

BEFORE THE UNITED STATES FEDERAL TRADE COMMISSION

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THE HUMANE SOCIETY OF THE UNITED STATES, and  
THE HUMANE SOCIETY LEGISLATIVE FUND,  
Petitioners,

FEDERAL TRADE COMMISSION,  
Respondent.

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**SUPPLEMENT TO PETITION FOR RULEMAKING  
RELATING TO RETAIL PUPPY SALES**

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## **RULEMAKING PETITION**

The Humane Society of the United States (“HSUS”) and the Humane Society Legislative Fund (“HSLF”)<sup>1</sup> submit this Supplement to HSUS’s Petition for Rulemaking Relating to Retail Puppy Sales<sup>2</sup> (“Petition”) pursuant to the First Amendment to the U.S. Constitution, the Administrative Procedure Act, 5 U.S.C. § 553 (2012), and the Federal Trade Commission Act (“FTCA”), 15 U.S.C. § 45 *et seq.* (2006). In this supplement, HSUS and HSLF highlight the deceptive and misleading marketing tactics routinely utilized by pet retail giant Petland,<sup>3</sup> as a case study supporting the need for the FTC to issue a Trade Regulation Rule (“TRR”) as requested in the Petition. The requested TRR defines with specificity certain acts or practices relating to the retail sale of puppies as unfair or deceptive under the FTCA.

### **Introduction**

Since the Petition was submitted in 2018, the pet retail industry continues to use the deceptive and unfair practices that we previously described. In the Petition, we specifically requested that the FTC promulgate a TRR, defining as unfair or deceptive the following specific acts or practices and commonly misused marketing terms or phrases when those terms are not defined or accurately applied:

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<sup>1</sup> Petitioner HSLF, based in Washington, D.C., is the separate lobbying affiliate of HSUS that works to pass animal protection laws at the state and federal levels, to educate the public about animal protection issues, and to support humane candidates for office. HSLF joins HSUS in its goal to eliminate the deplorable conditions in which dogs are kept in commercial breeding facilities, commonly known as “puppy mills.” HSLF does this by working directly with federal regulators and lawmakers to improve standards of care for the animals involved, hold bad actors accountable, and protect consumers who may fall victim to the deceptive practices commonly used in this industry.

<sup>2</sup> *Petition for Rulemaking Relating to Retail Puppy Sales*, HSUS, June 2018, attached as Ex. A.

<sup>3</sup> These practices are utilized not only by Petland’s corporate-run stores, but also by Petland’s franchised stores nationwide.

1. Advertising as, or as Only Doing Business with, Breeders who are “Reputable,” “Responsible,” or Other Like Terms;
2. Claiming to Be, or Only to Do Business with, “Licensed,” “Certified,” or “Inspected” Breeders;
3. Selling Puppies who are Unfit for Sale;
4. Labeling Puppies as Vet-Checked, Healthy, Health-Guaranteed or Health-Certified, and/or Falsifying or Misrepresenting Veterinary Records;
5. Offering a Deceptive Health Guarantee;
6. Advertising Puppies for Sale as Pedigree “Registerable,” “Registered,” or from Registered Parents;
7. Representing the Breeder as “Local” without Identifying the Verified Locality;
8. Failing to Disclose Material Facts about the Breeder or Puppy;
9. Misrepresenting the Traits of the Puppy for Sale;
10. Offering Misleading or Predatory Finance Options;
11. Utilizing Misleading Testimonials, Rating Systems, or Endorsements;
12. Describing the Transaction as an Adoption rather than a Sale;
13. Advertising Certain Breeds of Puppies as “Hypoallergenic”;
14. Advertising Certain Breeds of Puppies as “Micro” or “Teacup”;
15. Failing to Deliver the Puppy Purchased.<sup>4</sup>

While some of these practices may apply more generally to breeders and brokers rather than retail sales outlets like Petland, Petland provides a clear example of many of these

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<sup>4</sup> Ex. A at 6–7.

practices which are ongoing throughout the industry, and provides additional support for the need for this Agency to promulgate the requested TRR.

As described more fully below and in the attachments, HSUS routinely receives complaints from consumers detailing their distressing experiences associated with purchasing a puppy at Petland stores.<sup>5</sup> These stories reflect the ongoing and systematic use of deceptive sales and marketing tactics discussed in our original Petition.

HSUS has also undertaken eight undercover investigations at Petland stores – both corporate owned and franchises – since submitting the Petition. The findings of those investigations demonstrate without exception that Petland is engaging in neglect of the puppies it sells and deceptive and harmful conduct toward consumers. The stores investigated included Kennesaw, Georgia, Las Vegas, Nevada, Sarasota, Florida, Novi, Michigan, Tyler, Texas, Frisco, Texas, Fairfax, Virginia, and Florence, Kentucky.<sup>6</sup> Each of these investigations produced evidence showing that Petland stores continue to source their puppies from inhumane commercial or high-volume breeders, fail to provide the puppies with adequate veterinary care even when they are clearly experiencing illness, and mislead or lie to consumers about the puppies' health conditions.

When considered collectively, these undercover investigations and consumer complaints make clear that individual protections and private legal action are inadequate to address the widespread deceptive tactics prevalent in the retail pet industry. For this reason, a TRR that addresses these practices would not only be in

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<sup>5</sup> List of Petland-related Complaints received by HSUS, Puppy Buyer Complaint Form and Puppy Mill Tip Line, 2015-2020, attached as Ex. B.

<sup>6</sup> Investigations & Reports, HSUS, <https://www.humanesociety.org/resources/investigations-reports> (last visited May 22, 2020).

the public interest, but is necessary for the FTC to carry out its obligations under the FTCA. We therefore reiterate our request for the Commission to promulgate the rules described in our Petition, which would define and address some of the most common deceptive practices used by pet retailers as unfair or deceptive.

### **Legal Authority**

As explained in the Petition, the FTC is authorized under Section 18 of the FTCA to prescribe rules, referred to as "trade regulation rules" (TRRs), 16 C.F.R. § 1.7, "with respect to unfair or deceptive acts or practices in or affecting commerce," 15 U.S.C. § 57a(a)(1)(A) (2012). TRRs are appropriate where individual enforcement actions are unlikely or inefficient due to the widespread, or "prevalent," nature of the conduct. 15 U.S.C. §57a(b)(3). As demonstrated in the Petition and further evidenced by the information related to Petland provided in this Supplement, the deceptive practices exhibited by the puppy retail industry are indeed widespread.

The FTC "will find an act or practice deceptive if there is a misrepresentation, omission, or other practice, that misleads the consumer acting reasonably in the circumstances, to the consumer's detriment."<sup>7</sup> Consequently, a claim that is literally true but nonetheless deceives or misleads consumers by its implications is also considered a deceptive practice under the FTCA.<sup>8</sup> Alternatively, an "unfair" practice is one which causes a substantial "unjustified consumer injury" that is not outweighed by

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<sup>7</sup> FTC Policy Statement on Deception (Oct. 14, 1983) (*appended to Cliffdale Assocs., Inc.*, 103 F.T.C 110, 174 (1984)), *available at*: [https://www.ftc.gov/system/files/documents/public\\_statements/410531/831014deceptionstmt.pdf](https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf); *see also* 15 U.S.C. § 45(a)(1) (declaring "[u]nfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce" as unlawful).

<sup>8</sup> *See Kraft, Inc. v. F.T.C.*, 970 F.2d 311, 322 (7th Cir. 1992) ("[E]ven literally true statements can have misleading implications.").

any offsetting consumer or competitive benefits, and that could not reasonably have been avoided. 15 U.S.C. § 45(n).<sup>9</sup>

A written warranty will be found deceptive if it does not comply with the minimum requirements that the FTC prescribes<sup>10</sup>, 15 U.S.C. § 2302–04; 16 C.F.R. pt. 700, *et seq.*, or if it is not readily understood or enforceable.<sup>11</sup>

### **Factual Background and Analysis**

Petland is the only major pet retail chain<sup>12</sup> still selling live puppies and kittens. HSUS routinely receives complaints from consumers detailing the deceptive and misleading acts and practices that Petland used to induce them to purchase their purebred or specialty-bred puppies who ended up being sick or otherwise not as

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<sup>9</sup> See also FTC Policy Statement on Unfairness, 104 F.T.C. 1070–76 (1984) (*appended to International Harvester Co.*, 104 F.T.C. 949 (1984)) (codified at 15 U.S.C. § 45(n)), *available at*: <https://www.ftc.gov/public-statements/1980/12/ftc-policy-statement-unfairness>.

