

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

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| <p>ORGANIC CONSUMERS ASSOCIATION, 6771 South Silver Hill Drive, Finland, MN 55603, on behalf of the general public,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>HANDSOME BROOK FARM, LLC, 4132 East Handsome Brook Road, Franklin, NY 13775; HANDSOME BROOK FARM GROUP 2 LLC, 4132 East Handsome Brook Road, Franklin, NY 13775; and DOE CORPORATION Nos. 1-10 (the names Doe Corporation being fictitious, as the true names are presently unknown),</p> <p style="text-align: center;">Defendants.</p> | <p>Case No. <u>2016 CA 006223 B</u></p> <p><u>DEMAND FOR JURY TRIAL</u></p> |
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AMENDED COMPLAINT

On behalf of the general public, Plaintiff Organic Consumers Association (“Plaintiff” or “OCA”), a non-profit organization, by and through its counsel, brings this action against Defendants Handsome Brook Farm, LLC; Handsome Brook Farm Group 2 LLC; and Doe Corporation Nos. 1-10 (collectively, “Handsome Brook”) regarding the deceptive labeling, marketing, and sale of Handsome Brook Farm Pasture Raised Eggs, and alleges the following based upon information, belief, and the investigation of its counsel:

INTRODUCTION

1. Due to concerns about health, sustainability, and animal welfare, consumers are increasingly factoring into their purchasing decisions the origins of their food. The growing desire for humanely raised egg products is part and parcel of these trends.

2. Among other factors, consumers are concerned about how egg-laying hens are

raised, whether the hens have been fed hormones or other drugs, and whether the hens have been confined in cramped and inhumane conditions.

3. Given these concerns, consumers are increasingly seeking egg products that are “pasture raised.”

4. Reasonable consumers believe the term “pasture raised” means, at a minimum, that the egg-laying hens enjoy substantial unfettered freedom to roam and forage, with ample square footage of pasture per bird.

5. The products at issue in this action, at this time, are Handsome Brook Farm eggs labeled “Pasture Raised” (collectively, the “Products”).¹



6. Seeking to capitalize on consumer beliefs and preferences, Handsome Brook aggressively advertises and promotes the Products as “Pasture Raised.” These claims are false,

¹ Discovery may demonstrate that additional Handsome Brook products are within the scope of

deceptive, and misleading, because often the Products are not pasture-raised, insofar as they do not conform to any understanding that a reasonable consumer would have of the term “Pasture Raised.”

7. Instead, Handsome Brook procures non-pastured-raised eggs from its network of suppliers, and sometimes purchases non-pastured-raised eggs in the open market, and falsely labels those eggs “Pasture Raised.”

8. Handsome Brook touts the “Pasture Raised” attributes of the Products extensively on the Products’ labels, as well as on its website and through interviews and marketing materials, because it knows that consumers increasingly place value on the manner in which egg-laying hens are raised and treated.

9. Truly pasture-raised hen eggs are much more expensive to produce than eggs from hens who are not pastured. Through its practice of labeling both pasture-raised and non-pasture-raised eggs as “Pasture Raised,” Handsome Brook has been able to capitalize on consumers’ perceptions of what “Pasture Raised” means, to capitalize on consumers’ desires for eggs from pasture-raised hens, to undercut the prices of competing egg labels that actually sell eggs exclusively from pasture-raised hens, and thus to expand rapidly (and deceptively) its presence in the consumer market for pasture-raised eggs.

10. Handsome Brook’s false and misleading representations and omissions violate the District of Columbia Consumer Protection Procedures Act (“DCCPPA”), D.C. Code §§ 28-3901, *et seq.*

11. Because Handsome Brook’s labeling and advertising of the Products tends to mislead and is materially deceptive about the way in which the egg-laying hens are raised and cared for, OCA brings this deceptive advertising case on behalf of the general public, and seeks

relief including an injunction to halt Handsome Brook's false marketing and sale of the Products and a court-ordered corrective advertising campaign to inform the public of the true nature of the Products.

JURISDICTION AND VENUE

12. This Court has personal jurisdiction over the parties in this case. OCA maintains a presence in the District of Columbia and, by filing this Complaint, consents to this Court having personal jurisdiction over it.

