

Case #7135 (02/01/2023)

JBS USA Holdings, Inc.

Net Zero 2040

Challenger: *Institute for Agriculture & Trade Policy*

Product Type: *Food / Beverage*

Issues: *Environmental Claims*

Disposition: *Modified / Discontinued*

BBB NATIONAL PROGRAMS

NATIONAL ADVERTISING DIVISION

INSTITUTE FOR AGRICULTURE & TRADE
POLICY,

Challenger,

JBS USA HOLDINGS, INC.,

Advertiser.

Case No. 7135

Closed (02/01/2023)

FINAL DECISION

- An aspirational “net zero” emissions claim reasonably creates high expectations on the part of consumers and requires significant evidence that the advertiser’s efforts are providing environmental benefits with a very specific measurable outcome.

A. Basis of Inquiry

The advertising industry established the National Advertising Division (“NAD”) and the National Advertising Review Board (“NARB”) in 1971 as an independent system of self-regulation designed to build consumer trust in advertising. NAD reviews national advertising in all media in response to third-party challenges or through inquiries opened on its own initiative. Its decisions set consistent standards for advertising truth and accuracy, delivering meaningful protection to consumers and leveling the playing field for business. Challenger Institute for Agriculture & Trade Policy, (“IATP” or “Challenger”) challenged express and implied claims made by Advertiser JBS USA Holdings, Inc. (“JBS” or “Advertiser”) for its Net Zero 2040 claims. The following are representative of the claims that served as the basis for this inquiry:

A. *Express Claims*

- “JBS is committing to be net zero by 2040”
- “Global Commitment to Achieve Net-Zero Greenhouse Gas Emissions by 2040.”
- “the SBTi recognized the Net Zero Commitment of JBS.”
- “Bacon, chicken wings and steak with net zero emissions. It’s possible.”
- “Leading change across the food industry and achieving our goal of net zero by 2040 will be a challenge. Anything less is not an option.”
- “JBS will achieve Net Zero greenhouse gas emissions, reducing its direct and indirect (scopes 1,2 and 3) emissions”

B. Evidence Presented

The Challenger provided:

- Information from the United Nations about the Paris Agreement, climate change and global food agriculture¹
- Reports from the Intergovernmental Panel on Climate Change²
- United States Environmental Protections Agency (“EPA”) information about greenhouse gas emissions³
- information about the Science Based Targets Initiative (“SBTi”)⁴
- JBS Institutional Presentation 2Q22⁵
- 2020 JBS Sustainability Report⁶
- 2019 JBS Annual and Sustainability Report⁷

¹ *The Paris Agreement*, United Nations: Climate Change,

State of the World's Forests, U.N. Food and Agriculture Organization,

Antony J. Blinken, *The United States Officially Rejoins the Paris Agreement*, U.S. Department of State: Press Release (Feb. 19, 2021),

² *Special Report: Global Warming of 1.5°C: Summary for Policy Makers*, Intergovernmental Panel on Climate Change (IPCC) (2018),

IPCC Sixth Assessment Report: Technical Summary, Intergovernmental Panel on Climate Change (Oct. 1, 2021) at 88,

Rajendra Pachauri, et al., Climate Change 2014: Synthesis Report, Intergovernmental Panel on Climate Change, 87 (2015),

³ *GHG Inventory Development Process & Guidance; Scope 1,2, &3 Inventory Guidance*, EPA Center for Corporate Climate Leadership,

EPA, Overview of Greenhouse Gasses,

⁴ *The Net-Zero Standard, Science Based Targets*,

SBTi Business-Ambition FAQ, Science Based Targets Initiative, (Nov. 2021) at 4,

FAQs, Science Based Targets Initiative,

Tom Dowdall, *Science-Based Net Zero Targets: ‘Less Net, more Zero’*(Oct. 7, 2021),

Science Based Targets Initiative Commitment Letter, SBTi, (Nov. 2021),

⁵ Institutional Presentation 2Q22, JBS, at 9,

⁶ 2020 Sustainability Report, JBS USA,

⁷ Annual and Sustainability Report 2019, JBS,

- Information from JBS's websites⁸
- several peer reviewed articles on agricultural sustainability issues⁹
- Several peer reviewed articles on the United States meat and poultry industry¹⁰

