., *Decision Support System for Overall Welfare Assessment in Pregnant Sows A: Model Structure and Weighting Procedure*, 80 J. OF ANIMAL SCI. 1819, 1819-34 (2002).

¹⁰³ *Id.* at 136-37.

¹⁰⁴ *Sow Housing*, PORK CHECKOFF, <https://www.porkcheckoff.org/certification-tools/producer-tools/sow-housing/>.

¹⁰⁵ *Welfare Implications of Gestation Sow Housing*, AMERICAN VETERINARY MEDICAL ASSOCIATION, <https://www.avma.org/sites/default/files/resources/WelfareImplicationsOfGestationSowHousing.pdf>

¹⁰⁶ Webster J. 1994. *Animal Welfare: A Cool Eye Towards Eden* (Oxford, U.K.: Blackwell Science Ltd., pp.

gestation crates.¹⁰⁷ Accordingly, the use of gestation crates—which the pork industry openly admits to using—is incompatible with any assertion that pigs live in “comfortable,” or “healthy” environments that resemble “5-star treatment.”

ii. Tail Docking, Ear Notching & Castration

Other common practices in the pork industry include castration, tail docking, and ear notching. Castration and tail docking are standard operating procedures in the pork industry, as shown by their endorsements in published educational materials.¹⁰⁸

Castration is performed in part because many consumers prefer meat from a castrated pig versus a natural one.¹⁰⁹ According to industry guidance published by the Pork Checkoff, surgically castrating a piglet without pain management is currently a “viable option.”¹¹⁰ However, there is less cruel method of castration available, known as immunocastration.¹¹¹ Specifically, an FDA-approved prescription drug that accomplishes this goal is on the market, and when used, piglets do not require physical castration.¹¹² Even so, the process is still seen as an alternative method rather than a common practice within the pig farming industry.¹¹³

Tail docking of piglets—amputation of a part of their tail¹¹⁴—is another “routine” part of the pork industry.¹¹⁵ Meanwhile, it has been shown that piglets feel acute pain and stress during the tail docking procedure.¹¹⁶

148-9).

¹⁰⁷ C. Schuck-Paim and W. Alonso, *Productivity of mother pigs is lower, and mortality greater, in countries that still confine them in gestation crates*, F1000 Research (Aug. 4, 2022), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9379333/>

¹⁰⁸ PORK CHECKOFF, PQA PLUS VERSION 5 EDUCATION HANDBOOK at 119 (2021), <https://www.porkcdn.com/sites/lms/References+and+Resources/PQAv5+Handbook+English+2.8.22.pdf> [hereinafter PQA Plus].

¹⁰⁹ *Literature Review on the Welfare Implications of Swine Castration*, AM. VETERINARY MED. ASS’N (May 29, 2013), https://www.avma.org/sites/default/files/resources/swine_castration_bgnd.pdf.

¹¹⁰ PORK CHECKOFF, SWINE CARE HANDBOOK at 17 (2018), http://www.porkcdn.com/sites/all/files/documents/PQAPlus/V4.0/Details_Ref_SPS/2018SwineCareHandbook.pdf [hereinafter Swine Care Handbook].

¹¹¹ *Castration of Cattle and Pigs*, ALBERTA FARM ANIMAL CARE, <https://www.afac.ab.ca/castration-of-cattle-and-pigs/>.

¹¹² *Literature Review on the Welfare Implications of Swine Castration*, AM. VETERINARY MED. ASS’N (May 29, 2013), https://www.avma.org/sites/default/files/resources/swine_castration_bgnd.pdf.

¹¹³ *Id.*

¹¹⁴ Anna Valros & Mari Heinonen, *Save the pig tail*, PORCINE HEALTH MANAGEMENT (2015), <https://porcinehealthmanagement.biomedcentral.com/articles/10.1186/2055-5660-1-2>.

¹¹⁵ John J. McGlone & Mhairi Sutherland, *Is tail docking necessary and if so, how long should the tail be?*, PORK CHECKOFF 1 (Sept. 30, 2009).

¹¹⁶ See, e.g., Céline Tallet, Marine Rakotomahandry, Sabine Herlemont & Armelle Prunier, *Evidence of Pain, Stress, and Fear of Humans During Tail Docking and the Next Four Weeks in Piglets (*Sus scrofa domesticus*)*, FRONTIER. VETERINARY. SCI. (Dec. 11, 2019), <https://www.frontiersin.org/articles/10.3389/fvets.2019.00462>.