13. This Court has personal jurisdiction over Handsome Brook pursuant to D.C. Code § 13-423. Handsome Brook has sufficient minimum contacts with the District of Columbia to establish personal jurisdiction of this Court over it because, *inter alia*, Handsome Brook is engaged in deceptive schemes and acts directed at persons residing in, located in, or doing business in the District of Columbia, or otherwise purposefully avails itself of the laws of this District through its marketing and sales of the Products in this District.

14. This Court has subject matter jurisdiction over this action pursuant to D.C. Code §§ 28-3905(k)(1)(B), (k)(1)(C), (k)(1)(D), and (k)(2).

15. Venue is proper in this District under 28 U.S.C. § 1391(b). Substantial acts in furtherance of the alleged improper conduct, including the dissemination of false and misleading information regarding the nature and quality of the Products, occurred within this District. The Products are available for purchase at stores in the District of Columbia.

PARTIES

16. Upon information and belief, through the practices described herein, Handsome Brook has caused harm to the general public of the District of Columbia.

17. OCA is a 501(c)(3) non-profit public-interest organization that deals with crucial

issues of truth in advertising, accurate food labeling, food safety, genetic engineering, children's health, corporate accountability, environmental sustainability, and related topics.

18. OCA performs its work throughout the United States, including in the District of Columbia. Some of OCA's staff resides in or near the District of Columbia, including its political director. OCA has members who reside in the District of Columbia

19. OCA was formed in 1998 in the wake of backlash by consumers against the U.S. Department of Agriculture's controversial proposed national regulations for organic food. In its public education, network building, and mobilization activities, OCA works with a broad range of public interest organizations to challenge industrial agriculture, corporate globalization, and to inspire consumers to "Buy Local, Organic, and Fair Made." OCA's website, publications, research, and campaign staff provide an important service for hundreds of thousands of consumers and community activists every month. Its media team provides background information, interviews, and story ideas to television and radio producers and journalists on a daily basis.

20. Thus, OCA's focus is on representing the views and interests of consumers by educating consumers on food safety, industrial agriculture, genetic engineering, corporate accountability, and environmental sustainability issues. OCA uses funds it raises to educate consumers, increasing their awareness and knowledge of the agricultural production, and to protect the environment by regenerating organic and/or sustainable agriculture. OCA also uses its funds and member base to pressure food companies to adopt honest labeling practices, to the benefit of consumers.

21. Since its inception, OCA has advocated for outdoor access and pasture standards for organic animals. Most recently, OCA submitted comments on the U.S. Department of

Agriculture’s National Organic Program’s 2016 proposed rules for outdoor access for poultry, arguing that requiring nothing but bare dirt or concrete in outdoor areas deprives chickens of their ability to express natural behaviors.

22. Handsome Brook’s false and misleading labeling of the Products has frustrated OCA’s mission of educating its members and the consuming public about agricultural and labeling practices, by distorting the pasture-raised egg market and degrading consumer confidence in egg labels. OCA has asked its members to boycott brands that are known to provide inadequate outdoor access to their chickens and to buy eggs from truly pasture-raised chickens. Handsome Brook’s conduct harms this boycott and advocacy work, forcing OCA to spend additional resources to counteract such misinformation and to alleviate the consumer deception perpetrated by companies like Handsome Brook, through their mislabeling of eggs as “pasture-raised.”

23. On August 19, 2016, OCA purchased Handsome Brook Farm Organic Pasture Raised Large Eggs at the Harris Teeter store located at 401 M Street, SE, Washington, D.C., in order to evaluate the eggs’ purported “Pasture Raised” qualities.

24. OCA is acting for the benefit of the general public as a private attorney general pursuant to D.C. Code § 28-3905(k)(1). It is a public-interest organization pursuant to D.C. Code § 28-3901(a)(15), and a non-profit organization pursuant to D.C. Code § 28-3901(a)(14).

FACTUAL ALLEGATIONS

25. OCA brings this suit for injunctive relief under the DCCPPA, D.C. Code § 28-3901 *et seq.*, against Handsome Brook based on misrepresentations and omissions committed by Handsome Brook regarding the Products, which Handsome Brook falsely and deceptively labels and markets as “Pasture Raised,” when in fact the Products do not comprise exclusively eggs

from pasture-raised hens.

