IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

ORGANIC CONSUMERS ASSOCIATION, **Plaintiff,** **v.** **NOBLE FOODS, INC., d/b/a THE HAPPY EGG CO. USA,** **Defendant.**	**2020 CA 002009 B** **Judge Yvonne Williams**

ORDER DENYING MOTION TO DISMISS

Before the Court is Defendant The Happy Group Inc. d/b/a The Happy Egg's ("Happy Egg") Motion to Dismiss the Complaint ("Motion"), filed on June 4, 2020. Plaintiff Organic Consumers Association ("OCA") filed an Opposition to the Motion on July 2, 2020. Happy Egg filed its Reply on July 23, 2020. For the following reasons, the Motion shall be **DENIED**.

I. BACKGROUND

Happy Egg markets and sells eggs that purportedly come from "free range" hens. Compl. ¶ 8. Happy Egg periodically changes its packaging. *Id.* ¶ 29. On March 13, 2020, OCA purchased Happy Egg eggs to evaluate whether the current label has a tendency to mislead consumers. *Id.* ¶ 29. Happy Egg's current packaging labels the eggs "free range," and on the same label, states the hens are "pasture raised on over 8 acres." *Id.* ¶ 9. The packaging also bears the logo of the American Humane Association ("AHA"). *Id.* ¶ 29. The three standards used in egg industry, including by AHA, to measure animal welfare are "cage free," "free range," and "pasture raised." *Id.* ¶¶ 39–40. According to this standard, "pasture raised" hens have access to 2.5 acres per 1,000 hens, while "free range" hens can have access to 0.5 acres per 1,000 hens. *Id.* ¶ 50. Happy Egg's website and social media also use the phrase "pasture raised," creating addition consumer confusion. *Id.* ¶¶ 43–49. Since some consumers specifically seek out to

purchase eggs which meet the highest "pasture raised" standard, OCA alleges that the representations that Happy Egg makes on its packaging that the eggs are "free range" and "pasture raised" tends to mislead consumers about the animal welfare standards its eggs meet. *Id.* ¶¶ 38, 41.

On March 24, 2020, OCA filed the Complaint against Happy Egg, alleging that Happy Egg's representations violate the District of Columbia Consumer Protection Procedures Act ("CPPA"). Happy Egg filed its Motion to Dismiss on June 4, 2020. The Motion seeks dismissal for lack of subject matter jurisdiction on the grounds that OCA lacks standing to bring its claims. Def.'s Mot. at 1. The Motion also argues that even if the Court were to find proper standing, OCA has failed to state a claim regarding Happy Egg's use of the phrase "pasture raised." *Id.* OCA filed the Opposition to the Motion on July 2, 2020, and Happy Egg filed its Reply on July 23, 2020.

II. LEGAL STANDARD

A Complaint should be dismissed under Rule 12(b)(1) if the trial court lacks subject matter jurisdiction. Super. Ct. Civ. R. 12(b)(1). A question of subject matter jurisdiction "concerns the court's authority to adjudicate the type of controversy presented by the case under consideration." *In re J.W.*, 837 A.2d 40, 44 (D.C. 2003) (quoting *In re R.L.*, 590 A.2d 123, 128 (D.C. 1991) (citing 1 RESTATEMENT (SECOND) OF JUDGMENTS § 11 (1982)). Whether the trial court has subject matter jurisdiction is a question of law which is reviewed de novo. *Davis & Assocs. v. Williams*, 892 A.2d 1144, 1148 (D.C. 2006).

A complaint should be dismissed under Rule 12(b)(6) if it does not satisfy the requirement of Rule 8(a) that a pleading contain a "short and plain statement of the claim showing that the pleader is entitled to relief." "To survive a motion to dismiss, a complaint must

contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Potomac Development Corp. v. District of Columbia*, 28 A.3d 531, 544 (D.C. 2011) (quotation and citations omitted). For the purposes of a motion to dismiss, the complaint must be construed in the light most favorable to the plaintiff and its allegations taken as true. *McBryde v. Amoco Oil Co.*, 404 A.2d 200, 202 (D.C. 1979). A complaint that passes muster under this standard is "specific enough to give the defendant fair notice of what the claim is and the grounds upon which it rests." *Tingling-Clemons v. District of Columbia*, 133 A.3d 241, 245 (D.C. 2016) (quotation, brackets, and citation omitted).