Ear notching, used for permanent identification of a pig, is also performed on piglets, and is also approved by industry as a procedure that can be done without the use of pain mitigation.¹¹⁷

All three of these “routine” procedures constitute painful mutilations to a piglet’s body and cannot possibly be said to represent “5-star” service of pigs or “proper guest care techniques.” No reasonable consumer would believe that a luxury hotel mutilates their guests’ infant children as part of their attention to “individualized comfort and wellness.”

iii. Nutrition—Feedback

Within the pork industry, “feedback”—the practice of feeding sows feces from piglets to help with disease prevention in the next litter—is a known and accepted practice.¹¹⁸ An article in a pig industry news source, the National Hog Farmer, discusses the “evolution” of the feedback process, and acknowledges that, “Modern methods of pork production don’t afford pigs the opportunity of natural exposure by rooting around in manure to achieve a ‘properly colonized intestine’ ...”¹¹⁹ The pork industry, as it evolved, not only moved to raising pigs in unnatural ways, but in response to the problem this created, began to feed sows actual waste to solve it. When the focus group video touts pig farmers’ “incredible dedication to delivering balanced meals,”¹²⁰ the use of “healthy, nutritious foods,”¹²¹ and claim that “personal nutritionists” are developing their food,¹²² they are directly ignoring the mere existence of the process of feedback.

A particularly gruesome version of feedback was discovered by an undercover investigation done by the Humane Society of the United States in 2014.¹²³ During a spread of disease amongst pigs, a farm in Kentucky decided to grind up piglets who had gotten the virus and feed them to sows—sows who could have been their own mothers.¹²⁴ The investigation described the ground up piglets fed to sows as a “smoothie.”¹²⁵ Another investigation by Animal Outlook that was released in 2023 depicted “workers blend[ing] the intestines of dead piglets together with pig feces into a slurry and feed[ing] it to pregnant pigs.”¹²⁶ In the investigation video, a worker is seen retching and nearly vomiting as she blends the intestines.¹²⁷

¹¹⁷ PORK CHECKOFF, SWINE CARE HANDBOOK at 17 (2018), http://www.porkcdn.com/sites/all/files/documents/PQAPlus/V4.0/Details_Ref_SPS/2018SwineCareHandbook.pdf [hereinafter Swine Care Handbook].

¹¹⁸ Joe Vansickle, *Refining Feedback*, THE NAT’L HOG FARMER (Aug. 15, 2012), <https://www.nationalhogfarmer.com/health/refining-feedback>.

¹¹⁹ *Id.*

¹²⁰ Current version - National Pork Board, *Five-Star Hotel Concept Shocks Focus Group*, YouTube (May 26, 2023), <https://www.youtube.com/watch?v=TVmvXe6eOsk>.

¹²¹ *Id.*

¹²² *Id.*

¹²³ Eliza Barclay, *‘Piglet Smoothie’ Fed to Sows To Prevent Disease; Activists Outraged*, NPR (Feb. 20, 2014), <https://www.npr.org/sections/thesalt/2014/02/20/280183550/piglet-smoothie-fed-to-sows-to-prevent-disease-activists-outraged>.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Holden Farms: The Problem With Pork*, ANIMAL OUTLOOK, <https://animaloutlook.org/investigations/holden-farms-the-problem-with-pork/>.

¹²⁷ *Id.*

This practice stands in extreme contradiction to claims about a commitment to proper nutrition, as well as 5-star care and numerous other representations made in the focus group video. It seems unlikely that any guest dining at a luxury hotel would view a bowl of blended intestines and feces as “quality” or “nutritious.” It is equally unlikely that any such guest would consider the server who is retching and nearly vomiting as they prepared the mixture to be their “personal nutritionist.”

iv. Waste

The pork industry norm for waste management is to put hog excrement (including feces, urine, blood, and other bodily fluids) into large, often unlined, pits called lagoons.¹²⁸ The waste is digested by anaerobic bacteria and then the liquid is sprayed onto crops.¹²⁹ These practices have an extreme negative affect on the environment, as well as the people working on these farms and the surrounding neighbors.¹³⁰ A 2021 scientific study found that increased levels of fine particulate matter (an air pollutant) from the pork production process (mainly from waste) contribute to 3,300 premature deaths a year in the United States.¹³¹ In September of 2018, Hurricane Florence led to the overflow of 33 hog waste lagoons in North Carolina, and the “pink slurry” mixed with the rainwater.¹³² Events like this lead to loss of wildlife, contamination of water sources and soil pollution.¹³³

