

Complaint

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It is further ordered. That the initial decision be, and it hereby is, adopted as the decision of the Commission.

It is further ordered. That the complaint be, and it hereby is, dismissed.

IN THE MATTER OF

AMERICAN CHINCHILLA CORPORATION, ET AL.

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

Docket 8774. Complaint, March 6, 1969—Decision, December 23, 1969

Order adopting the decision of the hearing examiner which prohibits the corporate respondent and three individuals from making various misrepresentations in the sale of chinchilla breeding stock and dismissing the complaint as to respondent John C. Green, Jr.

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 American Chinchilla Corporation, a corporation, and Lowell Thomas Page and John C. Green, Jr., individually and as officers of said corporation, and Robert V. Fudge, individually and as a former officer of said corporation, and Gardner F. Tinnin, individually and as a salesman for 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 American Chinchilla Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with its principal office and place of business located at 4010 Clarksville Highway, Nashville, Tennessee, 37218. The corporate respondent's principal office and place of business was formerly located at 1153 Broad Street, Nashville, Tennessee, 37203.

Respondent Lowell Thomas Page is an individual and officer of American Chinchilla Corporation. He is the sole stockholder of

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said corporation and alone formulates, directs and controls the acts and practices hereinafter set forth.

Respondent Robert V. Fudge is an individual and former officer of American Chinchilla Corporation. Respondent Robert V. Fudge was the sole stockholder of said corporation and alone formulated, directed and controlled the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Respondent John C. Green, Jr., is an individual, officer and salesman for the corporate respondent. Respondent Gardner F. Tinnin is an individual and salesman for the corporate respondent. Respondents Green and Tinnin cooperated in and effectuated the acts, policies and practices of the corporate respondent, including the acts and practices hereinafter set forth. The address of respondent Lowell Thomas Page is the same as that of the corporate respondent. Respondent Robert V. Fudge's address is 18th at Clarksville Highway, Nashville, Tennessee. Respondent Gardner F. Tinnin's address is Cross Plains, Tennessee. Respondent John C. Green, Jr.'s address is 882 Glendale Lane, Nashville, Tennessee.

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 Robert V. Fudge is no longer engaged in the advertising, sale and distribution of chinchilla breeding stock to the public. 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 Lowell Thomas Page and American Chinchilla Corporation continue to cause, their said chinchillas, when sold, to be shipped from their place of business in the State of Tennessee 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 Lowell Thomas Page and American Chinchilla Corporation continue to make, numerous statements and representations by means of television and radio

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broadcasts, direct mail advertising, newspaper publications, 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 assistance to be made available to purchasers of respondents' chinchillas.

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

CHINCHILLA INVESTMENT POTENTIAL. Persons of sound business judgment will easily recognize this potential when considerin (sic) the following statements: 1. There is a shortage of good Quality Chinchillas. * * * 2. Demand for good quality Chinchilla pelts normally exceeds the supply. 3. Low overhead is one of the most distinct advantages. In most instances, time required is only about five minutes per pair per day. Feeding costs should not exceed \$3.00 per animal per year, on a large herd basis. * * * 4. Chinchilla breeding as a full time occupation or as a part time profitable business is bringing a source of enjoyment and important financial return to increasing numbers of persons. * * *

RAISING CHINCHILLAS PROFITABLE (sic). Q. Is the raising of Chinchillas profitable? A. We are in the business of producing the most expensive fur in the world and look forward to getting a high price for that article. Our thoughts are concurred in by the various Fur Auction people whom we have contacted on this subject. Q. Can Chinchillas be a sound investment? A. We feel that here (sic) is no other known industry which will show such tremendous and continued earning power. We consider Chinchilla farming more profitable, when properly conducted, than most investments or other lines of business. * * * Q. If I buy Chinchillas, does your interest continue in my welfare? A. To purchasers of our breeding stock, we offer an advisory service which includes: (1) assistance in planning the proper types of pens to house their animals, (2) scientific diets which have been worked out over a period of many years, (3) the privilege of writing us at any time with respect to any problems encountered, and the benefit of our experience throughout the years.

