

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re: )  
 ) P&S Docket No. D-  
 )  
 ) Tyson Farms, Inc. )  
 )  
 ) Respondent )  
 ) Complaint

12-0123

There is reason to believe that the Respondent Tyson Farms, Inc. has willfully violated the provisions of the Packers & Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 *et seq.*)(Act) and therefore this complaint is issued alleging the following:

I

(a) Respondent Tyson Farms, Inc. (Respondent) is a North Carolina Corporation with a business mailing address of 150 Fayetteville St., Box 1011, Raleigh, NC 27601, with its principal office located at 2200 Don Tyson Parkway CP131, Springdale, AR 72762 and its principal business mailing address at P.O. Box 2020 CP131, Springdale, AR 72762.

(b) Respondent, at all times material to this complaint, was:

- (1) engaged in the business of obtaining live poultry by purchase or under poultry growing arrangements for the purpose of slaughter,
- (2) shipping processed poultry products in commerce, and
- (3) operating as a live poultry dealer subject to the provisions of the Act.

## II

(a) Respondent, from the period of August 2009 through June of 2010, placed flocks of birds with poultry growers that were of different breeds. These two breeds, called "Cobb 500" and "Cobb 700", had different characteristics, in that Cobb 700 birds did not gain weight as rapidly as Cobb 500 birds. Respondent, however, based its weekly compensation to poultry growers on comparisons between the flocks of growers irrespective of those differences.

(b) The weekly ranking sheets from September 26, 2009, through August 7, 2010, showed that 542 flocks were raised by 115 growers over the 46 week period.

Of those flocks:

- (1) 168 flocks were of only Cobb 700 birds
- (2) 88 flocks were of only Cobb 500 birds
- (3) 274 flocks were of mixed percentages of Cobb 500 and Cobb 700 birds,  
and
- (4) the remaining 12 flocks were mixtures of Cobb 500, Cobb 700, and  
other poultry varieties.

(c) During this period, Respondent settled all flocks in a weekly settlement system such that flock performance for birds slaughtered were averaged and compared with the performance of flocks from each grower whose birds were slaughtered that week. Superior performing flocks received a premium over the base pay for every flock that performed better than the average that week, and inferior performing flocks received a discount from the base pay for every flock that

performed worse than average for the week.

(d) Pure Cobb 500 flocks performed better than mixed flocks and Cobb 700 flocks. In particular, Pure Cobb 500 flocks typically produced 5.85 pounds of meat per bird. Pure Cobb 700 flocks, however, only produced 5.24 pounds of meat per bird.

(e) Moreover, the Cobb 700 flocks were more expensive to feed, in that Cobb 700 birds cost 21.45 cents per pound of produced meat, and Cobb 500 birds cost 21.20 cents per pound of produced meat.

(f) Respondent knew and should have known that it was placing genetically different breeds of birds with different growers and settling those growers as part of the same settlement group.

(g) Respondent unfairly and deceptively compared growers of Cobb 700 birds to growers of Cobb 500 birds, resulting in substantial underpayments to growers whose flocks included Cobb 700 birds.

### III

By virtue of the facts alleged in paragraph II, Respondent violated section 410 of the Act, and has committed an unfair practice and deceptive practice under section 202 of the Act. (7 U.S.C. §§ 192, 228b-1)

WHEREFORE, it is hereby ordered that this complaint shall be served on Respondent for the purpose of determining whether Respondent has willfully violated the Act. Respondent shall file an answer with the Hearing Clerk, United States Department of Agriculture, Washington, D.C. 20250, in accordance with the

Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §1.130 *et seq.*)(Rules of Practice). Failure to file an answer shall constitute an admission of all the material allegations of this complaint.

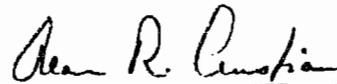
The Packers and Stockyards Program, GIPSA requests:

1. That unless Respondent fails to file an answer within the time allowed therefor, or files an answer admitting all the material allegations of this complaint, this proceeding be set for oral hearing in accordance with the Rules of Practice governing proceedings under the Act.

2. That an order be issued requiring Respondent to cease and desist from the violations found to exist and assessing such civil penalties as are authorized by section 411 of the Act (7 U.S.C. §228b-2) and warranted under the circumstances.

Done at Washington, D.C.

this 20 day of December, 2011



Alan R. Christian  
Deputy Administrator,  
Packers & Stockyards Program

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