<sup>10</sup> Written warranties, as defined in the Magnuson-Moss Warranty Act (“MMWA”), include: (1) Written promises or affirmations that a product is free of defects; (2) Written promises or affirmations that the product will meet a specified level of performance over a specified period of time; or (3) Written promises to take some remedial action, such as refund, repair, or replace, if the product fails to meet the specifications set forth in the undertaking. 15 U.S.C. § 2301(6).

The rules implemented by the FTC pursuant to the requirements of the MMWA include the Rule Concerning Disclosure of Written Consumer Product Warranty Terms and Conditions (“Warranty Rule”), 16 C.F.R. part 701, which specifies the information that must appear in a written warranty on a consumer product costing more than \$15, § 701.2; the Pre–Sale Availability of Written Warranty Terms Rule (“Pre–Sale Availability Rule”), 16 C.F.R. part 702, which requires warranty terms be made available to consumers prior to the consumer transaction, § 702.2; and the Informal Dispute Settlement Procedures Rule, 16 C.F.R. part 703, setting minimum standards for informal dispute settlement mechanisms that are incorporated into a written warranty, § 703.2(b)(1). None of these rules or the MMWA requires that a manufacturer or retailer warrant a consumer product in writing, but if they choose to do so, the warranty must comply with the rules.

<sup>11</sup> 15 U.S.C. § 2310(c)(2) (2012); see also *Davis v. S. Energy Homes, Inc.*, 305 F.3d 1268, 1272 (11th Cir. 2002) (“Congress passed the MMWA in 1975 in response to an increasing number of consumer complaints regarding the inadequacy of warranties on consumer goods.”).

<sup>12</sup> Petland has approximately 17 corporate-owned stores and 65 franchised stores in the United States, though ownership sometimes changes. See Store Locator, Petland, <https://petland.com/stores/map/index.html> (last visited May 20, 2020).

represented.<sup>13</sup> While we have highlighted some specific stories in detail below, Exhibit B to this Supplemental Petition contains all Petland-related complaints received by HSUS from January 2010 to January 2020, primarily via HSUS's Puppy Buyer Complaint Form and Puppy Mill Tip Line.

### ***I. Puppy Mills and the Puppy Mill to Retail Pet Store Pipeline***

As described in our original Petition, a puppy mill is a high-volume puppy breeding facility where profit takes priority over the welfare of the breeding dogs and their puppies.<sup>14</sup> Dogs in puppy mills are typically confined in overcrowded, dirty, stacked, wire-bottom cages, with inadequate veterinary care and little or no opportunity for exercise, companionship or socialization.<sup>15</sup> The female breeding dogs in these facilities are intensively bred, often with no rest between litters, and are often destroyed when they can no longer breed.<sup>16</sup> Puppy mills provide a ready supply of cheaply-produced, specialty-bred puppies to pet stores. And while most breeders selling to pet stores must be licensed under the Animal Welfare Act (“AWA”), the regulations issued under the AWA require only minimal attention to animal welfare,

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<sup>13</sup> Two investigations, conducted in 2008 and 2009 by HSUS, showed that many, if not a majority of, Petland’s puppies are sourced from inhumane, large-scale puppy mill operations. See Petland Investigation Report, HSUS, Nov. 2008, *available at*: <https://www.humanesociety.org/sites/default/files/docs/2008-investigation-report-petland.pdf>; see also Petland, Inc.: Sick Puppies, Heartbroken Families, HSUS, Dec. 2018, *available at*: <https://blog.humanesociety.org/wp-content/uploads/2018/12/HSUS-Petland-Report-2018-FINAL-IN-NEW-TEMPLATE.pdf> (hereinafter, “2018 Investigation”). The numerous complaints that we receive from Petland consumers, and our continued investigations, provide further evidence that Petland continues to source puppies from puppy mills and puppy mill brokers. See *supra* n. 5.

<sup>14</sup> See Ex. A at 17–22 and sources cited therein.

<sup>15</sup> See *Puppy Mill Facts and Figures 2020*, HSUS, Jan. 2020, *available at*: <https://www.humanesociety.org/sites/default/files/docs/Puppy%20Mill%20Facts%20and%20Figures%20January%202020.pdf> (last visited May 26, 2020).

<sup>16</sup> *Veterinary Report on Puppy Mills*, HSVMA, May 2013, *available at*: [http://www.hsvma.org/assets/pdfs/hsvma\\_veterinary\\_report\\_puppy\\_mills.pdf](http://www.hsvma.org/assets/pdfs/hsvma_veterinary_report_puppy_mills.pdf)



and even then, breeders often have numerous violations on their record yet continue to be licensed.<sup>17</sup>

Due to irresponsible breeding practices, puppies emerging from puppy mills often have genetic ailments such as heart, eye, and joint diseases. In addition, the unsanitary conditions produce puppies with respiratory infections, parasite infestations, and highly communicable and dangerous viruses such as campylobacter and parvovirus.<sup>18</sup> Many people who purchase puppies from a pet store contend with unexpected veterinary costs and significant out-of-pocket expenses, along with the emotional trauma that arises from caring for a sick pet.<sup>19</sup>

## ***II. Consumer Experiences and Deceptive Sales Practices***

As explained in the Petition, pet purchasers are becoming more aware of the inhumane practices associated with puppy mills, and increasingly consumers want to make sure that if they purchase a puppy, that puppy was raised in humane conditions and responsibly-bred.<sup>20</sup> And yet, because pet sellers use fraudulent marketing and sales tactics, even consumers who have done their research are still duped into purchasing sick or maladjusted dogs.

Petland's unfair and deceptive sales tactics mirror many of the acts and practices described in the Petition and that the requested TRR would address. Based

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<sup>17</sup> See *The Horrible Hundred 2020*, HSUS, May 2020, available at: <https://www.humanesociety.org/sites/default/files/docs/2020-Horrible-Hundred.pdf>; see also *Puppy Mills and the Animal Welfare Act*, HSUS, 2018, available at: <https://www.humanesociety.org/sites/default/files/docs/puppy-mills-awa-booklet-lores.pdf> (last visited May 26, 2020).

<sup>18</sup> See *Husbandry and Medical Concerns in Puppy Mills*, HSVMA, available at: [http://www.hsvma.org/husbandry\\_medical\\_concerns\\_puppy\\_mills](http://www.hsvma.org/husbandry_medical_concerns_puppy_mills) (last visited May 26, 2020).

<sup>19</sup> See *Puppy Buyer Complaints: A Five Year Summary, 2007-2011*, 2–4, HSUS, 2012, [http://www.humanesociety.org/assets/pdfs/pets/puppy\\_mills/puppy\\_mill\\_buyer\\_complaints.pdf](http://www.humanesociety.org/assets/pdfs/pets/puppy_mills/puppy_mill_buyer_complaints.pdf).

<sup>20</sup> Ex. A at 23–25.

on the nature of in-person retail sales, Petland's methods fit primarily into four of the categories described in the Petition: (1) offering misleading or oppressive financing options, (2) misrepresentations concerning the source or quality of the puppy, (3) misrepresentations concerning the health of the puppy or veterinary care received, and (4) offering misleading health and sales warranties. These sales and marketing strategies are so common and routine, employed in Petland stores across the country regardless of whether a store is a franchise or corporate-owned, that deceptive and misleading tactics appear to be standard practice at Petland.

Additionally, Petland pairs these tactics with high-pressure sales strategies which amplify the effect of the fraudulent behavior. Customer complaints describe Petland staff's tactics to force a sale before an interested consumer leaves the store. Petland staff encourage purchasing pets on a whim, and pressure consumers to make impulse decisions while they are in an emotionally vulnerable state due to the nature of purchasing a living being. This scenario compromises the purchaser's ability to fully consider the responsibilities associated with pet ownership, or to fully research the transaction – including the cost and terms of the purchase – before buying.

For example, one consumer told HSUS that she went into the Racine, Wisconsin Petland solely to purchase pet supplies when she was encouraged to move forward with purchasing a King Charles Spaniel puppy.<sup>21</sup> This consumer, referred to herein as Tracey,<sup>22</sup> was told that multiple consumers were interested in the puppy she was interacting with and that if the puppy was not purchased that day, one of the staff's

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<sup>21</sup> *See, e.g.,* Ex. B, Person 272.