⁸ *Global Commitment to Achieve Net-Zero Greenhouse Gas Emissions by 2040*, JBS Food Group (March 23, 2021),

JBS Net Zero 2040, JBS,

JBS is committing to be net zero by 2040, JBS,

Sustainability, Pilgrim's USA,

Sustainability, JBS,

Global Commitment to Achieve Net-Zero Greenhouse Gas Emissions by 2040, JBS Food Group (March 23, 2021),

⁹ *Matthew N. Hayek & Scot M. Miller, Underestimates of methane from intensively raised animals could undermine goals of sustainable development*, 16 *Env. Res. Letters* (2021) at 2,

Richard Waite & Alex Rudee, 6 Ways the US Can Curb Climate Change and Grow More Food, World Resources Institute (Aug. 20, 2020),

Jennifer Morgan, Why carbon offsetting doesn't cut it, World Economic Forum (Sept. 22, 2021),

Meat, dairy and a net-zero emission future, Livestock, Environment and People,
(last visited Sept. 19, 2022);

Dan Blaustein-Retjo, et al., The Clean Cow: Executive Summary, Breakthrough Instit.(Oct. 21, 2021),

Michael Gerrard & John C. Dernbach, Legal Pathways to Deep Decarbonization in the United States (2019);

Ben Lilliston, Latest Agriculture Emissions Data Show Rise of Factory Farms, *Inst. Agric. & Trade Pol'y* (Mar. 26, 2019),

Manuela Andreoni, Spot the greenwashing, *The New York Times* (May 20, 2022),

Monica Crippa et al., Food Systems Are Responsible for A Third of Global Anthropogenic GHG Emissions, 2 *Nature Food* 198 (2021);

Peter H. Lehner & Nathan A. Rosenberg, Farming for our Future: The Science, Law, and Policy of Climate-Neutral Agriculture (2021);

Sonja J. Vermeulen et al., Climate Change and Food Systems. *Annual Review of Environment and Resources*, 37 *Ann. Rev. Env't & Res.* 195 (2012);

¹⁰ *M. Shahbandandeh, Leading meat and poultry processing companies in the United States in 2021, based on sales*, *Statista* (Sept. 29, 2021),

Daniel P. Bigelow & Allison Borchers, U.S. Dep't of Agric., Major Uses of Land in the United States, 2012, at 4 tbl.1 (2017);

- News articles about agriculture¹¹
- Several articles about JBS¹²
- IATP published articles about greenhouse gas emissions,
- IATP published articles about JBS and its global operations. ¹³

Matthew Hayek et al., The Carbon Opportunity Cost of Animal-Sourced Food Production on Land, 4 Nature Sustainability 21 (2021);

Lucy Koch, Sustainability Is Factoring into 2019 Holiday Purchases, eMarketer (Oct. 14, 2019),

Report shows a third of consumers prefer sustainable brands, Unilever (May 1, 2017)

Sam Danley, Consumer interest in sustainability is still growing, Food Business News, <https://www.foodbusinessnews.net/articles/17988-consumer-interest-in-sustainability-still-growing> (last visited June 24, 2022)(attached as Exhibit 40).

Sally Pattern, Why companies should track consumer understanding of net zero, BOSS (Aug. 16, 2021),

Hana V. Vizcarra, The Reasonable Investor and Climate-Related Information: Changing Expectations for Financial Disclosures, 50 Env'tl. L. Rep. (ELI) 10106, 10109 (2020)

¹¹ *Charlie Mitchell & Austin Frerick, The Hog Barons, Vox (Apr. 19, 2021),*

Ula Chrobak, The World's Forgotten Greenhouse Gas, BBC (June 3, 2021),

What's Driving Deforestation? Union of Concerned Scientists (Feb. 8, 2016),

Henry Fountain, Amazon Is Less Able to Recover From Droughts and Logging, Study Finds, The New York Times (Mar. 7, 2022),

¹² *Marion Nestle, Least credible food industry ad of the week: JBS and climate change, Food Politics (Apr. 26, 2021);*