These facts directly contradict claims made in the NPB video regarding sustainability and care for the environment. Specifically, these statements include the focus group facilitator’s leading question “So how does it make you feel to know the hotel is focused so much on sustainability?” and Bryan’s statements that “pig farmers are always finding ways to use less land, water, and energy, to reduce their environmental impact.” and claims of “5-star treatment of people, pigs, and the planet.”

v. Death and Slaughter

The purpose of the pork industry is to breed and raise pigs so that they can be slaughtered and made into a variety of pork products. Although this is self-evident, a reasonable consumer

¹²⁸ Anjel Iriaghomo, *How Does Nitrogen Move Through a Swine Farm with a Lagoon-Sprayfield System?*, NC STATE EXTENSION (June 13, 2022), <https://content.ces.ncsu.edu/how-does-nitrogen-move-through-a-swine-farm-with-a-lagoon-sprayfield-system>.

¹²⁹ Talia Buford, *A Hog Waste Agreement Lacked Teeth, and Some North Carolinians Say They’re Left to Suffer*, PROPUBLICA (Nov. 23, 2018), <https://www.propublica.org/article/a-hog-waste-agreement-lacked-teeth-and-some-north-carolinians-say-left-to-suffer>.

¹³⁰ See, e.g., Steve Wing, Rachel Avery Horton, & Kathryn M. Rose, *Air Pollution from Industrial Swine Operations and Blood Pressure of Neighboring Residents*, 121 ENVIRONMENTAL HEALTH PERSPECTIVES 92 (Jan. 2013), <https://ehp.niehs.nih.gov/doi/epdf/10.1289/ehp.1205109>; K.J. Donham, *Community and occupational health concerns in pork production: A review*, J. 88 ANIMAL SCIENCE E102 (2010), <https://doi.org/10.2527/jas.2009-2554>.

¹³¹ Nina G. G. Domingo, et. al, *Air quality-related health damages of food*, PNAS (May 10, 2021), <https://www.pnas.org/doi/10.1073/pnas.2013637118>.

¹³² Talia Buford, *A Hog Waste Agreement Lacked Teeth, and Some North Carolinians Say They’re Left to Suffer*, PROPUBLICA (Nov. 23, 2018), <https://www.propublica.org/article/a-hog-waste-agreement-lacked-teeth-and-some-north-carolinians-say-left-to-suffer>.

¹³³ *The Sources and Solutions: Agriculture*, EPA (last updated Oct. 28, 2022), <https://www.epa.gov/nutrientpollution/sources-and-solutions-agriculture>.

viewing this advertisement would likely not realize that having their throats cut or being gassed to death is the ultimate destination of the animals being described as receiving “5-star treatment.”

Moreover, the processing plants where pigs are taken to be slaughtered and butchered are not places a luxury hotel that cares about their guests’ “comfort,” “safety,” and “well-being” would ship them off to. When a person stays at a 5-star hotel, they presumably go home at the end of their trip—not shipped in a transport truck to a plant where they will be bolted in the skull, shackled, and stabbed in the throat.

Recent undercover investigations have shined a light into the realities of slaughter in the pork industry. In 2023, Direct Action Everywhere released video footage taken inside the gas chambers at the Farmer John meatpacking plant outside of Los Angeles, California.¹³⁴ The video depicts pigs screaming and gasping for air who thrash violently while trying to escape.¹³⁵ On the left is a stock photo (not from the advertisement in question) of a guest enjoying the pool at a luxury hotel.¹³⁶ On the right is a pig screaming and suffocating inside a slaughterhouse gas chamber.¹³⁷



A separate 2015 investigation by Animal Outlook into Quality Pork Processors, a Minnesota slaughterhouse, discovered horrific acts of cruelty,¹³⁸ including a worker shoving a metal rod into a pig’s mouth and then using that rod to drag the pig, as the animal tries to get away along the concrete floor.¹³⁹ The image below depicts the pig too injured or sick to walk dragged with a metal rod in her mouth:

¹³⁴ *Spy Cams Reveal the Grim Reality of Slaughterhouse Gas Chambers*, WIRED, <https://www.wired.com/story/dex-pig-slaughterhouse-gas-chambers-videos/>.

¹³⁵ *Help expose and stop the cruel use of gas chambers*, STOPGASCHAMBERS.ORG, <https://www.stopgaschambers.org/>.

¹³⁶ Stock photo; not from advertisement challenged here, Adobe Stock, stock.adobe.com.

¹³⁷ *Help expose and stop the cruel use of gas chambers*, STOPGASCHAMBERS.ORG, <https://www.stopgaschambers.org/>.

¹³⁸ *Hormel: USDA-Approved High Speed Slaughter Hell*, ANIMAL OUTLOOK, <https://animaloutlook.org/investigations/hormel/>.

