

HURLEY CHINCHILLA RANCH, INC., ET AL.

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

Docket C-1693. Complaint, Feb. 24, 1970—Decision, Feb. 24, 1970

Consent order requiring an Omaha, Nebraska, seller of chinchilla breeding stock to cease making exaggerated earning claims, misrepresenting the quality and performance of its stock, deceptively guaranteeing the fertility of its stock, and misrepresenting services to its customers.

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 Hurley Chinchilla Ranch, Inc., a corporation, and William K. Hurley and Jack W. Swanson, individually and as 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 Hurley Chinchilla Ranch, Inc., is a corporation organized, existing and doing business under and by virtue

of the laws of the State of Nebraska, with its principal office and place of business located at 1112 Howard Street, Omaha, Nebraska.

Respondents William K. Hurley and Jack W. Swanson are individuals and officers of Hurley Chinchilla Ranch, Inc. The individual respondents cooperate and act together to formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Respondent William K. Hurley's address is 8051 Meredith Street, Omaha, Nebraska. Respondent Jack W. Swanson's address is 225 North 93rd Street, Omaha, Nebraska.

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 aforesaid business, respondents now cause, and for some time last past have caused, their said chinchillas, when sold, to be shipped from their place of business in the State of Nebraska to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned 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 make numerous statements and representations by means of television broadcasts, in 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, their quality, the expected return from the sale of their pelts, the training assistance to be made available to purchasers of respondents' chinchillas, and their warranty.

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

It's easy to start. No special housing is required. A garage, spare room, basement, barn, unused chicken coop or enclosed porch are adequate.

Q. Is experience necessary to succeed?

A. Most people who have purchased Chinchillas had no experience and succeeded.

The Chinchillas can reproduce anytime after 8 months and probably litter within one year. The period of gestation is 111 days and the female may be

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rebred immediately after giving birth. The average number of breedings is two a year. Three are possible. . . . Litters consist of one to five. . . .

Free Illustrated Chinchilla Brochure

Please send me your Free brochure. I understand that I am under no obligation and that no Field Man will call unless I request a visit.

It will give us much pleasure to hear from you, but still, it would be an even greater pleasure, if you would drop in and visit us in our new facilities. Browse through the long aisles of cages housing hundreds and hundreds of live, valuable Hurley Chinchillas.

This is perhaps our strongest suit. Our service personnel have had long experience in the chinchilla industry and are well qualified to meet most normal problems that may arise during early months of chinchilla ranching. Our service call schedule is presently set up to call on Hurley's customers every 90 days.

Hurley's Chinchilla Ranch unconditionally guarantees to exchange any animals purchased from them which fail to reproduce within one year from the date of delivery.

Hurley's Chinchilla Ranch unconditionally guarantees to replace any and all animals purchased from them which die from any cause up to and including one year from delivery date. . . .

Hurley's Purchase Plan. . . .

By special arrangement with Hurley's Chinchilla Ranch, Inc. . . . Omaha Chinchilla Ranch and Supply Company . . . hereby agrees to purchase all the chinchilla raised by you under the following simple conditions.

1. We will guarantee to pay a minimum of \$40.00 per female or \$100.00 for a group of three males and one female.

We emphasize that this is a minimum price. . . .

Five Year Investment Plan.

Starting with seven (7) Females and One (1) Male Chinchilla. Estimating three (3) babies per Female per year. . . . your potential is as follows:

Year	Offspring	Males	Females
1st.....	21	11	10
2d.....	36	18	18
3d.....	78	39	39
4th.....	162	81	81
5th.....	342	171	171

Estimated Five Year Return on Your Investment

288 Males at \$20.00 each	\$5,760.00
191 Females at \$20.00 each	3,820.00
Total	\$9,580.00

This leaves a herd of 114 females and 16 males for future expansion.

Hurley's is an enthusiastic participant in most every competitive show and exhibition throughout the United States. . . . Hurley's enters these events with almost complete confidence of winning. In fact, Hurley's has been the recipient of every type of award in the field of chinchilla breeding. . . . With such great array of authentic awards, it is concrete proof that Hurley's chinchilla stock is unquestionably the finest available. . . .

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

1. It is commercially feasible to breed and raise chinchillas in homes, enclosed proches, garages, chicken coops or barns, and large profits can be made in this manner.

