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IN THE CIRCUIT COURT OF THE STATE OF OREGON
IN AND FOR THE COUNTY OF MULTNOMAH

SONJA BOHR, TAMARA BARNES,
KAREN FOGLESONG, and MARY
WOOD, on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

TILLAMOOK COUNTY CREAMERY
ASSOCIATION, an Oregon
cooperative corporation,

Defendant.

Case No. 19CV36208

**PLAINTIFFS' SECOND AMENDED
COMPLAINT AND DEMAND FOR JURY
TRIAL**

**CLASS ACTION/UNLAWFUL TRADE
PRACTICES
ACT/RESTITUTION/DAMAGES
(INJUNCTIVE AND EQUITABLE RELIEF)**

**Claims not subject to mandatory arbitration
Demand for Jury Trial**

Filing fee \$1,111.00 pursuant to
ORS 21.160(1)(e)

PLAINTIFFS' SECOND AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

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1 Plaintiffs Sonja Bohr, Tamara Barnes, Karen Foglesong, and Mary Wood
2 (“Plaintiffs”) allege:

3
4 **NATURE OF THE CASE**

5 1.

6 This is a proposed class action on behalf of a statewide class seeking redress for
7 Tillamook’s deceptive practices. Tillamook causes likelihood of confusion or
8 misunderstanding as to the source of the dairy products it sells. Tillamook causes
9 likelihood of confusion or misunderstanding as to the affiliation, connection, or
10 association with another of those products. Tillamook uses deceptive representations or
11 designations of geographic origin in connection with its dairy products. Tillamook
12 misrepresents the nature, source, characteristics, and production practices of its dairy
13 products. And Tillamook fails to disclose known material defects or nonconformity of its
14 products in violation of Oregon state consumer protection laws and common law.

15 2.

16 Specifically, Tillamook has engaged in a deceptive marketing campaign to
17 convince consumers that the dairy cows who provide milk for its products graze on
18 pastures in Tillamook County. Tillamook represents to consumers that its products are
19 sourced from small family farms whose traditional farming practices are better for the
20 environment, the local community, and of course the cows than are the industrial dairy
21 facilities that Tillamook derides as “Big Food.”

22 3.

23 Unfortunately for consumers, Tillamook *is* Big Food: Tillamook sources upwards
24 of two thirds of the milk for its products from the largest and most industrialized dairy
25 factory farm in the country— a Concentrated Animal Farming Operation (“CAFO”) with
26 over 70,000 total cows and 32,000 dairy cows confined in a single location. Located in

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1 eastern Oregon, this complex of cement-floored production facilities and barren dirt
2 feedlots, where cows are continuously confined, milked by robotic carousels, and
3 afflicted with painful udder infections, is a far cry from the rolling green hills of the
4 Tillamook County family farms shown throughout Tillamook's marketing campaign.

5
6 4.

7 Consumers increasingly seek out and are willing to pay more for products that
8 they perceive as being ecofriendly, such as "free range," "cage free," "organic,"
9 "sustainable," "local," "grass fed" and other terms that lead reasonable consumers to
10 conclude they are supporting local and ethical businesses. Consumers believe such
11 sellers are better for the environment, more humane. Tillamook has projected such
12 ethical sourcing as its company ethos, deliberately crafting its marketing messages to
13 attract these consumers, who believe they are getting such responsibly sourced products
14 when they buy Tillamook cheese and ice cream. As the company says, "*Tillamook*
15 *cheddar cheese is made with four ingredients, patience, and old-fashioned farmer values*
16 *in Tillamook, Oregon.*"

17
18 5.

19 Indeed, through its marketing, Tillamook is capitalizing on a sea change in
20 consumer purchasing preference. More than three out of four consumers (77 percent)
21 say that they are concerned about the welfare of animals used in food production,¹ and
22 80 percent of consumers report good living conditions for animals to be "very
23 important" or "important" to them.² Two-thirds of consumers check to see if their food

23 ¹ Lake Research Partners, ASPCA Labeling Survey (June 2016), available at
24 https://www.asPCA.org/sites/default/files/publicmemo_asPCA_labeling_fi_rev1_0629716.pdf. See
25 also C. Victor Spain et al., *Are They Buying It? United States Consumers' Changing Attitudes toward*
26 *More Humanely Raised Meat, Eggs, and Dairy*, 8 ANIMALS 128 (Aug. 2018), available at
27 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6116027/>.

28 ² 2014 Consumer Reports National Research Center, *Food Labels Survey*, available at
Footnote continued on next page

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1 is locally produced – and 92 percent of consumers consider supporting local farmers
2 “very important” or “important.”³

3
4 6.

5 Consumers also seek out products made by small-scale farmers in order to
6 support non-industrialized farming, to eschew products that contribute to corporate
7 control of the food system, and support products that are environmentally sustainable.⁴
8 These strong consumer trends explain why Tillamook chooses to make representations
9 about small-scale farms and outdoor-grazing cows so prominently throughout its
10 marketing.

11 7.

12 Tillamook’s marketing is highly effective at convincing consumers that its dairy
13 products are sourced from smaller, pasture-based dairies in Tillamook County that
14 prioritize animal welfare and environmental stewardship more than large, industrial
15 dairies do.

16 8.

17 According to a recent consumer survey of Pacific Northwest consumers, the
18 majority of Tillamook dairy purchasers believe, from Tillamook’s representations, that
19 Tillamook sources milk from small-scale family farms and not large industrial dairy
20 farms. The majority of Tillamook consumers likewise believe that the company’s dairy
21 farms are located in Tillamook County, Oregon, that Tillamook farmers treat cows more

22 *Footnote continued from previous page*

23 <http://www.panna.org/sites/default/files/ConsumerReportsFoodLabelingSurveyJune2014.pdf>.

24 ³ *Id.*

25 ⁴ FAIR WORLD PROJECT, FAIRNESS FOR FARMERS (2018), *available at*

26 https://fairworldproject.org/wp-content/uploads/2018/09/Fair_World_Project-Fairness-For-Farmers-Report.pdf.

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1 humanely than other dairies do, and that Tillamook's animal welfare standards exceed
2 those of other dairy companies.

3
4
5 9.

6 Tillamook's deceptive marketing campaigns catering to conscientious dairy
7 consumers have reaped major rewards. Tillamook's CEO says the company may soon
8 surpass \$1 billion in sales,⁵ and has experienced 70 percent growth in revenue thanks in
9 large part to its "Dairy Done Right" marketing campaign.⁶

10 10.

11 The year after Tillamook launched "Dairy Done Right," Tillamook launched its
12 "Goodbye Big Food" campaign (see Illustration 9 below). Within 48 hours of the launch
13 (touted by Adweek as a campaign that "*cast[s] Tillamook products as wholesome, tasty 'real*
14 *food' alternatives to mass-produced fare*"⁷), Tillamook social media mentions increased
15 by 450 percent.⁸ Indeed, in a recent consumer survey of Pacific Northwest consumers,
16
17

18 ⁵ Mary Ellen Shoup, *Tillamook CEO Talks Dairy Innovation and Ambitions of Reaching \$1B in Sales*,
19 *FOOD NAVIGATOR* Oct. 22, 2018, [https://www.foodnavigator-](https://www.foodnavigator-usa.com/Article/2018/10/22/Tillamook-CEO-talks-dairy-innovation-and-ambitions-of-reaching-1bn-in-sales)
20 [usa.com/Article/2018/10/22/Tillamook-CEO-talks-dairy-innovation-and-ambitions-of-reaching-](https://www.foodnavigator-usa.com/Article/2018/10/22/Tillamook-CEO-talks-dairy-innovation-and-ambitions-of-reaching-1bn-in-sales)
21 [1bn-in-sales](https://www.foodnavigator-usa.com/Article/2018/10/22/Tillamook-CEO-talks-dairy-innovation-and-ambitions-of-reaching-1bn-in-sales) (last visited Aug. 12, 2019).

