

IN THE MATTER OF
MAJESTIC CHINCHILLA, INC., ET AL.

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

Docket C-1559. Complaint, July 10, 1969—Decision, July 10, 1969

Consent order requiring a Louisville, Ky., seller of chinchilla breeding stock to cease making exaggerated earning claims, misrepresenting the quality of the stock, deceptively guaranteeing the fertility of the stock, and misrepresenting 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 Majestic Chinchilla, Inc., a corporation, and Howard M. Withers, individually and as an officer of said corporation, and John R. Smith and Odie Carman, individually and as former officers 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 Majestic Chinchilla, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Kentucky, with its principal office and place of business located at 6910 Southside Drive, Louisville, Kentucky, 40214.

Respondent Howard M. Withers is an individual and the sole stockholder and an officer of said Majestic Chinchilla, Inc., which he acquired about August 1968 and since that time alone formu-

lates, directs and controls the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

Respondents John R. Smith and Odie Carman are individuals and former officers of Majestic Chinchilla, Inc. Prior to said change of ownership, together they formulated, directed and controlled the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Respondent John R. Smith's address is 10303 National Turnpike Road, Fairdale, Kentucky. Respondent Odie Carman's address is 8809 Brown Austin Road, Fairdale, Kentucky.

PAR. 2. Respondents, as above described, 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.

PAR. 3. In the course and conduct of their aforesaid business, respondents caused, and for some time last past have caused, and respondents Howard M. Withers and Majestic Chinchilla, Inc., continue to cause, their said chinchillas, when sold, to be shipped from their place of business in the State of Kentucky to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products 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, and respondents Howard M. Withers and Majestic Chinchilla, Inc., 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 their salesmen, with respect to the breeding of chinchillas for profit without previous experience, the rate of reproduction of said animals, the expected return from the sale of their pelts and their hardiness and freedom from disease.

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

* * * Many people contemplating raising chinchillas think they must have special buildings to house their herds. However, successful chinchilla ranch-

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ing can be done in basements, spare rooms, closed-in porches and outbuildings. * * *

* * * * *

* * * The Chinchilla is a healthy, hardy disease-free animal. * * *

* * * * *

Majestic guarantees each animal to live past maturity.

* * * * *

Breeding * * * Gestation period is 111 days and the young are born in litters of from one to five, with the average being about two.

* * * * *

Productivity—111 days gestation period; average one to two per litter. National average 1.9 per litter.

* * * * *

Is schooling or experience necessary to qualify as a Majestic rancher? Our experienced herdsmen personally guide each new rancher through the proven methods of chinchilla ranching. * * *

* * * * *

Fur value * * * Empress Chinchilla * * *—Dec. 1965 good quality—\$30.90 to \$63.00.

* * * * *

This graph shows your potential yearly income for the number of females breeding

Number of Females			
25	-----	\$1,561.00	175 ----- \$10,997.00
50	-----	3,145.00	200 ----- 12,582.00
75	-----	4,730.00	225 ----- 14,143.00
100	-----	6,291.00	250 ----- 15,727.00
125	-----	7,858.00	275 ----- 17,312.00
150	-----	9,436.00	300 ----- 18,875.00
* * * * *			

* * * A herd purchased from Majestic will be the finest grade of animals available for the price.

* * * * *

* * * Majestic qualifies in all of the categories that make ranching a success.

A—Quality stock.

B—Experienced Consultants. * * *

C—Ranches visitation four times a year by experienced herdsmen.

PAR. 5. By and through the use of the aforesaid statements and representations and others of similar import and meaning, but not expressly set out herein, separately and in connection with the oral statements and representations made by their salesmen and representatives to prospective purchasers and purchasers, re-

spondents represented, and respondents Howard M. Withers and Majestic Chinchilla, Inc., continue to represent, directly or by implication, that:

