

BEFORE THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION

THE HUMANE SOCIETY OF THE UNITED STATES,
Petitioner,

SMITHFIELD FOODS, INC.
Proposed Respondent.

**COMPLAINT REQUESTING ACTION TO ENJOIN THE DISSEMINATION OF
FALSE OR MISLEADING STATEMENTS IN VIOLATION OF ANTIFRAUD
PROVISIONS OF THE FEDERAL SECURITIES LAWS**

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INTRODUCTION

Complainant The Humane Society of the United States (“The HSUS”) hereby requests the Securities and Exchange Commission (“Commission”) investigate and take action against Smithfield Foods, Inc. (“Smithfield”) for disseminating false or deceptive information in violation of the Securities Exchange Act of 1934, 15 U.S.C. § 78a, *et seq.*, and Commission Rule 10b-5, 17 C.F.R. § 240.10b-5.

As described herein, Smithfield is issuing unlawfully false or misleading representations about the animal welfare and environmental practices of its wholly owned subsidiary Murphy-Brown, LLC (“Murphy-Brown”). On March 7, 2011, Smithfield posted on its investor relations website a press release announcing the launch of a series of informational videos: “New Smithfield Foods Educational Video Series Helps Take the Mystery Out of Pork Production.”¹ The release directed investors to visit websites hosting seven videos purporting to show “how we raise our pigs and how our environmental and animal handling sustainability practices work every day.”²

As detailed more fully below, these videos are replete with false and/or misleading representations—both express and implied—about Smithfield’s animal welfare and environmental practices. These claims are material and misleading to stakeholders concerned about corporate social responsibility (“CSR”). In fact, so material is the information in the videos and related releases that Smithfield recently acknowledged these very issues as the stakeholder concerns with the greatest CSR potential to impact the

¹See Attachment 1, News Release: “New Smithfield Foods Educational Video Series Helps Take the Mystery Out of Pork Production.”

<http://investors.smithfieldfoods.com/releasedetail.cfm?ReleaseID=555010>.

²*Id.*

company's performance.³ As such, Smithfield has actively marketed to CSR-conscious investors. In addition to the video series at issue in this complaint, Smithfield has, for example, taken steps like issuing annual CSR reports, creating a CSR-dedicated website, and seeking (and announcing) inclusion in the FTSE4Good Index, an investment index marketed as including only socially responsible companies.⁴ It is also significant that the investor news release announcing the videos was issued just three months after an HSUS investigation at a Murphy-Brown breeding facility revealed disturbing conditions and treatment of animals that was far below what reasonable stakeholders and consumers would consider humane.

The video series and related communications, therefore, are directly linked to investors and the trade in Smithfield securities. Accordingly, The HSUS respectfully requests that the Commission exercise its investigation and enforcement authority to stop Smithfield from misleading stakeholders through unlawful statements and omissions about Murphy-Brown's animal welfare and environmental practices.

PARTIES

1. The HSUS

The HSUS is the nation's largest animal protection organization, with nearly eleven million members and constituents. The HSUS is based in Washington, D.C., and works to protect all animals through education, investigation, litigation, legislation, advocacy, and field work. Amongst other issues, The HSUS campaigns to eliminate the most egregious factory farming practices.

³Attachment 2, Smithfield 2009/10 Materiality Matrix, "Corporate Social Responsibility Report," Smithfield Foods (2009/10).

⁴ Smithfield Press Release, "Smithfield Foods Included in FTSE4Good Index for Sixth Consecutive Year" (March 28, 2011). <http://investors.smithfieldfoods.com/releasedetail.cfm?ReleaseID=560113>.

2. Smithfield Foods, Inc.

Smithfield Foods, Inc. is the parent company of Murphy-Brown, LLC. Its common stock is listed on the New York Stock Exchange and trades under the ticker symbol “SFD.” Smithfield is the largest pork processor and hog producer in the world. Its corporate headquarters are located at 200 Commerce Street, Smithfield, VA, 23430.

STANDARD OF REVIEW

Section 10(b) of the Securities Exchange Act of 1934 and Commission Rule 10b-5 prohibit, in connection with the purchase or sale of any security, the making of any untrue statement of a material fact or the omission of a material fact that would render statements made not misleading.⁵ Commission Rule 10b-5 makes it unlawful...

- (a) To employ any device, scheme, or artifice to defraud,
- (b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or
- (c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person,

in connection with the purchase or sale of any security.⁶

**FALSE OR MISLEADING CLAIMS
RELATING TO PRODUCTION PRACTICES**

1. **Smithfield Videos Presented as Factual, Accurate and Material**

As a preliminary matter to address the framework and context in which the assertions and omissions at issue are made, one need start no further than just the title of the videos—which is prominently displayed on the screen of each one—“Taking the Mystery Out of Pork Production.” The videos come at a time when Smithfield openly acknowledges

⁵ Securities Exchange Act of 1934, (1934 Act), as amended, 15 U.S.C. § 78a *et seq.*

⁶ 17 CFR § 240.10b-5 (2011).

the importance of animal welfare and other social issues to its stakeholders and recently declared that its customers and consumers “increasingly...are asking us tough questions about our CSR programs.”⁷ The launch of the video series was announced by a news release posted to the company’s investor information website.⁸ The entire series of videos are posted on various sites, including the Murphy-Brown corporate site and the Smithfield Foods Channel on YouTube.com.⁹

The videos are also prominently featured in a newly launched CSR-dedicated website announced to investors in a news release on November 1, 2011.¹⁰ The company expressed its hope that they “would be used in educational capacities, used by traditional media outlets in news reporting, and would be viewed by the public.” Smithfield notes that the release of the videos was covered “by the Associated Press along with many other mainstream media sources.”¹¹ Such strong promotion and widespread reporting result in a virtual assurance that the videos will reach stakeholders and be influential to their investment decisions.