22 ⁶ The Challenger Project, Patrick Criteser interview,
23 <https://thechallengerproject.com/blog/2017/patrick-criteser-tillamook-interview> (last visited Aug.
24 12, 2019).

25 ⁷ David Gianatasio, *Tillamook Says a Fun, Violent Farewell to "Big Food" in Eye-Catching Ads*
26 *by 72andSunny*, *Adweek* Mar. 2, 2016, [https://www.adweek.com/creativity/tillamook-says-fun-](https://www.adweek.com/creativity/tillamook-says-fun-violent-farewell-big-food-eye-catching-ads-72andsunny-169963/)
27 [violent-farewell-big-food-eye-catching-ads-72andsunny-169963/](https://www.adweek.com/creativity/tillamook-says-fun-violent-farewell-big-food-eye-catching-ads-72andsunny-169963/) (last visited Aug. 12, 2019)
28 (emphasis added).

⁸ The Shorty Awards, *Tillamook "Goodbye Big Food, Hello Real Food" Social Launch*,
<https://shortyawards.com/9th/tillamook-goodbye-big-food-hello-real-food-oscar-launch> (last
visited Aug. 12, 2019)

1 the overwhelming majority (93.7 percent) of respondents were familiar with the
2 Tillamook brand, which was the most recognized dairy product brand (even over Kraft).

3
4 11.

5 Tillamook's advertising campaigns are designed to tell consumers that Tillamook
6 is different from the "flawed industrialized food system" and to "provoke people to
7 question the food they eat and the system behind it"⁹—despite the fact that Tillamook is
8 the embodiment of industrialized dairy. Ironically, the co-head of the advertising firm
9 for Tillamook's "Goodbye Big Food" campaign publicly claimed that "How our food is
10 made, and by whom, is no longer a niche topic but rather an escalating conversation in
11 culture. Tillamook is . . . *offering an honest point of view* that invites people to
12 independently make up their minds."¹⁰

13
14 12.

15 Tillamook causes likelihood of confusion and misunderstanding as to the source
16 of its dairy products by extensive advertising that the products are sourced from
17 humane, pasture-based farms producing "real food." Tillamook's cheese labels add to
18 the confusion, in that they include the Tillamook origin. They state that the goods are,
19 "Made with pride by Tillamook County Creamery Association, Tillamook, OR 97141."
20 Tillamook's repeated representations about geographic origin and source masks
21 Tillamook's true milk sourcing practices. Consumers who believe they are buying
22 products from small, high-welfare, pasture-based dairies in Tillamook County are
23 instead unwittingly purchasing cheese, butter, ice cream, and yogurt made from milk
24 from the largest industrial dairy in the country—that confines tens of thousands of cows
25 on concrete in the desert of eastern Oregon.

26
27 ⁹ *Id.*

28 ¹⁰ *Id.* (emphasis added).

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13.

Plaintiffs thus bring this action on behalf of themselves and similarly situated Oregon consumers, to hold Tillamook accountable for its uniform and pervasive claims falsely representing the company's products as coming exclusively from small-scale, pasture-based farms in Tillamook County that provide individualized care for cows, when this could not be further from the truth.

JURISDICTION AND VENUE

14.

Jurisdiction and venue are proper in Oregon, Multnomah County because Tillamook engages in regular and sustained business in Oregon and in Multnomah County. Tillamook maintains a registered agent for service of process in Oregon. And one or more of the Plaintiffs bought Tillamook products in Multnomah County.

THE PARTIES

15.

Plaintiff Sonja Bohr is a resident of Multnomah County, Oregon. During the past year (the "Class Period" as defined below), she purchased Tillamook dairy products—including cheese, yogurt, sour cream, and butter—in Oregon from one or more retailers, including Fred Meyer on Hawthorne Boulevard in Portland, for personal, family, or household purposes. Ms. Bohr saw the name "Tillamook" and Tillamook's marketing representations and believed that Tillamook products were all made from milk sourced from traditional pasture-based farms in Tillamook County, Oregon—and not from large-scale "factory farms." Ms. Bohr has seen similar representations made by Tillamook relating to its dairy products in online, print, or television advertising.

16.

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PLAINTIFFS' SECOND AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

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1 Ms. Bohr regularly seeks out, and is willing to pay more for, dairy products that
2 she perceives as being more humane and coming from small, pasture-based dairies.
3 Because she thought Tillamook was the gold standard in her area, she has been a loyal
4 Tillamook consumer. Ms. Bohr purchased Tillamook products because, having seen the
5 Tillamook representations, she thought she was purchasing a product that aligned with
6 her values. If she had known the truth—that the vast majority of the milk sourced for
7 Tillamook products comes from a massive factory farm in Eastern Oregon where cows
8 are never allowed to graze on grass—she would have bought other dairy products
9 instead of Tillamook’s, or would not have paid as much as she did for the Tillamook
10 products. Because of Tillamook’s false representations, Ms. Bohr paid a premium,
11 organic- and/or artisan-dairy price for an industrially produced, factory-farmed product.
12

13 17.

14 Plaintiff Tamara Barnes is a resident of Lane County, Oregon. During the Class
15 Period, she purchased Tillamook dairy products—including cheese and ice cream—in
16 Oregon from one or more retailers, including WinCo and Walmart, for personal, family,
17 or household purposes. Ms. Barnes saw the name “Tillamook” and Tillamook’s
18 marketing representations and believed that Tillamook products were all made from
19 milk sourced from small-scale family farms in Tillamook County, Oregon. Ms. Barnes
20 has seen similar representations made by Tillamook relating to its dairy products in
21 online, print, or television advertising.

22 18.

23 Ms. Barnes regularly seeks out, and is willing to pay more for, dairy products that
24 she perceives as being more humane and coming from small, pasture-based dairies. For
25 example, in addition to Tillamook products, Ms. Barnes has sought out and purchased
26 Umpqua Dairy and Rogue Creamery dairy products. She particularly avoids Kraft and

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1 other large dairy brands specifically because of her concerns about factory farming and
2 the abuse that those cows suffer. Ms. Barnes purchased Tillamook products because,
3 having seen the Tillamook representations, she thought she was purchasing a product
4 that aligned with her values. If she had known the truth—that the vast majority of the
5 milk sourced for Tillamook products comes from a massive factory farm in Eastern
6 Oregon where cows are never allowed to graze on grass—she would have bought other
7 dairy products instead of Tillamook’s, or would not have paid as much as she did for the
8 Tillamook products.

9
10 19.

11 Plaintiff Karen Foglesong is a resident of Baker County, Oregon. During the Class
12 Period, she purchased Tillamook dairy products—including cheese and ice cream—in
13 Oregon from one or more retailers, including Albertson’s and Safeway, for personal,
14 family, or household purposes. Ms. Foglesong saw the name “Tillamook” and
15 Tillamook’s marketing representations and believed that Tillamook practices were those
16 of small-scale family farms and not large industrial dairy farms. Ms. Foglesong has seen
17 similar representations made by Tillamook relating to its dairy products in online, print,
18 or television advertising.

19 20.

20 Ms. Foglesong regularly seeks out, and is willing to pay more for, dairy products
21 that she perceives as being more humane and coming from small, pasture-based dairies.
22 For example, in addition to Tillamook products, Ms. Foglesong has sought out and
23 purchased Organic Valley dairy products and other local dairy products at her local
24 farmer’s market. Ms. Foglesong purchased Tillamook products because, having seen the
25 Tillamook representations, she thought she was purchasing a product that aligned with
26 her values. If she had known the truth—that the vast majority of the milk sourced for

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1 Tillamook products comes from a massive factory farm in Eastern Oregon where cows
2 are never allowed to graze on grass—she would have bought other dairy products
3 instead of Tillamook’s, or would not have paid as much as she did for the Tillamook
4 products.
5

6 21.

