

Superior Court of the District of Columbia

Filed
D.C. Superior Court
07/27/2020 10:09AM
Clerk of the Court

CIVIL DIVISION- CIVIL ACTIONS BRANCH INFORMATION SHEET

Animal Equality

Case Number: 2020 CA 003279 B

vs

Date: July 24, 2020

Champion Petfoods USA Inc. and Champion Petfoods LP

One of the defendants is being sued
in their official capacity.

Name: <i>(Please Print)</i> Kim E. Richman	Relationship to Lawsuit
Firm Name: Richman Law Group	<input checked="" type="checkbox"/> Attorney for Plaintiff
Telephone No.: Six digit Unified Bar No.: 718-705-4579 1022978	<input type="checkbox"/> Self (Pro Se)
	<input type="checkbox"/> Other: _____

TYPE OF CASE: Non-Jury 6 Person Jury 12 Person Jury
Demand: \$ _____ Other: _____

PENDING CASE(S) RELATED TO THE ACTION BEING FILED

Case No.: _____ Judge: _____ Calendar #: _____

Case No.: _____ Judge: _____ Calendar#: _____

NATURE OF SUIT: *(Check One Box Only)*

A. CONTRACTS

COLLECTION CASES

- | | | |
|---|--|---|
| <input type="checkbox"/> 01 Breach of Contract | <input type="checkbox"/> 14 Under \$25,000 Pltf. Grants Consent | <input type="checkbox"/> 16 Under \$25,000 Consent Denied |
| <input type="checkbox"/> 02 Breach of Warranty | <input type="checkbox"/> 17 OVER \$25,000 Pltf. Grants Consent | <input type="checkbox"/> 18 OVER \$25,000 Consent Denied |
| <input type="checkbox"/> 06 Negotiable Instrument | <input type="checkbox"/> 27 Insurance/Subrogation | <input type="checkbox"/> 26 Insurance/Subrogation |
| <input type="checkbox"/> 07 Personal Property | Over \$25,000 Pltf. Grants Consent | Over \$25,000 Consent Denied |
| <input type="checkbox"/> 13 Employment Discrimination | <input type="checkbox"/> 07 Insurance/Subrogation | <input type="checkbox"/> 34 Insurance/Subrogation |
| <input type="checkbox"/> 15 Special Education Fees | Under \$25,000 Pltf. Grants Consent | Under \$25,000 Consent Denied |
| | <input type="checkbox"/> 28 Motion to Confirm Arbitration
Award (Collection Cases Only) | |

B. PROPERTY TORTS

- | | | |
|---|---|--------------------------------------|
| <input type="checkbox"/> 01 Automobile | <input type="checkbox"/> 03 Destruction of Private Property | <input type="checkbox"/> 05 Trespass |
| <input type="checkbox"/> 02 Conversion | <input type="checkbox"/> 04 Property Damage | |
| <input type="checkbox"/> 07 Shoplifting, D.C. Code § 27-102 (a) | | |

C. PERSONAL TORTS

- | | | |
|---|--|---|
| <input type="checkbox"/> 01 Abuse of Process | <input type="checkbox"/> 10 Invasion of Privacy | <input type="checkbox"/> 17 Personal Injury- (Not Automobile,
Not Malpractice) |
| <input type="checkbox"/> 02 Alienation of Affection | <input type="checkbox"/> 11 Libel and Slander | <input type="checkbox"/> 18 Wrongful Death (Not Malpractice) |
| <input type="checkbox"/> 03 Assault and Battery | <input type="checkbox"/> 12 Malicious Interference | <input type="checkbox"/> 19 Wrongful Eviction |
| <input type="checkbox"/> 04 Automobile- Personal Injury | <input type="checkbox"/> 13 Malicious Prosecution | <input type="checkbox"/> 20 Friendly Suit |
| <input checked="" type="checkbox"/> 05 Deceit (Misrepresentation) | <input type="checkbox"/> 14 Malpractice Legal | <input type="checkbox"/> 21 Asbestos |
| <input type="checkbox"/> 06 False Accusation | <input type="checkbox"/> 15 Malpractice Medical (Including Wrongful Death) | <input type="checkbox"/> 22 Toxic/Mass Torts |
| <input type="checkbox"/> 07 False Arrest | <input type="checkbox"/> 16 Negligence- (Not Automobile,
Not Malpractice) | <input type="checkbox"/> 23 Tobacco |
| <input type="checkbox"/> 08 Fraud | | <input type="checkbox"/> 24 Lead Paint |