Adding to the assurances of accuracy and to the materiality of the video series, Smithfield states in the investor release that the videos provide “an in-depth, behind-the-scenes look at pork production and sustainability practices at the company’s Murphy-Brown hog farms.”¹² Don Butler, director of government relations and public affairs for Murphy-Brown reiterates that the company’s “goal is to take the mystery out of pork

⁷ “Corporate Social Responsibility Report,” Smithfield Foods (2009/10), p.5.

⁸ Attachment 1, News Release: “New Smithfield Foods Educational Video Series Helps Take the Mystery Out of Pork Production.”

<http://investors.smithfieldfoods.com/releasedetail.cfm?ReleaseID=555010>.

⁹ See Attachment 3 (screenshot), <http://www.murphybrownllc.com/about/AUDIO/index.html>;
<http://www.youtube.com/user/SmithfieldFoods#p/a/6B939D758396045B/0/fDOtDhYnHSY>.

¹⁰ News Release, “Smithfield Foods Invites Conversation With Launch of New smithfieldcommitments.com Website.” November 1, 2011.

<http://investors.smithfieldfoods.com/releasedetail.cfm?ReleaseID=619615>.

¹¹ See <http://www.smithfieldcommitments.com/whats-happening-now/core-reporting-areas/animal-care/taking-the-mystery-out-of-pork-production>.

¹² See Attachment 1, Smithfield News Release.

production by answering many of the questions that people ask us.”¹³ The videos are presented as a demonstration of how the company puts its “commitment to product quality, food safety and animal care in practice.”¹⁴ Clearly, then, this series is framed as one that addresses matters of interest that have been raised with Smithfield and this is the company’s direct attempt to respond to them.

And even further weight is added to the assurances made to consumers by a scene early in the introductory video in which a company veterinarian relates a conversation she had with her son when he asked her about the pigs. The doctor-mother states that she tells her son that while the pigs are eventually going to die, the company’s responsibility is to provide the “best possible environment, best care that we can make available to them.”¹⁵ Certainly, relating its claims in this way paints the level of trust for the stakeholder as one of a degree equal to that shared by mother and son. It would be difficult to imagine an argument that a mother’s explanation to her son of her moral responsibility to animals in her care can be viewed as anything other than of material importance (and it is surely reasonable to conclude that investors would view such information as trustworthy and accurate).

2. False and Misleading Assertions About Standards of Animal Care

Throughout the video series, assertions are made that create the impression that Murphy-Brown pigs are given a level of care not just higher than industry standards, but the highest level possible and one that is “ideal” for pigs. Among the representations that contribute to this are the following:

- a) Smithfield’s responsibility is to provide the “best possible environment, best care

¹³ *Id.*

¹⁴ *Id.*

¹⁵ “Taking the Mystery Out of Pork Production: Introduction to Pork Production.”

- that we can make available to them.” [As noted above, this assertion is represented to viewers as a true account of a company veterinarian’s discussion with her son, thereby further enhancing the degree of trust and likelihood of reliance by stakeholders and other viewers.]
- b) “Here at Murphy-Brown, we have no higher priority than ensuring the well-being of our animals. Everything we do is about animal care and overall health.”
 - c) “Every need is met. If they’re sick, we take care of them. If they’re hurt, we take care of them.”
 - d) Regarding fulfillment of the needs of the animals: “...for the pigs, it’s an ideal situation.”
 - e) Smithfield’s animal welfare program “could serve as a conscientious model for the entire American pork industry.”

Taken together, the message conveyed by these statements and others asserted throughout the videos is that Smithfield’s animal care standards are as high as the company can possibly make them and that they certainly exceed common industry practices by setting the model for the rest of industry to follow. In fact, though, Smithfield cannot substantiate such claims because they are simply not true. The company offers the appearance of their truth and reliability through the video series, but does so by either making claims that are not reconcilable with the factual realities of its operations or by omitting material facts that would prevent investors from being misled in their interpretation.

a. HSUS Investigation of Inhumane Treatment at Murphy-Brown

In stark contrast to the picture of care painted by the Smithfield videos, HSUS

discovered drastically different conditions during an investigation of Murphy-Brown practices last year. For more than a month at the end of 2010, an HSUS investigator worked inside a Smithfield/Murphy-Brown breeding facility in Waverly, Virginia that housed more than 1,000 sows in “gestation crates,” which are metal cages that individually confine sows and are so restrictive they prevent pigs from even turning around. The investigator documented the following findings:

- a) Breeding sows were confined inside gestation crates so small the animals could barely move for virtually their entire lives. Frustrated by this extreme confinement, some sows had bitten their bars so incessantly that blood from their mouths coated the fronts of their crates.
- b) Sows suffered from open pressure sores and other ulcers and wounds that developed from their confinement and inability to change positions in the crate. Abscesses sometimes formed from simple scratches due to ever-present bacteria. The investigator never saw a veterinarian at the operation. A barn manager told the investigator to ignore a sow with a basketball-sized abscess on her neck, and then cut the abscess open with an unsterilized razor.
- c) Employees jabbed a lame sow’s neck and back with gate rods to force her to move.
- d) Three times, the investigator informed employees that a pig was thrown into a dumpster alive. The animal had been shot in the forehead with a captive bolt gun, which is designed to render an animal unconscious, and was thrown in the dumpster still alive and breathing.
- e) Employees mishandled piglets and tossed them into carts.
- f) Piglets born prematurely in gestation crates fell through the slats and died in

manure pits.¹⁶

It was just three months after this investigation was conducted that Smithfield launched its video series praising its animal care practices. The documented footage from within the Murphy-Brown facility, however, was manifestly not a place that was “ideal” for pigs, that met their every need, or that demonstrated a “conscientious model” for the industry.

b. Misrepresentation of Material Facts Relating to Gestation Crates

While egregious acts of cruelty uncovered during the Waverly investigation are, of course, irreconcilable with Smithfield’s representations to stakeholders of a high level of animal care, even the routine practices acknowledged by Smithfield, such as confinement in gestation crates, simply cannot be reconciled with its claims of providing the best possible care.