7 Plaintiff Mary Wood is a resident of Curry County, Oregon. During the Class
8 Period, she purchased Tillamook dairy products—including cheese and butter—in
9 Oregon from one or more retailers, including Fred Meyer, for personal, family, or
10 household purposes. Ms. Wood saw the name “Tillamook” and Tillamook’s marketing
11 representations and believed that Tillamook practices were those of small-scale family
12 farms and not large industrial dairy farms. Ms. Wood has seen similar representations
13 made by Tillamook relating to its dairy products in online, print, or television
14 advertising.
15

16 22.

17 Ms. Wood regularly seeks out, and is willing to pay more for, dairy products that
18 she perceives as being more humane and coming from small, pasture-based dairies. For
19 example, in addition to Tillamook products, Ms. Wood has sought out and purchased
20 Cowgirl Creamery organic cheese products from Market of Choice as well as Rumiano
21 Cheese products direct from the creamery in Northern California. Ms. Wood purchased
22 Tillamook products because, having seen the Tillamook representations, she thought she
23 was purchasing a product that aligned with her values. If she had known the truth—that
24 the vast majority of the milk sourced for Tillamook products comes from a massive
25 factory farm in Eastern Oregon where cows are never allowed to graze on grass—she
26

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1 would have bought other dairy products instead of Tillamook's, or would not have paid
2 as much as she did for the Tillamook products.
3

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6
7 23.

8 Defendant Tillamook County Creamery Association is an Oregon cooperative
9 corporation that does business in Oregon and across the United States. In 2017,
10 Tillamook's revenue attributable to its dairy products was \$800 million.¹¹
11

12 **GENERAL ALLEGATIONS**

13 24.

14 Throughout the Class Period, Tillamook engaged—and continues to engage—in
15 widespread marketing efforts that cause likelihood of confusion regarding the source of
16 its dairy products and their affiliation, connection, or association with another. These
17 efforts include misleading labels and deceptive representations of geographic origin in
18 connection with Tillamook dairy products. Tillamook also fails to disclose to consumers
19 that its products are made with milk from an industrial mega-dairy in Eastern Oregon.
20

21 25.

22 Tillamook's marketing uniformly depicts cows on pasture, farmer and family
23 involvement being integral to cow care (including children helping in cow care), and
24

25 ¹¹ Mary Ellen Shoup, *Tillamook CEO Talks Dairy Innovation and Ambitions of Reaching \$1B in Sales*,
26 FOOD NAVIGATOR Oct. 22, 2018, [https://www.foodnavigator-
27 usa.com/Article/2018/10/22/Tillamook-CEO-talks-dairy-innovation-and-ambitions-of-reaching-
28 1bn-in-sales](https://www.foodnavigator-usa.com/Article/2018/10/22/Tillamook-CEO-talks-dairy-innovation-and-ambitions-of-reaching-1bn-in-sales) (last visited Aug. 12, 2019).

1 small-scale farms, complete with idyllic red barns. See Illustrations 1 – 4 below.
2 Tillamook's messages constitute concrete and uniform representations about the
3 geographic location of Tillamook farms, Tillamook's production practices, and its animal
4 welfare practices.
5
6
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9 **Illustration 1**
10 **Facebook landing page for Tillamook**



11
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17 **Illustration 2**
18 **Tillamook Instagram post**



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**Illustration 3
Tillamook Instagram post**



**Illustration 4
Tillamook Instagram post**



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26.

Tillamook's Facebook page describes the company as follows:

Over a hundred years ago, **several small creameries** teamed up to form the Tillamook County Creamery Association (TCCA) to ensure the quality and reputation of **cheese made in the Tillamook Valley**. Today we're made up of approximately **90 dairy farm families** who own TCCA and are wholeheartedly dedicated to taking care of all dairy products that carries [*sic.*] the Tillamook name. (emphasis added)

27.

Tillamook's marketing messages cause likelihood of confusion or misunderstanding of the source of its products. Tillamook deceptively claims its dairy products are (1) sourced (exclusively) from dairy farms located in Tillamook County, (2) made using production practices that closely resemble small-scale traditional farming, and (3) from cows allowed to graze on pasture and treated better than those on factory farms. Tillamook makes these deceptive representations on its website, in print and television advertisements, and across social media platforms.

Geographic origin claims.

"There are only a few places in the world where the character of the land is inseparable from the character of its people."¹²

28.

Crucial to Tillamook's marketing are the representations that its products are made in Tillamook County, Oregon—from cows raised in the verdant hills and valleys of the Oregon coast. These claims are false. They cause likelihood of confusion or of

¹² A Portrait of Dairy: A Photo Essay, published by Tillamook on Slate.com, http://www.slate.com/articles/health_and_science/tillamook/2015/08/a_portrait_of_dairy_a_photo_essay_of_the_tillamook_co_op.html (last visited Aug. 12, 2019).

1 misunderstanding in violation of ORS 646.608(1)(b). They are deceptive representations
2 of geographic origin in violation of ORS 646.608(1)(d).

3
4 29.

5 Tillamook is a small community. Tillamook County ranges from the Pacific Ocean
6 to about 50 miles inland to the east. The county has a year-round mild, temperate
7 climate and abundant rain.

8 30.

9 Dairy farming is the largest agriculture occupation in Tillamook County. The
10 dairy farms located in Tillamook are predominantly small-scale operations that more
11 closely reflect traditional farming practices than today's industrialized factory farms.
12 Driving by these dairies, you can see dairy cows grazing on pastures of rolling green
13 hills. This is exactly the imagery that Tillamook capitalizes on throughout its marketing
14 campaign. See Illustrations 5 and 6 below.

15 **Illustration 5**
16 **Tillamook website - On The Farm 360° Experience**



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Illustration 6
Tillamook website landing page



31.

Tillamook repeatedly and prominently represents to consumers that its products are “*made with . . . old-fashioned farmer values in Tillamook, Oregon*” by “families [that] have been farming in Tillamook County for multiple generations.”

32.

Other geographic origin claims include: “We’re from a real place on the Oregon coast,” “our gold [i.e., cheese] comes from . . . the deep green grass . . . and pouring rain of the Tillamook Valley,” “We’re committed to sustaining the farming way of life in Tillamook County,” and near-constant references to “Tillamook farmers” (conflating the company and the location).

- 15-

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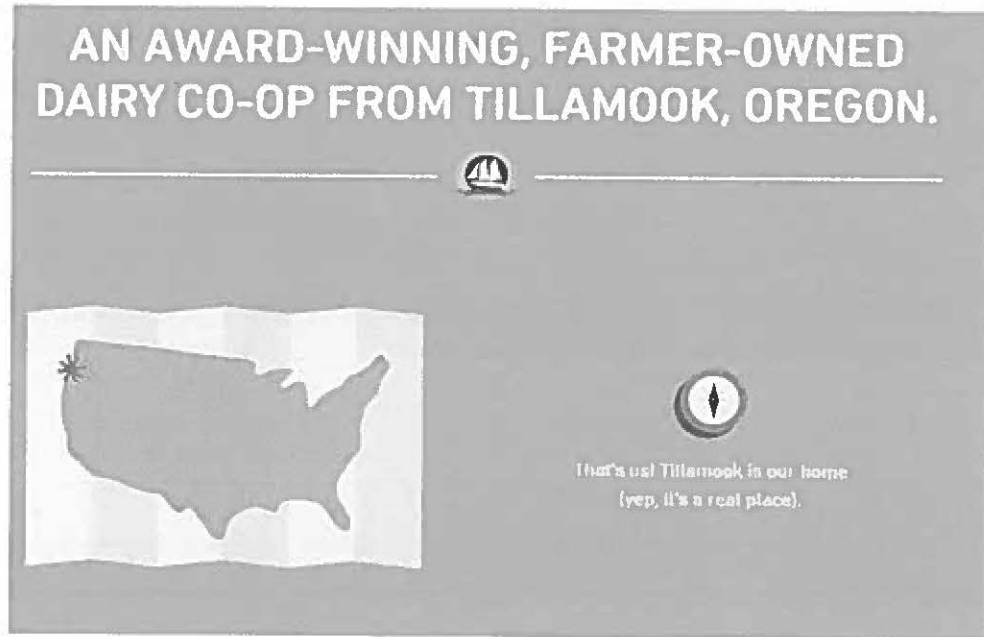
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33.