1. It is commercially feasible to breed and raise chinchillas from breeding stock purchased from respondents in homes, basements, closed-in porches, or spare buildings, and large profits can be made in this manner.
2. The breeding of chinchillas from breeding stock purchased from respondents, as a commercially profitable enterprise, requires no previous experience in the breeding, caring for and raising of such animals.
3. Chinchillas are hardy animals and are not susceptible to diseases.
4. Purchasers of respondents' breeding stock receive high or top quality chinchillas.
5. Each female chinchilla purchased from respondents and each female offspring will produce at least four live offspring per year.
6. Each female chinchilla purchased from respondents and each female offspring will produce successive litters of from one to five live offspring at 111-day intervals.
7. The offspring referred to in Paragraph Five subparagraph (6) above will produce pelts selling for an average price of \$30 per pelt, and that pelts from offspring of respondents' breeding stock generally sell from \$30.90 to \$63.00 each.
8. A purchaser starting with one female and one male of respondents' chinchilla breeding stock will have a net profit of \$3,865.98 from the sale of pelts in the sixth year.
9. Chinchilla breeding stock purchased from respondents is unconditionally guaranteed to live.
10. Purchasers of respondents' breeding stock receive service calls from respondents' service personnel four times a year for the first year after purchase of the animals.
11. Purchasers of respondents' breeding stock are given guidance in the care and breeding of chinchillas.
12. Purchasers of respondents' breeding stock can expect a great demand for the offspring and for the pelts of the offspring of respondents' chinchillas.
13. Through the assistance and advice furnished to purchasers of respondents' breeding stock by respondents, purchasers are able to successfully breed and raise chinchillas as a commercially profitable enterprise.

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, closed-in porches or spare buildings, 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, caring for and raising 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 respondents is not of high or top quality.

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

6. Each female chinchilla purchased from respondents and each female offspring will not produce successive litters of from one to five live offspring at 111-day intervals, but generally less than that number.

7. The offspring referred to in subparagraph (6) of Paragraph Five above will not produce pelts selling for an average price of \$30 per pelt but substantially less than that amount; and pelts from offspring of respondents' breeding stock will generally not sell for \$30.90 to \$63.00 each since some of the pelts are not marketable at all and others would not sell for \$30 but for substantially less than that amount.

8. A purchaser starting with one female and one male of respondents' breeding stock will not have a net profit of \$3,865.98 from the sale of pelts in the sixth year but substantially less than that amount.

9. Chinchilla breeding stock purchased from respondents is not unconditionally guaranteed to live but such guarantee as is provided is subject to numerous terms, limitations and conditions.

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

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

12. Purchasers of respondents' breeding stock cannot expect a great demand for the offspring of and pelts from respondents' chinchillas.

13. Purchasers of respondents' breeding stock are not able to successfully breed and raise chinchillas as a commercially profitable enterprise through the assistance and advice furnished them by respondents.

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, and 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 of the same general kind and nature as those sold by respondents.

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency 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 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 Majestic Chinchilla, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Kentucky, with its office and principal place of business located at 6910 Southside Drive, Louisville, Kentucky.

Respondent Howard M. Withers is an officer of said corporation and his address is the same as that of said corporation. Respondents John R. Smith and Odie Carman are former officers of said corporation. The address of respondent John R. Smith is 10303 National Turnpike Road, Fairdale, Kentucky, and the address of respondent Odie Carman is 8809 Brown Austin Road, Fairdale, 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 Majestic Chinchilla, Inc., a corporation, and its officers, and Howard M. Withers, individually and as an officer of said corporation, and John R. Smith and Odie Carman, individually and as former officers 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 "com-

merce" 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, closed-in porches 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, caring for and raising of such animals.

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

4. Purchasers of respondent's chinchilla breeding stock will receive high or top quality chinchillas.

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

6. The number of live offspring produced per female chinchilla is any number or range of numbers; 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 produced per female chinchilla of these purchasers under circumstances similar to those of the purchaser to whom the representation is made.

7. Each female chinchilla purchased from respondents and each female offspring will produce successive litters of one to five live offspring at 111-day intervals.

8. The number of litters or sizes thereof produced per female chinchilla is any number or range thereof; or representing, in any manner, the past number or range of numbers of litters or sizes produced per female chin-

chilla 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 litters or sizes thereof produced per female chinchilla of these purchasers under circumstances similar to those of the purchaser to whom the representation is made.

9. Pelts from the offspring of respondents' chinchilla breeding stock sell for an average price of \$30 per pelt; or that pelts from the offspring of respondents' breeding stock generally sell from \$30.90 to \$63.00 each.

10. Chinchilla pelts 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 pelts 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.

11. A purchaser starting with one female and one male will have, from the sale of pelts, a net profit, annual income or earnings of \$3,865.98 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; 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.

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

14. Purchasers of respondents' chinchilla breeding stock will receive service calls from respondents' service personnel four times a year for the first year after purchase of the animals 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.

15. 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.

16. 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.

17. The assistance or advice furnished to purchasers of respondents' chinchilla breeding stock by respondents will enable purchasers to successfully breed or raise chinchillas as a commercially profitable enterprise.

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 or profits to purchasers; or the quality or reproduction capacity of any chinchilla breeding stock.

C. Failing to deliver a copy of this order to cease and desist to all present and future salesmen and 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.

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Decision and 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.