"A complaint should not be dismissed because a court does not believe that a plaintiff will prevail on its claim; indeed it may appear on the face of the pleadings that a recovery is very remote and unlikely but that is not the test." *Carlyle Investment Management, LLC v. Ace American Insurance Co.*, 131 A.3d 886, 894 (D.C. 2016) (quotations, brackets, and citations omitted). In addition, the Court should "draw all inferences from the factual allegations of the complaint in the plaintiff's favor." *Id*. (quotations and citations omitted). However, legal conclusions "are not entitled to the assumption of truth," *Potomac Development Corp.*, 28 A.3d at 544 (quotation and citation omitted), so "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Sundberg v. TTR Realty, LLC*, 109 A.3d 1123, 1128-29 (D.C. 2015) (quotation omitted). The "complaint must plead factual content that allows the court to draw the reasonable inference that defendant is liable for the misconduct alleged." *Poola v. Howard University*, 147 A.3d 267, 276 (D.C. 2016) (quotation omitted).

III. DISCUSSION

A. Dismissal for Lack of Subject Matter Jurisdiction

Happy Egg asserts that the Court lacks subject matter jurisdiction because OCA does not have Article III standing to bring its claim. Def.'s Mot. at 3–7. The Court does not agree and finds that OCA has established standing. "A defect of standing is likewise a defect in subject matter jurisdiction." *UMC Dev., LLC v. District of Columbia*, 120 A.3d 37, 43 (D.C. 2015). To meet the constitutional standing requirements under Article III, a plaintiff must: (1) show an "injury-in-fact" which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical, (2) which is fairly traceable to the challenged action of the defendant, and (3) likely to be redressed by a favorable decision. *Padou v. District of Columbia*, 77 A.3d 383, 388–89 (D.C. 2013). The Court of Appeals has ruled that a plaintiff bringing a claim under the District of Columbia Consumer Protection Procedures Act ("CPPA") can satisfy the injury-in-fact requirement "solely by virtue of statutes creating legal rights, the invasion of which creates standing." *Grayson v. AT&T Corp.*, 15 A.3d 219, 247 (D.C. 2011). The deprivation of a statutory right derived from improper trade practices that are in violation of the CPPA may constitute an injury-in-fact sufficient to establish standing, even though a plaintiff would have suffered no judicially cognizable injury in the absence of the statute. *See Shaw v. Marriott Int'l, Inc.*, 605 F.3d 1039, 1042 (D.D.C. 2010). Nevertheless, a violation of a statute creates the particularized injury required by Article III only when an individual right has been conferred on a party by statute. *Id.*

Under the CPPA, "a public interest organization may, on behalf of the interests of a consumer or a class of consumers, bring an action seeking relief from the use by any person of a trade practice in violation of a law of the District if the consumer or class could bring an action

[as an individual consumer] for relief from such use by such person of such trade practice." D.C. Code § 28-3905(k)(1)(D)(i). However, to bring a successful action under subsection (D), the organization must have a "sufficient nexus to the interest involved of the consumer or class to adequately represent those interests." § 28-3905(k)(1)(D)(ii).

The Court finds that OCA has standing under subsection (D) as a public interest organization. Regarding subsection (D), OCA meets the definition of a public interest organization because it is a non-profit that deals with "issues of truth in advertising, accurate food labeling, food safety, children's health, corporate accountability, and environmental sustainability." Compl. ¶ 23; D.C. Code §28-3901(15). Indeed, OCA was founded for the purpose of advocating for and educating consumers in the arena of truth and transparency in food labeling and marketing. *Id.* ¶ 73. This Court has repeatedly found that the mission, goal, and work of protecting consumers through various efforts including promoting accurate labeling of consumer goods shows a sufficient nexus. *See Toxin Free USA v. J.M Smucker Co.*, Civil Case No. 2019 CA 003192 B, 2019 D.C. Super. LEXIS 15, at *6–7 (Nov. 6, 2019); *Nat'l Consumers League v. Bimbo Bakeries USA*, Civil Case No. 2013 CA 006548 B, 2015 D.C. Super. LEXIS 5, at *14 (Apr. 2, 2015). The Court finds OCA's mission and purpose to be sufficient to establish standing under subsection (D).