Jaydee Hanson & Julie Ranney, JBS is destroying the Amazon, The Ecologist (Mar. 30, 2020),

Aurora Sola, JBS Promises to Stop Destroying the Environment—in 14 Years, Sentient Media (Apr. 13, 2021),

Katie Nelson, JBS extends immunity to forest criminals to feed its supply chain until at least 2035 in surreal 'global commitment' Greenpeace (Mar. 25, 2021),

¹³ *Shefali Sharma, The great climate greenwash: Global meat giant JBS' emissions leap by 51% in five years, The Institute for Agriculture & Trade Policy (Apr. 20, 2022),*

Shefali Sharma & Ben Lilliston, From Net Zero to Greenwash—Global Meat and Dairy Companies, Institute for Agriculture & Trade Policy (Oct. 4, 2021),

The Advertiser provided:

- Copies of research commitments JBS has made with the University of Minnesota and Colorado State University
- Information about JBS USA and its global operations¹⁴
- information from its websites¹⁵
- 2021 JBS Sustainability Update¹⁶
- JBS Acquisitions Timeline
- JBS NZO Background Internal Presentation
- Verified Emission Reductions Purchase and Sale Agreement
- Confirmation and Business Ambition Document from Science Based Target initiative (“SBTi”)
- SBTi Commitment Letter
- Provided to NAD on a confidential basis information about its scope of work with the Carbon Trust (U.K.)
- Nebraska Today article

C. Background

A. Climate Change

Since 2015 the global community has attempted to address environmental impacts via the Paris Agreements.¹⁷ The Paris Agreements acknowledge that people contribute to climate change by releasing excess greenhouse gases into the atmosphere from activities such as burning fossil fuels for energy, cultivating crops, raising livestock, and clearing forests.

¹⁴ *Our Brands*, JBS Foods,

¹⁵ *Global Commitment to Achieve Net-Zero Greenhouse Gas Emissions by 2040*, JBS Food Group (March 23, 2021),

JBS Net Zero 2040, JBS,

JBS is committing to be net zero by 2040, JBS,

¹⁶

¹⁷ The Paris Agreements attempt to reduce the risks and impacts of climate change by limiting the increase in the global average temperature to well below 2°C above pre-industrial levels by pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels.

The Paris Agreement also encourages countries to develop climate resilience strategies which address the current changes and foster low greenhouse gas emissions development, in a manner that does not threaten food production. More specifically, the Paris Agreement and Intergovernmental Panel on Climate Change (“IPCC”) reports note that achieving the collective goal of limiting global warming requires drastic, rapid, and sustained reduction in GHG emissions by 2050 or sooner.

See, The Paris Agreement, United Nations: Climate Change, <https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement>

Increasingly consumers choose products based in part on the environmental benefits touted by advertisers. Consumers eager to reduce their impact on the environment can be misled by advertisers due to the complex nature of environmental benefit claims, ambiguous terms, and less than expert environmental knowledge.

B. Parties

The Challenger, IATP is a not-for-profit organization founded in 1986 with the mission of fostering sustainable rural communities and regions. IATP conducts research and advocacy that promotes sustainable food, farm, and trade systems. IATP's mission is to work locally and globally at the intersection of policy and practice to ensure fair and sustainable food, farm and trade systems. Some of IATP's work includes advocating for credible and transparent corporate disclosure of greenhouse gas emissions at the Securities and Exchange Commission and at international bodies, including the Science Based Target Initiative ("SBTi").

The Advertiser, JBS, is the second-largest food company and the largest animal protein producer in the world. With a global platform diversified by geography and products, JBS has a workforce of more than 245,000 and offers an extensive portfolio of brands, including Swift, Pilgrim's Pride, Seara, MoyPark, Friboi, Primo, and Just Bare, that can be purchased by consumers in more than 190 countries around the world. The Advertiser's products include boxed beef, ground beef, fresh pork, bacon, poultry, lamb, seafood, meat-based snack foods, and plant-based protein. JBS is also engaged in leather tanning, aluminum can production, industrial waste management, soap, glycerin, and biodiesel production, and transportation.