<sup>22</sup> In order to protect complainants' identities, we have used pseudonyms to refer to Petland consumers who reached out to us. Should the FTC wish to reach out to these persons directly, HSUS is authorized to share their contact information with the agency and will do so upon request.

family members intended to buy her. When Tracey explained that purchasing a puppy was not sensible because she and her family were about to leave for vacation, the sales staff said that Tracey could buy the puppy that day, leave her there, and pick her up when the family returned. Sales staff pushed the company’s veterinary care plan, medical warranties, financing options, purchase guarantees, and so on, until Tracey eventually agreed to buy the dog. Other consumers reported use of similar high-pressure tactics in the Fairfield, Ohio, Wichita, Kansas, and Bolingbrook, Illinois stores, including sales staff stating that a puppy was the “only one” of a particular breed in the store and would “go fast.”<sup>23</sup> The consistency of this experience across stores suggests that Petland sales staff are not providing consumers with accurate information about a particular puppy, but are instead concocting a story so that the consumer feels a heightened sense of urgency.

Once a consumer agrees to buy a dog, the tactics associated with reviewing the sales contract and health warranty are similarly manipulative. For example, several consumers reported that the sales staff asked the consumer to hold the puppy while the consumer reviewed the sales contract on a small digital screen.<sup>24</sup> This scenario – a consumer holding a nervous puppy in the middle of a busy store while a sales associate explains health warranties, medical waivers, arbitration clauses, lemon law waivers, non-disclosure agreements, and other important provisions – illustrates the manipulative nature of Petland’s sales tactics.

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<sup>23</sup> See, e.g., Ex. B, Person 222, Person 264.

<sup>24</sup> See, e.g., Ex. B, Person 51, Person 284 (When this consumer was explained the portion of her sales contract stating that she would agree to waive her rights under the Florida Pet Lemon Law, the sales staff said something similar to “this is the Florida Lemon Law. You can return your dog if it gets sick, but who would want to return a sick puppy anyway after you’ve fallen in love with them!”).

Purchasing a puppy is qualitatively different from buying an inanimate object like a dishwasher, and the high-pressure sales tactics affect consumers differently in this context. While puffery and high-pressure sales tactics are not on their own necessarily fraudulent, these practices create circumstances under which Petland staff can more easily mislead even some of the more educated pet purchasers. A consumer who falls in love with a puppy in the showroom may be more inclined to trust the verbal assurances of a friendly staff member and pay less attention to contractual provisions that are not carefully explained. As a result of the emotional nature of the purchase and the intentionally confusing manner in which the sales staff convey information, consumers often leave the store with little to no understanding of what they agreed to.<sup>25</sup>

#### ***A. Misleading or Oppressive Financing Options***

As discussed in the Petition, it is common for retail pet sellers to offer readily-available financing to their customers to increase the likelihood of a sale.<sup>26</sup> Consumers can apply for these plans on the spot and are almost guaranteed approval within minutes, ensuring that the consumer will complete her purchase before physically leaving the store.<sup>27</sup> These options frequently contain extremely high interest rates, costing the consumer additional hundreds if not thousands of dollars over the purchase price of the puppy over course of the loan, and may even result in a consumer's beloved pet being repossessed.<sup>28</sup> Customers are frequently unaware of the high interest rates

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<sup>25</sup> See, e.g., Ex. B, Person 284, Person 265, Person 42, Person 285.

<sup>26</sup> Ex. A at 52.

<sup>27</sup> See, e.g., Ex. B, Person 222, Person 73.

<sup>28</sup> Ex. A at 53. Petland has also misled consumers into unwittingly signing agreements to lease their pets, and at an exorbitant cost. See *Complaint Type: Billing/Collection Issue*, BBB, Nov. 5, 2018, <https://www.bbb.org/us/fl/aventura/profile/pet-shop/petland-0633-19000428/complaints> (last visited May 27, 2020). HSUS and ALDF submitted a letter to the

typically associated with these financing plans, and particularly when purchasing a puppy in-store, consumers are rarely, if ever, given the full terms of their agreement to review.

Petland puppies often cost thousands of dollars and, combined with the price of the supplies that come in the *required* package,<sup>29</sup> the resulting total is often a heavy financial burden for consumers. However, Petland staff frequently do not mention the entire package price until a customer is emotionally attached to a puppy. At that point, if a consumer says she cannot afford the dog, sales staff promote their financing options to close on a purchase, rather than lose the sale. Many customers, with their hearts now set on a specific puppy, agree to proceed with financing only later to find the interest rates are as high as 188%.<sup>30</sup> Multiple consumers reported that sales staff avoid any discussion of the high interest rates, how long the payments would continue, or penalties for missing a payment.<sup>31</sup>

For example, recently a consumer at a Texas Petland agreed to a payment plan proposed by the store employee, and only learned after leaving the store with his puppy

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Commission on September 18, 2018, requesting it investigate the pet leasing industry which has been attached to his petition as exhibit G.

<sup>29</sup> See, e.g., Complaint, *Office of the Attorney General, et al. v. Hoof's Pets, Inc. d/b/a Petland Orlando, et al.*, No. 107627968, May 18, 2020 (Cir. Ct. 9<sup>th</sup> Jud. Dist. Orange County, Fl.), ¶ 25, available at: [http://myfloridalegal.com/webfiles.nsf/WF/SSWN-BPQR2V/\\$file/petland+Complaint.pdf](http://myfloridalegal.com/webfiles.nsf/WF/SSWN-BPQR2V/$file/petland+Complaint.pdf); see also, e.g., Ex. B, Person 254, Person 284.

<sup>30</sup> See, e.g., Ex. B, Person 265, Person 33, Person 51. See also *Buyer Beware: Predatory Pet Leasing*, Bailing Out Benji, June 3, 2019, <https://bailingoutbenji.com/buyer-beware-predatory-pet-leasing/>; *Yes, You Can Rent-To-Own A Dog & It's Expensive*, Consumerist, April 14, 2016 <https://consumerist.com/2016/04/14/yes-you-can-rent-to-own-a-dog-its-expensive/>.

<sup>31</sup> See, e.g., Ex. B, Person 60, Person 265, Person 128. See also *Yes, You Can Rent-To-Own A Dog & It's Expensive*, Consumerist, April 14, 2016, <https://consumerist.com/2016/04/14/yes-you-can-rent-to-own-a-dog-its-expensive/>; *They thought they were buying a family dog. Turns out they were leasing it*, Tampa Bay Times, Dec. 27, 2018, <https://www.tampabay.com/business/they-thought-they-were-buying-a-family-dog-turns-out-they-were-leasing-it-20181224/>.

that he was signed up to finance the dog with an annual interest rate of 155%.<sup>32</sup> The loan documentation he received later indicated that his monthly salary had been misrepresented as \$5,000 (instead of \$2,000), presumably to ensure he would be approved for the amount necessary to make the sale.<sup>33</sup> Even worse, a single missed payment on his plan allowed the lender to deem the entire balance due immediately.<sup>34</sup> Predictably, HSUS has yet to hear of a consumer who was not approved for one of these oppressive financing plans.

When consumers are savvy enough to ask about total cost early on in the sales process and appear reluctant or deterred, Petland staff raise the financing options at that point, offering to just “see” if the purchaser would qualify.<sup>35</sup> For example, one consumer, referred to herein as Kristin, walked into Petland with her partner out of curiosity and decided to play with some of the puppies.<sup>36</sup> Kristin asked about the puppy prices and contract terms right away, and when she learned the puppy her partner liked cost \$3000, she decided she simply could not afford the dog. However, the sales staff continued to pressure Kristin and her partner while they interacted with the puppy, and suggested seeing if Kristin could be approved for financing. When the sales staff came back to tell Kristin she was approved for financing, Kristin was surprised yet still unprepared to commit to purchasing the puppy. Apparently sensing her continued reluctance, the sales staff told Kristin that this puppy was the “only one” of his kind, and that the last time the store had a puppy of his breed, he was purchased almost immediately, suggesting that it was now or never. Ultimately, Kristin agreed to

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<sup>32</sup> *See, e.g.*, Ex. B, Person 265.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *See, e.g.*, Ex. B, Person 222.

<sup>36</sup> *Id.*

purchase the puppy with financing, illustrating how high-pressure sales tactics set the stage for consumers to agree to potentially oppressive financing agreements.

