

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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

Plaintiffs-Appellees,

v.

TYSON FOODS, INC.,

Defendant-Appellant.

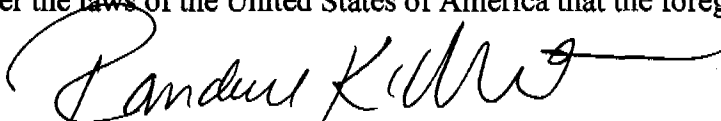
Civil Action No. 08-1461

DECLARATION OF RANDALL K. MILLER

I, Randall K. Miller, declare under penalty of perjury as follows: I am a Partner in the law firm of Arnold & Porter LLP and submit this declaration in support of Plaintiffs-Appellees' opposition to Tyson's emergency motion to stay. I have attached true and correct copies of the following exhibits which are referenced in Appellees' Opposition to Tyson's Motion to Stay.

1. Exhibit 1: Pictures of Tyson's "unqualified" RWA advertising, which continues to run in grocery stores around the country to this day
2. Exhibit 2: Tyson's ad running in the current (March/April 2008) issue of *Weight Watchers* magazine
3. Exhibit 3: Selected demonstrative exhibits used during Plaintiffs' closing argument
4. Exhibit 4: Email from USDA Undersecretary confirming that USDA lacks authority over Tyson's non-label advertising at issue in this case
5. Exhibit 5: April 22, 2008 Tyson Foods press release
6. Exhibit 6: April 22, 2008 telephone hearing with District Court
7. Exhibit 7: Example of NAD false advertising case where USDA immunity claim was rejected
8. Exhibit 8: FTC Enforcement Policy on Food Claims
9. Exhibit 9: Orders from false advertising case: *Schick* (razor blades); *McNeil* (Listerine); *Castrol* (motor oil); and *Scotts* (crabgrass treatment)
10. Exhibit 10: District Court's Bond Order
11. Exhibit 11: Excerpts from hearing transcript

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



Randall K. Miller

Dated this 29th day of April, 2008.