

IN THE MATTER OF

BAR V O CHINCHILLA COMPANY, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 8782. Complaint, May 19, 1969—Decision, Nov. 19, 1969*

Consent order requiring a Coats, Kansas, corporation selling chinchilla breeding stock to cease making exaggerated earning claims, misrepresenting the quality of its stock, deceptively guaranteeing the fertility of the 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 Bar V O Chinchilla Company, Inc., a corporation, and Grace Irene Gerstner and Michael J. Gerstner, individually and as officers of said corporation, and Ambrose J. Gerstner, individually and as a director 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 Bar V O Chinchilla Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Kansas, with its principal office and place of business located at Coats, Kansas.

Respondents Grace Irene Gerstner and Michael J. Gerstner are individuals and are officers of the corporate respondent and respondent Ambrose J. Gerstner is an individual and is a director of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

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.

PAR. 3. In the course and conduct of their business, as aforesaid, respondents now cause, and for some time last past have caused, their said chinchillas, when sold, to be shipped from their

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place of business in the State of Kansas 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 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 have made, and are now making, numerous statements and representations by means of newspaper advertising, 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 the training and assistance to be made available to purchasers of respondents' chinchillas.

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

PROSPECTIVE CHINCHILLA INCOME STATEMENT

ASSUMING: 450 females would litter 2 times
per year and average 1.9 babies
per litter—This would produce
1,715 babies. Allowing a casualty
loss of 20%, this would reduce
your prospective pelters to 1,372.

Depreciation costs	\$1,125.00	----
Cost per pelt		\$0.82
Feed cost (pellets) per year (24 ton at \$87): 450 females, 75 males, 1,372 pelters	2,088.00	----
Hay—Per year 15 ton at \$45	675.00	----
Feed and hay costs per pelt		2.01
Miscellaneous expense: Bath dust, wood shavings and medicine	1,440.60	----
Cost per pelt		1.05
Freight for pelts (1,372)	109.76	----
Cost per pelt		.08
Tanning costs	3,087.00	----
Cost per pelt		2.25
Selling cost of pelts (10 percent)	2,744.00	----
Cost per pelt		2.00

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Total operating cost -----	11,269.36	----
Total cost per pelt -----	-----	8.21
Gross income from 1,372 pelts at \$20 each -----	27,440.00	----
Less: Total operating costs -----	11,269.36	----
Total net profit -----	16,170.64	----
Net profit per pelt -----	-----	11.79

Chinchillas may be raised profitably on a part-time basis. However, for the above operation it will require the full time of one man. The EMPRESS quality average for 1965 was \$30.90 per pelt.

* * * THE GREATEST NEED OF THE CHINCHILLA INDUSTRY IS MORE BREEDERS TO PRODUCE TOP QUALITY PELTS. * * *

CHINCHILLAS ARE VERY CLEAN, ODORLESS, FREE FROM VERMIN, TAME AND PLEASANT TO HAVE ABOUT.

Nature works with breeders, multiplying their assets every few months by normal process of reproduction.

* * * we can control the temperature and by controlling the temperature, we have a chance of a possible three litters a year, per female.

* * * they litter approximately 3 times a year. * * *

* * * the demand for your good quality pelts is, of course, great and it should continue to be as great as it is or, greater as a matter of fact.

* * * there is a ready market place for anyone who decides to go into the chinchilla industry.

* * * your national average is a little under two babies per litter. * * * you'll have right around three quality pelts per female per year.

* * * a spare room or basement or a garage, any, any building that is, that can be kept warm or cool would be fine to start out with.

* * * they can litter three times a year, however, I always figure on just two litters per female per year.

* * * the national average is 1.9 babies per litter. Now, my brother had one this last year that had five. * * * I'd rather have two and three all the time.

* * * depending upon the number that a person starts with, in five to ten years they can have an income of \$500 to \$1,000 per month without a whole lot of work.

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* * * by keeping your females and selling nothing but your excess males, to where you'll start realizing some money and making some money after your fourth year's production.