Within the first few weeks after purchase, Kristin's dog became extremely sick and she quickly incurred veterinary costs equal to the cost of her puppy.<sup>37</sup> Fortunately Kristin's dog survived; this was not the case with some of the other Petland customers we spoke with who had to continue making monthly payments on their dogs, eventually totaling appreciably more than the original cost of the dog, even though the dog became severely ill and died shortly after purchase.<sup>38</sup> One consumer we spoke to was encouraged by Petland staff to return her congenitally-ill puppy for medical treatment, but later had to fight with the store to get the cost and payments rescinded.<sup>39</sup> Eventually, she saw the purchase charge on her online financing account disappear, only to see it reappear days later. To this day she still has not been able to get the charges removed from her account. Meanwhile, the dog who was the subject of her financing agreement *was resold by the store* and now lives with a new family.<sup>40</sup>

Unfortunately, these financing arrangements combined with high-pressure sales tactics are not unique to Petland, as discussed in our Petition, and the results can be both emotionally and financially draining on the consumer.<sup>41</sup> Therefore, in order to protect pet purchasers from these financing plans which harm consumers and the pets that they love, we request that this Agency promulgate the requested TRR.

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<sup>37</sup> *Id.*

<sup>38</sup> *See, e.g.*, Ex. B, Person 15.

<sup>39</sup> *See, e.g.*, Ex. B, Person 205.

<sup>40</sup> *Id.*

<sup>41</sup> Ex. A at 52–53.

***B. Misrepresentations Concerning the Source of the Puppy or Quality of Breeding***

As discussed in the Petition in detail, pet sellers frequently misrepresent the source or quality of a puppy to encourage a sale,<sup>42</sup> and Petland employs this tactic frequently. HSUS has received numerous reports of Petland staff making misleading or outright false claims about the breeding pedigree or origin of the puppies. For example, one consumer reported that Petland staff represented that a particular puppy came from a line of “show dogs” which was entirely false.<sup>43</sup>

These in-store representations are in addition to the many corporate marketing materials Petland publishes, touting the good health and high quality of Petland puppies. For example, a pamphlet titled “Petland Puppies” found on Petland’s corporate website states that Petland puppies come from:

1. USDA licensed and regulated breeders and distributors with no direct violations within the last 2 years and who have a veterinarian-documented socialization and exercise program and follow veterinarian protocol for skin, coat, nail and dental hygiene. . .
2. Hobby breeders as defined by the Animal Welfare Act, who raise their dogs in a humane manner.
3. Local adoption pets that are vet-checked. . .<sup>44</sup>

This marketing piece also assures consumers that “Petland’s Director of Animal Welfare Education and the Operations Team visits USDA licensed breeders and distributors to make sure certain standards are maintained,” and they “work with local,

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<sup>42</sup> Ex. A at 27–36.

<sup>43</sup> See, e.g., Ex. B, Person 119.

<sup>44</sup> *EVERY Petland Puppy Finds a Home*, Petland, <https://www.petland.com/docs/PetlandPuppies.pdf> (last visited May 22, 2020).



state and federal regulatory agencies and legislators concerning animal welfare issues and education...”<sup>45</sup>

As explained in more detail in our Petition, while some or many of these phrases may be literally true, they convey to the average consumer a high level of quality and standard of humane breeding that is not accurate.<sup>46</sup> Words like “licensed,” “certified,” or “USDA-inspected” imply that the government is consistently checking on and insuring the conditions of the breeding facilities.<sup>47</sup> They also suggest high standards.<sup>48</sup> However, the fact that a breeder is licensed says very little about the reputability of the breeding facility or the humane nature of the care the animals are given; indeed, the current AWA licensing regulations require little more than bare-minimum survival standards of care, and what low standards exist are poorly and inconsistently enforced.<sup>49</sup> Similarly, stating that a puppy is “pedigreed” or “registerable” suggests to a normal consumer that the puppy was bred using a high standard of health and genetic testing, when in reality, “registration” with one of the many breed clubs only verifies that the puppy’s parents are documented in a record, not that they are bred with quality controls.<sup>50</sup> The AKC even offers “registration”<sup>51</sup> for mixed-breed dogs.<sup>52</sup> Accordingly, terms like this are misleading under the FTCA.<sup>53</sup>

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<sup>45</sup> *Id.*

<sup>46</sup> Ex. A at 27–36.

<sup>47</sup> *Id.* at 29–30.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at 16-19, 31.

<sup>50</sup> *Id.* at 46–48.

<sup>51</sup> While the AKC refers to their mix-breed registration as an “enrollment program,” Petland staff fails to distinguish between “enrollment” and “registration” when discussing the subject with customers. *See, e.g.,* Ex. B, Person 22.

<sup>52</sup> *AKC Canine Partners*, AKC, <https://www.akc.org/register/information/canine-partners/> (last visited May 22, 2020).

<sup>53</sup> *See supra* n. 7.

To support its misleading representations, Petland often has what appear to be personalized stories prepared describing the background of each one of its puppies, accompanied by a binder full of happy photos and reassuring facts.<sup>54</sup> For example, several consumers told us that Petland staff at different stores across the nation relayed a strikingly similar story about their puppies: their puppies came from a “nice Amish family” that does not live very far away, or the puppies come from a “family farm” where they breed only a “small number of dogs” who are each given individualized love and attention.<sup>55</sup> Petland often shows potential puppy buyers pictures of the purported breeders’ families holding puppies similar in appearance to those found in the store.<sup>56</sup> On the another page of the binder, there is often a photo of what the staff alleges is the puppies’ canine parents.<sup>57</sup>

As one academic study found, pet-seeking consumers look for certain characteristics such as the source of the dog, the reputation of that source, and the puppy’s physical and genetic health, temperament, appearance, and breed.<sup>58</sup> Petland’s tactics demonstrate that Petland is well aware that consumers care about where the puppy they are purchasing came from and how the puppy was raised. HSUS has heard this story used with so many customers, across so many stores, that the story’s reliability and the pictures’ authenticity are questionable to say the least, and obscures the true origins of the puppies, who are routinely sourced from inhumane, unsanitary

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<sup>54</sup> See, e.g., Ex. B, Person 119, Person 211, Person 144, Person 272, Person 147.

<sup>55</sup> See, e.g., Ex. B, Person 211, Person 137.

<sup>56</sup> See, e.g., Ex. B, Person 144, Person 225.

<sup>57</sup> See, e.g., Ex. B, Person 225.

<sup>58</sup> Courtney Bir, *et al.*, *Public Perceptions of Dog Acquisition: Sources, Rationales and Expenditures*, CTR. FOR ANIMAL WELFARE SCI. AT PURDUE UNIV., 5–6 (June 2016), available at: <https://vet.purdue.edu/CAWS/files/documents/20160602-public-perceptions-of-dog-acquisition.pdf>.

puppy mills. In some cases, after Petland staff performed this song and dance indicating their puppies came from responsible breeders, when the consumers registered their new puppies with the AKC they discovered that the breeder information Petland provided was totally inaccurate.<sup>59</sup> Petland's use of these terms are at best misleading, and possibly constitute outright fraud. By promulgating the requested TRR, the FTC would not only be protecting consumers from being deceived by the false use of these terms which are intended to represent quality, but it would hopefully direct those consumers to purchase or adopt animals from sources that can truthfully speak to the puppies' origins.

### ***C. Misrepresentations Concerning the Health of the Puppies***

As also described in our Petition, pet stores often label their puppies as “vet-checked,” “healthy,” “health-guaranteed,” “health-certified,” or similar terms, and sometimes may even falsify or misrepresent the contents of veterinary records to convince consumers that the puppies are healthy.<sup>60</sup> Petland again presents a case in point. Numerous Petland consumers have reported to HSUS that Petland sales staff expressly assured them that their puppies were checked by a veterinarian, tested for all possible illnesses, and found to be completely healthy.<sup>61</sup> The “Petland Puppies” marketing pamphlet referenced above also states that:

All Petland puppies are checked by at least two and in many cases three veterinarians before being offered to customers. Our puppies also are issued health certificates.

Petland requires veterinarian documentation on each incoming puppy's medical history, including inoculations and wormings. Each Petland store owner also requires a

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<sup>59</sup> See, e.g., Ex. B, Person 119.

<sup>60</sup> Ex. A at 39–43.