I. Handsome Brook Labels the Products “Pasture Raised” in Order to Capitalize Upon Growing Desire and Demand for Eggs from Humanely Raised Hens.

26. As public awareness has grown regarding the inhumane treatment of animals raised for food, and especially the conditions in which many egg-laying hens are kept, consumers’ demand has also grown for humanely produced—specifically, pasture-raised—eggs.

27. Handsome Brook knows that consumers seek out and wish to purchase pasture-raised eggs.

28. A 2015 Consumer Reports survey found that it is important to consumers that food not be produced via standard factory-farm methods. For example, 82% of consumers said it was “important” or “very important” to reduce antibiotic use in food production; 84% said the same about improving living conditions for animals.²

29. To capture this growing market, Handsome Brook labels the Products as “Pasture Raised.”

30. Consumers reasonably expect that eggs labeled “Pasture Raised” come from hens who enjoy some minimum standard of care, namely, regular unfettered access to outdoor pasture to roam and forage, with ample square footage of pasture per bird.

31. Indeed, until very recently,³ Handsome Brook characterized “Pasture Raised” according to a 108-square-foot standard on its website,⁴ stating (among other claims):

- “Handsome Brook Farm provides lush pasture of more than 108 square

² See <https://goo.gl/kC16HY> (last visited July 8, 2016).

³ At some point within the months immediately preceding the filing of this Complaint, Handsome Brook began removing some of these claims from its website. Handsome Brook continues to label the Products “Pasture Raised” and has done nothing to correct these falsehoods upon which its reputation was established.

⁴ See <http://www.handsomebrookfarm.com> (screenshot acquired March 30, 2016).

feet per hen!”;

- “Handsome Brook Farm standards meet or exceed Whole Foods Market standards, Certified Humane Organic Standards, USDA Organic standards, and we have received a 4-Egg Rating from Cornucopia Institute. Most importantly, we regularly receive 3rd party inspections from outside entities to ensure that standards are met”⁵;
- “Our hens spend a large portion of their days outdoors on pasture (weather permitting, of course)”;
- “We provide at least 55 square feet of pasture at a time per hen which, when rotated, is more than 108 feet per hen.”

32. Even today, Handsome Brook’s website asserts, “We are strongly committed to the highest standards of quality pasture raised eggs, the ethical and humane treatment of our hens, the well being of our family farms, and fair trade practices.”⁶

33. Brian and Betsy Babcock, the co-founders of Handsome Brook, in extensive interviews and a substantial marketing operation, have touted Handsome Brook as different, and more ethical, than competing egg sellers.⁷

⁵ Like the American Humane Association does, the organization behind the “Certified Humane” seal, Humane Animal Farm Care, Inc., also requires that pasture-raised hens have a minimum of 108 square feet of pasture per hen. *See* <http://certifiedhumane.org/wp-content/uploads/2015/11/Std14.Layers.5A.pdf> (last visited July 18, 2016).

⁶ <http://www.handsomebrookfarm.com> (last visited July 31, 2016).

⁷ *E.g.*, “This Is What a Genuine Free-Range Farm Looks Like,” *available at* <http://on.inc.com/29u5zF2> (last visited July 5, 2016) (“The company says that, unlike farmers who claim to raise organic or free-range eggs and then keep their chickens in warehouses, Handsome Brook lets its hens run loose on actual farms.”); “Want a Better Egg? So Does Betsy Babcock,” *available at* <http://bit.ly/29w0RUz> (last visited July 5, 2016) (Betsy Babcock interview) (“Q. So what does it mean that your hens are ‘pasture-raised?’ A. They live in barns in which they have about 2 square feet of space each and two giant doors that give them free access to 12 acres of outside pasture.”); Babcock, Betsy, “A Guide to What Eggs You Should ACTUALLY Buy,” *available at* <http://bit.ly/29hQFgk> (last visited July 5, 2016) (“Pasture-raised is the highest quality in terms of ethical treatment of hens. These hens have access to 108 square feet per hen. They go outside. They eat bugs. They dust-bathe. They get to be chickens. . . . While it’s true that these eggs are a bit more expensive, there are some pasture-raised varieties, such as Handsome Brook Farm Pasture Raised Eggs, that are more reasonably priced than others.”); Gee, Kelsey, “Organic Farming Rules Overhauled,” *available at*

34. No reasonable consumer, seeing the words “Pasture Raised” on the Products, would expect the Products to come from hens who do not spend most of their daytimes with unfettered access to pastures with ample space for roaming and foraging.