SEE REVERSE SIDE AND CHECK HERE IF USED

Information Sheet, Continued

C. OTHERS

- | | |
|---|---|
| <input type="checkbox"/> 01 Accounting | <input type="checkbox"/> 17 Merit Personnel Act (OEA) |
| <input type="checkbox"/> 02 Att. Before Judgment | (D.C. Code Title 1, Chapter 6) |
| <input type="checkbox"/> 05 Ejectment | <input type="checkbox"/> 18 Product Liability |
| <input type="checkbox"/> 09 Special Writ/Warrants
(DC Code § 11-941) | <input type="checkbox"/> 24 Application to Confirm, Modify,
Vacate Arbitration Award (DC Code § 16-4401) |
| <input type="checkbox"/> 10 Traffic Adjudication | <input type="checkbox"/> 29 Merit Personnel Act (OHR) |
| <input type="checkbox"/> 11 Writ of Replevin | <input type="checkbox"/> 31 Housing Code Regulations |
| <input type="checkbox"/> 12 Enforce Mechanics Lien | <input type="checkbox"/> 32 Qui Tam |
| <input type="checkbox"/> 16 Declaratory Judgment | <input type="checkbox"/> 33 Whistleblower |

II.

- | | | |
|--|---|--|
| <input type="checkbox"/> 03 Change of Name | <input type="checkbox"/> 15 Libel of Information | <input type="checkbox"/> 21 Petition for Subpoena
[Rule 28-1 (b)] |
| <input type="checkbox"/> 06 Foreign Judgment/Domestic | <input type="checkbox"/> 19 Enter Administrative Order as
Judgment [D.C. Code § | <input type="checkbox"/> 22 Release Mechanics Lien |
| <input type="checkbox"/> 08 Foreign Judgment/International | 2-1802.03 (h) or 32-151 9 (a)] | <input type="checkbox"/> 23 Rule 27(a)(1)
(Perpetuate Testimony) |
| <input type="checkbox"/> 13 Correction of Birth Certificate | <input type="checkbox"/> 20 Master Meter (D.C. Code § | <input type="checkbox"/> 24 Petition for Structured Settlement |
| <input type="checkbox"/> 14 Correction of Marriage
Certificate | 42-3301, et seq.) | <input type="checkbox"/> 25 Petition for Liquidation |
| <input type="checkbox"/> 26 Petition for Civil Asset Forfeiture (Vehicle) | | |
| <input type="checkbox"/> 27 Petition for Civil Asset Forfeiture (Currency) | | |
| <input type="checkbox"/> 28 Petition for Civil Asset Forfeiture (Other) | | |

D. REAL PROPERTY

- | | |
|--|--|
| <input type="checkbox"/> 09 Real Property-Real Estate | <input type="checkbox"/> 08 Quiet Title |
| <input type="checkbox"/> 12 Specific Performance | <input type="checkbox"/> 25 Liens: Tax / Water Consent Granted |
| <input type="checkbox"/> 04 Condemnation (Eminent Domain) | <input type="checkbox"/> 30 Liens: Tax / Water Consent Denied |
| <input type="checkbox"/> 10 Mortgage Foreclosure/Judicial Sale | <input type="checkbox"/> 31 Tax Lien Bid Off Certificate Consent Granted |
| <input type="checkbox"/> 11 Petition for Civil Asset Forfeiture (RP) | |

Attorney's Signature

July 24, 2020

Date

2. Champion is a large producer of pet food, which it sells under its Acana brand.¹ Champion markets its products throughout the United States, including in the District of Columbia.

3. Champion makes explicit representations designed to mislead D.C. consumers to believe that certain of its products (the “Products”)² are made with only “wild-caught” fish (the “Wild-Caught Fish Claims”), when in fact they contain rainbow trout from industrial fish farms.

4. Thus, Champion’s marketing is false and misleading to D.C. consumers.

STATUTORY FRAMEWORK

5. This action is brought under the District of Columbia Consumer Protection Procedures Act (“CPPA”), D.C. Code § 28-3901, *et seq.*

6. The CPPA makes it a violation for “any person” to, *inter alia*:

Represent that goods or services have a source, sponsorship, approval, certification, accessories, characteristics, ingredients, uses, benefits, or quantities that they do not have;

Represent that goods or services are of a particular standard, quality, grade, style, or model, if in fact they are of another;

Misrepresent as to a material fact which has a tendency to mislead;

Fail to state a material fact if such failure tends to mislead;

Use innuendo or ambiguity as to a material fact, which has a tendency to mislead; or

Advertise or offer goods or services without the intent to sell them or without the intent to sell them as advertised or offered.

D.C. Code § 28-3904(a), (d), (e), (f), (f-1), (h).