The name of the company itself—Tillamook County Creamery Association— gives the clear impression that the company and its products are from Tillamook County, Oregon. In case there was any room for confusion:

Illustration 7
Tillamook website



34.

In fact, when shown Illustration 7 above, large majorities of respondents to a consumer survey on Tillamook's advertisements understood it to mean that Tillamook's dairy farms are located in Tillamook County, Oregon. Similarly, when exposed to the marketing claim, "Tillamook cheddar cheese is made with four ingredients, patience, and old-fashioned farmer values in Tillamook, Oregon," a significant majority of respondents took away that Tillamook's dairy farms are located in Tillamook, Oregon. This is exactly the purpose and goal of Tillamook's marketing campaign.

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35.

Consumers prefer local dairies for a number of reasons, including perceived health or quality of the final product, reduced environmental impact, benefits to the local community's economy, and seeing firsthand the production practices of the companies involved.

36.

Knowing this, Tillamook makes these deceptive claims throughout the marketing campaign for all of its products. Deceptive representations about the geographic origin appear throughout Tillamook's website, product packaging, print and television advertisements, and on internet advertising and social media platforms (in which Tillamook participates actively).

37.

In contrast to Tillamook's explicit claims, a large majority of the milk that Tillamook uses in its products is actually sourced from its massive factory farms in Boardman, Oregon.

38.

Boardman is located on the opposite side of the state as Tillamook County. Instead of Tillamook County's mild and wet climate filled with verdant pasture, Boardman is a hot, dry climate classified as steppe or semi-arid. Boardman is flat, arid, and often swelteringly hot—nothing like Tillamook County. And the mega-dairy in Boardman is so large that it is visible from space.

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39.

Tillamook’s claims are pervasive. And they convey information not only about geographic origin, but also about the production methods and animal welfare practices used to make Tillamook products.

Production practices claims.

“Tradition Is Important As Hell . . . members are impassioned about passing on the dairy farming tradition”¹³

40.

Throughout its marketing campaign, Tillamook uses only imagery from small, idyllic farms in Tillamook County. Tillamook makes deceptive representations about its production practices claims on its website, in print and television advertisements, and across social media platforms.

41.

Examples of Tillamook’s production claims include: “each member of the family is involved in life on the farm, including the kids, who often help with daily chores like feeding the calves,” “farmer values,” “we are independent farmer-owners, which means our values guide us instead of profit margins.”

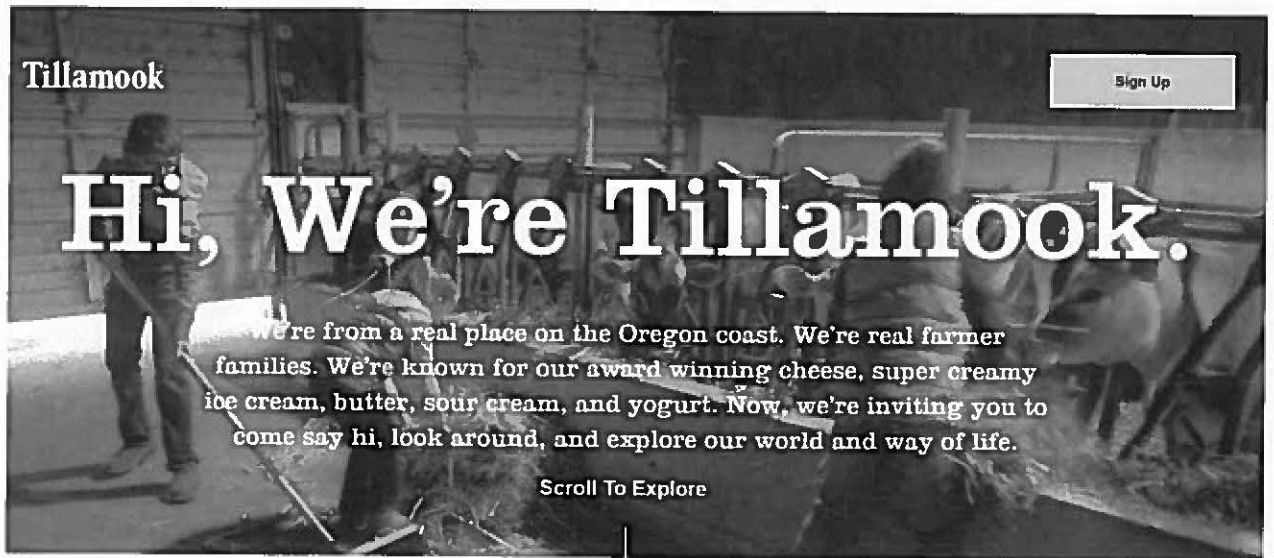
42.

Throughout its marketing campaign, Tillamook pervasively shows cows in open-air barns or on fresh, green pasture. They are shown being given personalized attention by the owners of these small farms and their families. Much of Tillamook’s marketing content involves the young children of dairy families giving Tillamook cows care and affection. See Illustrations 8 and 12 below and Illustration 2 above.

¹³ Tillamook website, <https://www.tillamook.com/our-story/tillamook-co-op.html> (last visited Aug. 12, 2019).

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Illustration 8
Tillamook website, "On The Farm"



43.

By highlighting local families' and farmers' attention to the process of tending for cows and producing milk, Tillamook perpetuates the idea that Tillamook producers are not "factory farms" where cows are treated like just one of tens of thousands of units to be milked, but rather small-production farms that respect their animals and traditional farming practices.

44.

On its website, Tillamook shows cows being milked and attended to individually by caretakers who take their time cleaning and prepping their udders and even petting and talking to them.¹⁴

¹⁴ Tillamook website, <https://www.tillamook.com/national/milking> (last visited Aug. 12, 2019).

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45.

In this, and many other ways, Tillamook actively seeks to differentiate itself from “factory farms” and industrialized food. In fact, Tillamook devoted an entire marketing campaign that encouraged consumers to “Say Goodbye to Big Food” and to purchase Tillamook products because they are “real food” and “Dairy Done Right.” See Illustrations 9 and 10 below.

