



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Division of Advertising Practices

May 29, 2007

Ms. Erica Meier
Executive Director
Compassion Over Killing
Post Office Box 9773
Washington, D.C. 20016

Ms. Jessica R. Alms, Co-Chair
Penn Law Animal Law Project
University of Pennsylvania Law School
3400 Chestnut Street
Philadelphia, Pennsylvania 19104

Ms. Jennifer Kaplan
5209 Brooklyn Avenue, N.E.
Seattle, Washington 98105

Re: Petition to Change Egg Labeling Requirements

Dear Ms. Meier, Ms. Alms, and Ms. Kaplan:

On February 21, 2007, Compassion Over Killing ("COK") and the Penn Law Animal Law Project filed a petition with the Federal Trade Commission ("FTC") asking the Commission to take regulatory action to revise the labeling requirements for eggs sold in the United States in order to remedy and or prevent misleading representations on egg cartons. Specifically, the petition asks the Commission to promulgate regulations requiring that all containers of shell eggs be labeled to indicate whether the eggs therein were produced under "free-range," "cage-free," or "caged" conditions. We appreciate your forwarding this petition to the Commission for our consideration.

As you may be aware, the FTC, the Food and Drug Administration ("FDA") and the Department of Agriculture ("USDA") share jurisdiction over claims made for food products, pursuant to a regulatory scheme established by Congress through complementary statutes.¹ Since 1954, the FTC and the FDA have operated under a Memorandum of Understanding whereby the FTC has taken primary responsibility for regulating food *advertising* while the FDA has taken primary responsibility for regulating food *labeling*. The FDA enforces several regulations with regard to eggs, including regulations governing shell egg labeling. (21 C.F.R. 101.) In addition, the USDA Agricultural Marketing Service enforces regulations pertaining to the grading of shell eggs. Such regulations require that carton labels comply with FDA regulations (21 C.F.R. 101) and the criteria of the USDA National Organic Standards (7 C.F.R. 205), when

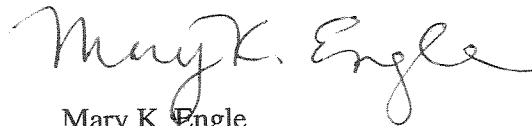
¹ Section 5 of the Federal Trade Commission Act ("FTC Act") prohibits "unfair or deceptive acts and practices," and Sections 12 and 15 prohibit any "false advertisement" of a food product that is "misleading in a material respect." The FDA's authority over food claims is embodied in part in Section 403(a) of the Federal Food, Drug, and Cosmetic Act ("FDCA"), which prohibits food "labeling [that] is false or misleading in any particular."

declared, and prohibit use of the USDA grade shield on egg packaging containing false or misleading labeling. (7 C.F.R. 56.35.) We believe that under this regulatory framework, your petition seeking the promulgation of federal regulations to require egg carton labeling as to the egg producers' production methods is more appropriately directed to FDA and USDA.

Accordingly, we have forwarded your petition to the FDA's Center for Food Safety and Applied Nutrition and to the USDA Agricultural Marketing Service for review. For this reason, we find that no further Commission action is warranted in response to your petition at this time.

The staff's decision should not be construed as a formal Commission determination as to whether current egg labeling and marketing practices comply with Section 5 of the FTC Act, and the Commission reserves the right to take any such future action that the public interest may require.

Very truly yours,



Mary K. Engle
Associate Director
Division of Advertising Practices

cc w/ attachments:

Barbara O. Schneeman, Ph.D., Director
Office of Nutritional Products, Labeling
and Dietary Supplements
FDA Center for Food Safety and Applied Nutrition

Rex A. Barnes, Ph.D., Acting Deputy Administrator
Poultry Programs
USDA Agricultural Marketing Service