7. A violation of the CPPA occurs regardless of “whether or not any consumer is in fact misled, deceived or damaged thereby.” *Id.*

¹ Champion Petfoods, *About Us*, <https://championpetfoods.com/en/about-us.html> (last visited July 21, 2020).

² Acana Bountiful Catch Dry Cat Food, Acana Freshwater Fish Formula Dry Dog Food, Acana Grasslands Dry Cat Food, Acana Grasslands Dry Dog Food, Acana Meadowland Dry Dog Food, and Acana Meadowlands Dry Cat Food. Discovery may demonstrate that additional Champion products are within the scope of this Complaint. Plaintiff reserves the right to amend this Complaint to include additional products identified through the course of discovery.

8. The CPPA “establishes an enforceable right to truthful information from merchants about consumer goods and services that are or would be purchased, leased, or received in the District of Columbia.” *Id.* § 28-3901(c). The statute “shall be construed and applied liberally to promote its purpose.” *Id.*

9. Animal Equality is a nonprofit organization as defined in D.C. Code § 28-3901(a)(14).

10. The CPPA affords Animal Equality, as a nonprofit organization, standing to bring this action on behalf of itself or its members, and on behalf of the general public: “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” *Id.* § 28-3905(k)(1)(C). Such an action to address a CPPA violation may “include[e] 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.” *Id.*

11. Remedies available for any CPPA claim include “[a]n injunction against the use of the unlawful trade practice” and “[a]ny other relief which the court determines proper.” *Id.* § 28-3905(k)(2)(D), (F).

FACT ALLEGATIONS

I. Champion’s Marketing Falsely Represents That It Uses “Wild-Caught” Fish.

12. Champion makes representations that falsely state or lead consumers to believe that it uses wild-caught rainbow trout in its pet foods.

13. For example, Champion’s website advertises its Grasslands dog food with the statement: “ACANA Grasslands is brimming with . . . wild-caught rainbow trout . . .”³



14. Likewise, Champion’s website advertises its Freshwater Fish Formula dog food with the statement: “ACANA Freshwater Fish is packed with whole, wild-caught rainbow trout”⁴

15. Another page on Champion’s website, titled “Sustainable and Wild-Caught Fish,” states, “Our saltwater fish are sustainable and wild-caught from New England’s cold and fertile waters, and our freshwater fish from American waters – all whisked to our DogStar Kitchen fresh or raw.”⁵

³ Acana, *Grasslands*, https://acana.com/en_US/for-dogs-1/grasslands/ds-aca-grasslands-dog.html (last visited July 21, 2020).

⁴ Acana, *Freshwater Fish Formula*, https://acana.com/en_US/for-dogs-1/freshwater-fish-formula/ds-aca-freshwater-fish.html (last visited July 21, 2020).

⁵ Acana, *Sustainable and Wild-Caught Fish*, https://acana.com/en_US/acana-about-fresh_regional_ingredients-fish.html (last visited July 21, 2020).

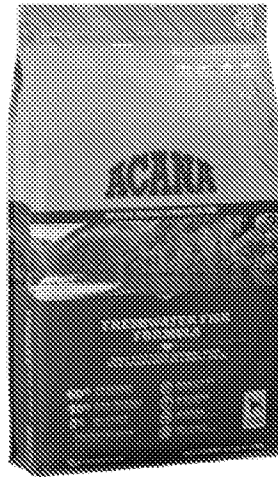
16. This page, from Champion's website (see image below), further describes its freshwater fish (which includes rainbow trout) as "Fresh, Whole, and Wild Freshwater Fish" and specifically states that its rainbow trout is "[s]ustainably caught by fishermen we know and trust."⁶



17. On the websites of major retailers such as Amazon and Petco, which sell the Products in the District, Champion consistently states (see image below) that the Products contain "wild-caught rainbow trout" and "wild-caught fish."⁷

⁶ *Id.*

⁷ See, e.g., *ACANA Dog Protein Rich, Real Meat, Grain Free, Adult Dry Dog Food*, Amazon, https://www.amazon.com/Orijen-Acana-Heritage-Freshwater-Fish/dp/B002BRBAC2/ref=sr_1_5?crid=2XWDDGDWYPC0Y&dchild=1&keywords=acana+freshwater+fish+dog+food&qid=1595014878&sprefix=acana+fresh%2Caps%2C142&sr=8-5 (last visited July 21, 2020).