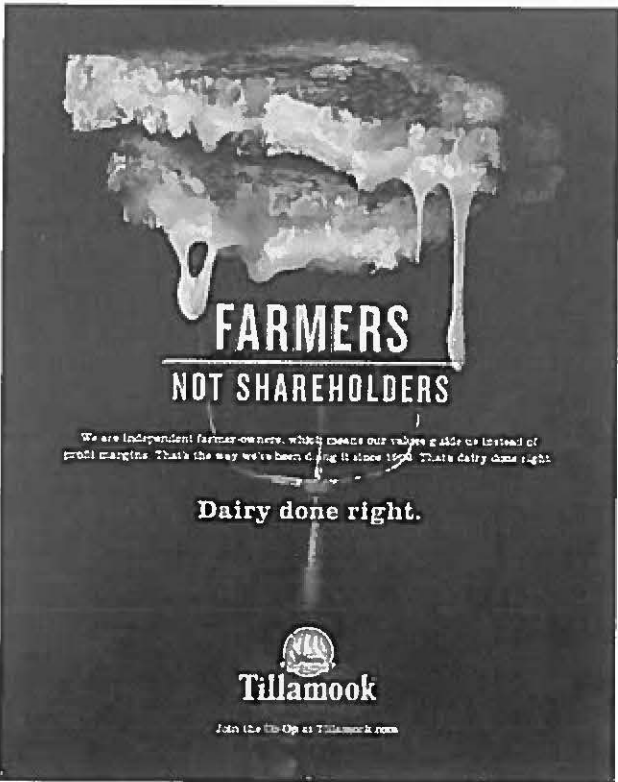
Illustration 9

Print advertisement, “Goodbye Big Food, Hello Real Food”



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Illustration 10
Print advertisement, "Farmers, Not Shareholders"



46.

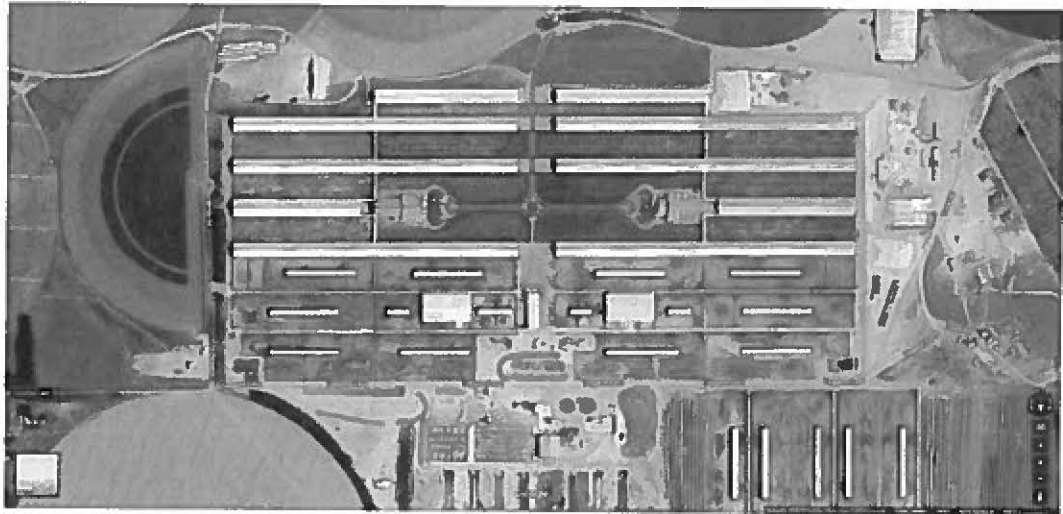
In Tillamook's signature television advertisement¹⁵ saying goodbye to "Big Food," the narrator states, "Enough quantity over quality. I'm done." The narrator says hello to "Real Food," against a backdrop of farmers in misty Tillamook County, rising early to tend to cows and do farm chores:

Hello farmers. Hello Co-Op. Hello Integrity [with image of little girl bottle-feeding calf]. Hello Molly [cow being petted]...Hello people who care about their food and how it's made. Hello everyone. We found something real: Tillamook.

¹⁵ See Tillamook: Goodbye Big Food. Hello Real Food, https://www.youtube.com/watch?v=7PIRO_C2uRo (last visited Aug. 12, 2019).

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Illustration 11
Threemile Canyon Farms, home to 70,000 cows



49.

Threemile has so many dairy cows that it has to use a computerized database to keep track of its cows, and boasts of “round-the-clock” milking. Instead of grazing on green grass in pastures, the cows confined at Threemile are fed corn, alfalfa, and other feed crops.¹⁶ Threemile milks 25,000 cows daily — “all done without a single person

¹⁶ Threemile Canyon Farms website, Dairy Partnerships, <https://www.threemilecanyonfarms.com/partnerships/dairy> (last visited Aug. 12, 2019).

1 ushering them into place,” and robotic arms are “who” clean and stimulate each cow’s
2 udders.¹⁷

3
4 50.

5 Tillamook’s marketing messages, such as the claim that Tillamook cheese is made
6 with “old-fashioned farmer values,” prompted in respondents to a consumer survey
7 clear perceptions regarding the company’s operations—i.e., similar to a family farm
8 rather than an industrial operation. In fact, when shown Illustration 9 (Goodbye Big
9 Food), a significant majority of respondents took away that Tillamook gets all its milk
10 from small-scale family farms and not large industrial dairy farms. This ad, as well,
11 prompted clear perceptions regarding the company’s reliance on small-scale family
12 farms rather than large industrial milk suppliers, and its superior animal treatment.

13 51.

14 Similarly, survey respondents were presented with one of Tillamook’s typical
15 social media posts, an image of “three generations” of a Tillamook farm family,
16 accompanied by the text,

17 *Everything Tillamook farmers do is for the health, comfort and happiness of their*
18 *cows. Chairman of the Board Shannon Lourenzo’s barns are outfitted with*
19 *waterbeds. Many of his neighbors’ barns are decked out with backscratchers.*
20 *Farmer Wendy Landolt, wife of Director Ryan Landolt, is renowned for singing*
21 *country songs to the baby calves. Cows are the foundation of Tillamook’s business.*
22 *Importantly, they’re also a part of our farmers’ families. So there’s no limit to the*
23 *care our farmers will give, 24 hours a day, 7 days a week.*

24 From this ad, respondents took away a strong impression that Tillamook gets all
25 its milk from small-scale family farms and not large industrial dairy farms. Consumers

26
27 ¹⁷ Erick Peterson, *Dairy Strive to Keep Improving*, CAPITAL PRESS (May 29, 2018),
28 <http://www.capitalpress.com/Oregon/20180529/dairy-strives-to-keep-improving> (last visited
Aug. 12, 2019).

1 expressed a clear perception regarding the company's special treatment of and care for
2 its animals, of cows grazing freely on pastures, on small-scale family farms which are
3 the only source of the company's milk.

4
5 52.

6 Like the consumers surveyed, Plaintiffs, who thought they were buying products
7 sourced from such small family farms and pasture-grazing cows in Tillamook, Oregon,
8 were shocked and dismayed to learn they were in fact patronizing the country's largest
9 dairy factory farm, where tens of thousands of cows are confined on concrete or in
10 barren feedlots.

11 53.

12 Because Tillamook's pervasive production claims mislead consumers into
13 believing that Tillamook products are sourced from small, local farms where cows graze
14 on grass and are given individualized care, Tillamook's claims are deceptive, and are
15 likely to mislead reasonable consumers like Plaintiffs.

16 **Animal welfare claims.**

17 "There's always a well-intentioned reason behind everything our farmers do, and it's
18 always for the health and comfort of their animals."¹⁸

19 54.

20 Prevalent throughout Tillamook's marketing are representations about the
21 superior treatment of its cows. Tillamook marketing broadly features cows afforded
22 outdoor access—often, cows contentedly grazing on verdant, wide-open pastures. At
23 Tillamook's creamery where the company markets directly to the public, one exhibit
24 tells consumers that "cows need places to rest and roam." Tillamook also represents,

25 ¹⁸ Tillamook website, Our Story, Calf-Care, <https://www.tillamook.com/our-story/calf-care.html>
26 (last visited Jul. 29, 2019).