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

3. The breeding stock of seven female chinchillas and one male chinchilla purchased from respondents will result in live offspring as follow: 21 the first year, 36 the second year, 78 the third year, 162 the fourth year, and 342 the fifth year.

4. All of the offspring referred to in Paragraph Five (3) above will have pelts selling for an average price of \$20 per pelt.

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

6. A purchaser starting with seven females and one male of respondents' chinchillas will have an income of \$9,580 from the sale of pelts at the end of the fifth year.

7. Chinchilla breeding stock purchased from respondents is unconditionally warranted to live one year and reproduce.

8. Purchasers of respondents' breeding stock will receive service calls from respondents' service personnel every 90 days.

9. Respondents' service personnel are well qualified and have had long experience in the chinchilla industry.

10. Chinchillas are hardy animals and are not susceptible to diseases.

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

12. Each female chinchilla purchased from respondents and female offspring will produce several successive litters of one to five offspring at 111 days intervals.

13. Purchasers of respondents' breeding stock receive the finest quality chinchilla breeding stock available.

14. Respondents participate in competitive exhibitions of chinchillas and as a result of such participation have received every type of award in the field of chinchilla breeding.

15. The respondents will promptly fulfill all of their obligations and requirements set forth in or represented directly or by implica-

tion to be contained in the guarantee or warranty applicable to each and every chinchilla.

16. Respondents maintain large modern facilities containing hundreds of chinchillas.

17. Prospective purchasers requesting respondents' brochure will not be visited by respondents' salesmen except upon request of the prospective purchaser.

18. Respondents or their agents will purchase through "Hurley's Purchase Plan" all the chinchilla offspring raised by purchasers of respondents' chinchilla breeding stock for a minimum price of \$40 per female or \$100 for a group of three males and one female.

19. Through the use of the word "Ranch" separately and as a part of respondents' trade name respondents are a "ranch" or farm devoted to the breeding and raising of chinchilla breeding stock.

PAR. 6. In truth and in fact:

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

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

3. The initial breeding stock of seven females and one male purchased from respondents will not result in the number specified in subparagraph (3) Paragraph Five above, since these figures do not allow for factors which reduce chinchilla production, such as those born dead or which die after birth, the culls which are unfit for reproduction, fur chewers and sterile animals.

4. All of the offspring referred to in subparagraph (4) of Paragraph Five above will not produce pelts selling for an average price of \$20 per pelt but substantially less than that amount.

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

6. A purchaser starting out with seven females and one male of respondents' breeding stock will not have an income of \$9,580 from the sale of pelts at the end of the fifth year but substantially less than that amount.

7. Chinchilla breeding stock purchased from respondents is not unconditionally warranted to live one year and reproduce but such

guarantee as is provided is subject to numerous terms, limitations and conditions.

8. Purchasers of respondents' breeding stock do not receive service calls from respondents' service personnel every 90 days. In some instances purchasers of respondents' chinchilla breeding stock do not receive any service calls and in other instances the time interval between said service calls is much longer than 90 days.

9. Respondents' service personnel are not well qualified and have not had long experience in the chinchilla industry.

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

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

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

13. Chinchilla breeding stock sold by the respondents is not the finest quality chinchilla breeding stock available.

14. Respondents seldom, if ever, participate in competitive exhibitions of chinchillas and have not received, as a result of such participation, every type of award in the field of chinchilla breeding. Respondents have won few, if any, awards in the field of chinchilla breeding.

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

16. Respondents do not maintain large modern facilities containing hundreds of chinchillas. Respondents' facilities consist of sales office in downtown Omaha, Nebraska and contain few, if any, chinchillas.

17. Prospective purchasers requesting respondents' brochure are visited by respondents' salesmen even if no request is made for said visit. Respondents' advertisements offering said brochure are merely a device to obtain the names and addresses of prospective purchasers and respondents' salesmen will visit prospective purchasers for the purpose of selling chinchillas irrespective of any request for said visit.

18. Respondents or any of their agents through "Hurley's Purchase Plan" seldom, if ever, purchase all or any of the chinchilla offspring raised by purchasers of respondents' breeding stock for a minimum price of \$40 per female or \$100 for a group of three males and one female.