PELTING. * * * Priming and pelting stations, staffed by experienced personnel, are available at a nominal charge per animal.

SERVICE. When the new rancher is accepted under the American Chinchilla Corp. program, he is taught the business of raising chinchillas profitably. Service calls are made periodically at each ranch for a period of at least one year. A staff is always available to advise the American Chinchilla rancher at no cost to the rancher.

BREEDING. The gestation period of the chinchilla is 111 days and the litters range from 1 to 5 babies. * * * The parents in most instances can and will breed back 18 to 24 hours after littering and females are known to have produced 7-8 and even 9 continuous litters every 111 days. * * *

PROPAGATION. * * * On a basis of two litters per year and two babies

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per litter and the sex breaking even and barring any unforeseen (sic) and unpredictable casualties, one female could produce sixteen females over a three year period, of which these sixteen on the above basis would produce 64 offspring a year. You can readily see how this pyramids as the years go by. * * *

* * * it is quite apparent that there is a long period of growth ahead and almost unlimited possibilities for the sale of pelts and good breeding stock. Fortunate is the man or woman who owns a herd of these animals, for all the world wants chinchilla and only America produces it. * * *

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 statements and representations made by their salesmen and representatives, respondents represented, and respondents Lowell Thomas Page and American Chinchilla Corporation 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, garages, 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 pedigreed 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 several 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 have pelts selling for an average price of \$30 per pelt, and that pelts from offspring of respondents' breeding stock generally sell from \$15-\$65 each.

8. A purchaser starting with six females and two males of respondents' chinchilla breeding stock will have an annual income of \$10,000 from the sale of pelts in the fifth year.

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9. Chinchilla breeding stock purchased from respondents is unconditionally guaranteed to live, breed and litter.

10. The 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 applicable to each and every chinchilla.

11. 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.

12. Purchasers of respondents' breeding stock are given guidance in the care and breeding of chinchillas.

13. Purchasers of respondents' breeding stock can expect a great demand for the offspring and for the pelts of the offspring of respondents' chinchillas.

14. Respondents will purchase any or all the chinchilla offspring raised by purchasers of respondents' chinchilla breeding stock, without distinction as to the quality or condition of such offspring, for \$30 to \$75 per animal.

15. Respondents maintain facilities for and provide priming and pelting and marketing services to purchasers of their chinchilla breeding stock.

16. 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, 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.

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4. Chinchilla breeding stock sold by respondents is not of pedigreed 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 several successive litters of from one to five 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 \$15-\$65 each since some of the pelts are not marketable at all and others would not sell for \$15 but for substantially less than that amount.

8. A purchaser starting with six females and two males of respondents' breeding stock will not have an annual income of \$10,000 from the sale of pelts in the fifth year but substantially less than that amount.

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

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

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

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

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

14. Respondents seldom, if ever, purchase any or all the chinchilla offspring raised by purchasers of respondents breeding stock for \$30 to \$75 per animal.

15. Respondents do not maintain facilities for and do not provide priming, pelting or marketing services to purchasers of their chinchilla breeding stock.

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16. 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.

Mr. Charles W. O'Connell supporting the complaint.

No appearance entered for any respondent.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER
JULY 17, 1969

PRELIMINARY STATEMENT

On March 6, 1969, the Federal Trade Commission, having determined that a proceeding in the above-entitled matter would be in the public interest, issued its complaint charging the respondents with violation of the Federal Trade Commission Act and setting April 28, 1969, as the date for the initial hearing.

The complaint was duly served by registered mail on three of the respondents on or before March 18, 1969, and served on the

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remaining two respondents, who could not be reached by registered mail, on April 24, 1969, by personal service. Thus the complaint was not served on two of the respondents in time to allow 30 days to answer the complaint before the scheduled initial hearing. Therefore, on April 9, 1969, the hearing examiner¹ cancelled the initial hearing to be reset at a later date.