For humane reasons, eight states¹⁷ have already banned the use of gestation crates. Dr. Temple Grandin—who Smithfield praises in the video series for her expertise in animal care—has stated that gestation crates “are a real problem. ... Basically you’re asking a sow to live in an airline seat. ... I think it’s something that needs to be phased out.” Indeed, even in an article reporting the release of the Smithfield videos, Grandin commented that “I feel very strongly that we’ve got to treat animals right, and the gestation stalls have got to go.”¹⁸ Dr. Grandin’s position is consistent with the findings of a 2007 survey funded by the American Farm Bureau and conducted by researchers at Oklahoma State University. That

¹⁶ See Attachment 4, HSUS Press Release. “HSUS Exposes Inhumane Treatment of Pigs at Smithfield” (December 15, 2010).

http://www.humanesociety.org/news/press_releases/2010/12/smithfield_pigs_121510.html.

¹⁷ States with laws instituting prohibitions on gestation crates: Florida (2002), Arizona (2006), Oregon (2007), Colorado (2008), California (2008), Maine (2009), Michigan (2009), Ohio (2010).

¹⁸ “Temple Grandin appears in Smithfield Foods videos,” *The Virginian-Pilot*, April 10, 2011 (emphasis added).

survey revealed that a majority of the public believe that housing pregnant sows in crates is not humane.¹⁹

In a case involving review of another industry’s housing practices—that of egg-laying hens in battery cages—the National Advertising Review Board affirmed that survey evidence showed that most consumers find such intense confinement to be “unacceptable.” In addressing industry claims that such confinement is humane, the board noted that “it is unimaginable that consumers would consider treatment they find ‘unacceptable’ to be humane treatment ...”²⁰ It would be equally unimaginable here that, with respect to gestation crates, consumers or stakeholders would consider treatment they find unacceptable to be “ideal” or the “best possible care.”

In January 2007, Smithfield did, in fact, pledge to phase out its use of gestation crates in company-owned facilities by 2017, but in 2009 the company backtracked on its self-imposed phase out timeframe. Smithfield has yet to publicly announce a new timeline for completing its phase-out. Other large pork producers, like Maxwell Foods, don’t use gestation crates at all and Cargill is already 50% gestation crate-free.

Of significant importance to the issue of whether the company’s assertions about providing the highest possible standards of care and “ideal” living conditions for pigs is deceptive is Smithfield’s own acknowledgement that its customers believe alternatives to gestation crates to be more humane forms of housing. Specifically, in a news release announcing the initial decision to phase out crates, Smithfield CEO C. Larry Pope stated that customers “made their views known on the issue of gestation stalls” and that they told the company they “feel group housing is a more animal-friendly form of sow housing.”²¹ And,

¹⁹ Prickett, R W, F B Norwood, and J L Lusk. “Consumer preferences for farm animal welfare: results from a telephone survey of US households.” *Animal Welfare* 19.3 (2010): 335-347.

²⁰ *United Egg Producers, Inc. (Animal Care Certified Eggs)*, NARB Panel Report #122, (April 2004).

²¹ See Attachment 5, News Release: “Smithfield Foods Makes Landmark Decision Regarding Animal

as noted above, Temple Grandin, the company's most prominent animal welfare consultant, has made abundantly clear that the use of gestation crates should be eliminated. Yet, Smithfield has not done that.

What it *has* done, however, is omitted from its disclosure to investors the material views of customers and experts and its own acknowledgement of their preferences. Instead of making these disclosures, the company is falsely asserting that the *current* system of intensive individual confinement is, in fact, "ideal" and meets every need of the pigs. Omitting from the videos the express consumer concerns and expert criticisms is itself problematic, but making affirmative, admittedly material, statements that squarely conflict with such criticisms and with factual investigative documentation is certainly not the type of communication that would result in an accurate and clear investor understanding of the significant animal care issues the company is facing.

Smithfield's stated reason for withdrawing its timetable for phasing out gestation crates was because of financial losses in 2009.²² Smithfield's representation that animal well-being is its "highest priority" would suggest that phasing out the intensive confinement system that its customers and welfare experts disapprove of would take precedence over financial considerations. In fact, Smithfield had originally stated that making the switch to group housing was the "right thing to do."²³ Representing to investors, then, that current intensive confinement conditions prior to such a conversion are "ideal" and the "best possible" is definitely the *wrong* thing to do. The company cannot lawfully represent in the videos that it is currently providing the highest standards of care while omitting its acknowledgment that "the right thing to do" is to change current conditions to eliminate gestation crates (and that it intends to do that "right thing" *at some unspecified*

Management." <http://investors.smithfieldfoods.com/releasedetail.cfm?releaseid=295899>.

²² Smithfield Foods Inc. 2009 Annual Report.