<sup>61</sup> See, e.g., Ex. B, Person 144, Person 22, Person 284, Person 176.

local consulting veterinarian to examine individual puppies and to update their health records.<sup>62</sup>

These statements are unequivocally intended to make consumers feel confident that puppies made available for sale are healthy, have received all of the necessary vaccines and de-wormings, and have been (repeatedly) checked for infectious or hereditary diseases or other health-related concerns. While it is not *explicitly* stated, there is an unmistakable – and intentional – implication that if any such health issues were found by the 2 to 3 veterinarians referenced in the pamphlet, that the puppy would not be made available for sale.<sup>63</sup> And yet, as so many consumers sadly come to find out, many of the puppies are far from healthy, some with fatal illnesses or diseases, and some with ailments that are readily preventable with proper vaccinations or de-wormings.<sup>64</sup>

In cases where symptoms are actually visible to consumers in-store, Petland staff frequently downplay the symptoms, for example calling kennel cough a “sniffle” or stating that vomiting and loose bowels are just a result of “stress” or that the animal is adjusting, when in fact it may be something quite serious such as multi-drug

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<sup>62</sup> *EVERY Petland Puppy Finds a Home*, Petland, 2, <https://www.petland.com/docs/PetlandPuppies.pdf> (last visited May 22, 2020).

<sup>63</sup> Moreover, as also explained in our Petition, the “health certificates” which accompany these puppies are not true guarantees of health. Ex. A at 39–42. The most common form of health certificate, called a certificate of veterinary inspection (“CVI”), is a standard form which, by some states’ law, must accompany a puppy crossing state lines. The examination undertaken prior to issuing a CVI is very brief and does not test the puppy, or his or her parents, for genetic disorders, parasites, or diseases such as giardia and brucellosis, both of which are contagious to humans and are frequently seen in puppy mill puppies. Generally, the veterinarians only check the puppies for obvious visible ailment, while some of the worst illnesses go undetected because they cannot be tracked at any given moment by the naked eye.

<sup>64</sup> *See, generally*, Ex. B.

resistant campylobacter,<sup>65</sup> canine influenza, or parvovirus.<sup>66</sup> For example, in Tracey’s case, when she noticed that the puppy she was interested in was extremely lethargic, she was told that was simply a behavioral trait and that the vet had cleared the puppy of any health issues.<sup>67</sup> In fact, when Tracey mentioned that she would like to use the puppy as a service animal, the Petland sales staff said her puppy was an excellent candidate because of her calm demeanor.<sup>68</sup> According to Tracey, the sales staff also said that it would be normal for the puppy to have “the sniffles” when she got home and this would just be a sign of the puppy adjusting.<sup>69</sup> Sadly, when Tracey came back from vacation and arrived at the store to pick up her puppy, the puppy was lifeless and refusing to eat.<sup>70</sup> Tracey’s puppy was later diagnosed with severe kennel cough and pneumonia which she had clearly been exposed to in the store.<sup>71</sup> Even though Tracey had already paid for service dog classes, her puppy was contagious for so long that she missed the training window before she surpassed her qualifying age.<sup>72</sup>

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<sup>65</sup> See R. Tauxe, MD, MPH, Letter to John Paul Goodwin, CDC, Apr. 14, 2020, attached as Ex. H; *Multidrug-Resistant Campylobacter Infections Linked to Contact with Pet Stores Puppies*, Investigation Notice, CDC, Dec. 17, 2019, <https://www.cdc.gov/campylobacter/outbreaks/puppies-12-19/index.html>; *Multidrug-Resistant Campylobacter Infections Linked to Contact with Pet Stores Puppies*, Final Update, CDC, Jan. 30, 2018, <https://www.cdc.gov/campylobacter/outbreaks/puppies-9-17/index.html>.

<sup>66</sup> *Petland Corporate Store Found Covering Up Disease Outbreaks an undercover investigation by the Humane Society of the United States*, HSUS (Nov. 2019) 7–8, available at: <https://www.humanesociety.org/sites/default/files/docs/FlorenceKY%20Petland%20Investigation%20Report.pdf> (hereinafter, “Florence Investigation”); See, e.g., Ex. B, Person 272, Person 284.

<sup>67</sup> Ex. B, Person 272.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

Another consumer reported to HSUS that her puppy's diarrhea was not mentioned until after the purchase paperwork had been signed.<sup>73</sup> As this consumer was finishing up her purchase, she was handed a vial of medication, told the puppy had "stool issues," but that this was normal and would resolve.<sup>74</sup> Unfortunately, after two years, no vet was ever able to solve this puppy's problem.<sup>75</sup> He continued to have such severe pain and lack of control over his bowels that he woke up multiple times in the middle of the night crying to relieve himself.<sup>76</sup> His bowel issues, and related overall decline in health, ultimately resulted in his owners making the gut-wrenching decision to humanely euthanize him.<sup>77</sup>

HSUS has received hundreds of stories similar to these: puppies whose lungs collapsed due to severe untreated pneumonia,<sup>78</sup> hypoglycemic "teacup" or miniature breeds who required veterinary care within hours of leaving the store,<sup>79</sup> yorkie puppies with unchecked genetic pre-dispositions to liver shunts,<sup>80</sup> and a German shepherd puppy with unchecked and undiagnosed hernias, hematomas, and megaesophagus who hemorrhaged on his owners' bathroom floor before sadly needing to be euthanized.<sup>81</sup> And these are only a few of the horror stories reported to HSUS – and the stories reported to HSUS are only a fraction of the likely similar experiences of consumers who do not think to contact HSUS. In most of these cases, the consumers

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<sup>73</sup> Ex. B, Person 264.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *See, e.g.*, Ex. B, Person 42.

<sup>79</sup> *See, e.g.*, Ex. B, Person 176.

<sup>80</sup> *See, e.g.*, Ex. B, Person 161.

<sup>81</sup> *See, e.g.*, Ex. B, Person 204.

relied to their detriment on the misrepresentations of Petland staff related to the puppies' health and clearance by veterinarians.

HSUS undercover investigations provide further irrefutable evidence that Petland knowingly exaggerates the level of care provided by its vets and staff, and knowingly misrepresents the health condition of the puppies it sells. As described in more detail below, all eight of HSUS's undercover investigations of Petland stores reveal what is at best harmful neglect of the puppies in its custody, and in many cases outright abuse.<sup>82</sup> Perfunctory vet-checks lasting mere seconds were performed upon the puppies' arrival at the stores, with even obvious signs of illness being ignored – and the affected puppies sold – without adequate veterinary care.<sup>83</sup> Ultimately, it is both the puppies and the consumers who suffer, with consumers paying dearly in money, time, and emotional distress when they purchase a sick puppy. To protect consumers and fulfill the FTC's regulatory obligations, it is imperative that the FTC issue the requested TRR finding the use of these labels and practices deceptive and illegal when not accompanied by truthful disclosures about the veterinary care and findings associated with the puppy.

#### ***D. Offering Deceptive Health and Sales Warranties***

As discussed in our Petition, many puppy retailers offer guarantees and warranties designed to protect stores' interests and not the consumers'.<sup>84</sup> These guarantees contain exclusions and loopholes, and often require a consumer to return a sick puppy to the store in order to get a refund—an option most pet owners would never

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<sup>82</sup> Investigations & Reports, HSUS, <https://www.humanesociety.org/resources/investigations-reports> (last visited May 22, 2020).

<sup>83</sup> 2018 Investigation *supra* n. 13 at 2; Florence Investigation *supra* n. 66 at 4.

<sup>84</sup> Ex. A at 43–46.

exercise after having bonded with their new pet. Moreover, it is also common for stores not to honor the terms of the warranty even where they do cover the costs at issue. What the complaints from across the pet industry make clear is that these “guarantees” and purported warranties are simply another method used by stores to induce sales by suggesting that (a) the dogs are healthy because the store would not offer a guarantee otherwise, and (b) if the dog does get sick the consumer is protected. In many cases, neither of those things is true.

Once again, Petland provides a clear example of this deceptive practice. Petland’s purchase contracts contain various terms and obligations related to the purchase of the consumer’s new puppy, including purported health guarantees and warranties. While the specific provisions vary somewhat from store to store, there appear to be some terms that are consistent across most of the Petland locations for which we have reviewed the documents.