On April 30, 1969, the undersigned, under the impression that all respondents had been served by April 22, 1969, issued an order for a hearing to be held May 26, 1969. It was contemplated that defaults would be established as to respondents who failed to answer and that a prehearing conference would be held with respect to those who did answer. At the hearing held May 26, 1969, counsel supporting the complaint that stated two respondents had not been served until April 24, 1969, and that they therefore had all of the day of May 26, 1969, in which to interpose an answer. Accordingly, on motion of complaint counsel the hearing examiner by order dated May 26, 1969, reset the initial hearing for June 11, 1969, and ordered that such order be served personally on the two respondents who had been served personally with the complaint.

On June 4, 1969, complaint counsel requested an extension of time to serve personally the order of May 26, 1969, on the two respondents who had been served personally with the complaint. The extension of time was granted by order dated June 4, 1969, and the initial hearing was rescheduled to July 14, 1969.

On the same date (June 4, 1969) respondent, John C. Green, Jr., wrote a letter to the Secretary of the Commission stating that he had not been engaged in the Chinchilla business since November of 1967; that he was not associated with and did not know Lowell Thomas Page; and that he was a salesman with American Chinchilla for less than 6 months. He also claimed inability to afford counsel.

This letter from Mr. Green was treated as an answer by the Secretary of the Commission and as an application to open the default by the undersigned. On June 10, 1969, the undersigned ordered that respondent Green might appear personally or by counsel at the hearing scheduled for July 14, 1969, to show cause why his default should be opened and why the facts stated in his letter of June 4, 1969, should be established by proof.

¹ This case was originally assigned to the Hon. Leon R. Gross on March 6, 1969. It was reassigned to the undersigned on April 10, 1969.

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Thereafter, at the hearing of July 14, 1969, complaint counsel established that the complaint had been served on all respondents and that more than 30 days had elapsed without any respondent having filed an answer. At the hearing, respondent Green neither appeared personally nor was represented by counsel to move to open his default. Accordingly, after having ascertained from complaint counsel that the investigation completely supported the allegations of the complaint, the undersigned granted complaint counsel's motion to note respondents' default.

Pursuant to Rule 3.12(c) of the Rules of Practice for Adjudicative Proceedings of the Federal Trade Commission, the hearing examiner has determined that each of the respondents has waived his right to appear and contest the allegations of the complaint and that the hearing examiner is authorized without further notice to respondents or to any of them to find the facts to be as alleged in the complaint and to enter his initial decision containing such findings, appropriate conclusions, and an order.

Accordingly, the undersigned makes the following findings of fact as alleged in the complaint and the following conclusions and order.

FINDINGS OF FACT AS ALLEGED IN THE COMPLAINT

PAR. 1. Respondent American Chinchilla Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with its principal office and place of business located at 4010 Clarksville Highway, Nashville, Tennessee, 37218. The corporate respondent's principal office and place of business was formerly located at 1153 Broad Street, Nashville, Tennessee, 37203.

Respondent Lowell Thomas Page is an individual and officer of American Chinchilla Corporation. He is the sole stockholder of said corporation and alone formulates, directs and controls the acts and practices hereinafter set forth.

Respondent Robert V. Fudge is an individual and former officer of American Chinchilla Corporation. Respondent Robert V. Fudge was the sole stockholder of said corporation and alone formulated, directed and controlled the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Respondent John C. Green, Jr., is an individual, officer and salesman for the corporate respondent. Respondent Gardner F. Tinnin is an individual and salesman for the corporate respondent. Respondents Green and Tinnin cooperated in and effectuated

the acts, policies and practices of the corporate respondent, including the acts and practices hereinafter set forth. The address of respondent Lowell Thomas Page is the same as that of the corporate respondent. Respondent Robert V. Fudge's address is 18th at Clarksville Highway, Nashville, Tennessee. Respondent Gardner F. Tinnin's address is Cross Plains, Tennessee. Respondent John C. Green, Jr.'s address is 882 Glendale Lane, Nashville, Tennessee.

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 Robert V. Fudge is no longer engaged in the advertising, sale and distribution of chinchilla breeding stock to the public. 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 Lowell Thomas Page and American Chinchilla Corporation continue to cause, their said chinchillas, when sold, to be shipped from their place of business in the State of Tennessee 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 including the purchase of said chinchillas, the respondents made, and respondents Lowell Thomas Page and American Chinchilla Corporation continue to make, numerous statements and representations by means of television and radio broadcasts, direct mail advertising, newspaper publications, 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 assistance to be made available to purchasers of respondents' chinchillas.

