UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

SANDERSON FARMS, INC., *et al.*,

Plaintiffs-Appellees,

v.

TYSON FOODS, INC.,

Defendant-Appellant.

Civil Action No. 08-1461

MOTION FOR LEAVE TO SUPPLEMENT
OPPOSITION BASED ON NEW INFORMATION JUST RECEIVED

On April 28, Tyson moved for a partial stay of a preliminary injunction, Plaintiffs filed opposition papers yesterday, and Tyson has requested that the Court rule by today.

Plaintiffs just received additional information from USDA late this afternoon that further seriously undermines Tyson's likelihood of success (one of the elements of a stay)

Tyson argued that the Court of Appeals should stay a preliminary injunction based on USDA immunity, that is, based on the fact that USDA approved some of the advertising messages at issue in the case.

Plaintiffs presented several responsive arguments (each independently fatal to Tyson's argument), including our argument that USDA never considered Tyson's practice of injecting antibiotics into eggs at Tyson's hatchery and therefore USDA

provided no guidance whatsoever about whether chicken from these injected eggs could be labeled with any "RWA" label.

The USDA labeling process relates only to the product label (not non-label advertising at issue in this lawsuit) and Plaintiffs have requested in a separate process that USDA revoke Tyson's label.

In a letter received shortly after 4 pm today, USDA stated that Tyson's hatchery practices, if true, are of "***serious concern***" to USDA (see attached letter).

This letter further establishes what we proved at the preliminary injunction hearing that

(1) Tyson's hatchery practice was not known to USDA; and

(2) USDA did not approve or authorize Tyson to inject antibiotics into chicken and then label that chicken with any sort of "raised without antibiotics" label.

This new information further undermines Tyson's USDA immunity argument and basis for a stay.

Plaintiffs respectfully request that the Court consider this letter to deny Tyson's Motion for Stay.

Respectfully submitted,
ARNOLD & PORTER LLP

/s/ Randall K. Miller

Randall K. Miller
Nicholas M. DePalma
1600 Tyson Boulevard, Suite 900
McLean, VA 22102-4865
Direct: 703.720.7030
Facsimile: 703.720.7399
Email: Randall.Miller@aporter.com
Email: Nicholas.DePalma@aporter.com
Counsel for Plaintiffs-Appellees

Dated: April 30, 2008

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of April, 2008, I have caused the foregoing to be served via electronic transmission upon the following:

Randi Singer
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
Counsel for Defendant-Appellant

/s/ Randall K. Miller
Randall K. Miller

United States Department of Agriculture

Food Safety and Inspection Service

Washington, D.C. 20250

APR 30 2008

Randall K. Miller
Arnold and Porter, LLP
1600 Tysons Boulevard
Suite 900
McLean, VA 22102-4865

By Fax and Federal Express

Dear Mr. Miller:

Your petition, submitted on behalf of Sanderson Farms, Inc., Purdue Farms, Inc., Foster Farms, and the Truthful Labeling Coalition, to rescind the approval for Tyson Food, Inc.'s (Tyson) label claim "Raised Without Antibiotics that impact antibiotic resistance in humans" was received by FSIS and has been referred to the Office of Policy and Program Development for consideration.

The petition alleges that Tyson administers antibiotics at its hatcheries by injecting eggs with antibiotics approved for use in humans two to three days before they hatch. This allegation, if true, is of serious concern to FSIS. To assist us in evaluating your petition, please provide us with any documentation that you may have to support this allegation. We would appreciate receiving any such information as soon as possible, but no later than May 6, 2008. Please submit the information to Charles Gioglio, Office of Policy and Program Development. Mr. Gioglio can be reached at (202) 205-0279. Thank you for your cooperation in this matter.

Sincerely,

Philip S. Derfler
Assistant Administrator
Office of Policy and Program Development

OPTIONAL FORM 99 (7-90)
FAX TRANSMITTAL
# of pages ▶ 1
To Randall Miller
From Philip Derfler
Dept./Agency Arnold + Porter
Phone (202) 720-2209
Fax # (703) 720-7899
Fax # (202) 720-2025
NSN 7540-01-317-7368 5099-101
GENERAL SERVICES ADMINISTRATION