(1) Congenital/Hereditary Defect Guarantee

Most of the Petland stores appear to warrant their puppies “against hereditary and congenital disorders that may interfere with [the animal’s] ability to lead a normal life,” as long as that defect is verified and brought to the retailer’s attention within a year of purchase.<sup>85</sup> However, congenital defects that are not immediately apparent from a visual inspection will frequently go undiagnosed for months, if not years, while the owner treats the symptoms, hoping they will go away. In fact, some defects cannot be

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<sup>85</sup> See, e.g., Sales Contract for Person 205, Dec. 26, 2018 (attached as Ex. C); see also Sales Contract for Person 137, Apr. 14, 2019 (attached as Ex. D); Sales Contract for Anonymous Chicago Consumer, July 20, 2019 (attached as Ex. E); Sales Contract for Person 42, Mar. 20, 2019 (attached as Ex. F).



substantiated without performing an invasive, expensive, and potentially risky investigative surgery.<sup>86</sup>

Additionally, if an animal dies from the defect before the defect is officially identified, the only means to confirm the existence of these defects is by performing a necropsy. In many cases, Petland will refuse to reimburse a consumer for the cost of their animal or cover the deceased animal's medical costs until the necropsy is performed and the defect is identified, instead offering to replace the puppy with one of "equal value."<sup>87</sup> In other words, Petland consumers are forced to incur even more costs in order to determine whether the initial costs of their traumatic experience are covered. In many cases, consumers just drop the issue instead of incurring additional expenses, emotional trauma, and uncertainty.<sup>88</sup>

## (2) 48-hour Return Warranty

Most of the Petland purchase contracts that we have seen give the consumer the option of returning the newly-purchased puppy for a full or partial refund within a 48-hour time period. While this warranty is presented as a safety net for consumers, it is, in reality, a mere shell of a promise. It is unlikely that consumers will return a puppy they just bought within 48 hours, even if the puppy is exhibiting medical concerns. Instead, any responsible and caring owner will take the animal to the vet for care. Moreover, both consumers and investigators have reported the use of deceptive tactics as barriers to prevent a consumer from being able to identify or diagnose illnesses

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<sup>86</sup> K. Kampschmidt, *Common congenital and hereditary problems in neonatal small animals (Proceedings)*, DVM360 (Oct. 1, 2008), <https://www.dvm360.com/view/common-congenital-and-hereditary-problems-neonatal-small-animals-proceedings>.

<sup>87</sup> See, e.g., Ex. B, Person 211, Person 161.

<sup>88</sup> See, e.g., Ex. B, Person 148.

within the first 48 hours.<sup>89</sup> For example, as observed by HSUS investigators, stores issue doses of “preventative” antibiotics, or other remedies, to mask symptoms for a short period of time.<sup>90</sup> When symptoms like sniffing, vomiting, lethargy, coughing, or loose stool appear, the sales staff instruct purchasers not to worry because, they say, these issues are common in the first few days due to stress and adjustment.<sup>91</sup>

Petland represents to customers that the company’s medical care warranty will cover visits to and some medical care rendered at the Petland-associated vet (as explained in more detail below), so if Petland had the customer’s and puppy’s best interest in mind, it would make sense for the staff to instruct customers to go to the vet at *the onset* of any troubling symptoms. Instead, Petland’s express recommendations seem to serve no other purpose than to get the purchaser past this 48-hour warranty period.

### (3) Medical Coverage Warranty

Petland stores typically also offer a warranty which is generally medical care-related, though the terms of this warranty vary greatly, specifically as to how long the warranty is in effect, what types of conditions are covered, and what obligations the purchaser has in keeping this warranty active. Typically, Petland will condition reimbursement under this warranty on taking the new pet only to the Petland-associated vet and obtain the qualifying diagnosis from that vet.<sup>92</sup> Sometimes, the

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<sup>89</sup> See *infra* n. 90–91.

<sup>90</sup> *Expanded Undercover Investigation reveals more sick and dead puppies at Petland stores*, HSUS, May 2019, 4, available at: [https://www.humanesociety.org/sites/default/files/docs/PetlandReport\\_FINAL-May2019.pdf](https://www.humanesociety.org/sites/default/files/docs/PetlandReport_FINAL-May2019.pdf) (hereinafter, “May 2019 Investigation”).

<sup>91</sup> See *supra* n. 66.

<sup>92</sup> See, e.g., Ex. B, Person 194; Person 285. See also Ex. E.

consumer must continually make “qualifying purchases” of premium food from the Petland store from which the dog was bought.<sup>93</sup> If either of these obligations is not followed, Petland may disclaim responsibility for the medical costs.<sup>94</sup>

While not all of these obligations may seem unreasonable on their face, Petland fails to tell consumers that a majority of Petland vets only have the facilities or skills to provide basic-level care during limited business hours. This means that if a Petland puppy comes down with any symptoms that require attention outside of normal business hours, or require high-level care, the consumer is forced to break the terms of the medical coverage warranty or risk losing her animal.<sup>95</sup>

Sometimes, Petland’s health warranties expressly or otherwise disclaim the most common and contagious illnesses carried by puppies sold in pet stores, such as kennel cough, parvo, or distemper.<sup>96</sup> Moreover, while the cost of veterinary visits at a Petland-approved clinic is included in the warranties, vaccines, medicine, X-rays, and blood work are often outside of the coverage costs.<sup>97</sup> In effect, these medical care warranties give the consumer little benefit as the express language disclaims away almost every typical cost a Petland consumer would incur at the vet, minus the cost of the visit.

In particularly unfair fashion, some Petland contracts warrant against the puppy having such illnesses at the time of purchase, and yet, when the puppy is

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<sup>93</sup> See, e.g., Ex. B, Person 272; see also Ex. E.

<sup>94</sup> See, e.g., Ex. B, Person 194, Person 285.

<sup>95</sup> See Ex. C, Ex. E, Ex. D., Ex. F (all stating Petland will not cover the cost of emergency services).

<sup>96</sup> See Ex. E; Ex. F. See *Humane Society Veterinary Medical Association (HSVMA) Veterinary Report on Puppy Mills*, HSVMA, May 2013, available at:

[https://www.hsvma.org/assets/pdfs/hsvma\\_veterinary\\_report\\_puppy\\_mills.pdf](https://www.hsvma.org/assets/pdfs/hsvma_veterinary_report_puppy_mills.pdf).

<sup>97</sup> See Ex. C, Ex. F.

diagnosed with one of those illnesses only a day or two later, Petland denies coverage of associated medical costs, stating that the specific cause of the puppy's symptoms is outside of their medical care plan.<sup>98</sup> As noted earlier however, the so-called warranties are often not worth the paper they are written on, either requiring the consumer to return the puppy or otherwise leaving the consumer without any reasonable recourse. A consumer should not be expected at the time of purchase to negotiate coverage of illnesses that the store expressly warrants against. Instead, a consumer should be able to rely on the representations of pet store staff who claim that the animal is healthy.

(4) Limitation of Liability, Arbitration Clause, and Waiver of Class Action Rights

Though many states have been enacting laws to protect retail pet purchasers when their animal is deemed “unfit for sale” at the time of purchase by a licensed veterinarian (otherwise known as “Pet Lemon Laws”), Petland's contracts take advantage of these laws' exceptions which allow a consumer to knowingly sign away this statutory protection, in exchange for a different store warranty. Petland includes such waivers in its contracts, often without explaining that to the consumer, meaning the waiver is not made “knowingly” in accordance with the lemon law's directive. In addition, many Petland agreements include arbitration provisions and class action waivers, which make it financially infeasible for aggrieved consumers to find legal help. At least one Petland manager told his sales staff that these provisions effectively eliminated the consumer's option to file suit.<sup>99</sup>

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<sup>98</sup> See, e.g., Ex. B, Person 42; see also Ex. F.

<sup>99</sup> See May 2019 Investigation *supra* n. 90 at 5.

When reviewing these various types of warranties and waivers with the customer, Petland staff often gloss over or misrepresent the specifics in a way that makes it seem like the consumer is receiving a benefit, when in reality, and as explained in our Petition, these contracts are specifically tailored to protect the stores' interests.<sup>100</sup> Even when there is a contractual term that has the possibility of benefitting the pet purchaser, the preliminary requirements or conditions for seeking that benefit make the provision practically unenforceable under the circumstances. For example, Petland frequently disclaims liability for illnesses or congenital defects until the consumer spends even *more* money seeking a second expert opinion or performing a necropsy on an already dead dog.<sup>101</sup> In some cases, where benefits are conditioned on meeting a certain time-limited notice requirement, Petland or its third-party resolution company may delay their communications with a customer long enough that the Petland consumer cannot adequately provide notice under the state's Lemon Laws.<sup>102</sup>

Moreover, regardless of the specific terms in these contracts, HSUS has been told on multiple occasions that Petland merely refused to honor the terms. These so-called guarantees are deceptive because they lead consumers to believe that (a) the dogs are healthy because the store would not offer a guarantee otherwise, and (b) if the dog does get sick the consumer is protected. In many cases, neither of those things is true.

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<sup>100</sup> Ex. A at 43.

<sup>101</sup> *See, e.g.*, Ex. B, Person 15.