Roll over image to zoom in



About this item

- ACANA Freshwater Fish food is nutrient-dense and high in protein, nourishing dogs completely with whole, wild-caught rainbow trout, blue catfish, and yellow perch
- With rich inclusions of quality animal ingredients, ACANA dog food uses meat, organs, cartilage, and bone, delivering the nutrients dogs need naturally
- Our Fresh Regional ingredients are supplied by people we know and trust, from regional farms, ranches, and waters, and delivered to our kitchen fresh or raw
- Grain-free, with no gluten, potato, or tapioca, common in today's pet foods, ACANA dog food is crafted from whole, quality animal ingredients for a Biologically Appropriate diet that nourishes dogs according to their natural, biological needs
- Made in our own kitchens in Kentucky. For more information, please contact our Customer Care team at customerscare@championpetfoods.com or 877.939.0006.
- Age Range Description: All Life Stages

Compare with similar items

New (6) from \$71.99 + FREE Shipping



Shop by Pet ▾

Brands ▾

Sale ▾

Pharmacy ▾



ACANA Freshwater Fish Dry Dog Food

Weight 25 LBS ▾

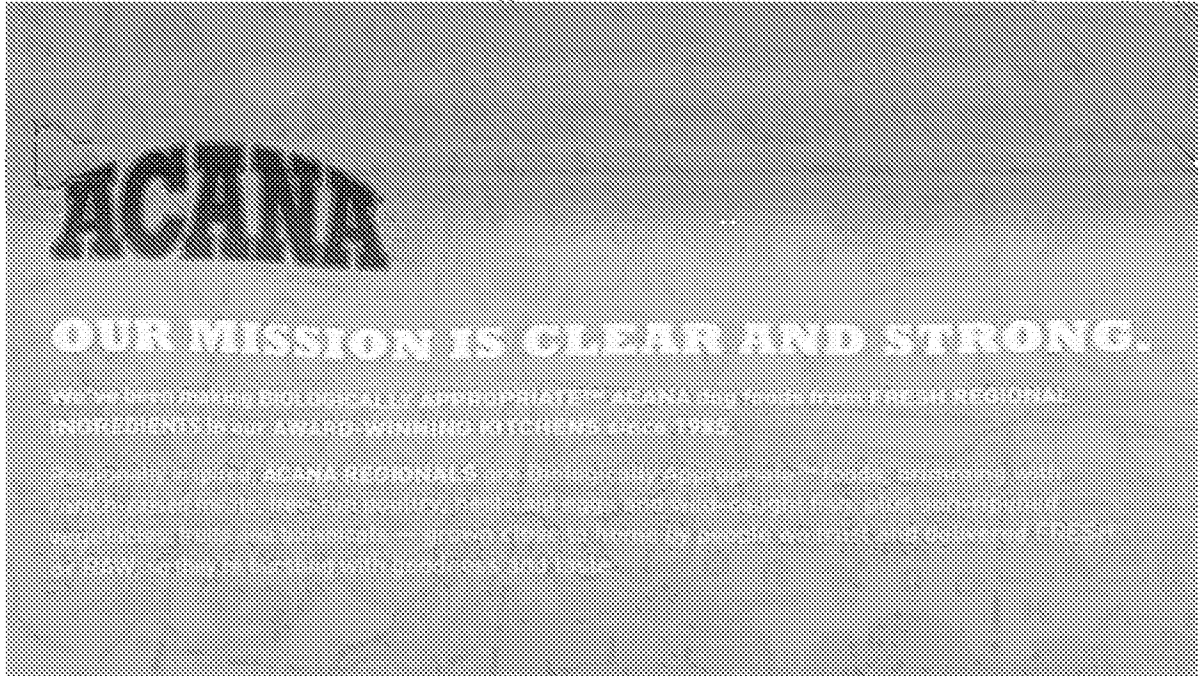
Qty - 1

Brimming with 60% wild-caught rainbow trout, blue catfish, and white perch, ACANA's Freshwater Fish Formula is a richly nourishing, grain-free recipe with a delicious flavor that dogs love.