²³ *Id.*

point in the future). It is also worth noting that, while Smithfield claimed financial losses were responsible for withdrawing the initial phase-out deadline, the company has yet to re-establish the deadline after announcing all-time record revenues this year.²⁴ While Smithfield is perfectly within its rights not to spend its revenues on reinstating a gestation crate elimination deadline, it is simply dishonest and unlawful to simultaneously tell investors that animal well-being is the company's highest priority or that the pigs are provided the best possible care standards and live in "ideal" conditions.

c. Material Omissions About National Pork Board Certifications

As an assurance to investors and consumers viewing the video series, Smithfield states that all of its farms are "certified by the National Pork Board to ensure sound animal care."²⁵ Additionally, the company assures that "truck drivers must receive training on animal handling and movement and must be certified before transporting our animals."²⁶ What Smithfield fails to disclose, however, is the material connection between itself and the endorser issuing these certifications. Both certifications are issued by the National Pork Board ("NPB"), a federally created organization that is funded and directed by pork producers and that is mandated by law to promote the pork industry. For a particularly noteworthy example of the material connection at issue, one need only consider that the current vice president of the National Pork Board is also the general manager of Smithfield's Murphy-Brown Midwest operations, all of which the company touts as holding NPB-issued care certifications.²⁷

Federal Trade Commission rules dictate that where there is a connection between

²⁴News Release, "Smithfield Foods Reports Record Fourth Quarter and Full Year Results," June 16, 2011, <http://investors.smithfieldfoods.com/releasedetail.cfm?ReleaseID=585415>

²⁵"Taking the Mystery Out of Pork Production: Animal Care."

²⁶*Id.*

²⁷*See* National Pork Board Members, <http://www.pork.org/AboutUs/66/PorkBoardMembers1.aspx>

the endorser and the seller of the advertised product that might materially affect the weight or credibility of the endorsement, that connection must be fully disclosed.²⁸ There is no such disclosure in the videos, nor any way that the reasonable investor can know from the videos the extent to which the NPB is intertwined with producers, including Smithfield. Certainly, however, it must be concluded that such factors as the NPB mandate to increase pork sales and its funding provided entirely by producers themselves raises questions about the weight or credibility of the PQA Plus and TQA certification programs. After all, unlike independent certification businesses, NPB's success does not depend on the integrity of its certifications, but on the degree to which it increases pork sales. Such incentive is exactly the type of material connection that the disclosure policies for endorsements were implemented to address. Without the full disclosure of NPB's producer funding, producer direction, and industry promotion mandate, investors are not able to fairly evaluate the integrity of the organization's certification programs.

Were the connection between Smithfield and the NPB properly disclosed, reasonable investors would be alerted to scrutinize the PQA Plus program more closely. Upon doing so, they would then discover that producer certification under the program is granted for simply attending a single exam-free training session once every three years. In other words, all it takes to receive this so-called seal of animal care assurance is to simply to show up at a one-time session with an advisor. There is no test, no hands on training, no way to fail to receive certification at the end of the session, and no need to do anything else for more than a thousand days afterward.²⁹ Upon further scrutiny, investors would learn that, despite NPB's express acknowledgement that farm owners may not be able to be objective, PQA

²⁸ "Guides Concerning Use Of Endorsements And Testimonials In Advertising," 16 CFR Part 255; 16 CFR 255.5 (2011).

²⁹ See Attachment 6, National Pork Board, PQA Plus Certification Manual, p. 103.
<http://www.pork.org/filelibrary/PQAPlus/PQAPlusEdBook.pdf>.

Plus Site Status may nonetheless be established by self-assessments of the producer’s own site.³⁰ And, as with the certifications, such assessments need be performed only once every three years, either by self-assessment or by pre-announced audits.³¹ Even if the site owner elects a third-party audit, it is impossible to fail the PQA Plus Site Status audit– an auditor may only recommend improvements, but PQA Plus Site Status and renewal are both certainties regardless of the auditor’s assessment findings.

Smithfield’s assurances to stakeholders of the integrity of the programs in ensuring animal welfare only increase the likelihood of harmful reliance on the misleading information, which is unlawfully deficient in its material disclosure requirements, and which in this case would reveal to the investor the lack of independence of the endorsement. Smithfield cannot tout its endorsements from NPB programs while failing to fully disclose its material connection with the endorser; NPB is producer-directed and producer-funded and any certification it issues to producers must fully disclose that connection to avoid violating federal law.

d. Failure to Fully Disclose Information Related to Surgical Procedures

One of the videos references and partially depicts several surgical procedures routinely performed on piglets at Murphy-Brown facilities:

“During their first week of life, all piglets receive an iron shot to boost their immune system and get their tails docked to prevent injury later in life. Males are castrated to prevent full sexual maturity, which would change the quality and taste of the meat.”

While this description suggests the reasons for these procedures, it omits necessary information that would permit stakeholders from being misled as to whether they meet the company’s professed CSR claims of making animal welfare its highest priority and

³⁰ National Pork Board, PQA Plus Certification Manual, p. 81. *See also*, Attachment 5.

³¹ *Id.*

providing its animals with an “ideal” life. What is critically necessary to disclose is that the surgical procedures are painful for the piglets, yet are performed without any anesthetics or analgesics.

The video shows the iron booster shot in close-up, the tail docking in long shot, and omits the castration entirely. Castration is performed by cutting the piglet’s scrotum with the hooked blade of a surgical scalpel and pushing the testicles through the incision, then cutting or pulling them free of connecting tissue.³² Physiological and behavioral lines of evidence clearly demonstrate that castration without pain killer causes significant suffering for the piglets.³³ According to the American Veterinary Medical Association, “[c]astration is a painful procedure and animal welfare would be improved if it was performed under anesthesia and with analgesia, or replaced by a less invasive procedure.”³⁴

The tail docking is another procedure that causes “acute trauma and pain.”³⁵ No evidence is shown in the video of a local anesthetic or analgesic to prevent or manage pain for this procedure—indeed the industry norm is *not* to provide such relief for piglets.³⁶ The AVMA, however, recommends for such procedures the use of practices that reduce pain, including the use of effective medications whenever possible.³⁷ Yet Smithfield nonetheless asserts that animal welfare is its highest priority and that every need is met—and it does

³² Prunier A, Bonneau M, von Borell EH, et al. 2006. A review of the welfare consequences of surgical castration in piglets and the evaluation of non-surgical methods. *Animal Welfare* 15:277-89; Holden PJ and Ensminger ME. 2006. *Swine Science*, 7th Edition (Upper Saddle River, NJ: Pearson Prentice Hall, pp. 365-6).

³³ EFSA Scientific Panel on Animal Health and Welfare. 2004. Opinion of the Scientific Panel on Animal Health and Welfare on a request from the Commission related to welfare aspects of the castration of piglets. *The EFSA Journal* 91:1-18. And Von Borell E, Baumgartner J, Giersing M, et al. 2009. Animal welfare implications of surgical castration and its alternatives in pigs. *Animal* 3(11):1488-96.

³⁴ “Welfare Implications of Practices Performed on Piglets,” American Veterinary Medical Association, March 26, 2010.

³⁵ Sutherland, M. A., P. J. Bryer, N. Krebs, and J. J. McGlone. 2008. Tail docking in pigs: Acute physiological and behavioural responses. *Animal* 2:292–297.

³⁶ *Id.*

³⁷ AVMA Policy: Tail Docking and Teeth Clipping of Swine. Oversight: AWC; Approved EB 04/2010, EB Revised 06/2011.

this while simultaneously omitting the material welfare-related fact that it is willfully failing to meet the pig’s need for pain relief during an acutely painful procedure.

That Smithfield is choosing to perform these painful mutilations at all is certainly an issue worthy of much CSR consideration. But of legal relevance to this complaint is that, having made the decision to perform these mutilations and then to inform concerned stakeholders about them, the communication may not be selectively worded to withhold information that would be important to stakeholders in evaluating this corporate practice.

By way of analogy, if a veterinarian was alleged to have amputated a dog’s tail without administering proper anesthetics or analgesics, providing the reasons for the amputation might sound valid but it would omit the critical information of why the procedure was done in a less than humane manner. In the case of the Smithfield videos, the omitted information is particularly important in light of the repeated claims that animal welfare is the company’s highest priority and the animal’s “every need” is met. Yet, in the case of surgical mutilations performed on piglets, even the basic need for pain relief is withheld, and so is disclosure to the stakeholder about that practice that is so at odds with the company’s professed CSR assurances.

e. Misleading Imagery of Atypical Conditions

Despite the fact that hogs expel enough manure onto their thinly slatted floors to fill massive waste lagoons, the images in the videos portray pristine housing conditions for all animals. Although the workers are wearing calf-high waterproof boots, the floors are perfectly dry and nearly spotless. Even Smithfield’s own consultant Dr. Temple Grandin—who the company praises in the videos as “an internationally acclaimed animal scientist” and “animal-handling expert”—disputes that the videos represent a true reflection of typical conditions at Murphy-Brown farms. The Smithfield videos, she stated, “show reality

under the best of conditions, with very, very good management.”³⁸ When she suggested that the company take the one action that would ensure stakeholders would not be misled on this issue—install live webcams at its farms—Smithfield refused, virtually ensuring that stakeholders would only have access to the produced, atypical images in the released videos.

As has been noted with respect to other issues in this complaint, Smithfield does not have to make any representations at all about the housing conditions within its farms if it so chooses. What it cannot do, however, is make selective representations that result in false impressions of practices that it acknowledges are so materially important to stakeholders.³⁹

3. Unlawful Environmental Claims

a) Unlawful Misrepresentation of ISO 14001:2004 Certification

Smithfield is violating the express prohibitions of the International Organization of Standards (ISO) by misrepresenting its certification in a manner that suggests an endorsement of its environmental practices and a guarantee of its program as environmentally friendly. In several of the videos, including the one titled “Environmental Sustainability,” while touting itself as an “organic recycler,” Smithfield refers to its Murphy-Brown operations having “achieved the coveted ISO 14001 certification, the

³⁸ “Temple Grandin appears in Smithfield Foods videos,” *The Virginian-Pilot*, April 10, 2011.

³⁹ This complaint addresses specifically that imagery for which there is clear contrary information. Complainant would note, however, that some imagery raises unanswered questions, as well. For example, there is a scene in several videos showing a transport train passing through a field of wind turbines. Smithfield refers to its commitment to the environment generally throughout the videos, but not specifically to wind power. Yet, because of the images of fields of wind turbines, it would certainly be reasonable that a stakeholder viewing the videos could conclude that wind power plays a significant role in Murphy-Brown operations, though whether that would be an accurate conclusion or not is left undisclosed. Smithfield’s last CSR report makes no mention of wind power, leaving one to further question why it is suggested by the video imagery.

recognized international gold standard for environmental management.”⁴⁰

The ISO, however, expressly warns against advertising the certification in a way that suggests an endorsement or guarantee of the environmental benefit of the product or system:

“ISO 9001:2008 and ISO 14001:2004 do not give specific requirements for specific products or services.

Therefore, ISO 9001:2008 and ISO 14001:2004 certifications must not be presented in any way that may be interpreted as their being product certifications or product guarantees. For example, customers and consumers must not be misled into believing that ISO 9001:2008 is a product quality guarantee, or that ISO 14001:2004 guarantees a “green” or environmentally friendly product.”⁴¹

Smithfield violates this ISO endorsement policy in the videos and also directly on its Murphy-Brown website, where it refers to the certification as a “seal of approval” from the “international community” that the company is living up to its environmental goals.⁴²

Additionally, Smithfield appears to misrepresent the scope of Murphy-Brown’s certification. Although the company runs operations throughout the country, the accreditation company whose logo appears on the video—NSF—lists only Murphy-Brown’s east coast operations among its certifications.⁴³ The ISO’s policies for publicizing certifications expressly state that if only part of a company’s processes or sites are covered, “it is unacceptable to mislead people by giving the impression that the whole [company] has

⁴⁰ See also, Attachment 1. Note: The ISO states that a general reference to ISO 14001 should not be used, but rather the full designation of ISO 14001:2004 should be employed for precision. Therefore, although Smithfield uses the general reference in its video series, this complaint follows ISO guidelines for properly referencing the certification.

http://www.iso.org/iso/iso_catalogue/management_and_leadership_standards/certification/publicizing_your_certification/publicizing_your_certification-be_precise.htm.

⁴¹http://www.iso.org/iso/iso_catalogue/management_and_leadership_standards/certification/publicizing_your_certification/publicizing_your_certification-process_not_product.htm.

⁴² See Murphy-Brown, LLC, “Environmental Management.”

http://www.murphybrownllc.com/beta/OPERATE/ENV_MANAGEMENT/index.html.

⁴³ Further unclear from the videos is whether Smithfield is representing that just Murphy-Brown *company* farms are certified or whether contract growers are also certified. The distinction is significant, as in North Carolina alone Murphy-Brown operates only 175 company farms compared to more than 1300 contract farms. At a minimum, Smithfield should be required to substantiate its claim on this point.

been certified for all its activities and processes, or for all its geographical locations.”⁴⁴ Therefore, any unqualified representation—such as those made in several of the videos—that Murphy-Brown (as a whole) is certified is, according to the ISO itself, misleading and “unacceptable.”

The ISO warns that “ISO 14001:2004 certificates are issued for scopes of activity, which are specified on the certificate. [Companies] should be just as specific when publicizing that certification. Do not misrepresent the scope (the extent) of the certification as far as either activity or geographic location is concerned.”⁴⁵

Not only do the videos fail to specify the details or scope of the ISO 14001:2004 certification, but the final scene of the video entitled “Environmental Protection” displays the Murphy-Brown LLC logo above the NSF ISO 14001 [sic] logo, falsely implying that the certification was issued for the whole company rather than just a portion. Here again, the very policies of the organization creating the certification standards states that such advertising is misleading and “unacceptable.”

b) Misleading Assertions of “Organic” Agriculture

Smithfield claims throughout its videos that the company is a “big-time organic recycler” and that its manure handling represents “organic” recycling “at its best.” Smithfield deceptively employs the term “organic” here by confusing its literal meaning with its specially designated meaning with respect to food production. Because of the growing concern about the health and environmental impact of using chemicals in food production, the market for food produced without such chemicals is growing at record rates.

⁴⁴http://www.iso.org/iso/iso_catalogue/management_and_leadership_standards/certification/publicizing_your_certification/publicizing_your_certification-scope_certification.htm.

⁴⁵http://www.iso.org/iso/iso_catalogue/management_and_leadership_standards/certification/publicizing_your_certification/publicizing_your_certification-scope_certification.htm.

Such food production is strictly regulated by law, as is its accompanying advertising.⁴⁶ Any agricultural product that is “represented” as “organic” must be produced and handled in accordance with rules promulgated pursuant to the Organic Foods Production Act.⁴⁷

Smithfield’s unqualified representations that its operations constitute “organic” agriculture “at its best” is an unacceptable misuse of the term “organic” that is likely to be misunderstood by investors and consumers. The United States Department of Agriculture does not list either Smithfield or Murphy-Brown in its database of certified organic operations.⁴⁸ While there is no evidence that Smithfield’s operations are certified or otherwise comply with the Organic Foods Production Act, substantiation should be required if that is the company’s claim. If the company cannot produce such substantiation or acknowledges that its operations do not qualify to be represented as “organic,” then such assertions in the video series should be immediately removed.

c) Material Omissions Relating to Manure Lagoons

Although Smithfield represents manure lagoons as an environmentally friendly form of waste management, the science and the data prove otherwise. Manure lagoons emit harmful pollutants into the air, including methane and ammonia, gases implicated in climate change.⁴⁹ It is worth noting with respect to Smithfield’s manure disposal systems that both the state senate and house of North Carolina (Murphy-Brown’s home state) voted unanimously to permanently ban any further construction of open-air hog waste lagoons.⁵⁰

⁴⁶ The Organic Foods Production Act of 1990, as amended (7 U.S.C. 6501 et seq.); 7 CFR Part 205 (2011).

⁴⁷ 7 CFR 205.102 (2011).

⁴⁸ See “National Organic Program Certified Operations” database at <http://apps.ams.usda.gov/nop>.

⁴⁹ U.S. Environmental Protection Agency. 2007. Inventory of U.S. greenhouse gas emissions and sinks: 1990-2005, p. 6-6.

⁵⁰ “Legislation Bans Hog Waste Lagoons in North Carolina,” *American Agriculturist* (July 27, 2007). <http://americanagriculturist.com/story.aspx/legislation-bans-hog-waste-lagoons-in-north->

As stated in the legislative summary, the bill prohibits the issuance of any permits for “the construction, operation, or expansion of an animal waste management system that serves a swine farm that employs an anaerobic lagoon as the primary method of treatment and land application of waste by means of a sprayfield as the primary method of waste disposal.”⁵¹ This legislation was enacted in 2007, yet four years later Smithfield portrays in its videos these same anaerobic lagoon and sprayfield systems as environmentally friendly.

4. **Misleading Representations Relating to Antibiotic Use**

Several of the videos make reference to Smithfield’s practices regarding the administration of antibiotics to its pigs. These references are clearly addressed toward public concern about antimicrobial resistance resulting from use of antibiotics for non-therapeutic and sub-therapeutic production purposes. The following statement is repeated in several of the videos:

“We do not use antibiotics for growth-promoting purposes. We use antibiotics for three main purposes: to treat disease, prevent disease, and control disease.”