<sup>102</sup> *See, e.g.*, Ex. B, Person 205. (In the case of this consumer, she kept Petland's third-party conflict resolution company informed of her pet's veterinary treatment from the day they first entered the emergency clinic. Petland suggested that if the consumer sent in her bills, the cost of all treatment would be covered with no additional conditions. However, a month after purchase and at least three weeks after the visit to the emergency clinic, Petland denied full coverage. When the consumer attempted to assert her rights under the state's Lemon Laws, Petland's resolution company stated that an official unfit for sale letter had not been provided within the statute's required 14 days after purchase, leaving the consumer without recourse.)

The combined effect of these four types of imbalanced guarantees and unfair limiting provisions, along with the stress and costs of seeking medical care for the pets, is a major deterrent for consumers seeking any further relief.

Therefore, it is imperative that the FTC issue a TRR defining these practices as misleading, deceptive, and fraudulent to ensure that pet retailers are either providing fair warranties, representing their warranties in an accurate manner, or providing consumers with a reasonable opportunity to read and understand the terms of their agreement. Without promulgating such a TRR, consumers will continue to be deceived to their detriment.

### ***III. Undercover Investigations at Petland Stores***

As noted, since submitting our Petition in June 2018, HSUS has published five separate reports<sup>103</sup> detailing the findings of undercover investigations in eight different Petland stores.<sup>104</sup> In each of these stores, HSUS investigators observed sick puppies isolated in the stores' back rooms<sup>105</sup> and, in five of the stores, investigators found dead

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<sup>103</sup> For purposes of this supplement, HSUS has only recounted the findings of four of these five reports as they are most relevant to the unfair and deceptive practices outlined in our Petition. The fourth report, published in April of 2019, highlighted the deaths of 14 or more dead rabbits found in the Fairfax, Virginia store. HSUS found that these deaths were viewed as commonplace, as the store had not sought medical care for the rabbits prior to their passing, nor had they investigated the cause to prevent further illness. *Undercover investigation finds dead rabbits in Virginia Petland store; ailing rabbits not taken to a veterinarian*, HSUS, Apr. 2019, available at:

<https://blog.humanesociety.org/wp-content/uploads/2019/04/Petland-Rabbit-Report.pdf>. After publishing this report, Petland withdrew its franchise agreement with this store and the location shut down. *Petland in Fairfax closes after allegedly letting rabbits 'die out'*, WJLA, Apr. 3, 2019, <https://wjla.com/features/7-on-your-side/petland-closes-after-allegedly-letting-rabbits-die-out>.

<sup>104</sup> Investigations & Reports, HSUS, <https://www.humanesociety.org/resources/investigations-reports>.

<sup>105</sup> See 2018 Investigation *supra* n. 13 at 2, 4; May 2019 Investigation *supra* n. 90 at 2, 4–5, Florence Investigation *supra* n. 66 at 6–7; *Undercover Investigation of Petland in Frisco, Texas, finds underweight and sick puppies; sick rabbit left to die*, HSUS, Sep. 2019, 1,

animals in the stores' freezers.<sup>106</sup> What the reports make absolutely clear is that Petland still sources many if not all of its puppies from inhumane puppy mill facilities, many of the puppies are very sick, and Petland is selling the puppies with the knowledge that the animals are sick. These investigations shed even more light on how egregious Petland's claims are – discussed above – that their puppies are healthy and come from high quality breeding facilities.

### ***December 2018: Kennesaw, Georgia and Las Vegas, Nevada Stores***

In December of 2018, HSUS published the findings of two undercover investigations in the Kennesaw, Georgia and Las Vegas, Nevada stores.<sup>107</sup> Both stores received truckloads of puppies from out-of-state brokers, with the Las Vegas store sourcing some of its dogs from Pinnacle Pets in Missouri and the Georgia store sourcing from Blue Ribbon Puppies in Indiana: both known puppy mill dealers.<sup>108</sup> Despite many of the puppies exhibiting symptoms of illness, HSUS investigators found a lack of concern by Petland staff regarding the puppies' wellness and medical care.

For example, at both the stores, puppies were kept in crowded cages despite likely contagious illnesses, were not afforded adequate veterinary care, and their exercise opportunities consisted almost exclusively of interactions with potential buyers. At the Kennesaw store the investigator witnessed veterinary "exams" that lasted as short as fifteen seconds, and employees administering veterinary medications

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<https://www.humanesociety.org/sites/default/files/docs/Petland%20Frisco%20Report%20Final%209.10.19.pdf> (hereinafter, "Frisco Investigation").

<sup>106</sup> See 2018 Investigation *supra* n. 13 at 2, 4; May 2019 Investigation *supra* n. 90 at 2, 4; Frisco Investigation *supra* n. 105 at 1–2.

<sup>107</sup> 2018 Investigation *supra* n. 13.

<sup>108</sup> *Id.* at 6.

without having been properly instructed in their use.<sup>109</sup> This is especially alarming in light of the fact that the Kennesaw store had been investigated by the Georgia Department of Agriculture multiple times for puppies diagnosed with parvovirus, respiratory infections, and Giardia, all of which are *highly* contagious.<sup>110</sup>

As a result of Petland's neglect, animals died. At the Kennesaw store, one employee told our investigator that when she would arrive for her shift she sometimes found puppies dead.<sup>111</sup> One dead puppy was found in a black plastic bag in the store's freezer.<sup>112</sup> In Las Vegas, our investigator observed a very sick Maltese puppy not receiving medical care who she was told had been confined in a cage in the back room for about a month.<sup>113</sup> Our investigator inquired about adopting the puppy and was told he was being sent back to the distributor, Pinnacle Pet, and the store had already received the refund.<sup>114</sup> The store's management seemed unconcerned as to the puppy's fate or whether the puppy might suffer or die in transit back to the distributor.<sup>115</sup>

***May 2019: Sarasota Florida, Novi, Michigan, and Tyler, Texas***

HSUS's undercover investigations in three additional stores revealed similar neglect. In Tyler, Texas, a chihuahua puppy was ill and having seizures for five days before the store owner authorized the dog to go to the veterinary hospital.<sup>116</sup> One employee stated that the owner rarely took sick puppies to the vet and that "[the owner] doesn't want to pay that extra money. So really, most of the dogs that go to the vet end

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<sup>109</sup> *Id.* at 2.

<sup>110</sup> *Id.*

<sup>111</sup> *Id.* at 1.

<sup>112</sup> *Id.* at 2.

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> May 2019 Investigation *supra* n. 90 at 2.



up dying because we take them [at the] last minute.”<sup>117</sup> Similar to the Kennesaw store, the Tyler investigator found a dead puppy in the freezer.<sup>118</sup> Moreover, staff from the Tyler store were caught on camera discussing the fact that the store’s veterinarian had reportedly told the store’s owner to stop obtaining tiny puppies under two pounds due to their frailty, but the owner allegedly did not comply with the advice.<sup>119</sup>

The investigation in the Sarasota, Florida store revealed similar practices.<sup>120</sup> Alarming symptoms like severe diarrhea, vomiting, and respiratory problems in puppies were treated by store staff who were not licensed to practice veterinary medicine instead of seeking proper veterinary treatment.<sup>121</sup> When two customers reported having recently purchased a dog with parvovirus, a highly contagious infectious disease, the store’s internal response was solely to clean the facilities, while puppies continued to be sold despite potential exposure.<sup>122</sup> Neither the public nor any customers were informed.<sup>123</sup> In fact, in lieu of monitoring the dogs to prevent the sale of a dog with parvovirus, sales staff were instead given sales incentives and goals which encouraged the sale of and interaction with potentially infected dogs.<sup>124</sup>

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<sup>117</sup> *Id.* at 2.

<sup>118</sup> *Id.*

<sup>119</sup> *Id.* at 2-3. After our investigation, the ownership of the Tyler, Texas store conveniently changed and various public announcements were made suggesting that the store might have altered its ways. *CHANGES UNDERWAY: Petland Tyler under new management*, CBS19, June 24, 2019, <https://www.cbs19.tv/article/news/changes-underway-petland-tyler-under-new-management/501-f234c396-4c75-444b-a00b-c9c3478652a9>. However, HSUS continues to receive complaints from this store, suggesting that it is merely back to business under the new ownership. *See, e.g.*, Ex. B, Person 265.

<sup>120</sup> May 2019 Investigation *supra* n. 90.

<sup>121</sup> *Id.* at 3.