¹³⁹ *Id.*



The image below depicts a worker beating a pig:



B. Animal welfare and sustainability claims such as those made in the NPB advertisement are material to a consumer’s purchasing decision, particularly when endorsed by a celebrity such as Bryan.

The FTC’s determination of materiality assesses whether the act is “likely to affect the consumer’s conduct or decision with regard to a product or service.”¹⁴⁰ In practice, the FTC looks to whether the information is “important to consumers” or not.¹⁴¹ If the misleading statement or omission is about material information, injury to the consumer is considered

¹⁴⁰ Letter from James C. Miller III, Chairman, FTC, to Hon. John D. Dingell, Chairman, House Comm. on Energy & Commerce (Oct. 14, 1983), https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf [hereinafter FTC Policy Statement on Deception].

¹⁴¹ *Id.* at 5.

“likely.”¹⁴² Injury is said to have occurred “if consumers would have chosen differently but for the deception.”¹⁴³

It is widely known that advertising assertions regarding animal welfare are “important” in consumer purchasing decisions and thus, animal welfare claims such as those made in the challenged advertisement are material. Countless surveys in recent years have demonstrated that consumers overwhelmingly care about the welfare of animals when making purchasing decisions. A representative sample of findings from recent surveys includes the following:

- A 2017 research study looked at American citizens’ views on what an “ideal pig farm” would look like.¹⁴⁴ The survey results showed that 74% of respondents considered animal welfare as an important characteristic of the ideal pig farm, the highest factor among all measured.¹⁴⁵ Animal welfare concerns that were mentioned by respondents included “space to move, feeding, contact with outdoors or nature, [and] absence of pain, suffering and mistreatment.”¹⁴⁶
- A 2018 research study looked at changing views among American consumers regarding the way animals raised for meat are raised.¹⁴⁷ 78% of survey respondents said they were either “somewhat concerned” or “very concerned” about farmed animal welfare.¹⁴⁸ One of the primary concerns reported by respondents, specifically when considering the purpose of humane certification program labeling, was for the space given to animals.¹⁴⁹
- In 2022, another study of American grocery shoppers found that 76% of shoppers were somewhat or very concerned about animal welfare.¹⁵⁰ Of the large majority of shoppers (86%) who reported buying an animal product with an animal welfare-related claim in the preceding year, 89% did so because the label stated or implied that production practices were of a higher welfare standard, and 79% actively paid more for that reason.¹⁵¹

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ Patrycia Sato, Maria J. Hötzel, & Marina A.G. von Keyserlingk, *American Citizens’ Views of an Ideal Pig Farm*, ANIMALS (Aug. 22, 2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5575576/pdf/animals-07-00064.pdf>.

¹⁴⁵ *Id.* at 4.

¹⁴⁶ *Id.*

¹⁴⁷ C. Victor Spain, et al., *Are They Buying It? United States Consumers Changing Attitudes toward More Humanely Raised Meat, Eggs and Dairy*, ANIMALS (July 25, 2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6116027/pdf/animals-08-00128.pdf>.

¹⁴⁸ *Id.* at 5.

¹⁴⁹ *Id.*

¹⁵⁰ Melissa Thibault, Sharon Pailler, & Daisy Freund, *Why Are They Buying It? United States Consumers’ Intentions When Purchasing Meat, Eggs and Dairy With Welfare-related Labels*, FOOD ETHICS at 12 (June 18, 2022), <https://link.springer.com/article/10.1007/s41055-022-00105-3>.

¹⁵¹ *Id.* at 12.

- A February 2024 survey conducted by NSF found that 67% of US consumers say animal wellness is either very or extremely important to purchasing decisions.¹⁵²
- A 2017 survey by Packaged Facts found that 58% of consumers are more concerned about food animal welfare than they were just a few years prior.¹⁵³
- A 2016 study by the American Society for the Prevention of Cruelty to Animals found that 77% of consumers are concerned with the welfare of farmed animals.¹⁵⁴
- A 2014 Consumer Reports survey found that 80% of respondents to a survey conducted by Consumers Reports said they want good living conditions for animals raised for food.¹⁵⁵

The statements in the NPB advertisement center on animal welfare claims. Accordingly, a reasonable consumer viewing this advertisement would be more likely to consume these products after seeing a supposedly unsuspecting focus group react so positively to discovering the “luxury hotel” they have been hearing about is really a pig farm.