Typical and illustrative, but not all inclusive of the said state-

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ments and representations made in respondents' television and radio broadcasts and promotional literature, are the following:

"CHINCHILLA INVESTMENT POTENTIAL. Persons of sound business judgment will easily recognize this potential when considerin (sic) the following statements: 1. There is a shortage of good Quality Chinchillas. * * * 2. Demand for good quality Chinchilla pelts normally exceeds the supply. 3. Low overhead is one of the most distinct advantages. In most instances, time required is only about five minutes per pair per day. Feeding costs should not exceed \$3.00 per animal per year, on a large herd basis. * * * 4. Chinchilla breeding as a full time occupation or as a part time profitable business is bringing a source of enjoyment and important financial return to increasing numbers of persons. * * *"

"RAISING CHINCHILLAS PROFITABLE (sic). Q. Is the raising of Chinchillas profitable? A. We are in the business of producing the most expensive fur in the world and look forward to getting a high price for that article. Our thoughts are concurred in by the various Fur Auction people whom we have contacted on this subject. Q. Can Chinchillas be a sound investment? A. We feel that here (sic) is no other known industry which will show such tremendous and continued earning power. We consider Chinchilla farming more profitable, when properly conducted, than most investments or other lines of business. * * * Q. If I buy Chinchillas, does your interest continue in my welfare! A. To purchasers of our breeding stock, we offer an advisory service which includes: (1) assistance in planning the proper types of pens to house their animals, (2) scientific diets which have been worked out over a period of many years, (3) the privilege of writing us at any time with respect to any problems encountered, and the benefit of our experience throughout the years."

"PELTING. * * * Priming and pelting stations, staffed by experienced personnel, are available at a nominal charge per animal."

"SERVICE. When the new rancher is accepted under the American Chinchilla Corp. program, he is taught the business of raising chinchillas profitably. Service calls are made periodically at each ranch for a period of at least one year. A staff is always available to advise the American Chinchilla rancher at no cost to the rancher."

"BREEDING. The gestation period of the chinchilla is 111 days and the litters range from 1 to 5 babies. * * * The parents in most instances can and will breed back 18 to 24 hours after littering and females are known to have produced 7-8 and even 9 continuous litters every 111 days. * * *"

"PROPAGATION. * * * On a basis of two litters per year and two babies per litter and the sex breaking even and barring any unforeseen (sic) and unpredictable casualties, one female could produce sixteen females over a three year period, of which these sixteen on the above basis would produce 64 offspring a year. You can readily see how this pyramids as the years go by. * * *"

"* * * It is quite apparent that there is a long period of growth ahead and almost unlimited possibilities for the sale of pelts and good breeding stock. Fortunate is the man or woman who owns a herd of these animals, for all the world wants chinchilla and only America produces it. * * *"

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 statements and representations made by their salesmen and representatives, respondents represented, and respondents Lowell Thomas Page and American Chinchilla Corporation 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, garages, 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 pedigreed 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 several 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 have pelts selling for an average price of \$30 per pelt, and that pelts from offspring of respondents' breeding stock generally sell from \$15-\$65 each.

8. A purchaser starting with six females and two males of respondents' chinchilla breeding stock will have an annual income of \$10,000 from the sale of pelts in the fifth year.

9. Chinchilla breeding stock purchased from respondents is unconditionally guaranteed to live, breed and litter.

10. The 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 applicable to each and every chinchilla.

11. 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.

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12. Purchasers of respondents' breeding stock are given guidance in the care and breeding of chinchillas.

13. Purchasers of respondents' breeding stock can expect a great demand for the offspring and for the pelts of the offspring of respondents' chinchillas.

14. Respondents will purchase any or all the chinchilla offspring raised by purchasers of respondents' chinchilla breeding stock, without distinction as to the quality or condition of such offspring, for \$30 to \$75 per animal.