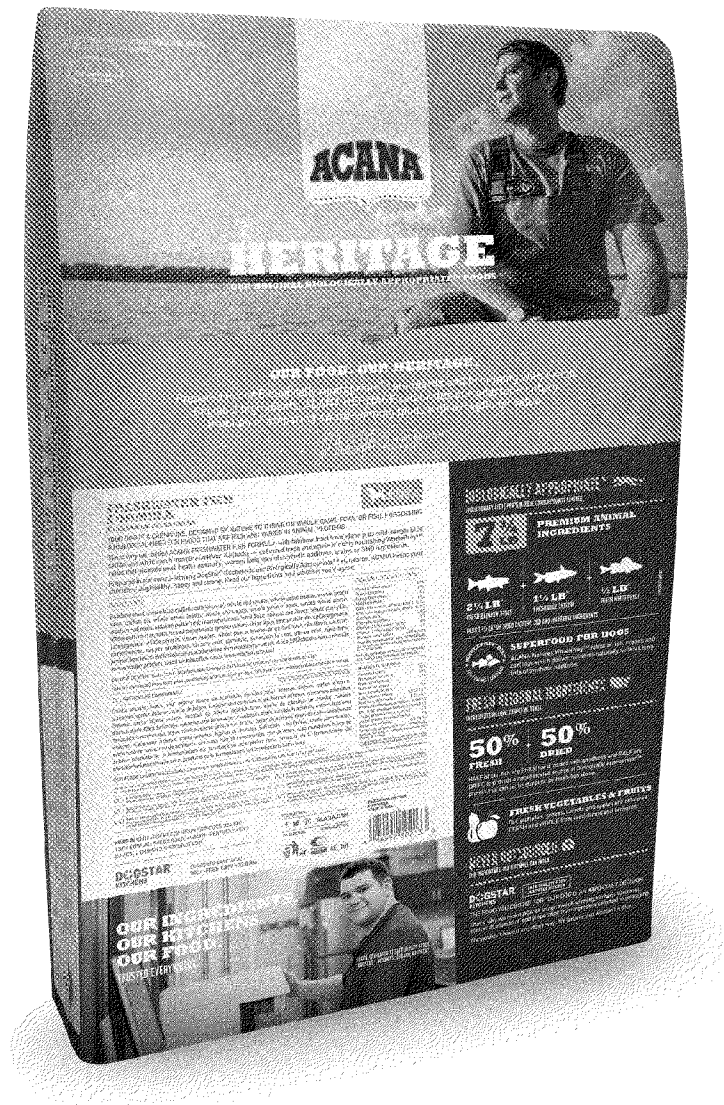
- By nature, all dogs are evolved as carnivores, biologically adapted for a diet rich and varied in fresh meats with smaller amounts of fruits and vegetables.
- WHOLEPREY DIET POULTRY / ORGANS / CARTILAGE In her eternal wisdom, Mother Nature matched the nutrients found in whole prey animals to perfectly meet the needs of your dog
- Mirroring nature, ACANA foods features a richly nourishing balance of muscle meat, organs and cartilage - all of which reflect the whole prey animal, delivering nutrients naturally.

18. Additionally, the packaging of several of the Products (see, e.g., image below) states that those Products are “brimming” with “wild-caught fish.”⁸

⁸ See, e.g., Acana, *Grasslands*, supra note 3; see also Acana, *Meadowland*, https://acana.com/en_US/for-dogs-1/meadowland/ds-aca-meadowlands-dog.html (last visited July 21, 2020).



19. The packaging of the Freshwater Fish Formula (shown below) has the picture and name of a fisherman with the caption, “trusted supplier of fresh wild-caught fish.”



20. The representations and insinuations in Champion’s labeling and marketing that it uses wild-caught fish are false and/or tend to mislead D.C. consumers as to a material fact.
21. Champion uses rainbow trout from Idaho.⁹
22. The vast majority of rainbow trout sourced from Idaho come from large industrial fish farms.¹⁰

⁹ See Acana, *Sustainable and Wild-Caught Fish*, *supra* note 5; see also Orijen, *Sustainable and Wild-Caught Fish*, https://orijen.ca/en_US/acana-about-fresh_regional_ingredients-fish.html (last visited July 21, 2020).

¹⁰ Idaho Department of Fish and Game, *Ask Fish and Game: Commercial source for wild Idaho trout?* (June 2, 2014, 3:00 PM MDT), <https://idfg.idaho.gov/question/commercial-source-wild-idaho-trout>.

23. The artificial preservative ethoxyquin is a chemical that is widely used as a feed additive in fish farming operations. The presence of trace residues of ethoxyquin in fish products indicates that the fish in the products were farmed, not wild-caught. Residues of ethoxyquin are not found in wild-caught fish products but are routinely found in farmed fish products.¹¹

24. Animal Equality commissioned laboratory tests of three Champion products. Two of the products, which did not contain rainbow trout, did not test positive for ethoxyquin. One of the Products, which does contain rainbow trout, tested positive for ethoxyquin. Accordingly, Animal Equality has secured reasonable confirmation that the rainbow trout used in the Products are industrially farmed, contrary to Champion’s “wild-caught” representations.¹²