35. In the event that any consumer sought more information, either from Handsome Brook’s website or from its marketing materials, that consumer would only have his or her belief confirmed that the Products come from hens who spend most of their daytime in pastures, namely, in “lush” pastures with a minimum of 108 square feet per bird.

II. Despite the “Pasture Raised” Labels and Extensive Marketing Campaign, Handsome Brook’s Products Contain Eggs From Hens Who Are Not Pasture-Raised.

36. Despite its labeling and marketing, Handsome Brook’s Products contain eggs that do not come from “Pasture-Raised” hens.

A. Handsome Brook’s Captive Supply Network Includes Hens Who Are Not Pasture-Raised.

37. In order to fuel its rapid expansion in the pasture-raised egg market, Handsome Brook “partnered” with family farms.

38. As part of these “partnerships,” Handsome Brook encouraged farmers, some with limited or no experience in raising hens, to build barns for hens.

39. Lacking guidance on chicken care or pasture-raised standards, many farmers who constructed chicken barns and/or purchased flocks in order to sell eggs to Handsome Brook ended up raising hens in conditions that do not fit consumer perceptions of “Pasture Raised”;

<http://on.wsj.com/215Z62v> (last visited July 5, 2016) (“Betsy Babcock, founder of organic egg producer Handsome Brook Farm in New York state, said she is pleased to finally see the proposed rules. . . . Her company requires that egg producers selling under its brand give hens nearly 109 square feet of outdoor space each.”).

nevertheless, and despite knowing the conditions in which the hens were actually raised, Handsome Brook labeled and sold such eggs as “Pasture Raised.”

40. Lacking guidance on chicken care or pasture-raised standards, many farmers who constructed chicken barns and/or purchased flocks in order to sell eggs to Handsome Brook ended up raising hens in conditions that were not humane and did not offer hens any significant access to pasture; nevertheless, and despite knowing the conditions in which the hens were actually raised, Handsome Brook labeled and sold such eggs as “Pasture Raised.”

41. Without regard for the actual conditions in which hens are raised on the farms from which it purchases, Handsome Brook has labeled, and continues to label, these Products as “Pasture Raised.”

42. Most farms from which Handsome Brook sources its eggs are located in the northeastern United States, where freezing conditions require birds to be confined, and not pastured, for up to several months per year, and where, many months of the year, pastures are not green. Nevertheless, Handsome Brook has labeled, and continues to label, these Products as “Pasture Raised,” without any qualification such as “Seasonally Pasture Raised.”

B. Handsome Brook Has Purchased Eggs in the Open Market Without Regard to Whether Those Eggs Come From Pasture-Raised Hens.

43. As part of its rapid expansion in the pasture-raised egg market, Handsome Brook has also purchased eggs in the open market (i.e., outside its captive supply network) without regard for whether those eggs were purported to be from, or in fact were from, pasture-raised hens.

44. Handsome Brook knew that the eggs it purchased in the open market were not from pasture-raised hens.

45. Handsome Brook nevertheless packaged these eggs, including eggs from hens with no significant access to pasture, as its Products in cartons labeled “Pasture Raised,” or directed that the eggs be so packaged.

C. The “Certification” That Handsome Brook Places Upon the Products Does Not Indicate Whether the Products in Fact Come From Pasture-Raised Hens.

46. Handsome Brook places an American Humane Association “certification” label on the Products, which is a paid, private arrangement between Handsome Brook and American Humane Association.

47. This paid, private arrangement does not insulate Handsome Brook from liability for its decision to label the Products falsely as “Pasture Raised” without regard for the conditions in which the hens actually are raised.

48. It appears that American Humane Association may have audited fewer than 10 of approximately 58 small and family farms within Handsome Brook’s supply chain.