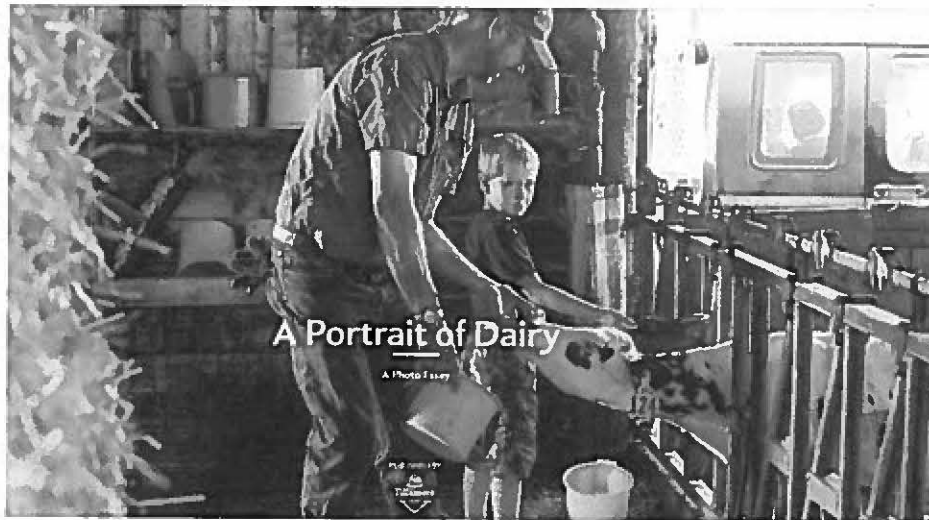
1 through imagery and specific claims, that its cows are given personalized attention and
2 care by the owners of these small farms and their families. See Illustration 8 above and
3 Illustrations 12 and 13 below.

4 55.

5 Examples of Tillamook's animal welfare claims include: "We treat our cows like
6 family," "Our farmers know that happy, healthy cows make quality, wholesome milk,"
7 "The best dairy calls for the best cow care," "best practices in animal welfare," "living
8 just yards from the barn, farmers are around 24/7/365 for their cows," and "even the
9 cows are happy."

10 **Illustration 12**

11 **Tillamook photo essay published on Slate.com, A Portrait of Dairy¹⁹**



21 56.

22 Consumers reasonably expect that smaller family-run dairies provide
23 individualized care to cows. By using only imagery from these small, Tillamook County
24 farms, where cows are kept in open-air barns with clean hay bedding, or on fresh, green

25 ¹⁹ A Portrait of Dairy: A Photo Essay, published by Tillamook on Slate.com,
26 http://www.slate.com/articles/health_and_science/tillamook/2015/08/a_portrait_of_dairy_a_phot_o_essay_of_the_tillamook_co_op.html (last visited Aug. 12, 2019).

1 pasture, Tillamook caused Plaintiffs and other reasonable consumers to believe that all
2 the cows milked for Tillamook products are similarly treated.

3 **Illustration 13**
4 **Tillamook Instagram post**



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Illustration 14
Tillamook website, Our Story²⁰



Three generations of the Soals Family

Gotta Love The Cows

Everything Tillamook farmers do is for the health, comfort and happiness of their cows. Chairman of the Board Shannon Lourenzo's barns are outfitted with waterbeds. Many of his neighbors' barns are decked out with backscratchers. Farmer Wendy Landolt, wife of Director Ryan Landolt, is renowned for singing country songs to the baby calves.

Cows are the foundation of Tillamook's business. Importantly, they're also a part of our farmers' families. So there's no limit to the care our farmers will give, 24 hours a day, 7 days a week.

²⁰ Tillamook website, Our Story, <https://www.tillamook.com/our-story/tillamook-co-op.html>

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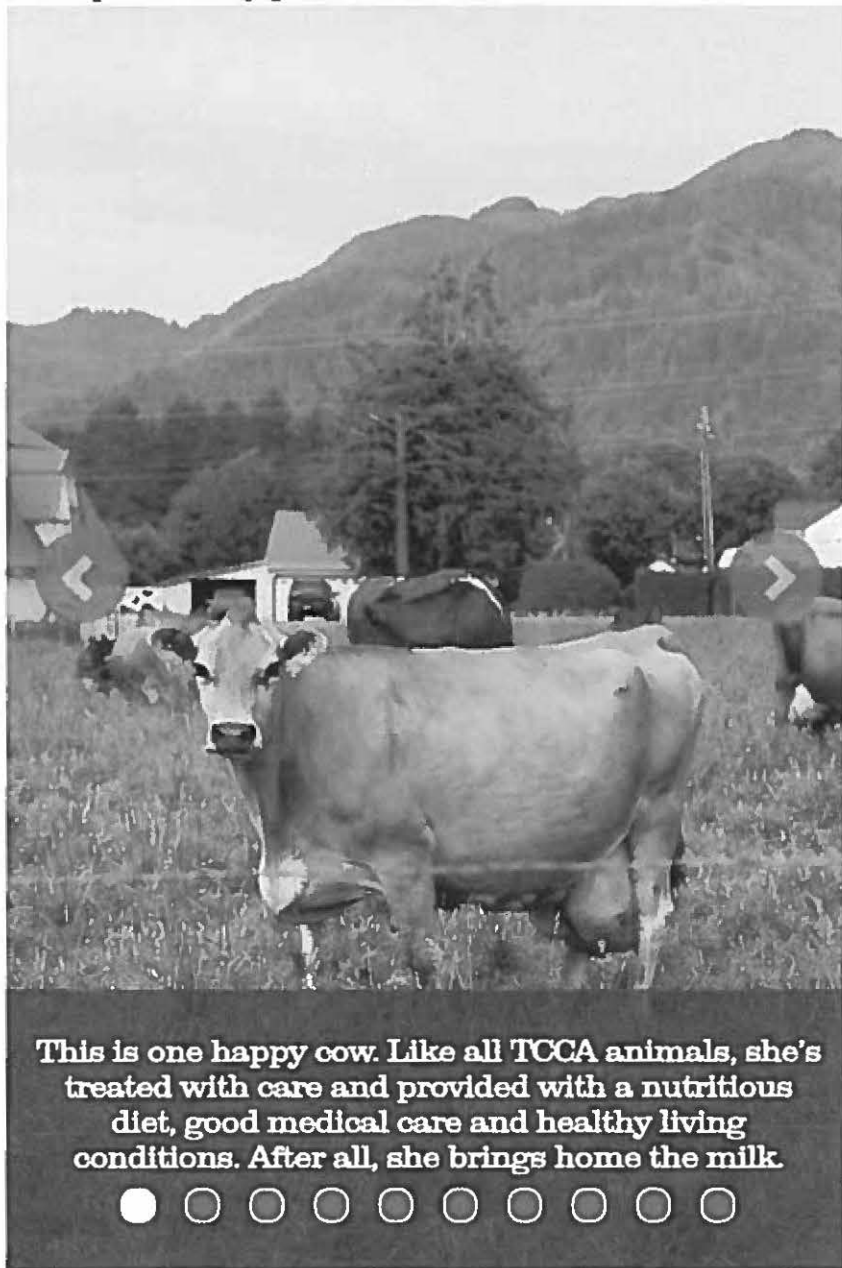
Illustration 15
Tillamook Instagram post



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Illustration 16

Tillamook photo essay published on Slate.com, A Portrait of Dairy²¹



²¹ A Portrait of Dairy: A Photo Essay, published by Tillamook on Slate.com, http://www.slate.com/articles/health_and_science/tillamook/2015/08/a_portrait_of_dairy_a_photo_essay_of_the_tillamook_co_op.html (last visited Aug. 12, 2019).

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57.

However, the cows at Tillamook's Boardman, Oregon factory farm experience nothing like this. Instead, cows confined at Threemile Canyon are housed by the tens of thousands in industrial-type warehouses where they stand on concrete or in their own waste. They don't wander indoors and outdoors and graze at their leisure. There are no small children taking care of each of them, and it's extremely unlikely that—given the 32,000+ dairy cows in one facility at Threemile—anyone bothers to give individual names or attention to them (as indicated by some of Tillamook's social media posts).