II. Champion’s Representations Are Material to Consumers.

25. Champion’s false and misleading representations are material to D.C. consumers.

26. Consumers prefer wild-caught fish and believe it is higher-value and higher-welfare than farmed fish.

27. A separate survey of consumers showed significantly more consumers (70%) were interested in buying U.S. wild-caught fish than were interested in buying U.S. farmed fish (47%).¹³

28. Likewise, respondents to a 2008 survey “generally agreed that wild fish are higher quality and tastier than farmed fish” and believed wild-caught products were superior to farmed seafood.¹⁴

¹¹ Anne Benkenstein et al., *Analysis of Ethoxyquin and its Metabolites in Salmon Using QuEChERS* (2016), https://www.eurl-pesticides.eu/userfiles/file/EurlSRM/EPRW2016_Benkenstein_PD_007_Ethoxyquin-in-Salmon.pdf.

¹² Accordingly, Champion’s claims that the fish ingredients it sources are “without artificial preservatives” are also false. See e.g., Acana, *Sustainable and Wild-Caught Fish*, *supra* note 5.

¹³ Narayan Mahon, *How hungry are Wisconsinites for fish raised on local farms?*, Cap Times (May 13, 2019), https://madison.com/ct/news/local/environment/how-hungry-are-wisconsinites-for-fish-raised-on-local-farms/article_952beb91-b48c-524a-9bed-8e0c823351ed.html.

¹⁴ Troy E. Hall & Shannon M. Amberg, *Factors influencing consumption of farmed seafood products in the Pacific northwest*, 66 *Appetite* 1 (July 2013), <https://doi.org/10.1016/j.appet.2013.02.012>.

29. In a study on consumer perceptions of fish welfare and willingness to pay for perceived higher-welfare fish products, researchers found that about 80 percent of the respondents believed wild-caught fish had better welfare than farmed fish. The results also showed fish welfare is important to consumers, with 48 percent willing to pay extra for rainbow trout they believed had lived a better life.¹⁵

30. Food industry experts have identified that consumer preferences regarding human food products are increasingly “carrying over to pet foods.”¹⁶

31. A 2017 survey found that “9 out of 10 Americans say it’s important that the pet food they purchase provides transparency of ingredients.”¹⁷

32. Experts have specifically identified that an increase in consumers that want to provide premium food to their pets, including “wild-caught” fish, has caused an increase in national spending on pet food.¹⁸

PARTIES

33. Defendant Champion Petfoods USA Inc. is incorporated in Delaware, and has its headquarters and principal place of business in Kentucky.

¹⁵ Hans Stubbe Solgaard and Yingkui Yang, *Consumers’ perception of farmed fish and willingness to pay for fish welfare*, 113 *British Food J.* 997 (2011), https://www.researchgate.net/publication/254187556_Consumers%27_perception_of_farmed_fish_and_willingness_to_pay_for_fish_welfare.

¹⁶ Jennifer Semple, *The “real” customer*, *Food Business News* (May 14, 2018) <https://www.foodbusinessnews.net/articles/11818-the-real-customer>. This trend has been identified by the marketing industry as the “humanization” of pet food. *The Humanization of Pet Food*, Nielsen (March 2016), <https://www.nielsen.com/wp-content/uploads/sites/3/2019/04/humanization-of-pet-food-report-mar-2016-1.pdf>.

¹⁷ *9 of 10 pet owners want pet food ingredient transparency*, *Pet Food Industry* (April 10, 2017) <https://www.petfoodindustry.com/articles/6390-of-10-pet-owners-want-pet-food-ingredient-transparency>.

¹⁸ Annie Gasparo, *Pets or People, Big Food Faces the Same Supermarket Battle*, *Wall Street Journal* (Nov. 12, 2018), <https://www.wsj.com/articles/big-food-enconmters-familiar-challenges-in-pet-food-aisle-1542018602>.

34. Defendant Champion Petfoods LP is a Canadian limited partnership with its headquarters and principal place of business in Alberta, Canada. Defendant Champion Petfoods LP wholly owns, operates, and/or controls Defendant Champion Petfoods USA Inc.

35. Collectively, Defendants produce, process, market, and distribute the Products.

36. The Products are available in a wide variety of pet food retail outlets, including stores in the District.

37. Plaintiff Animal Equality is a nonprofit organization that works to expose cruel, unsustainable, and unhealthy practices of animal agribusinesses, and to promote humane, environmentally friendly, and healthy food alternatives. Industrial farming is one of Animal Equality's priority issues, and Animal Equality is engaged in campaigns to increase the transparency of the animal agriculture industry, decrease the consumption of industrially farmed animal products, and hold industrial agribusinesses accountable for their adverse impacts on animals, the environment, and human health.