15. Respondents maintain facilities for and provide priming and pelting and marketing services to purchasers of their chinchilla breeding stock.

16. 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 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 pedigree 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 several 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 \$15-\$65 each since some of the pelts are not marketable at all and others would not sell for \$15 but for substantially less than that amount.

8. A purchaser starting with six females and two males of respondents' breeding stock will not have an annual income of \$10,000 from the sale of pelts in the fifth year but substantially less than that amount.

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

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

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

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

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

14. Respondents seldom, if ever, purchase any or all the chinchilla offspring raised by purchasers of respondents breeding stock for \$30 to \$75 per animal.

15. Respondents do not maintain facilities for and do not provide priming, pelting or marketing services to purchasers of their chinchilla breeding stock.

16. 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 Paragraph Four and Five hereof were, and are, false, misleading and deceptive.

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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.

CONCLUSIONS

1. The Federal Trade Commission has jurisdiction over the respondents and over the subject matter of this proceeding which is in the public interest.
2. Respondents were engaged in interstate commerce, and the acts and practices hereinbefore found were unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.
3. The following order should issue:

ORDER

It is ordered, That respondents American Chinchilla Corporation, a corporation, and its officers, and Lowell Thomas Page and John C. Green, Jr., individually and as officers of said corporation, and Robert V. Fudge, individually and as a former officer of said corporation, and Gardner F. Tinnin, individually and as a salesman for 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, 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 pedigreed 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 \$15 to \$65 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 six females and two males will have, from the sale of pelts, an annual income, earnings or profits of \$10,000 in the fifth 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. 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.

15. 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.

16. 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.

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. Respondents will purchase all or any of the offspring raised by purchasers of respondents' breeding stock for from \$30 to \$75 per animal or for any other price or prices unless respondents do in fact purchase all the offspring offered by said purchasers at the prices and on the terms and conditions represented.

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

20. 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.

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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.

OPINION OF THE COMMISSION

DECEMBER 23, 1969

BY JONES, *Commissioner*:

On July 17, 1969, the hearing examiner entered his Initial Decision and Order in this case on default. Service of the order was completed on August 1, 1969. No notice of appeal was filed by any party. In order to enable it to fully consider this matter, the Commission stayed the finality of that order and initial decision by order dated August 28, 1969.¹

The complaint named as respondents the American Chinchilla Corporation, a Tennessee corporation with principal office and place of business in Nashville, Tennessee, and four individual respondents: Lowell Thomas Page and John C. Green, Jr. as individuals and as officers of the corporation; Robert V. Fudge as an individual and as a former corporate officer; and Gardner F. Tinnin as an individual and as a salesman. All of the individual respondents apparently reside in the Nashville, Tennessee area. The respondents were charged with violation of Section 5 of the Federal Trade Commission Act for having made false, misleading and deceptive representations, written and oral, to prospective purchasers of chinchilla breeding stock which respondents offered for sale to the public.² The alleged misrepresentations related to

¹ FTC Rules of Practice and Procedure, Rule 3.51 (a).

² Complaint, paragraph 4.

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the investment and profit potential in the sale of chinchillas and the care and know-how required to breed and raise chinchillas.³

The notice of hearing served with the complaint scheduled the hearing on the complaint to be held in Washington, D.C., on April 28, 1969. None of the respondents answered the allegations of the complaint within the time allowed, and on April 25 complaint counsel moved for a default order against Green, Fudge and Tinnin.⁴ By the hearing examiner's order of April 30, 1969, this motion was heard on May 26, 1969, and an order of default was entered by the examiner at the conclusion of that hearing, establishing the default of respondents Green, Fudge and Tinnin.⁵

On June 4, 1969, respondent Green addressed a handwritten letter to the Commission on the back of the hearing examiner's May 26th order which read as follows: ⁶

DOCKET 8744

AMERICAN CHINCHILLA CORPORATION, et al [sic]

Dear Sir:

I have not been engaged in the chinchilla business since Nov. of 1967. I was not associated with a Lowell Thomas Page, nor do I even know him.

I was a salesman with the American Chinchilla for a period of less than six months.