58.

Cows confined in industrial factory farms like Tillamook's in Boardman frequently suffer from a disease called mastitis. Mastitis is a bacterial invasion of the mammary gland, and can occur as a result of trauma to cows' udder caused by milking machines, poor sanitation in milking parlors and barns, and genetic selection for extremely high milk yield. Mastitis is the most prevalent disease among dairy cows, and for the cows, is excruciatingly painful.

59.

Cows suffering from mastitis produce milk with a high somatic cell count (SCC) produced in response to the cow's infected mammary gland. An SCC of more than 200,000 cells per milliliter of milk is "abnormal and an indication of inflammation in the udder."²² Oregon does not permit milk with an SCC of 500,000 cells per milliliter to be sold. Tillamook's bulk milk from Threemile Canyon Farms routinely has an SCC of more than 200,000, with SCCs of up to 450,000 in 2016 and 340,000 in 2017.

²² U.S. Dep't of Agric., *Dairy 2014: Part II—Milk Quality, Milking Procedures, and Mastitis on U.S. Dairies*, 2014, at 47 (Sept. 2016), https://www.aphis.usda.gov/animal_health/nahms/dairy/downloads/dairy14/Dairy14_dr_Mastitis.pdf.

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60.

This means that the majority of Tillamook's cows are suffering from mastitis—a painful disease caused or made worse by teat trauma from milking, and by poor sanitation.

61.

In short, there is a world of difference between the animal care and living environments depicted in Tillamook's marketing campaign and those experienced by the vast majority of cows that supply Tillamook milk. In reality, most of Tillamook's cows are never allowed access to pasture (or even outside the warehouses in which they are confined), are not provided individualized care on small family farms, and are even suffering from painful infections.

62.

When respondents to a recent survey were presented with the claim, "*Tillamook cheddar cheese is made with four ingredients, patience, and old-fashioned farmer values in Tillamook, Oregon,*" and asked what old-fashioned farmer values are, when it comes to animal care, over 70 percent referred to animal treatment and well-being, the environment in which animals were raised, the natural/unaltered quality of their raising, and the creation of a superior product. To consumers, Tillamook is saying: "*Raising animals humanely, feeding them ethically and taking pride in your work;*" "*Take care of the animals, feed them natural foods, don't give them antibiotics and don't feed them gm0s;*" "*not mass produced - being humane;*" "*I think animals need to be treated with care and attention, and old farmer values should reflect that in the time before industrialization of livestock.*"

63.

In another, closed-end survey question, this same marketing claim prompted clear perceptions regarding the company's concern for animal welfare. And relative to

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1 respondents from Idaho, Montana, and Washington (the other three Pacific Northwest
2 states surveyed), those from Oregon were more likely to agree that the claim conveyed
3 that Tillamook's cows are treated more humanely than those of other companies. In
4 other words, Tillamook's marketing is particularly deceptive to Oregon consumers.

5
6 64.

7 The messages sent by Tillamook's imagery—conveying superior cow welfare and
8 personalized care for its animals—are also being received by consumers. In the survey
9 discussed above, for example, Illustrations 13 and 14 prompted clear perceptions in
10 respondents regarding the company's special treatment of and care for its animals—
11 being that of a company operating on a small scale with pasture-grazing cows. And
12 again, relative to respondents from Idaho, Montana, and Washington, Oregon
13 consumers viewing Illustration 13 were more likely to agree that the social media post
14 conveyed that Tillamook gets all its milk from small-scale family farms and not large,
15 industrial dairy farms.

16 65.

17 Because Tillamook's animal care practices and the living environment it provides
18 its cows are in fact no different than those of the average dairy factory farm, and in fact
19 cause suffering for the thousands of cows confined together in its warehouses,
20 Tillamook's marketing representations are illegal and deceptive, and reasonable
21 consumers are likely to be deceived.

22 CLASS ACTION ALLEGATIONS

23 66.

24 Plaintiffs bring this action as a class action pursuant to ORCP 32 for the time
25 period beginning one year from before the date of filing of this action to the date on
26 which a class is certified ("Class Period").

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67.

Plaintiffs seek to represent an Oregon class consisting of: All persons in Oregon who purchased Tillamook dairy products in Oregon during the Class Period. Excluded from the Class are Defendant's officers and directors and the immediate families of Defendant's officers and directors. Also excluded from the Class is Defendant and its subsidiaries, parents, affiliates, joint venturers, any entity in which Defendant has or has had a controlling interest, any judge who rules on any matter connected to this case, and any juror who sits on this case at trial.

68.

The class is so numerous that joinder is impracticable. ORCP 32A(1).

69.

This action involves common questions of law and fact because each Class Member's claim derives from the same deceptive practices. ORCP 32A(2). The common questions of law and fact involved predominate over questions that affect only Plaintiffs or individual Class Members. ORCP 32B(3). Common questions of law or fact include:

- Whether Tillamook marketed and sold its dairy products to Plaintiffs, and those similarly situated, using deceptive statements or representations;
- Whether Tillamook omitted or misrepresented material facts in connection with the marketing and sale of its dairy products;
- Whether Tillamook engaged in a common course of conduct as described in this Complaint;
- Whether Tillamook's marketing and sales of its dairy products violates the Unlawful Trade Practices Act, ORS 646.608(1) in one or more of the ways alleged;
- Whether one or more of Tillamook's violations caused ascertainable losses to plaintiffs and the class; and
- Whether, and to what extent, injunctive relief should be imposed on Tillamook to prevent such conduct in the future.

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70.

Plaintiffs' claims are typical of the Class. ORCP 32A(3). All Class Members bought products marketed with one or more of Tillamook's deceptive claims. Tillamook's deceptive actions concern the same business practices described in this Complaint, irrespective of where they occurred or were received. Because, like Plaintiffs, all Class Members paid more for Tillamook products than they otherwise would have had Tillamook not falsely marketed them, or bought Tillamook products when they otherwise would not have (and would have instead purchased other dairy products that *do* have the benefits that Tillamook claimed its products have), the injuries of each Class Member were caused directly by Tillamook's illegal conduct as alleged in this Complaint.

71.

Plaintiffs will fairly and adequately protect the interests of all Class Members. ORCP 32A(4). The class shares a common interest in injunctive relief for Tillamook's violations. Plaintiffs also have no interests that conflict with or are antagonistic to the interests of Class Members. Plaintiffs have retained competent and experienced class action attorneys to represent their interests and that of the class.

72.

Plaintiffs commenced this action seeking only injunctive and equitable relief. Plaintiffs gave notice as required by ORCP 32A(5) and 32H and seek damages.

73.

A class action is superior. ORCP 32B. There is no plain, speedy, or adequate remedy other than by maintenance of this class action. The prosecution of individual remedies by members of the Class will tend to establish inconsistent standards of

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1 conduct for Tillamook and result in the impairment of Class Members' rights and
2 disposition of their interests through actions to which they were not parties. Class action
3 treatment will permit a large number of similarly situated persons to prosecute their
4 common claims in a single forum simultaneously, efficiently, and without the
5 unnecessary duplication of effort and expense that numerous individual actions would
6 engender. Furthermore, as the injury suffered by each individual member of the Class
7 may be relatively small, the expenses and the burden of individual litigation would
8 make it difficult or impossible for individual members of the Class to redress the wrongs
9 done to them, while an important public interest will be served by addressing the matter
10 as a class action.

11 74.

12 The prerequisites to maintaining a class action for injunctive or equitable relief
13 pursuant to ORCP 32 are met as Tillamook has acted or refused to act on grounds
14 generally applicable to the Class, thereby making appropriate final injunctive or
15 equitable relief with respect to the Class as a whole.

