

Docket C-1738. Complaint, May 6, 1970—Decision, May 6, 1970

Consent order requiring two Boulder, Colo., sellers of chinchilla breeding stock to cease making exaggerated earning claims, misrepresenting the quality of their stock, deceptively guaranteeing the fertility of their stock, and misrepresenting their 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 Master Chinchilla Breeders Association, Ltd., a corporation, and Lewis H. Van Meter, individually and as an officer of said corporation, and United Mar-

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keting Corporation, a corporation, and Donovan S. Bonnawitz, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Master Chinchilla Breeders Association, Ltd., and United Marketing Corporation are corporations organized, existing and doing business under and by virtue of the laws of the State of Colorado with their principal office and place of business located at 1325 Ithaca Drive, Boulder, Colorado.

Respondent Lewis H. Van Meter is an individual and officer of Master Chinchilla Breeders Association, Ltd. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporation.

Respondent Donovan S. Bonnawitz is an individual and officer of United Marketing Corporation. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporation.

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 Colorado 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 direct mail advertising and through the oral statements and display of promotional material to prospective purchasers, with respect to the breeding of chinchillas for profit without previous experience, the rate of reproduction of said animals, their hardiness, the demand for pelts and the expected returns from their sales, and the training assistance to be made available to purchasers.

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

NEED MORE MONEY FOR EDUCATION TRAVEL RETIREMENT.

ARE YOU SATISFIED WITH YOUR PRESENT INCOME?

WE MAY HAVE FOUND THE ANSWER TO FINANCIAL SECURITY FOR CITY PEOPLE AND FARMERS ALIKE.

CHINCHILLAS COULD PULL YOU OUT OF YOUR MONTHLY PAY-CHECK RUT!!!

CHINCHILLA RANCHERS ARE INCREASING THEIR ANNUAL INCOME BY RAISING HIGH QUALITY CHINCHILLAS FOR THE FUR MARKET.

IF YOU QUALIFY! YOU MAY BECOME A PART OF THIS RAPIDLY EXPANDING AND HIGHLY PROFITABLE INDUSTRY . . . PROVIDING YOU LIKE ANIMALS AND ARE INTERESTED IN MORE INCOME IN YOUR SPARE TIME . . .

TRAINING! WE FURNISH ON THE JOB TRAINING, SCHOOLS AND BULLETINS TO TEACH YOU ALL PHASES OF CHINCHILLA RANCHING.

BECOME A PART-TIME CHINCHILLA RANCHER AND EARN ADDITIONAL MONEY FOR COLLEGE EDUCATIONS, RETIREMENT INCOME, HIGHER LIVING STANDARD.

Gentlemen:

I would like to have additional information on your method of raising chinchillas. I understand this request does not obligate me in any way.

Name _____ Age _____

Address _____

City _____ State _____ Zip _____

Occupation _____ Phone _____

I am interested in additional yearly income of: (Check One)

\$3,000 _____ \$5,000 _____ \$7,500 _____ \$10,000 _____ \$20,000 _____

. . . The business of chinchilla breeding has now developed into a substantial, well stabilized industry offering profitable returns on the modest investment required.

Chinchilla raising holds an unusually, attractive future for ambitious beginners who will apply to it the same diligence and good business principles required for success in any other field of endeavor.

. . . The Chinchilla breeds freely in captivity. Breeding may take place at any time of the year. The gestation period is 111 days. They have an average of 1.9 babies per litter and average two litters a year.

Chinchillas are hardy and live eight to ten years. . . .

. . . With the feed costs as low as \$2.00 and an average Aurora Quality pelt price of \$25.57 he also has a very good margin of profit.

But whoever you are, raising chinchillas gives you the opportunity for a SECOND INCOME, or a full time project if you wish.

. . . Average pelt prices have steadily advanced the past several years with future marketing prospects being very favorable by all indications. . . .

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ASSOCIATION PLAN B
THREE PAIRS SELECT CHINCHILLA

FIRST EIGHTEEN MONTH "EPP" (PROJECTION—2 OFFSPRING PER YEAR PER FEMALE CHINCHILLA)

THIS IS THE ASSOCIATION'S EXCLUSIVE "EDUCATIONAL PRODUCTION PERIOD" DURING WHICH TIME THE HERD SHOULD DOUBLE (8, INCLUDING YOUNG BONUS ANIMALS) BY THE END OF THE FIRST EIGHTEEN MONTHS. $2 \times 8 = 16$.

FIRST YEAR FOLLOWING "EPP" (assuming 50% male/female ratio) : 8 Females = 16 Offspring

SECOND YEAR FOLLOWING "EPP" (assuming 50% male/female ratio) : 16 Females = 32 Offspring

THIRD YEAR FOLLOWING "EPP" (assuming 50% male/female ratio) : 32 Females = 64 Offspring

START MARKETING FOURTH YEAR—FOLLOWING "EPP" (Assuming 50% ratio) : 64 Females = 128 Offspring

THAT IS A GROSS INCOME OF

\$3,200

A YEAR!

(BASED CONSERVATIVELY ON \$25 PELT PRICE AVERAGE.)

Note: Assuming the production of just 2 offspring per year per female and a 50% male/female ratio, this represents a yearly gross income of approximately two times the original investment—which is fully depreciable over the first five years.

QUESTION: IS THIS A "GOOD BUSINESS"?

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 oral statements and representations made by their salesmen and representatives, respondents represent and have represented, directly or by implication, that:

1. It is commercially feasible to breed and raise chinchillas from breeding stock purchased from respondents in spare rooms, basements, garages or outbuildings, and that 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 disease.

4. Each female chinchilla purchased from respondents and each female offspring will produce two or three litters of two live offspring per year.

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

6. The offspring of breeding stock purchased from respondents will have pelts selling for an average price of \$25 per pelt.

7. A purchaser starting with three females and three males of respondents' chinchilla breeding stock will have, from the sale of pelts, a gross annual income of \$3,200 by the end of the fourth year.

8. Purchasers of respondents' chinchilla breeding stock can expect to realize therefrom a net income sufficient for financial security, retirement, college education or a higher living standard.

9. Through the assistance, advice and guidance furnished to purchasers of respondents' breeding stock by respondents, purchasers are able successfully to 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. Each female chinchilla purchased from respondents and each female offspring will not produce two or three litters of two offspring per year, but generally less than that number.

5. Purchasers of respondents' breeding stock cannot expect a great demand for the offspring of respondents' chinchillas or pelts therefrom.

6. The offspring of breeding stock purchased from respondents will not produce pelts selling for an average price of \$25 per pelt but substantially less than that amount.

7. A purchaser starting with three females and three males of respondents' breeding stock will not have a gross annual income of \$3,200 from the sale of pelts by the end of the fourth year, but substantially less than that amount.

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8. Purchasers of respondents' breeding stock cannot expect to realize therefrom a net income sufficient for financial security, retirement, college education or a higher living standard.

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

Therefore, the statements and representatives 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 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 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 ad-

mission 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. Respondents Master Chinchilla Breeders Association, Ltd., and United Marketing Corporation are corporations organized, existing and doing business under and by virtue of the laws of the State of Colorado, with their principal office and place of business located at 1325 Ithaca Drive, Boulder, Colorado.

Respondent Lewis H. Van Meter is an individual and officer of Master Chinchilla Breeders Association, