

ORTEGA vs. KROGER COMPANY

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U.S. District Court, Cent. Dist. Calif., No. 14-1949

The largest supermarket in the country, Kroger Company, advertised its store brand chicken, the “Simple Truth” produced by Perdue Farms, as being “cage free” and “humanely treated.” Their website stated that the chickens were fed an organic vegetarian diet, were not given hormones or antibiotics and had access to the outdoors. Since there was growing consumer demand concerning the treatment of animals raised for consumption, the Kroger brand displayed these “humane” procedures on Simple Truth’s advertising and packaging.

In 2014, Anna Ortega filed suit in California asking for class action status, alleging that the chickens were not raised any differently than other massed-produced chickens on the market, and that the advertising was deceptive and misleading for all customers of the “Simple Truth” brand. The deceptive language on the packaging included the word “organic” which required a federally regulated certification process, (according to the FDA and USDA: “...require that the animals are raised in living conditions accommodating their natural behaviors, fed 100% organic feed and not administered antibiotics or hormones,” U.S. Department of Agriculture, “Organic 101: What the USDA Organic Label Means,” www.usda.gov).

Perdue argued that it was simply basing its “humane” claim as a member of the National Chicken Council’s (NCC) trade association’s Animal Welfare Guidelines followed by 95% of chicken producers. The guidelines allow for 30,000 chickens to be raised in a dimly lit warehouse on a bed of feces filled litter with little or no light or fresh air. Each chicken is given less than two-thirds of a square foot of room and have no access to the outside.

Ms. Ortega and lawyers for the activist group “Compassion over Killing” stated that besides these inhumane conditions, the chickens were electrically stunned before being slaughtered. The complaint outlined common industry standards that allowed disease and injury to continue unchecked from birth to slaughter, and that allowed chickens to suffer and die in pain. Ms. Ortega alleged that such treatment was not “humane” and constituted fraud and deception in “Simple Truth’s” advertising by charging more for its “humane” chicken brand.

The Humane Society of the United States (HSUS) had also filed a similar class action lawsuit in 2010 on behalf of consumers in Florida and New Jersey. The suit claimed that Perdue’s labeling their chickens as “humanely raised,” was misleading because the chickens were actually kept in cramped quarters in extreme heat on trucks, and raised in dimly lit packed factory warehouses. (“The Complex



Calculus of Food-Label Claims,” www.fortune.com, 10/14/2014.) Kroger settled both lawsuits by agreeing to remove the “raised in a humane environment” claim from its packages of “Simple Truth” chicken products by October 2015, but stood by their claim that they continually worked with their suppliers to ensure the humane treatment of animals. (“Perdue, Kroger Agree to Settle Chicken Labeling Suits,” www.law360.com/articles/586798).

The positive outcome of these recent settlements indicated that consumers care about the treatment of animals that are produced for consumption. A recent survey conducted by Edge Research, (for the ASPCA), found that 80% of consumers wanted the chicken they eat to be humanely raised, but that only 30% trusted the producers to actually treat chickens humanely. Consumers also wanted more truth in advertising and wanted to be able to trust what producers put on their labels. (“Consumer Marketing Win: Ending Humanewashing,” **Food Safety News**, 10/27/2014.)

Other Chicken Labeling Class Action Lawsuits:

- Wendy Roy, et.al. v. Perdue Farms Inc., Case No. 6:13-cv-01656, U.S. Dist. Ct., Middle Dist. Fla.
- Hemy v. Perdue Farms Inc., et.al., Case No. 3:11-cv-00888, U.S. Dist. Ct., New Jersey

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