49. Additionally, when Handsome Brook has purchased eggs in the open market for resale, it has done so without regard for whether those eggs participate in the American Humane Association program.

50. In publicly filed documents, Handsome Brook has stated that its American Humane Certification, from a paid third-party organization, “informs consumers that [Handsome Brook’s] eggs are ‘pasture raised,’ which is an important selling point for consumers seeking ethically[sourced] eggs.” Handsome Brook therefore knows that representing its Products as “Pasture Raised” is a material component to driving sales and growth.

III. Handsome Brook Deceives Consumers by Labeling the Products “Pasture Raised.”

51. By deceiving consumers about the nature and quality of its Products, Handsome

Brook is able to sell a greater volume of the Products, to undercut the prices of competing products, and to take away market share from competing products, thereby increasing its own sales and profits and limiting the choices available to consumers.

52. Handsome Brook made the false, deceptive, and misleading representations and omissions intending for consumers to rely upon these representations and omissions in purchasing the Products.

53. Consumers lack the knowledge necessary to determine whether the Products in fact conform to the “Pasture Raised” representations and to know or to ascertain the true nature and quality of the Products. Reasonable consumers must and do rely on Handsome Brook to report honestly whether the Products are in fact pasture raised.

54. Across all of its Products, Handsome Brook conceals the truth about the nature and quality of its “Pasture Raised” eggs.

55. Should any consumer seek further information, Handsome Brook’s own website declares: “We are strongly committed to the highest standards of quality pasture raised eggs, the ethical and humane treatment of our hens, the well being of our family farms, and fair trade practices.”⁸

56. Although it is not necessary to show that consumers were deceived in fact, Handsome Brook intended for consumers to rely on its representations, and hundreds of thousands of reasonable consumers did in fact so rely

57. Handsome Brook incorporated in 2007 and began distributing “pasture raised eggs” locally in 2008. Since then, Handsome Brook has expanded its distribution network to include retail stores nationwide, including Kroger and Harris Teeter, as well as internet retailers

⁸ <http://www.handsomebrookfarm.com> (last visited July 31, 2016).

like Fresh Direct.

58. Handsome Brook cultivates its image as an environmentally friendly brand that is concerned with animal welfare—the kind of company whose label claims can be trusted.

59. For example, on its website, Handsome Brook describes its hen-raising practices as follows:

All of our eggs are from hens who roam outdoors on acres of pasture, feeding on grass and enjoying the sunshine . . . nutrition as nature intended. Our pastures are completely pesticide free, herbicide free, and chemical free—and are rotated to promote healthy vegetation. In addition, we provide our hens supplemental feed inside the barn for snacking when they nest and come in to rest at night. This supplemental feed is comprised of all Certified Organic grain and mineral components, meaning among other things, NO GMOs whatsoever.

See <http://handsomebrookfarm.com/pasture-raised-products/pasture-raised-organic/> (last visited July 20, 2016).

60. Handsome Brook’s website explains the company’s “core values,” including “sustainable practices and environmental stewardship,” “providing our animal partners with safe and humane living conditions,” “the financial well-being of our farmer, retail, and business partners,” and “providing [customers] the best product possible.” See <http://handsomebrookfarm.com/5-2/mission/> (last visited July 31, 2016).

61. Handsome Brook claims to partner with 60 farms, each with an average of 5,000 hens on 12.5 acres and presents itself as an champion of small-scale, family-owned farms:

We contract with small family farms who raise hens and following laying requirements according to our very specific Pasture Raised Standards. We commit to purchasing eggs from them, and this has enabled to us to help encourage insure [*sic*] the stability and growth of small farms. Your purchase of Handsome Brook Farm Pasture Raised Eggs literally supports small farm families!

<http://handsomebrookfarm.com/5-2/supporting-family-farms/> (last visited July 31, 2016).

62. Handsome Brook promotes the health benefits of its Products, stating:

“You are what you eat” certainly applies to eggs. It makes sense. Handsome Brook Farm’s Pasture Raised hens have a naturally healthy diet, foraging outside

in the fresh air—and this translates into a more nutritionally dense egg than non-pastured eggs. Studies show that Pasture Raised eggs have lower cholesterol and fat, more Vitamin A, D, and E, higher levels of omega-3 fatty acids, and higher levels of carotene.