The disingenuous and misleading problem with this statement is that it targets a public health concern in a way that suggests a false conclusion. Over the last decade, there has been an increasing public health concern about antimicrobial resistance resulting from the routine and unnecessary use of antibiotics in animal agriculture. Playing on this public health concern, Smithfield offers its assurance that it does not use antibiotics for growth-promoting purposes, but only for disease-related reasons. While such claims imply that antibiotic use is limited to specifically targeted animals, the reality is that the drugs are

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⁵¹ North Carolina Bill Summary, 2007 Reg. Sess. S.B. 1465.

administered through the feed to every single pig Smithfield raises.⁵² A recent article in *Scientific American* called this type of administration the “perfect recipe for disaster” because administering low-dose antibiotics through feed introduces only enough drugs to kill the non-resistant strains, which leaves more opportunities for harder-to-kill resistant strains to develop.⁵³ Surely, Smithfield could not reasonably argue that its statement regarding antibiotic use is clear on this point or that it accurately alleviates the public health concern on this issue. To suggest otherwise, Smithfield would have to take the position that the public’s primary concern here is with the *reason* for its administration of antibiotics to pigs rather than the risk of antimicrobial resistance that threatens human health from doing so, and that it would be only the unreasonable investor who could see it any other way.

Compounding the misleading statements regarding Smithfield’s antibiotic use is the claim in one of the videos that the United States Food and Drug Administration (FDA) *assures* that all drugs used are safe for the pig, for humans and for the environment.⁵⁴ In fact, this is a dangerous mischaracterization of the FDA’s position on the health risks associated with drug use in livestock operations. The FDA expressly acknowledges that the herd-wide administration of antibiotics “poses a qualitatively higher risk to public health than the administration of such drugs to individual animals or targeted groups of animals.”⁵⁵ Earlier this year, the FDA publicly released for the first time just how widespread the use of feed-mixed antibiotics is in the livestock industry. Fully 80% of the antibiotics sold in this country are used for livestock production and nearly three-fourths of

⁵² See Feed-Grade Antibiotics Use Report, “Corporate Social Responsibility Report,” Smithfield Foods (2009/10), pp.54-55.

⁵³ “Our Big Pig Problem,” *Scientific American*. March 30, 2011.

⁵⁴ “Taking the Mystery Out of Pork Production: Finishing Farm.”

⁵⁵ “The Judicious Use of Medically Important Antimicrobial Drugs in Food-Producing Animals,” FDA Center for Veterinary Medicine, June 28, 2010, p.14.

those drugs are delivered in exactly the manner the FDA states presents the higher risk to public health (and exactly the manner that Smithfield is administering them)—through the feed.⁵⁶

Also of significance to Smithfield’s assertions is the FDA’s position that drugs approved prior to 2003 did not undergo the updated health-risk assessment for antimicrobial resistance.⁵⁷ In other words, contrary to Smithfield’s assertion that the FDA assures there is no public health risk from its antibiotic use, the FDA states that there is indeed a risk, particularly if Smithfield or other producers are using antibiotics approved prior to 2003.

Smithfield’s mischaracterization of the FDA’s position on the public health risk from antibiotic use in livestock operations, combined with its carefully worded administration policies that falsely imply that antibiotics are given only to specific animals rather than herd-wide, present a very real threat to both stakeholders and to public health. While the latter is not within the Commission’s scope of authority to address, the former clearly is. Smithfield can assure stakeholder clarity by simply disclosing specifically the type and amount of antibiotics it uses. What it can’t do, however, is avoid the issue by misleading stakeholders with ambiguous assertions, material omissions and mischaracterized agency assurances.

⁵⁶ See Attachment 7. News Release: “FDA Reports to Slaughter: Over 70 Percent of Antibiotics Administered to Animals In Feed,” Congresswoman Louise Slaughter (D-NY), Accessed at http://www.louise.house.gov/index.php?option=com_content&task=view&id=2481&Itemid=100065.

⁵⁷ “The Judicious Use of Medically Important Antimicrobial Drugs in Food-Producing Animals,” FDA Center for Veterinary Medicine, June 28, 2010, p.15.

**ANALYSIS OF CLAIMS UNDER ANTIFRAUD
PROVISIONS OF FEDERAL SECURITIES LAWS**

1. Material Assertions and Omissions Relating to Issues of Social Responsibility

It is a violation of the antifraud provisions of the federal securities laws “to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.”⁵⁸

The Smithfield videos and releases are clearly designed to address ethical concerns of stakeholders—investors, potential investors, customers, etc. Indeed, these issues are of particular interest to both stakeholders concerned about the company’s social responsibility practices and to those concerned about the financial damage to the business should it be revealed that the company is treating animals or the environment in ways that customers find unacceptable.

There can be no dispute that many stakeholders are concerned enough about animal welfare to alter their purchasing and/or investing habits on the basis of representations such as those made by Smithfield here. In fact, Smithfield’s CEO recently declared that the “company’s future performance is intrinsically linked to [its] performance on sustainability issues.”⁵⁹ Consequently, Smithfield prominently posts information on its CSR policies, including links specifically to animal welfare, environment and antibiotic use. The company publishes an annual CSR report, the most recent of which contains a “materiality analysis” conducted by the company to determine the most important of these issues to stakeholders. The analysis ranks issues by their levels of “Concern to Stakeholders” and “Potential

⁵⁸ 17 C.F.R. § 240.10b-5(b) (2011).

⁵⁹ “Corporate Social Responsibility Report,” Smithfield Foods (2009/10), p.4.