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19. Respondents' business organization is not a ranch or farm devoted to the breeding and raising of chinchilla breeding stock but is a business organization formed for the purpose of selling chinchilla breeding stock for respondents' own profit.

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

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

PAR. 9. The aforesaid acts and practices of 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 Hurley Chinchilla Ranch, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nebraska, with its office and principal place of business located at 1112 Howard Street, Omaha, Nebraska.

Respondents William K. Hurley and Jack W. Swanson are individuals and officers of said corporation. Respondent William K. Hurley's address is 8051 Meredith Street, Omaha, Nebraska. Respondent Jack W. Swanson's address is 225 North 93rd Street, Omaha, Nebraska.

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 Hurley Chinchilla Ranch, Inc., a corporation and its officers and directors, and William K. Hurley and Jack W. Swanson, individually and as 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 "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, spare rooms, enclosed porches, chicken coops, barns or other quarters or buildings or that large profits can be made in this manner: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that the represented quarters or buildings have the requisite space, temperature, humidity, ventilation and other environmental conditions which would make them adaptable to and

suitable for the breeding and raising of chinchillas on a commercial basis and that large profits can be made in this manner.

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

3. The breeding stock of seven females and one male chinchilla purchased from respondents will produce live offspring of 21 the first year, 36 the second year, 78 the third year, 162 the fourth year, or 342 the fifth year.

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

5. The offspring of chinchilla breeding stock purchased from respondents will produce pelts selling for the average price of \$20 each.

6. Chinchilla pelts produced from respondents' breeding stock will sell for any price, average price, or range of prices: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that the represented price, average price, or range of prices are usually received for pelts produced by chinchillas purchased from respondents or by the offspring of such chinchillas.

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

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

9. A purchaser starting with seven females and one male will have, from the sale of pelts, an income, earnings, return or profits of \$9,580 at the end of the fifth year after purchase.

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

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

12. Purchasers of respondents' chinchilla breeding stock will receive service calls from respondents' service personnel every 90 days or at any other interval or frequency: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that the represented service calls are actually furnished.

13. Respondents' service personnel are qualified to service chinchilla breeders or have had long experience in the chinchilla industry.

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

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

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

17. The number of litters or sizes thereof produced per female is any number: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that the represented number of litters or sizes thereof are usually and customarily

produced by the chinchillas sold by respondents or the offspring of said chinchillas.

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

19. Respondents have participated in competitive exhibitions of chinchillas; or that as a result of such participation respondents have won or received prizes or awards for their chinchillas: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that they have participated in said exhibitions; and that they have won or received the represented prizes or awards.

20. Respondents' chinchillas are guaranteed unless respondents do in fact 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.

21. Respondents maintain large modern facilities wherein hundreds of other large numbers of chinchillas are displayed; or misrepresenting, in any manner, the size or nature of respondents' facilities or the number or kind of chinchillas or other products on hand or on display.

22. Prospective purchasers requesting respondents' brochures or other promotional literature will not be visited by respondents or their agents, salesmen or other personnel, except upon the request of the prospective purchaser; or failing to reveal that prospective purchasers requesting respondents' brochures or promotional material will be visited by respondents' agents, salesmen or other personnel.

23. Respondents will purchase all or any of the chinchilla offspring or pelts thereof raised by purchasers of respondents' chinchilla breeding stock for a minimum price of \$40.00 per female or \$100 for a group of three males and one female or said offspring or pelts for any other price: *Provided, however,* It shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish

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that they do, in fact, purchase all offspring or pelts offered by said purchasers at the prices represented.

24. Using the word "Ranch" or any other word of similar import or meaning as part of respondents' corporate or trade name or misrepresenting in any other manner the nature, status or character of respondents' business.

B. Failing promptly to fulfill all of their obligations and requirements under the terms set forth in or represented, directly or by implication, to be contained in any guarantee or warranty applicable to the sale of said products.

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

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

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

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

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

IN THE MATTER OF

SPENCER GIFTS, INC.

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

Docket C-1694. Complaint, Feb. 24, 1970—Decision, Feb. 24, 1970

Consent order requiring an Atlantic City, N.J., mail-order merchandiser to cease advertising and offering for sale any non-prescription ready-made spectacles unless it discloses that such products are for limited use by per-