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June 15, 2023

Sent via email to melanie.konstantopoulos@dc.gov, dlcp@dc.gov and shakira.richardson2@dc.gov

Melanie Konstantopoulos
Interim General Counsel
Department of Licensing and Consumer Protection
1100 4th Street, SW,
Washington, DC 20024

Subject: Case No. 2023-000002257

Ms. Konstantopoulos,

On behalf of Animal Partisan, I write in response to a June 13, 2023 letter from the Department of Licensing and Consumer Protection (“DLCP”) communicating the closure of a complaint filed by our organization. Animal Partisan’s complaint was filed on May 1, 2023 and accused American Humane, a business headquartered in the District of Columbia, of deceptive trade practices. Based on the content of DLCP’s recent letter and prior interactions, we believe that the agency has failed to diligently investigate this matter as required by law and respectfully request that you reconsider our complaint.

D.C. Code § 28–3905(b)(1) mandates that DLCP genuinely consider each complaint, stating unequivocally that “the Director shall investigate each such complaint.” Not only does D.C. Code mandate such an investigation, it requires DLCP to make a determination as to whether or not a trade practice occurred in violation of District law, stating that “the Director shall . . . determine . . . what trade practice actually occurred; and . . . [w]hether the trade practice which occurred violates any statute, regulation, rule of common law, or other law of the District of Columbia.” *Ibid.*

Here, it appears that DLCP did not give genuine consideration and investigation to Animal Partisan’s complaint. Our interactions with DLCP suggest that the agency may not have even read the complaint and if it did, did not make the required determination whether the trade practice complained of violated D.C. law. This is best evidenced by DLCP’s own letter of June 13, 2023. The letter states that Animal Partisan’s complaint was closed, but provides no rationale, explanation, or justification for this closure. The letter does not indicate that DLCP even investigated the complaint. Nor does the letter indicate that DLCP found the complaint did not have merit or that the agency does not have jurisdiction over this issue. Instead, the letter simply advises that the matter is closed and directs Animal Partisan to a host of other agencies.

Compounding the matter, DLCP's suggestions on where Animal Partisan might pursue this complaint are based on misunderstandings of both the law and the nature of the complaint itself:

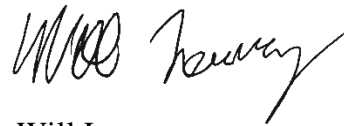
- The letter states that “this Program recommends that your concerns be presented to the District of Columbia’s Office of Attorney General as well as to the Food and Drug Administration, given their oversight *over food labeling regulations*.” Consumer Protection Unit Letter to Animal Partisan, June 13, 2023 (emphasis added). As stated expressly in Section V(C) of the complaint “the conduct challenged in this complaint relates to claims made on the Internet and **not on Foster Farms’ labels**.” The complaint further cites a recent District of Columbia Court of Appeals decision stating that “States (and the District of Columbia) are free to regulate advertisements without regard to whatever terms the USDA approves as appropriate for labeling, so long as they do not encroach on the labeling itself.” *Animal Legal Def. Fund v. Hormel Foods Corp.*, 258 A.3d 174, 191 (D.C. 2021). Thus, this matter does not involve “food labeling regulations” and DLCP is not prohibited from enforcing the law against American Humane.
- DLCP’s letter states that “The United States Department of Agriculture may also present an avenue worth pursuing, given the Department’s oversight over the federal Animal Welfare Act.” It is easily discernible that farmed animals—such as the chickens at issue here—are not protected by the Animal Welfare Act. *The Animal Welfare Act: Background and Selected Issues*, Congressional Research Service, <https://crsreports.congress.gov/product/pdf/R/R47179> (“Certain animals—such as horses and farm animals and birds, rats, and mice bred for research—are excluded from the law.”). Accordingly, the Animal Welfare Act provides no remedy, nor does the USDA have any jurisdiction over this matter. Accordingly, DLCP is not preempted or absolved from investigating this matter.
- The letter further states that “You also have the right to file a claim in DC Superior Court against the respondent to determine what rights you have in this matter and order an appropriate remedy.” While true, D.C. Code does not limit complainants seeking remedy to the courts as the only option for enforcing the District’s deceptive trade practice laws. As stated previously, D.C. Code fully empowers DLCP with a wide range of powers of its own, including the ability to issue cease and desist orders, report to other governmental agencies, negotiate consent decrees, promulgate regulations, impose civil fines, and to “exercise and perform such other functions and duties consistent with the purposes or provisions of this chapter which may be deemed necessary or appropriate to protect and promote the welfare of District of Columbia consumers.” D.C. Code § 28–3903(a)(1-17).

In addition to these statements made in DLCP’s letter, a separate interaction bolsters the suggestion that the agency failed to conduct the investigation and determination required under D.C. Code § 28–3905(b)(1). On May 4, 2023 at approximately 9:55am EST, Animal Partisan was contacted via telephone by Investigator Anthony Hooks from DLCP. Investigator Hooks indicated that the agency does not handle “cruelty complaints.” We advised Investigator Hooks that this was not a cruelty complaint but instead, a violation of D.C. Code related to deceptive

trade practices. Investigator Hooks further stated that he needed to check whether American Humane had “health certificates.” We again explained the nature of the complaint and asked Investigator Hooks whether he had read the complaint to which he replied that he had not. We advised Investigator Hooks that it would be beneficial to read the complaint before attempting to dispose of this matter.

DLCP’s actions suggest that the agency gave no genuine consideration to this complaint contrary to its mandates to do so under D.C. Code. Such actions suggest that the agency has abrogated its responsibility to handle consumer complaints and may be subject to judicial review. *See Heckler v. Chaney*, 470 U.S. 821, n.4 (1985). We respectfully request that DLCP reconsider its decision to close this complaint and conduct a full and thorough investigation pursuant to its statutory responsibilities.

Please contact me at wlowrey@animalpartisan.org or (804) 307-4102 should you require further information.



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cc:

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