* * * A chinchilla now will litter three times; of course this is because of controlling temperature. * * * We can get three litters per female per year, where in the wild, they usually just littered once a year, depending upon the climate. * * *

* * * Had you started out seven years ago with a unit, for instance, it'd be very likely that you'd have a net income of somewhere between twenty and twenty-five thousand dollars a year.

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, made by respondents in their advertising and promotional material separately and in connection with the oral statements and representations made by their salesmen and representatives, the respondents have represented, and are now representing, directly or by implication, that:

1. It is commercially feasible to breed and raise chinchillas from breeding stock purchased from respondents in homes, basements, garages, closed-in porches, spare buildings or sheds, 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, raising and caring for such animals.

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

4. Purchasers of respondents' breeding stock receive select or choice 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 several successive litters of from one to four 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 \$20 per pelt, and that pelts from offspring of respondents' breeding stock generally sell from \$20-\$30 each.

8. A purchaser starting with three females and one male of respondents' chinchilla breeding stock will have an income of \$7,000 from the sale of pelts in the third year.

9. Chinchilla breeding stock purchased from respondents is unconditionally guaranteed to live one year and reproduce.

10. Purchasers of respondents' breeding stock will receive three service calls from respondents' service personnel each year.

11. Purchasers of respondents' breeding stock will be 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, garages, closed-in porches, spare buildings or sheds, 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. Chinchillas are not hardy animals and are susceptible to pneumonia and other diseases.

4. Purchasers of respondents' breeding stock do not receive select or choice quality chinchillas.

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 several successive litters of from one to four live offspring at 111-day intervals, but generally less than that number.

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7. The offspring referred to in subparagraph (6) of Paragraph Five above will not produce pelts selling for an average of \$20 per pelt, but substantially less than that amount; and pelts from offspring of respondents' breeding stock will generally not sell for \$20-\$30 each since some of the pelts are not marketable at all and others would not sell for \$20 but for substantially less than that amount.

8. A purchaser starting with three females and one male of respondents' breeding stock will not have an income of \$7,000 from the sale of pelts in the third year, but substantially less than that amount.

9. Chinchilla breeding stock purchased from respondents is not unconditionally guaranteed to live one year and reproduce; 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 aforesaid business, and at all times mentioned herein, respondents have been, and now are, 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 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 Commission having issued its complaint on May 19, 1969, charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with a copy of that complaint; and

The Commission having duly determined upon motion certified to the Commission that, in the circumstances presented, the public interest would be served by waiver here of the provision of Section 2.34(d) of its Rules that the consent order procedure shall not be available after issuance of complaint; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the 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 set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission having considered the aforesaid agreement and having determined that it provides an adequate basis for appropriate disposition of this proceeding, the agreement is hereby accepted, the following jurisdictional findings are made, and the following order is entered:

1. Respondent Bar V O Chinchilla Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Kansas, with its office and principal place of business located at Coats, Kansas.

Respondents Grace Irene Gerstner and Michael J. Gerstner are officers of said corporation, and respondent Ambrose J. Gerstner is a director of said corporation. They formulate, direct and control the policies, acts and practices of said corporation and their 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 Bar V O Chinchilla Company, Inc., a corporation, and its officers, and Grace Irene Gerstner and Michael J. Gerstner, individually and as officers of said corporation, and Ambrose J. Gerstner, individually and as a director 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 attics, 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 respondents' chinchilla breeding stock will receive select or choice 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

from 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 four 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 chinchilla from 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 \$20 per pelt; or that pelts from the offspring of respondents' breeding stock generally sell from \$20 to \$30 each.

10. 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.

11. A purchaser starting with three females and one male will have, from the sale of pelts, an annual income, earnings or profits of \$7,000 in the fourth 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 the nature and extent of the guarantee, the manner in which the guarantor will perform thereunder and the identity of the guarantor.

14. Purchasers or respondents' chinchilla breeding stock will receive three or any other number of service calls from respondents' service personnel each year 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, service 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.

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the 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.