<http://handsomebrookfarm.com/faqs/> (last visited July 31, 2016).

63. Handsome Brook also promotes the taste benefits of its “pasture raised” eggs with its slogan, “Taste the Difference.” See <http://handsomebrookfarm.com/faqs/> (last visited July 31, 2016).

64. Betsy Babcock, co-founder of Handsome Brook, states that its hens “are outside foraging on grass and bugs. That makes a fundamental difference in the taste of the egg.” See “Disruptive Entrepreneurs Seize Opportunity, Take on Sector Giants,” *Investor’s Business Daily*, Feb. 4, 2016, available at <http://www.investors.com/news/management/leaders-and-success/disruptive-entrepreneurs-seize-opportunity-take-on-sector-giants/> (last visited June 15, 2016).

65. Handsome Brook prominently labels the Products, in a large font, “Pasture Raised.” The words “Pasture Raised” are larger than the name of the company.

66. The front labels prominently display a graphic that depicts a hierarchy of egg-production practices, with “caged” at Level 1, “cage-free” at Level 2, “organic” at Level 3, and “pasture raised” at Level 4. The graphic conveys the message that Handsome Brook’s “Pasture Raised” eggs are superior to competing, “non-pastured” eggs.

67. Handsome Brook reinforces its “pasture raised” claims by superimposing these representations over a photograph that depicts a bucolic red barn, out of which gazes a robust and healthy-appearing hen.

68. Handsome Brook states, on its website:

True Pasture Raised, means just that! Pasture Raised layer hens that forage freely

outdoors on acres of lush, green pasture with protective cover and are able to nest and sleep safely indoors at night with plenty of room to roam, perch, and exhibit natural chicken behavior.

Handsome Brook Farm hens actually go outdoors and are encouraged to graze and forage to their heart's content and are provided acres of real pasture to forage!

Our hens spend a large portion of their days outdoors on pasture (weather permitting, of course) and our flock are Certified by American Humane as Pasture Raised. They also have roomy indoor nesting space, with multiple perches and can exhibit normal chicken behavior like dust bathing, free movement, and foraging for grass and bugs. They are encouraged to move freely between indoors and outdoors.

See <http://handsomebrookfarm.com/whats-the-difference/> (last visited July 31, 2016).

69. Handsome Brook's conduct in labeling and marketing the Products as "Pasture Raised" deceived and/or was likely to deceive the public. Consumers were deceived into believing the Products were uniformly pasture-raised. Instead, the Products include eggs from hens not raised in conditions that any reasonable consumer would associate with "Pasture Raised."

70. Consumers cannot discover the true nature of the Products from reading the label. Consumers cannot discover the true nature of the Products even by visiting Handsome Brook's website, which is replete with representations that its Products are "Pasture Raised" and descriptions of the conditions in which its "Pasture Raised" hens live. Discovery of the true nature and quality of the Products requires information that is not available to the average reasonable consumer.

71. Handsome Brook deceptively and misleadingly conceals material facts about the Products, namely, that the Products include eggs from hens who are not "Pasture Raised."

72. Consumers are not at fault for failing to discover Handsome Brook's wrongs earlier, and had no actual or presumptive knowledge of facts sufficient to put them on inquiry

notice.

73. The acquisition and production process Handsome Brook uses for the Products is known only to Handsome Brook and its suppliers. Handsome Brook has not disclosed such information to consumers. Upon information and belief, Handsome Brook has purchased non-pasture-raised eggs from various suppliers to sell under its “Pasture Raised” label and maintains a network of suppliers whose hens may not be pasture-raised.

74. To this day, Handsome Brook continues to conceal and suppress the true nature, identity, source, and method of production of the Products, tolling the statute of limitations on claims against it.

IV. Handsome Brook Intended for Consumers to Rely Upon the False and Misleading Representations.

75. Handsome Brook holds itself out to the public as a trusted producer of pasture-raised eggs.

76. Handsome Brook knew what representations it made on the Product labels and in its marketing materials, and also knew that many of the Products came from hens not in conditions that a reasonable consumer would consider “Pasture Raised.”