D. Decision

A. Standard of Review

Advertisers must possess a "reasonable basis" for claims disseminated in advertising whether they intended those messages or not.¹⁸ What constitutes a "reasonable basis" depends on several factors, including the type of product, the type of claim, the consumer benefit from a truthful claim, the ease of developing substantiation for the claim, the consequences of a false claim, and the amount of substantiation experts in the field believe is reasonable.

Advertising plays an important role in raising consciousness about sustainability and informing consumers of a company's environmental activities and commitments. However, images and terms suggesting sustainability give rise to different meanings and consumer expectations making such advertising claims difficult to substantiate.¹⁹ When analyzing sustainability and other environmental benefits claims, NAD relies on guidance set forth by the appropriate regulatory authorities. The Federal Trade Commission's ("FTC") Guides for the Use of Environmental Marketing Claims (the

¹⁸ *Guardian Technologies, LLC (GermGuardian and PureGuardian Air Purifiers and Replacement Filters)*, Report #6319, NAD/CARU Case Reports (November 2019).

¹⁹ *Georgia-Pacific Consumer Products LP (Quilted Northern Ultra Soft & Strong Bathroom Tissue)*, Report #7018, NAD/CARU Case Reports (September 2021).

it is implementing today to achieve net zero operational impact by 2040. Based on the foregoing, NAD recommended that the Advertiser discontinue the claim that “JBS is committing to be net zero by 2040.” Nothing in this decision precludes the Advertiser from making narrower truthful and not misleading claims regarding its efforts at researching potential methods for reducing emissions and any efforts it is undertaking to reduce emissions.

(2) *“Global Commitment to Achieve Net-Zero Greenhouse Gas Emissions by 2040*

Next, NAD reviewed a version of the Advertiser’s “net zero” claim, which references greenhouse gas emissions. The claim “Global Commitment to Achieve Net-Zero Greenhouse Gas Emissions by 2040” appears in numerous social media posts, corporate communications and prominently as the title of JBS’ website dedicated to explaining the organization’s environmental sustainability plans to achieve net-zero greenhouse gas emissions by 2040.

IATP argued that the claim conveys the message that JBS’s net zero commitment is comprehensive and that it will reduce emissions across its entire supply chain – meaning it will reduce its scope 1, 2, and 3 emissions. IATP argued that JBS’s representations that it is reducing these emissions is misleading because JBS net zero plans do not count its scope 3 emissions, which likely account for 90-97% of its total emissions. IATP argued that by failing to account for the “vast majority of its greenhouse emissions,” any claim of reaching net zero is thus meaningless and not in line with how that term is understood by reasonable consumers.

NAD reviewed the challenged claim and found that it reasonably conveys the message that JBS has committed to achieving net-zero greenhouse gas emissions by 2040 because the claim is broad and unqualified. By including language that it will achieve net-zero greenhouse gas emissions by 2040, the advertising conveys the message that JBS has a plan that will result in the achievement of the goal.

JBS argued that this aspirational claim is supported and explained that it has taken numerous steps to establish baseline greenhouse gas emissions which include Scope 3 emissions and has taken steps toward Scope 3 reductions. JBS explained that it recognizes that in order to achieve its net-zero 2040 goal it must address Scope 3 emissions and that while its 2021 Sustainability Report addresses the challenges associated with accurately calculating and addressing Scope 3 emissions it also presents a path forward. Specifically, JBS noted that since announcing the 2040 net-zero committed in 2021, it has invested in research or commissioned studies with:

- The Foundation for Food and Agriculture;
- The University of Minnesota to create a model for assessing “JBS’s animal and feedstock supply chains as well as their associated GHG [greenhouse gas] impacts;”
- The Ecosystem Services Market Consortium (“ESMC”) to fund a pilot program focused on the sale of “credits and assets for greenhouse gas reduction, water quality and quantity and biodiversity” in the United States;
- Colorado State University for “collaborating with the supply chain to demonstrate how beef producers can reduce their impact on climate and achieve climate neutrality;

- University of Nebraska to support its Feedlot Innovation center dedicated to “science-driven innovation in the development of resilient systems for food animal production;”²⁸
- The Institute of Animal Science (IZ), linked to the São Paulo State Department of Agriculture and Food Supply, and Silvateam, a world-leading producer of plant-based extracts used in animal feed.

