

Complaint

IN THE MATTER OF

DIVISION WEST CHINCHILLA CORPORATION ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-1334. Complaint, May 9, 1968—Decision, May 9, 1968*

Consent order requiring an Omaha, Nebr., seller of chinchilla breeding stock to cease misrepresenting the profits to be made in chinchilla breeding, the fertility of its stock, and making other false claims.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Division West Chinchilla Corporation, a corporation, and Richard G. Wood and Craig Moody, individually and as officers of said corporation, and James R. Holyfield, individually and as a former officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Division West Chinchilla Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nebraska, with its principal office and place of business located at 7230 North Pershing Drive, Omaha, Nebraska.

Respondents Richard G. Wood and Craig Moody are individuals and officers of Division West Chinchilla Corporation. Respondent James R. Holyfield is an individual and former officer of Division West Chinchilla Corporation. Together they formulated, directed and controlled the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Respondents Richard G. Wood and Craig Moody continue to formulate, direct, and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. The address of respondents Richard G. Wood and Craig Moody is the same as that of the corporate respondent. The address of respondent James R. Holyfield is 908 Milford Lane, Louisville, Kentucky.

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PAR. 2. Respondents are now, and for some time last past, have been engaged in the advertising, offering for sale, sale and distribution of chinchilla breeding stock to the public. Respondent James R. Holyfield is not engaged in the advertising, offering for sale, sale and distribution of chinchilla breeding stock to the public at the present time. He was engaged in the aforementioned activities at the time the acts and practices hereinafter set forth occurred.

PAR. 3. In the course and conduct of their aforesaid business, respondents caused, and for some time last past have caused, and respondents Richard G. Wood, Craig Moody, and Division West Chinchilla Corporation continue to cause, their said chinchillas, when sold, to be shipped from their place of business in the State of Nebraska to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned hereinafter have maintained, a substantial course of trade in said chinchillas in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business and for the purpose of inducing the sale of their chinchillas, the respondents made, and respondents Richard G. Wood, Craig Moody, and Division West Chinchilla Corporation continue to make, numerous statements and representations by means of television broadcasts, direct mail advertising and through the oral statements and display of promotional material to prospective purchasers by salesmen, with respect to the rate of reproduction of chinchillas, the expected rate of return from their pelts, their quality, their hardiness and freedom from disease.

Typical and illustrative, but not all inclusive, of the said statements and representations made in respondents' advertising and promotional material are the following:

First of all, they deal only in high-quality chinchillas.

We have a complete program of service and herd-improvement. Service? An information bulletin delivered to your ranch every month for two years.

* * * the Chinchilla is a healthy, hardy, disease-free animal that needs only NUTRITION to build its immunity against disease.

* * * a herd purchased from Division West will be the finest grade of animals available for the price.

Well, after five years, successful ranchers can look forward to an income of six thousand dollars a year or more, increasing each year.

An average rate of growth is three offspring *per* female, *per* year. And it's the growth of the herd that's the key to making substantial profits in this business. Now under a good growth of herd program, it can be accomplished on a six-year plan. A chinchilla rancher starts out with six females plus one male. for a total of seven. Each female should average two litters *per* year with an

average of almost two offspring. So, at the end of one year the chinchilla rancher should have a herd of about 25 animals, including the newborn, of course, and the original herd. Now this number should include about sixteen females. During the second year, these females should produce approximately 33 new offspring. And this multiplying process continues into the third and fourth years until a real profit-making herd is acquired. Now you need only a relatively few males to increase the size of the herd, so excess males are sold for pelting profit. Now, in recent years, this average pelt price was well over \$21.00. So, for every one hundred males sold off each year it will bring over two thousand dollars to the rancher. So, after four or five years, the rancher who has followed this growth-of-herd program will be earning substantial annual income which will grow each year thereafter to just as much as he cares to make it.

* * * a successful rancher, just by building his herd for five years, will probably have an income of six thousand dollars a year * * * maybe more.

And space? Well, you probably have it already. Successful chinchilla ranches have been housed in basements * * * garages * * * closed-in porches * * * spare buildings and barns, and even your own home.

PAR. 5. By and through the use of said statements and representations made by respondents in their advertising and promotional material, and in oral representations made by their salesmen, and others of similar import and meaning, but not expressly set out herein, respondents represented, and respondents Richard G. Wood, Craig Moody, and Division West Chinchilla Corporation continue to represent, directly or by implication, that:

1. It is commercially feasible to breed and raise chinchillas in homes, basements, garages, closed-in porches, spare buildings or barns and large profits can be made in this manner.

2. The breeding of chinchillas for profit requires no previous experience.

3. Chinchillas are hardy animals, and are not susceptible to diseases.

4. Purchasers of respondents' breeding stock receive select or choice quality chinchilla.

5. Each female chinchilla purchased from respondents and each female offspring will produce at least three live offspring per year.

6. The breeding stock of six females and one male chinchilla purchased from respondents will result in live offspring as follows: 18 the first year, 33 the second year, 69 the third year, 144 the fourth year, and 303 the fifth year.

7. Pelts from the offspring of respondents' breeding stock sell for an average price of \$21.60 per pelt.

8. A purchaser starting with six females and one male of respondents' chinchilla breeding stock will have an income of \$5,076 from the sale of pelts in the sixth year.

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9. Purchasers of respondents' breeding stock would receive service calls from respondents' service personnel four times a year for two successive years after purchase of the animals.

10. Purchasers of respondents' breeding stock would be given guidance in the care and breeding of chinchillas.

PAR. 6. In truth and in fact:

1. It is not commercially feasible to breed or raise chinchillas in homes, basements, garages, closed-in porches, spare buildings or barns and large profits cannot be made in this manner. Such quarters or buildings, unless they have adequate space and the requisite temperature, humidity, ventilation, and other necessary environmental conditions are not adaptable to or suitable for the breeding or raising of chinchillas on a commercial basis.

2. The breeding of chinchillas for profit requires specialized knowledge in the feeding, care and breeding of said animals, much of which must be acquired through actual experience.

3. Chinchillas are not hardy animals and are susceptible to pneumonia and other diseases.

4. Chinchilla breeding stock sold by respondent is not of select or choice quality.

5. Each female chinchilla purchased from respondents and each female offspring will not produce at least three live offspring per year but generally less than that number.

6. The initial chinchilla breeding stock of six females and one male purchased from respondents will not result in the number specified in subparagraph (6) of Paragraph Five above since these figures do not allow for factors which reduce chinchilla production such as those born dead or which die after birth, the culls which are unfit for reproduction, fur chewers and sterile animals.

7. A purchaser of respondents' chinchillas could not expect to receive an average price of \$21.60 for each pelt but substantially less than that amount.

8. A purchaser starting with six females and one male of respondents' breeding stock will not have an income of \$5,076 from the sale of pelts in the sixth year but substantially less than that amount.

9. Purchasers of respondents' breeding stock do not receive the represented number of service calls from respondents' service personnel but generally less than that number.

10. Purchasers of respondents' breeding stock are given little if any guidance in the care and breeding of chinchillas.

Therefore, the statements and representations as set forth in Paragraphs Four and Five hereof were and are false, misleading and deceptive.

PAR. 7. In the course and conduct of their business, at all times mentioned herein, respondents have been in substantial competition in commerce with corporations, firms and individuals in the sale of chinchilla breeding stock.

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the tendency and capacity to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' chinchillas by reason of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of the respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Deceptive Practices proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating

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its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Division West Chinchilla Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nebraska, with its office and principal place of business located at 7230 North Pershing Drive, Omaha, Nebraska.

Respondents Richard G. Wood and Craig Moody are officers of said corporation and their address is the same as that of said corporation. Respondent James R. Holyfield is a former officer of said corporation and his residence address is 908 Milford Lane, Louisville, Kentucky.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Division West Chinchilla Corporation, a corporation, and its officers, and Richard G. Wood and Craig Moody, individually and as officers of said corporation, and James R. Holyfield, individually and as a former officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of chinchilla breeding stock or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, that:

1. It is commercially feasible to breed or raise chinchillas in homes, basements, garages, closed-in porches, spare buildings, barns or other quarters or buildings or that large profits can be made in this manner: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that the represented quarters or buildings have the requisite space, temperature, humidity, ventilation and other environmental conditions which would make them adaptable to and suitable for the breeding and raising of chinchillas on a commercial basis and that large profits can be made in this manner.

2. Breeding chinchillas for profit can be achieved without previous knowledge or experience in the feeding, care and breeding of such animals.

3. Chinchillas are hardy animals or are not susceptible to disease.

4. Purchasers of respondents' chinchilla breeding stock will receive select or choice quality chinchillas or any other grade or quality of chinchillas: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that purchasers do actually receive chinchillas of the represented grade or quality.

5. Each female chinchilla purchased from respondents and each female offspring produce at least three live young per year.

6. The number of live offspring produced per female chinchilla is any number: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that the represented number of offspring are usually and customarily produced by female chinchillas purchased from respondents or the offspring of said chinchillas.