The Court also finds that OCA also has standing under subsection (C) of the CPPA, which provides that

> a nonprofit organization may, on behalf of itself or any of its members, or on any such behalf and on behalf of the general public, bring an action seeking relief from the use of a trade practice in violation of a law of the District, including a violation involving consumer goods or services that the organization purchased or receive in order to test or evaluate qualities pertaining to use for personal, household, or family purposes.

D.C. Code § 28-3905(k)(1)(C). The Complaint describes OCA as a 501(c)(3) non-profit organization that purchased Happy Egg products to evaluate the truthfulness of the label. Compl. ¶¶ 23, 69. Happy Egg argues that OCA's lack of standing is comparable to the plaintiff in *Beyond Pesticides v. Dr. Pepper Snapple Group, Inc.*, Case No. 17-1431, 2019 U.S. Dist. LEXIS 109812 (D.D.C. July 1, 2019). Def.'s Mot. at 5–6. In *Beyond Pesticides*, the plaintiff challenged the defendant's use of the term "natural" in marketing its applesauce. *See Beyond Pesticides*, 2019 U.S. Dist. LEXIS 109812 at *1. The defendant argued that plaintiff did not have standing because it did not suffer an actual injury. *Id.* There, the District of Columbia District Court held that plaintiff's decision to purchase the applesauce for testing was insufficient, on its own, to establish organizational standing, and stated, "this Circuit does not recognize that 'self-inflicted harm' as an injury in fact. *See id.* at *2–3.

Notably, the *Beyond Pesticides* Court specifically distinguished District of Columbia Superior Court and Court of Appeals in its ruling. *See id.* at *4. This District Court noted that, while an organization's decision to purchase a product for testing can establish standing in the Superior Court and Court of Appeals, it does not establish the Article III standing required to sue in federal court. *Id.* (citing *Atchison v. District of Columbia*, 585 A.2d 150, 153 (D.C. 1991) for the proposition "D.C. courts 'enjoy[] flexibility in regard to [the case or controversy requirement] not possessed by the federal courts.'")). As such, *Beyond Pesticides* is not persuasive in determining the issue of standing in the instant case.

Accordingly, OCA has adequately alleged that it is in the class of plaintiffs who have a statutory right to bring a CPPA action. The deprivation of that right constitutes an injury-in-fact that is sufficient to establish standing, even though OCA may not have suffered a judicially

cognizable injury in the absence of the statute. *See Shaw*, 605 F.3d at 1042. Thus, the Court has subject matter jurisdiction over OCA's claims.

B. Federal Preemption

Happy Egg argues that the Egg Products Inspection Act ("EPIA") preempts OCA's claims because the EPIA was enacted to ensure that eggs are properly labeled and packaged. Def.'s Mot. at 7–11; 21 U.S.C. § 1031. The EPIA states that it is "the policy of the Congress to provide for . . . uniformity of standard for eggs." 21 U.S.C. § 1032. The EPIA further provides that no state "may require the use of standards of quality, condition, weight, quantity, or grade which are in addition to or different from the official Federal standards. 21 U.S.C. § 1052(b). State law that interferes with or is contrary to federal law is preempted by federal law. *Bostic v. D.C. Hous. Auth.*, 162 A.3d 170, 173 (D.C. 2017).

Happy Egg alleges that OCA seeks to replace the EPIA with the CPPA and create new regulations for egg cartons that would be "in addition to" the official Federal standards. Def.'s Mot. at 7–11 (citing 21 U.S.C. § 1052(b)). Alternatively, Happy Egg argues that OCA's claims are impliedly preempted because permitting OCA to use state consumer protection law to create additional standards for eggs poses a direct obstacle to Congress's purpose of uniform regulation of egg carton labels and standards. *Id.* at 10.