In addition, JBS explained that it has partnered with science-based companies and research centers to develop and expand the use of feed additives to help reduce methane emissions in the beef value chain and signed an agreement with Royal DSM to use Bovaer[®] in its beef chain, which is a feed additive for cows that will reduce methane emissions. In addition, JBS noted that it has committed funds to the Partnerships for Climate-Smart Commodities proposal submitted by the Iowa Soybean Association in partnership with the Soil and Water Outcomes Fund, signed an agreement to purchase verified emission reductions and committed to creating targets in line with the SBTi Forest, Land and Agriculture project.

NAD carefully considered the evidence JBS provided to support its global commitment to greenhouse gas emissions by 2040. NAD found that JBS’s research and financial investments demonstrate steps towards the stated commitment to net zero greenhouse gas emissions. However, NAD found that the evidence did not support the message that JBS’s efforts are part of an operational plan that will result in net-zero greenhouse gas emissions by 2040. Therefore, NAD recommended that the Advertiser discontinue the claim “Global Commitment to Achieve Net-Zero Greenhouse Gas Emissions by 2040.”

(3) *“Bacon, chicken wings and steak with net zero emissions”*

Another version of JBS’s “net zero” advertising references “net zero” meat production, stating “Bacon, chicken wings and steak with net zero emissions. It’s possible.” This claim appeared prominently as a full-page advertisement in the *New York Times* under the main title of the advertisement titled, “Agriculture Can Be Part of the Climate Solution.” The advertisement included the logo of JBS brand Pilgrim’s.

IATP argued that the advertising conveys the message that JBS has a concrete plan to achieve net zero emissions animal proteins and is executing on the plan. JBS maintained that the advertisement is aspirational and does not convey an objective message that JBS will achieve net zero emissions for these animal proteins by 2040.

While the word “possible” can be used to indicate some uncertainty, here the word underscores that net zero emissions can be achieved in JBS’s meat production, by stating “It’s possible” and under a headline attesting that “Agriculture Can Be Part of the Climate Solution.” Thus, one message reasonably conveyed by this claim is the same broad message as JBS’s other “net zero” claims. Namely, that JBS has developed a plan for “net zero” meat production and is implementing such a plan.

JBS provided no support for specific emissions reduction action taken related to these animal proteins, and instead explained that the evidence of JBS’s investment in research related to its net-zero 2040

²⁸ *JBS USA supports new Feedlot Innovation Center with \$700,000 gift*, Nebraska Today, April 12, 2022,

goal is inclusive of bacon, chicken wings and steak to the extent the research will yield results which will enable JBS to produce the animal proteins with net zero climate impact. NAD noted the research is ongoing but has not yet produced any results that would satisfy consumers' reasonable expectations that JBS has successfully demonstrated an approach to meat production which would result in "net zero" emissions. Accordingly, NAD recommended that the Advertiser discontinue the claim that "Bacon, chicken wings and steak with net zero emissions. It's possible."

(4) *"Leading change across the food industry and achieving our goal of net zero by 2040 will be a challenge. Anything less is not an option"*

NAD next reviewed the claim "Leading change across the food industry and achieving our goal of net zero by 2040 will be a challenge. Anything less is not an option" which appeared in the same April on a full-page advertisement in the *New York Times* in April 2021.

IATP argued that the message conveyed by this claim is that JBS, as a leader in the food industry, has a concrete plan to achieve net-zero and is executing on the plan. JBS argued that the claim is truthful because it is the largest animal protein producer in the world and that it has in fact committed to leading change in the industry.

NAD examined the challenged claim and found that the first part of the claim conveyed the message that JBS is committed to leading change in the industry and that such a claim is supported by its public commitment and financial investments in research. However, NAD found, that the "anything less is not an option" portion of the claim conveys the unsupported message that JBS is engaged in concrete efforts to achieve its goal. As discussed more fully above, the evidence in the record does not support such a claim. NAD therefore recommended that JBS discontinue the claim, "Anything less is not an option" claim when combined with the claim, "Leading change across the food industry and achieving our goal of net zero by 2040 will be a challenge."