77. Handsome Brook thus knew all the facts demonstrating that the Products were mislabeled and falsely advertised.

78. In making false, misleading, and deceptive representations and omissions about the Products, Handsome Brook knew and intended that consumers would purchase the Products when consumers would otherwise purchase competing products, including eggs from hens truly pasture-raised.

79. When consumers purchase eggs that purport to be “Pasture Raised,” they expect,

among other things, that the eggs came from hens who receive adequate sunlight and air, unfettered daytime access to the outdoors, and sufficient space to extend their wings and engage in other behaviors typical of chickens, including significant square footage, per bird, of pasture.

80. In making the false, misleading, and deceptive representations and omissions, Handsome Brook knew and intended that consumers would purchase the Products in lieu of eggs that were not labeled “Pasture Raised,” furthering Handsome Brook’s private interest of increasing sales of its Products and decreasing the sales of the pasture-raised eggs that are truthfully marketed by its competitors.

81. In making the false, misleading, and deceptive representations and omissions, Handsome Brook knew and intended that consumers would purchase the Products in lieu of more expensive eggs that were truthfully labeled as “pasture raised,” furthering Handsome Brook’s private interest of increasing sales of its Products and decreasing the sales of the pasture-raised eggs that are truthfully marketed by its competitors

82. In making the false, misleading, and deceptive representations and omissions, Handsome Brook knew that many consumers prefer pasture-raised eggs, and that many consumers will not purchase eggs unless they come from pasture-raised hens.

V. Handsome Brook Benefits From Its Misleading Representations and Omissions.

83. Handsome Brook labels and advertises its Products in large, bold font as “Pasture Raised,” and has profited handsomely as a result.

84. Over the past two years, approximately, the number of hens producing eggs for Handsome Brook has grown by some million birds, or more. This astounding growth, unprecedented in the market for ethically sourced eggs, is due in significant measure to Handsome Brook’s misleading representations and omissions.

85. *Inc. Magazine* recently named Handsome Brook one of the top 500 fastest growing businesses in the country.

86. As the intended, direct, and proximate result of Handsome Brook's false, misleading, and deceptive representations and omissions, Handsome Brook has sold more of the Products, at higher profits, at the expense of the consuming public. As a direct and proximate result of its deception, Handsome Brook also deceptively obtained other benefits, including the higher value associated with a "Pasture Raised" brand, redirecting sales to it and away from its competitors, and harming the public and the market.

87. Upon information and belief, Handsome Brook has failed to remedy the problem with the Products, thus causing future harm to consumers. Consumers are at risk of real, immediate, and continuing harm if the Products continue to be sold as is.

88. Handsome Brook has failed to provide adequate relief to members of the consuming public as of the date of filing this Complaint. Handsome Brook continues to distort and damage the market for pasture-raised eggs.

89. Accordingly, Plaintiff OCA seeks declaratory relief in the form of an order declaring Handsome Brook's conduct to be unlawful, as well as injunctive and equitable relief disclosing and putting an end to Handsome Brook's misleading and unfair business practices, including a change in Handsome Brook's agricultural practices so that the Products are pasture-raised as labeled and marketed, or an injunction against the use of the "Pasture-Raised" label.

CAUSE OF ACTION

VIOLATION OF THE DISTRICT OF COLUMBIA CONSUMER PROTECTION PROCEDURES ACT

90. Pursuant to D.C. Code §§ 28-3905(k)(1) and 28-3905(k)(2), the OCA brings this

Count against Handsome Brook on behalf of the general public of the District of Columbia, for Handsome Brook's violation of DCCPPA, D.C. Code § 28-3901, *et seq.*

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

92. Handsome Brook has labeled its Products as "Pasture Raised" and has otherwise presented an image and marketing materials suggesting that the Products are pasture-raised, when in fact many of the Products came from hens that were not pasture-raised.

93. Handsome Brook's labeling and advertising of the Products misrepresents, tends to mislead, and omits facts regarding the source, characteristics, standard, quality, and grade of the Products.

94. Handsome Brook's misleading labeling and advertising include statements that the Products are "Pasture Raised" and come from hens who enjoyed "ethical and humane treatment."