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

In the Novi, Michigan store, not only were animals being treated for their illnesses by staff without any direct veterinary oversight, but one staff member had contracted *Campylobacter* as a result of her interaction with sick puppies.<sup>125</sup> This staff member was not the only person who appears to have contracted *Campylobacter* from this store; the store was recently sued by a customer who alleges he contracted the bacteria soon after his puppy purchase.<sup>126</sup> Our investigator at the Novi store captured on video another staff member discussing that all puppies in the Novi store are routinely dosed with antibiotics as a “preventative measure.”<sup>127</sup> Not only does this “preventative” practice result in sick and improperly treated dogs going home with consumers, but it is known to result in multiple drug-resistant strains of bacteria. In fact, the Centers for Disease Control have linked Petland puppies to two outbreaks of a specific multi-drug-resistant strain of *Campylobacter* that sickened many people.<sup>128</sup>

#### ***September 2019: Frisco, Texas***

In Frisco, Texas, the Petland store sourced its puppies from major pet dealers like Justin Jackson of Clifton, Kansas, and Pinnacle Pet.<sup>129</sup> Many of these puppies arrived at the store with symptoms such as bloody diarrhea, vomiting, coughing, sneezing, and lethargy.<sup>130</sup> Instead of seeking veterinary care, Petland chose to administer inadequate ad-hoc treatments such as force-feeding, probiotics, and cough

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<sup>125</sup> *Id.* at 4.

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> Ex. H; *Multidrug-Resistant Campylobacter Infections Linked to Contact with Pet Stores Puppies*, Investigation Notice, CDC, Dec. 17, 2019, <https://www.cdc.gov/campylobacter/outbreaks/puppies-12-19/index.html>; *Multidrug-Resistant Campylobacter Infections Linked to Contact with Pet Stores Puppies*, Final Update, CDC, Jan. 30, 2018, <https://www.cdc.gov/campylobacter/outbreaks/puppies-9-17/index.html>.

<sup>129</sup> Frisco Investigation *supra* n. 105 at 2.

<sup>130</sup> *Id.*

syrup before returning the puppy to the broker or breeder if those methods did not work.<sup>131</sup> Purchasers of dogs who had previously been ill in the store were informed of the prior illness on an inconsistent and random basis.<sup>132</sup>

As a result of these reckless practices, our investigator had to cut the undercover employment short when, similar to the Novi employee, the investigator contracted *Campylobacter* and needed to seek medical care.<sup>133</sup>

### ***November 2019: Florence, Kentucky***

In HSUS's most recent investigation, which took place in a Petland, Inc. corporate-owned store, our investigator observed similar conduct in Petland's practices, demonstrating that these practices are not unique to franchises. Many of the puppies in Florence exhibited troubling symptoms such as listlessness, loose and bloody stools, and disinterest in eating, yet were not taken to the veterinarian for proper diagnosis or treatment prior to the illness becoming deadly or at least extremely problematic.<sup>134</sup> Moreover, instead of informing customers of the puppies' illnesses, Petland managers told employees to keep silent, even when there was a notable disease outbreak.<sup>135</sup>

For example, in one incident, two puppies had to be euthanized due to a diagnosis of canine distemper, a highly contagious and incurable viral disease which can leave permanent neurological damage when not fatal. After one positive test and euthanasia of a goldendoodle, a customer's recently-purchased Yorkie tested positive and was also euthanized by the Petland Veterinarian.<sup>136</sup> Prompted by the Yorkie's

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<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> *Id.* at 3.

<sup>134</sup> Florence Investigation *supra* n. 66 at 3–4.

<sup>135</sup> *Id.* at 3.

<sup>136</sup> *Id.* at 6.

diagnosis, Petland tested only two noticeably-ill puppies while Petland staff was told to put signs on all other puppies' cages reading, "I've just arrived and can't wait until my doctor says I can come out and play," in order to hide the true reason for the isolation.<sup>137</sup> When those additional tests came back positive, those two puppies were allegedly sent "back to their breeders" while many others who may have been exposed to the virus were quietly transported to a new Petland store in Indiana overnight, possibly furthering the spread of this extremely contagious viral illness.<sup>138</sup>

After this distemper outbreak, and following the return of puppies to the breeders or to the Indiana store, the HSUS investigator came into work and found almost all of the display cases empty with signs stating "Annual kennel maintenance – Puppies coming soon!"<sup>139</sup> Meanwhile, staff was told to clean the cages and 35 new puppies were ordered.<sup>140</sup> There was no evidence that the public or purchasers from the prior few weeks had been notified of their puppies' potential exposure.

In light of the horrific events occurring in this store, HSUS decided to send a secret shopper into the Florence, KY location to interact with one puppy, later named Jasper, who had been noticeably ill for weeks.<sup>141</sup> The undercover investigator informed HSUS that Jasper had signs of a very contagious disease, Campylobacter, yet his only interaction with a veterinarian was a perfunctory 45 second intake exam when he first arrived at the store.<sup>142</sup> While the secret shopper interacted with Jasper in one of Petland's greeting booths, Jasper had noticeable diarrhea. The manager told the secret

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<sup>137</sup> *Id.* at 5.

<sup>138</sup> *Id.* at 6.

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> *Id.* at 7.

<sup>142</sup> *Id.* at 4.

shopper on hidden camera that Jasper’s condition was “not Campylobacter” and that the shopper would have “.002% chance of getting Campylobacter from a puppy from [the Petland store.]”<sup>143</sup> Before purchasing Jasper, the shopper was further told that Jasper had in fact been tested for Campylobacter, and his tests came back negative.<sup>144</sup> HSUS found no paperwork confirming this test had ever occurred.

HSUS’s secret shopper took Jasper to a veterinarian not associated with Petland immediately after purchase and found that Jasper, who was “skin and bones,” indeed had campylobacter and giardia.<sup>145</sup> On that same day, the undercover investigator, who had previously visited an Urgent Care for gastrointestinal issues, received test results confirming that the investigator too had contracted Campylobacter.<sup>146</sup>

### **Conclusion**

As described in the original Petition, retail pet sellers are engaging in misleading and deceptive practices to which many consumers are falling victim. Petland provides a vivid example of these practices that are prevalent across the industry. Petland stores use high-pressure sales tactics, oppressive or misleading financing options, misleading statements related to pet health and pedigree, and inherently deceptive warranties and waivers to guarantee a sale. Despite sourcing its dogs from puppy mills, and failing to provide adequate veterinary care and oversight while in possession of the puppies, Petland also conveys to the public that its puppies are of top genetic quality, humanely-bred, guaranteed healthy, and backed by a buyer-friendly purchase agreement. Even as consumers gain greater insight into the problems

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<sup>143</sup> *Id.* at 7. See also *Petland: How sick is that puppy in the window?*, Youtube (content by HSUS), Nov. 14, 2019, 1:22, <https://www.youtube.com/watch?v=cHQYXAEMIRU>.

<sup>144</sup> *Id.*

<sup>145</sup> *Id.* at 9–10.

<sup>146</sup> *Id.*

within the for-profit pet industry, educating themselves on what questions to ask and conditions to check, pet retailers maintain sales and profitability by using fraudulent marketing and sales schemes.

The consumer accounts and undercover investigations described in this Supplement make clear that that Petland, at a bare minimum, is aware of the deceptive nature of its practices yet continues to mislead consumers to their detriment. Consumers who fall victim to these sales tactics incur substantial financial injury, in the form of medical bills and significant emotional trauma. Disproportionate comprehension of contractual terms leaves consumers with little or no recourse, and many state laws intended to protect consumers by requiring disclosure of breeders' federal animal welfare violations have been rendered useless by a lack of enforcement of those laws on the federal level.<sup>147</sup>

*(continued on next page)*

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<sup>147</sup> While many states require stores to post all citations and violations resulting from federal inspections of their puppies' breeders, research has shown a significant decrease in federal enforcement of animal protection laws. See K. Brulliard, *The USDA saw no problems at this zoo. Local authorities found 'a monkey dungeon.'*, Wash. Post, Dec. 19, 2019, <https://www.washingtonpost.com/science/2019/12/19/usda-saw-no-problems-this-zoo-local-authorities-found-monkey-dungeon/>. Practically, this prevents consumers from knowing whether the breeder of their soon-to-be family member provided humane conditions and it allows pet stores to misleadingly rely on the *lack* of documented violations as "proof" of ethical treatment.

The FTC has clear authority to issue a rule which can specifically address and expressly prohibit many of these deceptive practices that are prevalent throughout the pet retail industry. For all of these reasons and those discussed in the Petition, HSUS and HSLF request that the Commission take immediate action to promulgate a TRR which addresses the deceptive and unfair practices used by pet retailers.

Respectfully submitted,



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