Impact on Smithfield.” The issues presented in this complaint—the humane treatment of animals, use of antibiotics, and environmental issues related to manure management and water quality—were identified as “those of greatest potential impact on Smithfield Foods and the highest concern to stakeholders.”⁶⁰

This report demonstrates that, prior to issuing the videos and related releases, Smithfield knew and openly acknowledged how important these issues are to customers, investors and the future of Smithfield. And Smithfield’s president and CEO further expressed this position in the following excerpt from a letter on the new company CSR site:

Our customers, investors, and other stakeholders seek transparency. They want to learn more about how we are reducing our environmental footprint. They want to know how we take care of our animals.⁶¹

The accuracy and completeness of the information contained in the videos, then, is critical, as the likelihood of stakeholder reliance on it is, according to Smithfield’s own research, substantial.

2. The Videos and Releases Are Likely to Reach Stakeholders and Satisfy the “In Connection With” Requirement

The Commission has interpreted the “in connection with purchase or sale of any security” broadly to give stakeholders maximum protection against fraud.⁶² In this case, the deceptive information is published on Smithfield’s corporate investor website, on Murphy-Brown’s corporate website, and on YouTube.com, all of which are freely accessible to the public. The Commission has made clear that “antifraud provisions of the federal securities

⁶⁰ See Attachment 2. Smithfield 2009/10 Materiality Matrix, “Corporate Social Responsibility Report,” Smithfield Foods (2009/10).

⁶¹ See <http://www.smithfieldcommitments.com/core-reporting-areas/introduction/letter-from-the-president>.

⁶² *SEC v. Rana*, 8 F.3d 1358, 1362 (9th Cir. 1993); See also *SEC v. Hasho*, 784 F.Supp.1059, 1106 (S.D.N.Y.1992) (“[a]ny statement that is reasonably calculated to influence the average investor satisfies the ‘in connection with’ requirement of Rule 10b-5.”).

laws apply to company statements made on the Internet in the same way they would apply to any other statement made by, or attributable to, a company.”⁶³ As the online community grows and technology advances, web sites become an even more significant source for the fast and widespread release of information. In its latest interpretive release paper on web site guidance, the Commission stated it believes “that a company’s web site can be a valuable channel of distribution for information about a company, its business, financial condition and operations.”⁶⁴

All the sites on which Smithfield is publishing the videos and related releases are freely open to the public, of which the Commission has noted generally that a “fundamental principle underlying these interpretations and rules is that, where access is freely available to all, use of electronic media is at least equal to other methods of delivering information or making it available to investors and the market.”⁶⁵

⁶³ *Commission Guidance on the Use of Company Web Sites*. Release No. 34-58288,, at Section II.B (Aug. 7, 2008) [73 FR 45862].*See e.g.*, *Use of Electronic Media for Delivery Purposes*, Release No. 33-7233, at n. 11, (Oct. 6, 1995) [60 FR 53458], (“The liability provisions of the federal securities laws apply equally to electronic and paper-based media. For instance, the antifraud provisions of the federal securities laws as set forth in Section 10(b) of the Exchange Act [15 U.S.C. 78j(b)] and Rule 10b-5 [17 CFR 240.10b-5] thereunder would apply to any information delivered electronically, as it does to information delivered in paper.”); *Use of Electronic Media by Broker-Dealers*, Release No. 33-7288, at Section I, n. 4, (May 9, 1996) [61 FR 24643] (“The substantive requirements and liability provisions of the federal securities laws apply equally to electronic and paper-based media. For example, the antifraud provisions of the Exchange Act and Rule 10b-5 thereunder . . . apply to information delivered and communications transmitted electronically, to the same extent as they apply to information delivered in paper form.”); *Use of Electronic Media*, Release No. 33-7856, at Section II.B, (Apr. 28, 2000) [65 FR 25843] (“It is important for companies . . . to keep in mind that the federal securities laws apply in the same manner to the content of their Web sites as to any other statements made by or attributable to them.”).

⁶⁴ *Commission Guidance on the Use of Company Web Sites*. Release No. 34-58288,, at Section II.A (Aug. 7, 2008) [73 FR 45862].

⁶⁵ *Id.* at 11.

3. **Stakeholder Vulnerability to the Type of Deception at Issue Here Calls for Heightened Scrutiny**

Stakeholders concerned about CSR issues, such as the humane treatment of animals, are almost totally dependent on the company's truthfulness. If stakeholders have concerns about corporate finances or governance, they can independently review publicly filed records. If they have concern about the quality of whatever product the company is manufacturing, they can get a sample and have it independently tested. If, however, they have a concern about how the company treats animals used for production, they have no means of independently observing that and so are wholly dependent on the company's assurances. Indeed, Smithfield has expressly rejected opening this level of scrutiny when it rejected its own welfare expert's recommendation that it install live webcams inside its farms.⁶⁶

Where, as here, there is strong evidence that a company's claims are not true, that the treatment of animals is not at the level being asserted to stakeholders, that the claims of "organic" farming and environmental responsibility are being deceptively portrayed, and where the misleading endorsements are being offered as assurances, action from the Commission to protect stakeholders is essential.

RELIEF REQUESTED

The actions described above constitute violations of the antifraud provisions of the federal securities laws. Accordingly, The HSUS respectfully requests that the Commission exercise its investigative and enforcement powers to stop Smithfield from deceiving

⁶⁶ "Temple Grandin appears in Smithfield Foods videos," *The Virginian-Pilot*, April 10, 2011 ("Grandin said she suggested to Butler, without luck, that Smithfield go a step further and install a live webcam at its farms: 'Let's open the doors and screen it live.'")

stakeholders with deceptive assertions and omissions relating to animal welfare and the other issues detailed in this complaint.

Respectfully submitted,

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