(5) *"The SBTi recognized the Net Zero Commitment of JBS"*

Lastly, NAD reviewed a claim relating to SBTi's recognition of JBS's "net zero" goal. The claim that "SBTi recognized the Net Zero Commitment of JBS" appears on JBS's "Net Zero 2040" website. IATP argued that JBS's reliance on the SBTi commitment letter is misleading because signing a letter of commitment is not the same as having developed or implemented science-based targets to achieve net zero impact on the environment.

JBS explained that "SBTi maintains publicly-accessible dashboard which displays several categories of companies and the stage of their respective commitments such as companies with targets or commitments. Companies with "Targets" have produced clearly-defined pathways . . . to reduce greenhouse gas ("GHG") emissions, which have been validated by SBTi. Companies with "Commitments" have demonstrated their intention to develop targets and submit these for validation within 24 months. JBS acknowledged that it has made a commitment, which is the first step in setting a science-based target.

NAD found that the message conveyed by the claim is that SBTi has reviewed and approved JBS's net zero goals and objectives underpinning its commitment to have net zero impact on the environment by 2040. JBS has demonstrated that it has begun the process to become SBTi certified. NAD determined, however, that while it is literally true that SBTi has recognized JBS' submission of the

SBTi Commitment Letter, it does not substantiate the message that SBTi has certified approved JBS' strategy to achieve net-zero climate impact by 2040 based on science-based targets.²⁹ Further, JBS acknowledged that it engaged Carbon Trust Advisory Limited to help provide a greenhouse gas footprint and Science Based Targets, both aligned with SBTi criteria, and that these efforts are underway, but not yet complete. Specifically, both the greenhouse gas footprint and corresponding targets include Scope 3 efforts that will likely be available in the near future.³⁰ The record established demonstrates JBS's notable, but preliminary efforts to establish SBTi approved science-based greenhouse gas emission targets, but not an approved strategy to allow it to achieve net-zero climate impact by 2040.

Based on the foregoing, NAD recommended that the Advertiser discontinue the claim that "the SBTi recognized the Net Zero Commitment of JBS." Nothing in this decision precludes JBS from making narrower truthful and not misleading claims regarding the steps it is taking to align its activities with SBTi criteria and its engagement with the SBTi process.

E. Conclusion

The Advertiser voluntarily permanently discontinued the claim that "JBS will achieve Net Zero greenhouse gas emissions, reducing its direct and indirect (scopes 1,2 and 3) emissions." The voluntarily discontinued claim will be treated, for compliance purposes, as though NAD recommended its discontinuance and the Advertiser agreed to comply.

NAD recommended that JBS discontinue each of the challenged "net zero" claims, including the claims that:

- "JBS is committing to be net zero by 2040";
- "Global Commitment to Achieve Net-Zero Greenhouse Gas Emissions by 2040.";

²⁹ *Butterball, LLC (Butterball Turkey Products)*, Report #6930, NAD/CARU Case Reports (August 2021).

In, *Butterball, LLC* NAD examined multiple environmental claims including several that were aspirational in nature. NAD determined that the aspiration claims that were made in close proximity to the American Humane Certified seal communicated a narrower message that Butterball complies with a specific set of independent standards. Butterball provided evidence that the practices required by the AH seal are set by a scientific advisory committee comprised of veterinarians and scientific experts in the relevant field and are consistent with their standards for humane treatment. NAD observed that those claims spoke to the advertiser's "recognition" of its "responsibility" and "commitment" to environmental stewardship, without expressly stating objective measures by which it has, does, or will put that recognition into action.

Moreover, in *Butterball*, NAD provided guidance on the use of certifications in supporting claims without misleading consumers. NAD explained that claims tied to a clear and conspicuous third-party certification—a certification that is independent and based on scientific standards, enforced and audited by the certifier, with the origins of the seal clearly identified—reasonably convey the message that the advertiser's practices are consistent with the certification even if consumers do not necessarily know the specific standards that certification requires. When an advertiser makes claims in close proximity to a claim about or description of a specific certification consumers would understand that the advertiser's practices are consistent with the reputable, third-party standards represented by the seal.

³⁰ See, *Set a Target*, SBTi: