

Complaint

75 F.T.C.

IN THE MATTER OF

CHINCHILLA BREEDERS COMPANY, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-1524. Complaint, Apr. 28, 1969—Decision, Apr. 28, 1969

Consent order requiring a Lafayette, Calif., seller of chinchilla breeding stock to cease making exaggerated earning claims, misrepresenting the quality of its stock, deceptively guaranteeing the fertility of its stock, and misrepresenting its services to purchasers.

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 Chinchilla Breeders Company, Inc., a corporation, and William R. Kinsel, individually and as an 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 Chinchilla Breeders Company, Inc., is a corporation organized, existing and which did business under and by virtue of the laws of the State of California, with its principal office and place of business located at 529 Silverado Drive, Lafayette, California.

Respondent William R. Kinsel is an individual and officer of Chinchilla Breeders Company, Inc. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents for some time prior to November 1967 were engaged in the advertising, offering for sale, sale and distribution of chinchilla breeding stock to the public.

PAR. 3. In the course and conduct of their aforesaid business, respondents have caused their said chinchillas, when sold, to be shipped from their place of business in the State of California to purchasers thereof located in various other States of the United States, and at all times mentioned herein maintained a sub-

stantial 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 aforesaid business, and for the purpose of obtaining the names of prospective purchasers and inducing the purchase of said chinchillas, the respondents made numerous statements and representations by means of magazine advertising and through the oral statements and display of promotional material to prospective purchasers by their salesmen, with respect to the breeding of chinchillas for profit without previous experience, the rate of reproduction of said animals and the expected return from the sale of their pelts.

Typical and illustrative, of said statements and representations, but not all inclusive thereof, are the following:

Chinchilla Raising For Profit

- Exceptionally high earnings
- Part or Full Time at home
- Use Spare Room or Garage
- We Do Pelting, Marketing for you

Registered Graded Breeding Stock

3 year Life Warrantee Guaranteed Production

There at present is a strong demand * * *

A genuine interest in the item will continue * * *

Breeders "Guaranteed Market Price" Agreement. Chinchilla Breeders Company Agrees:

1. To buy all descendents of the Registered chinchillas originally purchased from CHINBREDCO, said descendents to be purchased in pairs * * *.
2. To pay the CHINBREDCO Breeder the sum of \$80.00 per pair for said offspring

PAR. 5. By and through the use of the above-quoted statements and representations, and others of similar import and meaning, but not expressly set out herein, and through the oral statements and representations made in sales presentations to purchasers, the respondents have represented, directly or by implication:

1. That it is commercially feasible to breed and raise chinchillas for breeding stock purchased from respondents in homes, basements, garages or spare rooms and large profits can be made in this manner.
2. That the breeding of chinchillas from breeding stock purchased from respondents, as a commercially profitable enterprise, requires no previous experience in the breeding, raising and caring for such animals.

3. That pelts from the offspring of respondents' breeding stock generally sell for \$25 to \$40 per pelt.

4. That pelts from the offspring of respondents' breeding stock sell for an average price of \$35.

5. That chinchillas are hardy animals, and are not susceptible to diseases.

6. That each female chinchilla purchased from respondents and each female offspring will produce at least four live offspring per year.

7. That thirty pairs of chinchilla breeding stock purchased from respondents will produce an annual gross income of \$51,200 within five years.

8. That purchasers of respondents' breeding stock receive registered, graded breeding stock and high quality chinchilla breeding stock.

9. That chinchilla breeding stock purchased from respondents is unconditionally guaranteed to live three years and to reproduce.

10. That respondents will promptly fulfill all of their obligations and requirements set forth in or represented, directly or by implication, to be contained in the guarantee or warranty applicable to each and every chinchilla.

11. That purchasers of respondents' breeding stock will be given guidance in the care and breeding of chinchillas.

12. That respondents will purchase, through the "Breeders 'Guaranteed Market Price' Agreement," all the chinchilla offspring raised by purchasers of respondents' chinchilla breeding stock for \$80 per pair, a pair being one male and one female, or two females.

13. That purchasers of respondents' breeding stock will receive service calls from respondents' service personnel every six weeks.

14. That the respondents maintain facilities for and provide priming, pelting, tanning, dressing and marketing services to purchasers of their chinchilla breeding stock.

15. That there is a great demand for the offspring and for the pelts of the offspring of chinchilla breeding stock purchased from respondents.

16. That breeding chinchillas by mated pairs will produce more offspring of better quality than by using one male to breed several females, called polygamous breeding.

17. Through the use of the trade name Chinchilla Breeders

Company, separately and in connection with other statements and representations, that respondents are chinchilla breeders.

PAR. 6. In truth and in fact:

1. It is not commercially feasible to breed or raise chinchillas from breeding stock purchased from respondents in homes, basements, garages or spare rooms 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 from breeding stock purchased from respondents, as a commercially profitable enterprise, requires specialized knowledge in the breeding, raising and care of said animals much of which must be acquired through actual experience.

3. A purchaser of respondents' chinchillas could not expect to receive from \$25 to \$40 for each pelt produced since some of the pelts are not marketable at all and others would not sell for \$25 but for substantially less than this amount.

4. A purchaser of respondents' chinchillas could not expect to receive an average price of \$35 for each pelt produced but substantially less than that amount.

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

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

7. Thirty pairs of chinchilla breeding stock purchased from respondents will not produce an annual gross income of \$51,200 within five years but substantially less than that amount.

8. Purchasers of respondents' breeding stock do not receive registered, graded breeding stock of high quality chinchilla breeding stock.

9. Chinchilla breeding stock purchased from respondents is not unconditionally guaranteed to live three years and reproduce but said guarantee is subject to numerous terms, limitations and conditions.

10. Respondents do not in fact fulfill all of their obligations and requirements set forth in or represented, directly or by implication, to be contained in the guarantee or warranty applicable to each and every chinchilla.

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

12. Respondents, through the "Breeders 'Guaranteed Market Price' Agreement" or through any other agreement or arrangement, seldom, if ever, purchase all or any of the chinchilla offspring raised by purchasers of respondents' breeding stock for \$80 per pair. Furthermore, respondents purchase the breeding stock resold by them from a commercial breeding organization and seldom, if ever, purchase any breeding stock from their customers.

13. Purchasers of respondents' breeding stock do not receive service calls from respondents' service personnel every six weeks. In some instances purchasers of respondents' chinchilla breeding stock do not receive any service calls and in other instances the time interval between said service calls is much longer than six weeks.

14. Respondents do not maintain facilities for and do not provide priming, pelting, tanning, dressing or marketing service to purchasers of the chinchilla breeding stock.

15. There is not a great demand for the offspring or for the pelts of the offspring of chinchilla breeding stock purchased from respondents.

16. Breeding chinchillas by mated pairs will not produce more offspring or offspring of better quality than the polygamous breeding method.

17. Respondents are not chinchilla breeders; but are engaged solely in the sale of chinchillas purchased from others.

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, respondents have been in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of chinchilla breeding stock of the same general kind and nature as that sold by respondents.

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements, representations, and practices has had the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were 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 all to the prejudice and injury of the public and of respondents' competitors and constituted 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 Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; 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 complaint to issue herein, 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 considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed 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 in the form contemplated by said agreements, makes the following jurisdictional findings, and enters the following order:

1. Respondent Chinchilla Breeders Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 529 Silverado Drive, in the city of Lafayette, State of California.

Respondent William R. Kinsel is an officer of said corporation and his address is the same as that of said corporation.

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 Chinchilla Breeders Company, Inc., a corporation, and its officers, and William R. Kinsel, individually and as an 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 or spare buildings, or other quarters or buildings unless in immediate conjunction therewith it is clearly and conspicuously disclosed that the represented quarters or buildings can only be adaptable to and suitable for the breeding and raising of chinchillas on a commercial basis if they have the requisite space, temperature, humidity, ventilation and other environmental conditions.

2. Breeding chinchillas as a commercially profitable enterprise can be achieved without previous knowledge or experience in the breeding, raising and care of such animals.

3. Pelts from the offspring of respondents' chinchilla breeding stock sell for an average price of \$35 per pelt; or that pelts from the offspring of respondents' breeding stock generally sell from \$25 to \$40 each.

4. Chinchilla pelts from respondents' breeding stock will sell for any price, average price, or range of prices; or representing, in any manner, the past price, average price or range of prices of purchasers of respondents' breeding stock unless in fact the past price, average price or range of prices represented are those of a substantial number of purchasers and accurately reflect the price, average price or range of prices realized by these purchasers under circumstances similar to those of the purchaser to whom the representation is made.

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

6. Each female chinchilla purchased from respond-

ents and each female offspring produce at least four live young per year.

7. The number of live offspring produced per female chinchilla is any number or range thereof; or representing, in any manner, the past number or range of numbers of live offspring produced per female chinchilla of purchasers of respondents' breeding stock unless in fact the past number or range of numbers represented are those of a substantial number of purchasers and accurately reflect the number or range of numbers of live offspring thereof produced per female chinchilla of these purchasers under circumstances similar to those of the purchaser to whom the representation is made.

8. A purchaser starting with thirty pairs of chinchilla breeding stock will have an annual gross income, earnings, return or profits of \$51,200 within five years after purchase.

9. Purchasers of respondents' breeding stock will realize earnings, profits or income in any amount or range of amounts; or representing, in any manner, the past earnings, profits or income of purchasers of respondents' breeding stock unless in fact the past earnings, profits or income represented are those of a substantial number of purchasers and accurately reflect the average earnings, profits or income of these purchasers under circumstances similar to those of the purchaser to whom the representation is made.

10. Purchasers of respondents' chinchilla breeding stock will receive registered or graded chinchillas or high quality chinchillas.

11. Breeding stock purchased from respondents are warranted or guaranteed without clearly and conspicuously disclosing in immediate conjunction therewith the nature and extent of the guarantee, the manner in which the guarantor will perform and the identity of the guarantor.

12. Respondents' chinchillas are guaranteed unless respondents do in fact promptly fulfill all of their obligations and requirements set forth in or represented, directly or by implication, to be contained in any guarantee or warranty applicable to each and every chinchilla.

13. 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 unless purchasers are actually given the represented guidance in the care and breeding of chinchillas and are furnished the represented advice by respondents as to the breeding of chinchillas.

14. Respondents will purchase all or any of the offspring raised by purchasers of respondents' breeding stock for \$80 a pair; or that respondents will purchase said offspring for any other price unless respondents do in fact purchase all the offspring offered by said purchasers at the prices and on the terms and conditions represented; or representing, in any manner, that respondents will purchase chinchilla offspring raised by customers unless respondents do in fact purchase such offspring.

15. Purchasers of respondents' chinchilla breeding stock will receive service calls from respondents' service personnel every six weeks or at any other interval or frequency unless purchasers do in fact receive the represented number of service calls at the represented interval or frequency.

16. Respondents maintain facilities for or provide their purchasers with priming, pelting, tanning, dressing or marketing services; or misrepresenting, in any manner, their facilities or services.

17. Chinchillas or chinchilla pelts are in great demand; or that purchasers of respondents' breeding stock can expect to be able to sell the offspring or the pelts of the offspring of respondents' chinchillas because said chinchillas or pelts are in great demand.

18. Breeding chinchillas by mated pairs will produce more or better quality offspring than by polygamous breeding.

B. Using the words "Breeders" or any other word of similar import or meaning in or as a part of respondents' trade or corporate name; or representing, directly or by implication, that respondents are chinchilla breeders; or misrepresenting, in any manner, the kind or nature of respondents' business.

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

D. Misrepresenting, in any manner, the earnings or profits to purchasers or the quality or reproduction capacity of any chinchilla breeding stock.

E. 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 salesman or other person a signed statement acknowledging receipt of said order.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

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.

IN THE MATTER OF

STEFANI BROS., ET AL.