Second, consumers also care about sustainability claims, such as those made in the video. For example, a 2022 survey of nationally representative sample of 1,042 Americans found that 75% of people are “concerned about the environmental impacts of the products they buy.”¹⁵⁶ The survey also found that 68% of American consumers believe the food sector is demonstrating an “actionable commitment to becoming more sustainable.”¹⁵⁷ Thus, the sustainability claims made in the video are likewise material to consumers.

Finally, it is widely known that celebrity statements are “likely to affect” the consumer’s purchasing decision, which is precisely the reason the NPB recruited Bryan to promote pork products. For example, a recent study by the Wharton School of Business found that “[p]eople are more likely to choose products that are endorsed by a celebrity rather than a non-celebrity, and they make that choice faster.”¹⁵⁸ A separate study of athlete endorsements by the Harvard Business School found that “there is a positive payoff to a firm's decision to sign an endorser,

¹⁵² *Nearly 70% of Americans Say Animal Wellness Plays an Important Role in Purchasing Decisions*, NSF, <https://www.nsf.org/news/nsf-reveals-americans-say-animal-wellness-important-role-purchasing-decisions>.

¹⁵³ *Survey: More consumers concerned about animal welfare*, PROQUEST, <https://www.proquest.com/docview/1905748008?sourcetype=Trade%20Journals>.

¹⁵⁴ *New Research Finds Vast Majority of Americans Concerned about Farm Animal Welfare, Confused by Food Labels and Willing to Pay More for Better Treatment*, ASPCA, <https://www.asPCA.org/about-us/press-releases/new-research-finds-vast-majority-americans-concerned-about-farm-animal>

¹⁵⁵ Bopp S, *It's Only Natural, But What Does That Mean?*, Drovers Cattle Network, Aug 27, 2014.

¹⁵⁶ *Business of Sustainability Index*, PDI TECHS., INC. at 4 (June 2022) (can be downloaded at <https://pditechnologies.com/resources/report/business-sustainability-index/>).

¹⁵⁷ *Id.* at 9.

¹⁵⁸ *The Marketing Psychology Behind Celebrity Endorsements*, KNOWLEDGE AT WHARTON, <https://knowledge.wharton.upenn.edu/article/the-marketing-psychology-behind-celebrity-endorsements/>.

and that endorsements are associated with increasing sales in an absolute sense and relative to competing brands.”¹⁵⁹

Bryan’s influence on the public is widely recognized. A presentation created by the NPB for the campaign at issue campaign at issue, touted the benefits of Bryan as a spokesperson for the campaign, describing him as “influential”, “trustworthy and sincere”, “recognizable”, and “newsworthy”.¹⁶⁰ A slide from a PowerPoint presentation created by the Pork Checkoff and obtained by Animal Partisan through public records requests is below:

Influential Spokesperson

| | |
|----------------------------------|--------------------------|
| Why? | Audience: |
| ✓ Trustworthy and sincere | ✓ 75% age 25-44 |
| ✓ More social following/channels | ✓ 75% female |
| ✓ New voice, expands reach | ✓ TX, PA, NY, IL, MI, CA |
| ✓ Recognizable | |
| ✓ Newsworthy | |
| ✓ Value based on social reach | |

The claims made in the focus group advertisement are material to consumers. They involve animal welfare and sustainability, each of which is widely known to influence purchasing decisions. Moreover, they are associated with and apparently endorsed by a widely known celebrity, a tactic known to influence consumer decisions.

VI. RELIEF REQUESTED

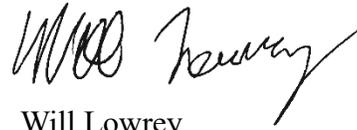
Animal Partisan requests that the FTC utilize its power to protect consumers by enjoining the NPB and Bryan from disseminating the focus group video or any related advertisements on any platform. Moreover, the FTC should order the NPB and Bryan to issue public statements acknowledging that the video was misleading and admitting that no reasonable basis existed for the claims made therein.

¹⁵⁹ A. Elberse, The Economic Value of Celebrity Endorsements, Journal of Advertising Research (2012), <https://www.hbs.edu/faculty/Pages/item.aspx?num=40853>.

¹⁶⁰ *Mythbusting 2.0: We’re Open if You Are*, Jason Menke, Director, Consumer PR and Claire Memmelaar, Manager, Consumer Digital Content, PowerPoint presentation.

We appreciate your consideration of this matter. Please contact me should you have further questions at wlowrey@animalpartisan.org.

Submitted April 30, 2024

A handwritten signature in black ink, appearing to read "Will Lowrey". The signature is fluid and cursive, with the first name "Will" written in a stylized, overlapping manner.

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