Upon review of the Complaint, OCA does not appear to be creating additional standards for the quality of eggs beyond those set in the EPIA. Moreover, OCA does not claim that Happy Egg may not sell its eggs as they are currently produced. Pl.'s Opp'n at 9. Rather, OCA is contending that Happy Egg is "deliberately misleading consumers as to which animal welfare standard the eggs meet." *Id.*; Compl. ¶¶ 38–51. A clarification of Happy Egg's use of "free range" and "pasture raised" in its label would not directly or indirectly contravene the EPIA's

regulations on the standard for eggs. While Happy Egg may use these regulations and standards as a basis for the quality at which it produces its eggs, this does not preempt the claim overall as OCA is seeking that Happy Egg accurately labels the eggs as it pertains to the industry standards on the label to prevent consumer confusion. *Id.* ¶¶ 41–51. The Court does not find that such a clarification would "stand[] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Organic Consumers Ass'n v. Hain Celestial Grp.*, 285 F. Supp. 3d 100, 103 (D.D.C. 2018). Accordingly, Happy Egg's claim that OCA's allegations are precluded by federal law is without merit.

C. Dismissal for Failure to State a Claim

Happy Egg argues that OCA's claim should be dismissed because it fails to plausibly allege that the egg carton as a whole would mislead a reasonable consumer. Def.'s Mot. at 6–8. The CPPA determines it an unfair or deceptive trade practice to: (a) represent that goods or services have a source . . . certification, accessories, characteristics, ingredients, uses, benefits, or quantities that they do not have; (d) represent that goods or services are of particular standard, quality, grade, style, or model, if in fact they are of another; (e) misrepresent as to a material fact which has a tendency to mislead; (f) fail to state a material fact if such failure tends to mislead; (f-1) use innuendo or ambiguity as to a material fact, which has a tendency to mislead; and (h) advertise or offer good or services without the intent to sell them or without the intent to sell them as advertised or offered. D.C. Code § 28-3904(a), (d), (e), (f), (f-1), (h). Under the CPPA, "a claim 'of an unfair trade practice is properly considered in terms of how the practice would be viewed and understood by a reasonable consumer.'" *Whiting v. AARP*, 637 F.3d 355, 363–64 (D.C. Cir. 2011) (quoting *Pearson v. Soo Chung*, 961 A.2d 1067, 1075 (D.C. 2008)). A court

may "appropriately grant a motion to dismiss on a deceptive practices claim if no reasonable person would be . . . deceived." *Whiting*, 637 F.3d at 364.

Happy Egg's packaging advertises its eggs as "free range" as well as "pasture raised," when they do not meet the standard under the AHA, but bear the AHA logo on the packaging. Compl. ¶ 52. OCA alleges that a reasonable consumer would be misled by the representations as to which animal welfare standard the eggs meet. *Id.* ¶ 53. OCA further alleges that Happy Egg "used innuendo and ambiguity as to a material fact—including the specific animal-welfare standard the Eggs meet—in a manner that tends to mislead; and advertised and offered Eggs as "pasture raised" without the intent to sell the Eggs as advertised and offered." *Id.*

Happy Egg argues that the Complaint fails to state a plausible claim because the representation that its hens are "pasture raised on over 8 acres" is a true statement. Def.'s Mot. at 12–13. However, a reasonable consumer looking for eggs that meet the higher "pasture raised" standard under the AHA may be confused by Happy Egg packaging which states that the products are "free range" and "pasture raised," and may be misled to believe that the eggs meet the standard of "pasture raised" accepted throughout the industry. *See* Pl.'s Opp'n at 12. As such, the Court finds OCA has sufficiently pled factual allegations, taken as true, to plausibly allege that a reasonable consumer could be misled by Happy Egg's description of its eggs as "pasture raised," when they do not meet the industry accepted standard. The Complaint establishes a CPPA violation claim that the Court will not dismiss at this stage.

IV. CONCLUSION

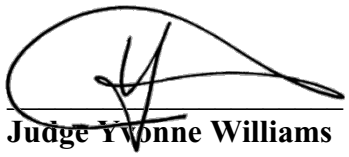
In sum, the Court finds that OCA does have Article III standing as a nonprofit and public interest organization to bring its CPPA claims against Happy Egg. Moreover, OCA has

plausibly alleged a CPPA violation against Happy Egg upon which relief can be granted, and this claim is not preempted by federal regulations. Therefore, the Court denies Happy Egg's Motion.

Accordingly, it is this 25th day of August 2020, hereby,

ORDERED that Happy Egg's Motion to Dismiss the Complaint shall be **DENIED**.

IT IS SO ORDERED.



Judge Yvonne Williams

Date: August 25, 2020

Copies to:

Kim E. Richman
Counsel for Plaintiff

Nicholas M. DePalma
Christian R. Schreiber
Counsel for Defendant