I am not in a position to afford legal council [sic] in this matter, but I have not knowingly broken any laws of the Commission.

Yours respectfully,

/s/ John C. Green

The Secretary of the Commission marked the letter as an Answer to the allegations of the complaint and forwarded it to the hearing examiner. The examiner treated the letter as a motion to reopen the May 26 default hearing and on June 10, entered an order allowing Green to appear "personally or by counsel at the

³ Complaint, paragraphs 4-9.

⁴ Respondents Green, Fudge and Tinnin were all served with copies of the complaint, notice of hearing and proposed order, by registered mail on March 17; the corporate respondent and Page were personally served on April 24. Therefore, under the Commission's Rules, which allow respondents 30 days from the date of service within which to answer the complaint, Green's, Fudge's and Tinnin's answers were due by April 16; American's and Page's were due by May 24.

⁵ At the May 26, 1969, hearing which established the default of Green, Fudge and Tinnin, complaint counsel moved for a hearing on the default of American and Page. The hearing examiner's May 26th order scheduled a hearing, which was ultimately held on July 14, 1969, for the purpose of determining whether American and Page were in default, and if they were not, "for the purpose of receiving evidence in support of the complaint."

⁶ The record indicates that Green had received copies of complaint counsel's motion for default and the hearing examiner's order on May 16, ten days prior to the scheduled hearing on default.

hearing now scheduled for July 14, 1969 and [to] show cause why his default should now be opened and set aside * * *” and allowing Green to show why evidence should be taken “by his sworn testimony or such other proof as he may care to offer on the issue as to whether or not any order against him should be entered.”

Green did not appear in Washington, D.C., at the July 14, 1969, hearing, and the examiner at the conclusion of that hearing granted complaint counsel’s motion to note the default of all respondents.⁷

The record establishes that all of the respondents were properly served.⁸ With the exception of respondent Green, none of the respondents ever communicated with the examiner, entered an appearance, or answered. As to these respondents, the Initial Decision and Order of the examiner have correctly disposed of the issues in this case, and it is our opinion that they should be, therefore, adopted as the Opinion and Final Order of the Commission.

The letter addressed by Green to the Commission, however, places Green in a different position from the other respondents and raises questions which must be separately considered and disposed of. Green’s letter in essence denied his liability and claimed a lack of financial ability to afford counsel. The hearing examiner treated the letter as a motion to reopen the default and immediately scheduled a hearing on the motion. His order provided an opportunity for Green to attend the hearing in person or with counsel to respond to the merits of the complaint. The language of the order is ambiguous as to whether it was also intended to permit Green to offer evidence with respect to his implied claim of indigency.

Which ever view is taken of the examiner’s order, we do not believe that merely setting the matter down for a rehearing was

⁷ The examiner, in his Initial Decision, made the following statement about this hearing:

“* * * at the hearing of July 14, 1969, complaint counsel established that the complaint had been served on all respondents and that more than 30 days had elapsed without any respondent having filed an answer. At the hearing, respondent Green appeared neither personally nor was represented by counsel to move to open his default. Accordingly, after having ascertained from complaint counsel that the investigation completely supported the allegations of the complaint, the undersigned granted complaint counsel’s motion to note respondents’ default.

“Pursuant to Rule 3.12(c) of the Rules * * *, the hearing examiner has determined that each of the respondents has waived his rights to appear and contest the allegations of the complaint * * *.” (ID, p. 1024).

⁸ The Initial Decision (at 1024) so states, and the record contains the proof of service. Respondents Green, Fudge and Tinnin were served by registered mail; American and Page were personally served by a Commission attorney.

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a sufficient response. We read Green's letter as going beyond a mere denial of the complaint's allegations. His letter clearly constitutes both an assertion of poverty and a request for the appointment of counsel. We are of the view that under the circumstances of this case, the examiner did not sufficiently protect the rights of respondent Green and that it would, therefore, be improper for us to adopt the hearing examiner's order against him.

We have no doubt that in a proper case where an adequate showing of financial inability is made out, a respondent is entitled to counsel. We can think of nothing less conducive to fairness and due process in administrative procedures than to pit the power of the State, armed with all of the panoply of the legal machinery (funds, investigatory resources, staff or skilled attorneys, etc.), against a single individual and then to deny that individual the right to counsel when he denies the allegations and specifically asserts that he cannot afford counsel.⁹

In *Adkins v. DuPont Co.*, 335 U.S. 331 (1948), the Supreme Court stressed the fundamental principle which should guide the Commission in cases of this nature when it made the statement that "no citizen shall be denied an opportunity to * * * defend [himself] * * * solely because [of] his poverty. * * *" (P. 342.)

An added factor of unfairness in this case is the fact that the hearing was held some 700 miles away from the residence of this respondent. The round trip to Washington by plane would have cost Green \$88.20, and by bus \$47.00 and over eighteen hours in travel time each way. Clearly an impoverished respondent who cannot afford a lawyer cannot be realistically expected to travel to Washington to represent himself no matter how many times that opportunity is offered him.

The examiner's response to Green's letter—an order scheduling another hearing which constituted no change from the May 26th hearing which had provoked Green's letter—could hardly have been construed by him as anything other than a total rejection of his June 4th letter.

In our view elemental fairness and concern for the rights of the litigants who appear before the Commission require that the Commission see to it that any respondent who requests counsel on grounds of indigency is accommodated. Such requests should be

⁹ As the Supreme Court said in *Hannah v. Larche*, 363 U.S. 420, 442 (1960):

"[W]hen governmental agencies adjudicate or make binding determinations which directly affect the legal rights of individuals, it is imperative that those agencies use the procedures which have traditionally been associated with the judicial process." (Emphasis added.)

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addressed to the hearing examiner, who should thereupon satisfy himself as to the reasonableness of the request and where appropriate take such steps as are necessary to make counsel available to such a respondent.¹⁰ In this connection, the examiner or the respondent may obtain counsel on request of either a local bar association or a local legal aid agency. If counsel cannot be obtained in this manner the examiner should then direct complaint counsel, on behalf of the Commission, to petition the appropriate United States Court of Appeals for the appointment of counsel.¹¹

Under the circumstances of this case, we have determined not to remand this matter to the hearing examiner for further proceedings, but instead to dismiss the complaint as to respondent Green. We are convinced that the public interest will be adequately protected in this instance by issuing the order against the corporate respondent and the individual respondents Page, Fudge and Tinnin.

ORDER

No appeal from the initial decision of the hearing examiner having been filed, but the Commission having stayed the effective date of the initial decision by its own Order of August 28, 1969, in order to determine whether said initial decision constitutes an adequate disposition of this case; and

The Commission having concluded that, as to respondents American Chinchilla Corporation, Lowell Thomas Page, Robert V. Fudge and Gardner F. Tinnin, the initial decision entered by the hearing examiner on July 17, 1969, adequately disposes of the issues in this case; and

The Commission having further concluded that, as to respondent John C. Green, Jr., the proceedings which led to the entry of the initial decision of the hearing examiner did not sufficiently protect the rights of respondent Green and that, therefore, as to him the complaint should be dismissed;

¹⁰ In determining the financial condition of the respondent, the examiner should be mindful of the Supreme Court's decision in *Adkins v. DuPont Co.*, *supra*, and the practice followed in the federal courts under their controlling statute on this point, 28 U.S.C. § 1915.

¹¹ The Courts of Appeals appear to have jurisdiction under the All Writs Act, 28 U.S.C. § 1651(a), since the appointment of counsel would be protective of its appellate jurisdiction. See *FTC v. Dean Foods Co.*, 384 U.S. 597, 603-605 (1966). Since the absence of counsel "would otherwise mean that the case would not be adjudicated on its merits and therefore could not be reviewed" by a Court of Appeals, such a petition would also meet the tests of the *Dean* dissenters. (*Id.* at 625.)

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It is ordered, That, as to respondents American Chinchilla Corporation, Lowell Thomas Page, Robert V. Fudge, and Gardner F. Tinnin, the initial decision of the hearing examiner be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That, as to respondent John C. Green, Jr., the complaint be, and it hereby is, dismissed.