38. On April 27, 2020, Animal Equality bought Acana Free-Run Poultry Formula Dry Dog Food, Acana Freshwater Fish Formula Dry Dog Food, and Orijen Original Dry Dog Food¹⁹ online at Petco.com, a site which is fully accessible to all District consumers and delivers to all parts of the District.²⁰ Independent testing of these products commissioned by Animal Equality revealed trace residues of ethoxyquin in the Acana Freshwater Fish Formula Dry Dog Food.

39. Animal Equality purchased the Products in order to evaluate Champion's marketing claims. Animal Equality determined, though its evaluation of the products, that these products

¹⁹ Orijen brand pet food products are also produced by Champion but are not among the Products at issue in this action.

²⁰ These products are also available in stores physically in the District.

contained trace residues of ethoxyquin and therefore likely originated from fish farms where ethoxyquin was used as a feed additive.

JURISDICTION AND VENUE

40. This Court has personal jurisdiction over the parties in this case. Animal Equality consents to this Court having personal jurisdiction over the organization.

41. This Court has personal jurisdiction over Champion because it has purposefully directed its conduct to the District and has availed itself of the benefits and protections of District of Columbia law.

42. This Court has subject-matter jurisdiction over this action under the CPPA, D.C. Code § 28-3901, *et seq.*

43. Venue is proper in this Court because Champion aims marketing at consumers within the District. Champion's internet advertising is accessible in the District. The Products can be, and are, purchased in the District by District consumers.

CAUSE OF ACTION

Violations of the District of Columbia Consumer Protection Procedures Act

44. Animal Equality incorporates by reference all the allegations of the preceding paragraphs of this Complaint.

45. Through § 28-3905(k)(1)(C), the D.C. CPPA allows for nonprofit organizational standing to the fullest extent recognized by the D.C. Court of Appeals in its past and future decisions addressing the limits of Constitutional standing under Article III.

46. Champion is a "person" and a merchant that provides "goods" within the meaning of the CPPA. *See id.* § 28-3901(a)(1), (3), (7).

47. Champion has falsely and deceptively advertised and marketed the Products with representations that they contain “wild-caught” fish. In fact, Champion’s rainbow trout comes from industrial fish farms. Thus, Champion has violated the CPPA by “represent[ing] that goods . . . have a source . . . [or] characteristics . . . that they do not have”; “represent[ing] that goods . . . are of a particular standard, quality, grade, style, or model, if in fact they are of another”; “misrepresent[ing] as to a material fact which has a tendency to mislead”; “fail[ing] to state a material fact if such failure tends to mislead”; “us[ing] innuendo or ambiguity as to a material fact, which has a tendency to mislead”; and “advertis[ing] . . . goods . . . without the intent to sell them as advertised.” *See id.* § 28-3904(a), (d), (e), (f), (f-1), (h).

JURY TRIAL DEMAND

48. Plaintiff Animal Equality hereby demands a trial by jury.

PRAYER FOR RELIEF

Wherefore, Plaintiff Animal Equality prays for judgment against Champion and requests the following relief:

- a. A declaration that Champion’s conduct is in violation of the CPPA;
- b. An order enjoining Champion’s conduct found to be in violation of the CPPA; and
- 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.

RICHMAN LAW GROUP



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Counsel for Plaintiff



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ANIMAL EQUALITY

Vs.

C.A. No. 2020 CA 003279 B

CHAMPION PETFOODS USA INC et al

INITIAL ORDER AND ADDENDUM

Pursuant to D.C. Code § 11-906 and District of Columbia Superior Court Rule of Civil Procedure (“Super. Ct. Civ. R.”) 40-I, it is hereby **ORDERED** as follows:

(1) Effective this date, this case has assigned to the individual calendar designated below. All future filings in this case shall bear the calendar number and the judge’s name beneath the case number in the caption. On filing any motion or paper related thereto, one copy (for the judge) must be delivered to the Clerk along with the original.

(2) Within 60 days of the filing of the complaint, plaintiff must file proof of serving on each defendant: copies of the summons, the complaint, and this Initial Order and Addendum. As to any defendant for whom such proof of service has not been filed, the Complaint will be dismissed without prejudice for want of prosecution unless the time for serving the defendant has been extended as provided in Super. Ct. Civ. R. 4(m).

(3) Within 21 days of service as described above, except as otherwise noted in Super. Ct. Civ. R. 12, each defendant must respond to the complaint by filing an answer or other responsive pleading. As to the defendant who has failed to respond, a default and judgment will be entered unless the time to respond has been extended as provided in Super. Ct. Civ. R. 55(a).