7. The breeding stock of six females and one male chinchilla purchased from respondents will produce live offspring of 18 the first year, 33 the second year, 69 the third year, 144 the fourth year and 303 the fifth year.

8. The number of live offspring produced by respondents' chinchilla breeding stock is any number: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that the represented number of offspring are usually and customarily produced by chinchillas purchased from respondents or the offspring of said chinchillas.

9. Offspring of chinchilla breeding stock purchased from respondents will produce pelts selling for the average price of \$21.60 each.

10. Purchasers of respondents' breeding stock will receive for chinchilla pelts any price or prices: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that the represented price or prices per pelt are usually received for pelts

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produced by chinchillas purchased from respondents, or by the offspring of said chinchillas.

11. A purchaser starting with six females and one male will have, from the sale of pelts, an annual income, earnings or profits of \$5,076 in the sixth year after purchase.

12. Purchasers of respondents' breeding stock will realize earnings, profits or income in any amount or range of amounts: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that the represented amount or range of amounts of earnings, profits or income are usually realized by purchasers of respondents breeding stock.

13. Purchasers of respondents' chinchilla breeding stock will receive service calls from respondents' service personnel four times a year for two successive years after purchase of the animals or at any other interval or frequency: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that the represented number of service calls are actually furnished.

14. Purchasers of respondents' chinchilla breeding stock are given guidance in the care and breeding of chinchillas or are furnished advice by respondents as to the breeding of chinchillas: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that purchasers are actually given the represented guidance in the care and breeding of chinchillas or are furnished the represented advice by respondents as to the breeding of chinchillas.

B. 1. Misrepresenting, in any manner, the assistance, training, services or advice supplied by respondents to purchasers of their chinchilla breeding stock.

2. Misrepresenting, in any manner, the earnings on profits of purchasers of respondents' chinchilla breeding stock.

C. Failing to deliver a copy of this order to cease and desist to all present and future salesmen or other persons engaged in the sale of the respondents' products or services and failing to secure from each such salesmen or other person a signed statement acknowledging receipt of said order.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Certification of Record

IN THE MATTER OF

NED R. BASKIN DOING BUSINESS AS
HOLLYWOOD FILM STUDIOSMODIFIED ORDER, OPINION, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION ACT*Docket 4902. Complaint, Feb. 8, 1943—Decision, May 10, 1968*

Order modifying a cease and desist order dated January 26, 1951, 47 F.T.C. 913, which charged a Hollywood, Calif., mail-order seller of photo enlargements with certain false advertising practices by adding prohibitions against deceptively representing that customers will receive color enlargements without added cost, will receive two enlargements forthwith and unconditionally, and that cash will be paid for using customer photos in advertising.

CERTIFICATION OF RECORD,
REPORT, AND RECOMMENDATION

OCTOBER 17, 1967

This is a report, recommendation and certification of the record pursuant to order of the Federal Trade Commission dated December 30, 1966 [70 F.T.C. 1851], made in accordance with Section 3.28(b)(3) of the Commission's Rules of Practice effective August 1, 1963,¹ and referred to the undersigned on July 24, 1967. It deals with the question of whether or not the Commission's order to cease and desist, issued against respondent January 26, 1951² should be reopened and modified in the manner proposed.

This proceeding to reopen was commenced September 9, 1966, by the Commission issuing its Show Cause Order as to why the original proceeding should not be reopened and the outstanding order modified by adding certain paragraphs that were set forth in the order of Sep-

¹ Under rules effective July 1, 1967, 32 F.R. 8456, the pertinent section is § 3.72(b)(3). The rule § 3.28(b)(3) reads as follows:

"Whenever an order to show cause or petition to reopen is not opposed, or if opposed but the pleadings do not raise issues of fact to be resolved, the Commission, in its discretion, may decide the matter on the order to show cause or petition and answer thereto, or it may serve upon the parties a notice of hearing, setting forth the date when the cause will be heard. In such a case, the hearing will be limited to the filing of briefs and may include oral argument when deemed necessary by the Commission. When the pleadings raise substantial factual issues, the Commission will direct such hearings as it deems appropriate, including hearings for the receipt of evidence by it or by a hearing examiner. Unless otherwise ordered and insofar as practicable, hearings before a hearing examiner to receive evidence shall be conducted in accordance with Subparts C, D, E and F of these rules. Upon conclusion of hearings before a hearing examiner, the record and the hearing examiner's recommendations shall be certified to the Commission for final disposition of the matter."

² 47 F.T.C. 913.