95. Handsome Brook's labeling and marketing materials make representations and use innuendo that tends to mislead reasonable consumers into believing that the Products came from hens who were pasture-raised. The representations omit the truth about the Products.

96. The Products lack the characteristics, ingredients, benefits, standards, qualities, or grades that Handsome Brook states and implies in its labeling and advertisements.

97. These misstatements, innuendo, and omissions are material and have the tendency to mislead.

98. Handsome Brook did not intend to sell the Products as advertised.

99. The facts as alleged above demonstrate that Handsome Brook has violated the DCCPPA, D.C. Code § 28-3901 *et seq.* Specifically, Handsome Brook has violated D.C. Code

§ 28-3904, which makes it an unlawful trade practice to:

- (a) represent that goods or services have a source, sponsorship, approval, certification, accessories, characteristics, ingredients, uses, benefits, or quantities that they do not have; . . .
- (d) represent that goods or services are of particular standard, quality, grade, style, or model, if in fact they are of another;
- (e) misrepresent as to a material fact which has a tendency to mislead;
- (f) fail to state a material fact if such failure tends to mislead;
- (f-1) [u]se innuendo or ambiguity as to a material fact, which has a tendency to mislead; . . . [or]
- (h) advertise or offer goods or services without the intent to sell them or without the intent to sell them as advertised or offered.

100. The DCCPPA makes such conduct an unlawful trade practice “whether or not any consumer is in fact misled, deceived or damaged thereby.” D.C. Code § 28-3904.

101. Though the OCA need not show proof of deception to succeed on its DCCPPA claim, consumers were in fact deceived. Handsome Brook knew or should have known that reasonable consumers would believe that its Products were “Pasture Raised” as labeled and advertised.

102. The OCA has a sufficient nexus to consumers of the Products to adequately represent those interests.

103. Because Handsome Brook misrepresents the characteristics, ingredients, and benefits of Products; misrepresents the standard, quality, and grade of the Products; misrepresents, fails to state, and uses innuendo and ambiguity in ways which tend to mislead reasonable consumers with regard to material facts about the Products; and advertises the Products without the intent to sell the products as advertised, Handsome Brook’s labeling and marketing of the Products as “Pasture Raised” violates D.C. Code §§ 28-3904(a), (d), (e), (f), (f-

1), and (h).

104. Handsome Brook is a “person” within the meaning of D.C. Code § 28-3901(a)(1), is a merchant under § 28-3901(a)(3), and provides “goods” within the meaning of § 28-3901(a)(7).

105. Pursuant to D.C. Code § 28-3905(k)(1)(C), “[a] nonprofit organization may, on behalf of itself or any of its members, or on any such behalf and on behalf of the general public, bring an action seeking relief from the use of a trade practice in violation of a law of the District, including a violation involving consumer goods or services that the organization purchased or received in order to test or evaluate qualities pertaining to use for personal, household, or family purposes.”

106. Pursuant to D.C. Code § 28-3905(k)(1)(D)(i), “a public interest organization may, on behalf of the interests of a consumer or a class of consumers, bring an action seeking relief from the use by any person of a trade practice in violation of a law of the District if the consumer or class could bring an action under subparagraph (A) of this paragraph for relief from such use by such person of such trade practice.”

107. Plaintiff OCA is a “person” within the meaning of D.C. Code § 28-3901(a)(1), a “non-profit organization” within the meaning of D.C. Code § 28-3901(a)(14), and a “public interest organization” within the meaning of D.C. Code § 28-3901(a)(15).

108. OCA brings this Count against Handsome Brook for Handsome Brook’s violation of the DCCPPA, D.C. Code § 28-3901 *et seq.*

PRAYER FOR RELIEF

WHEREFORE, Plaintiff OCA prays for judgment against Handsome Brook and requests the following relief:

- A. a declaration that Handsome Brook's conduct is in violation of the DCCPPA;
- B. an order enjoining Handsome Brook's conduct found to be in violation of the DCCPPA, as well as corrective advertising;
- C. an order granting Plaintiff costs and disbursements, including reasonable attorneys' fees and expert fees, and prejudgment interest at the maximum rate allowable by law; and
- D. such further relief, including equitable relief, as this Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

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