(4) At the time and place noted below, all counsel and unrepresented parties shall appear before the assigned judge at an initial scheduling and settlement conference to discuss the possibilities of settlement and to establish a schedule for the completion of all proceedings, including, normally, either mediation, case evaluation, or arbitration. Counsel shall discuss with their clients **prior** to the conference whether the clients are agreeable to binding or non-binding arbitration. **This order is the only notice that parties and counsel will receive concerning this Conference.**

(5) Upon advice that the date noted below is inconvenient for any party or counsel, the Quality Review Branch (202) 879-1750 may continue the Conference **once**, with the consent of all parties, to either of the two succeeding Fridays. Request must be made not less than seven business days before the scheduling conference date.

No other continuance of the conference will be granted except upon motion for good cause shown.

(6) Parties are responsible for obtaining and complying with all requirements of the General Order for Civil cases, each judge’s Supplement to the General Order and the General Mediation Order. Copies of these orders are available in the Courtroom and on the Court’s website <http://www.dccourts.gov/>.

Chief Judge Robert E. Morin

Case Assigned to: Judge JOSE M LOPEZ

Date: July 27, 2020

Initial Conference: 9:30 am, Friday, October 23, 2020

Location: Courtroom 212

500 Indiana Avenue N.W.

WASHINGTON, DC 20001

ADDENDUM TO INITIAL ORDER AFFECTING ALL MEDICAL MALPRACTICE CASES

In accordance with the Medical Malpractice Proceedings Act of 2006, D.C. Code § 16-2801, et seq. (2007 Winter Supp.), "[a]fter an action is filed in the court against a healthcare provider alleging medical malpractice, the court shall require the parties to enter into mediation, without discovery or, if all parties agree[,] with only limited discovery that will not interfere with the completion of mediation within 30 days of the Initial Scheduling and Settlement Conference ("ISSC"), prior to any further litigation in an effort to reach a settlement agreement. The early mediation schedule shall be included in the Scheduling Order following the ISSC. Unless all parties agree, the stay of discovery shall not be more than 30 days after the ISSC." D.C. Code § 16-2821.

To ensure compliance with this legislation, on or before the date of the ISSC, the Court will notify all attorneys and *pro se* parties of the date and time of the early mediation session and the name of the assigned mediator. Information about the early mediation date also is available over the internet at <https://www.dccourts.gov/pa/>. To facilitate this process, all counsel and *pro se* parties in every medical malpractice case are required to confer, jointly complete and sign an EARLY MEDIATION FORM, which must be filed no later than ten (10) calendar days prior to the ISSC. D.C. Code § 16-2825 Two separate Early Mediation Forms are available. Both forms may be obtained at www.dccourts.gov/medmalmediation. One form is to be used for early mediation with a mediator from the multi-door medical malpractice mediator roster; the second form is to be used for early mediation with a private mediator. Both forms also are available in the Multi-Door Dispute Resolution Office, Suite 2900, 410 E Street, N.W. Plaintiff's counsel is responsible for eFiling the form and is required to e-mail a courtesy copy to earlymedmal@dcsc.gov. *Pro se* Plaintiffs who elect not to eFile may file by hand in the Multi-Door Dispute Resolution Office.

A roster of medical malpractice mediators available through the Court's Multi-Door Dispute Resolution Division, with biographical information about each mediator, can be found at www.dccourts.gov/medmalmediation/mediatorprofiles. All individuals on the roster are judges or lawyers with at least 10 years of significant experience in medical malpractice litigation. D.C. Code § 16-2823(a). If the parties cannot agree on a mediator, the Court will appoint one. D.C. Code § 16-2823(b).

The following persons are required by statute to attend personally the Early Mediation Conference: (1) all parties; (2) for parties that are not individuals, a representative with settlement authority; (3) in cases involving an insurance company, a representative of the company with settlement authority; and (4) attorneys representing each party with primary responsibility for the case. D.C. Code § 16-2824.

No later than ten (10) days after the early mediation session has terminated, Plaintiff must eFile with the Court a report prepared by the mediator, including a private mediator, regarding: (1) attendance; (2) whether a settlement was reached; or, (3) if a settlement was not reached, any agreements to narrow the scope of the dispute, limit discovery, facilitate future settlement, hold another mediation session, or otherwise reduce the cost and time of trial preparation. D.C. Code § 16-2826. Any Plaintiff who is *pro se* may elect to file the report by hand with the Civil Actions Branch. The forms to be used for early mediation reports are available at www.dccourts.gov/medmalmediation.

Chief Judge Robert E. Morin