16 **FIRST CLAIM FOR RELIEF VIOLATION OF UNLAWFUL TRADE PRACTICES ACT**

17 **First Count—Willful violation**

18 75.

19 Tillamook willfully violated ORS 646.608(1) in one or more of the following ways,
20 and, as set forth in more detail, plaintiffs and members of the class suffered ascertainable
21 losses, in that they purchased Tillamook products or paid more for Tillamook products
22 than they otherwise would have paid:

23 A. Tillamook violated ORS 646.608(1)(b) by causing likelihood of confusion or of
24 misunderstanding as to the source, sponsorship, approval, or certification of
25

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1 goods. Specifically, Tillamook causes likelihood of confusion or
2 misunderstanding that:

- 3 1) It sources its dairy products from small family farms;
4 2) It sources its dairy products from Tillamook County; and
5 3) It sources its dairy products from farms that prioritize animal welfare;

6 B. Tillamook violated ORS 646.608(1)(d) by using deceptive representations or
7 designations of geographic origin in connection with goods; and

8 C. Tillamook violated ORS 646.608(1)(e) by representing that goods had qualities
9 or characteristics that they did not have.

10 76.

11 Plaintiffs and the class suffered ascertainable losses as a result, as alleged in more
12 detail, in one or more of the following ways:

13 A. Plaintiffs and the class purchased goods at an inflated price based upon the
14 represented increased economic market value of those products as a result of
15 Tillamook's successful marketing that created widespread likelihood of confusion
16 or misunderstanding and allowed Tillamook to charge a premium for its dairy
17 products, and as a result plaintiffs and members of the class paid more than they
18 otherwise would have paid for Tillamook dairy products;

19 B. Plaintiffs and the class paid higher prices for Tillamook's dairy products
20 because of their understanding that the dairy products all came from the small
21 family farms with increased priority of animal welfare in Tillamook County and
22 the Tillamook County Creamery Association, located in Tillamook;

23 C. Plaintiffs and members of the class overpaid for the Tillamook dairy products
24 because the dairy products were not as represented;

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1 D. Plaintiffs and the class purchased “misbranded goods” as defined by 21 CFR
2 101.18 (False Statement of Geographic Origin). The sale of misbranded goods are
3 prohibited by 21 USC Sec. 331. Because defendant was prohibited from selling
4 misbranded goods by federal law, plaintiffs and the class seek damages based
5 upon the purchase price for those illegal products;

6 E. Defendant disseminated a false advertisement as defined by ORS 616.215(5)
7 which is prohibited by ORS 616.265 and ORS 616.270. Because defendant was
8 prohibited from advertising its products by state law plaintiffs and the class seek
9 damages based upon the purchase price for those illegally advertised products;
10 and

11 F. Plaintiffs and the class purchased products that were not ecofriendly, or from
12 family farms or that were prioritizing animal welfare despite the successful
13 advertising campaign that depicts otherwise. Without that essential ecofriendly
14 characteristic, plaintiffs and the class seek damages based upon the purchase
15 price for those products.

16 77.

17 Defendant’s illegal marketing and sales prices have lead plaintiffs and members
18 of the class to routinely pay more for Tillamook dairy products, as compared to national
19 and generic brands. By way of example, on August 10, 2019, Safeway 3212 in Ashland
20 Oregon sold Tillamook sharp cheddar (8 oz) for \$3.59, compared to Cabot sharp cheddar
21 (8 oz.) for \$2.50, a difference of \$1.09. Similarly, on August 11, 2019, Fred Meyer 3030 NE
22 Weidler, in Portland, sold Tillamook medium cheddar cheese (8 oz) for \$3.69 and Kroger
23 medium cheddar cheese (8 oz) for \$2.69, a difference of \$1.
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The increased economic value associated with defendant's illegal advertising and sales practices are also documented by more recent Oregon sales offers on or about February 27, 2020:

Butter	Tillamook	5.49	Safeway St Helens	4.99	Land O Lakes
				3.99	Vital Farms
		5.49	Safeway Beaverton	4.99	Land O Lakes
				3.59	Lucerne
		5.49	Albertsons Tigard	4.99	Land O Lakes
				3.59	Lucerne
		4.89	Fred Meyer Hollywood	4.59	Darigold
				3.29	Kroger
				2.99	Moovelous
		5.99	New Seasons Grant Pk	4.49	New Seasons Grant Park
		5.49	Safeway NE Sandy	3.59	Lucerne
		4.89	Mkt Fresh St Helens	3.69	Food Club

Medium Cheddar 8 oz	Tillamook	3.99	Safeway St Helens	2.79	Lucerne
		3.34	Fred Meyer	1.88	Kroger
			Scappoose		
		3.69	Whole Foods	2.99	365
		3.99	Safeway NE Sandy	2.79	Lucerne

Medium Cheddar 16 oz	Tillamook	6.99	Safeway Beaverton	4.99	Lucerne
		4.99	Fred Meyer Hollywood	2.99	Moovelous
		6.45	Mkt Fresh St Helens	4.89	Food Club

Extra Sharp 8 oz	Tillamook	5.39	Whole Foods	4.79	Cabot
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1	Shredded Cheese					
2		Tillamook	3.99	Safeway Beaverton	2.99	Lucerne
3			3.99	Albertsons Tigard	2.99	Lucerne
			5.19	Mkt Fresh St Helens	3.35	Food Club

4						
5	Cheese Slices					
6		Tillamook	3.99	Safeway Beaverton	2.99	Lucerne
7			3.99	Albertsons Tigard	2.99	Lucerne
8			4.89	Fred Meyer Hollywood	4.59	Darigold
			4.69	Mkt Fresh St Helens	3.89	Food Club

9	Sour Cream					
10		Tillamook	2.39	Mkt Fresh St Helens	1.79	Food Club

11						
12	Yogurt - Large					
13		Tillamook	3.05	Mkt Fresh St Helens	2.79	Food Club

14	Yogurt - Small					
15		Tillamook	.79	Safeway Beaverton	.69	Yoplait
16			.79	Albertsons Tigard	.59	Lucerne
17					.69	Yoplait
18					.49	Lucerne
			1.00	Fred Meyer Hollywood	.40	Kroger

19	Ice Cream - gallon					
20		Tillamook	6.79	Zupans	6.29	Umpqua
21			5.49	Fred Meyer	2.50	Kroger Deluxe
22			5.49	Hollywood Fred Meyer	2.50	Kroger Deluxe
23				Hollywood		

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79.

To the extent required by the Court, Plaintiffs and the class will seek leave to add additional allegations of evidence of overpayment once Tillamook provides the previously-requested discovery on production and pricing, including comparisons between Tillamook brand and unbranded products manufactured by Tillamook and by third-party producers, as well as any additional necessary pricing and sales discovery that may be obtained from third parties.

80.

Plaintiffs and the class also seek equitable relief, an injunction, and attorneys' fees. ORS 656.638; ORS 646.636.

Second Count—Reckless or knowing violation

81.

Plaintiffs incorporate and reallege the unlawful and deceptive business acts and practices of Tillamook as set forth above.

82.

Tillamook knowingly or recklessly violated the ORS 646.608 in one or more of the ways alleged above, and as a result Plaintiffs and the class suffered ascertainable losses, in that they purchased or paid more for Tillamook branded products than they otherwise would have paid. Plaintiffs and the class are entitled to recover \$200 per class member. Plaintiffs and the class seek equitable relief, an injunction, and attorneys' fees. ORS 656.638; ORS 646.636.

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PLAINTIFFS DEMAND A JURY TRIAL as to each issue on which they are entitled.

DATED this 2nd day of March, 2020.

SUGERMAN LAW OFFICE

By /s/ David F. Sugerman
David F. Sugerman, OSB No. 86298
Attorney for Plaintiffs and Trial Attorney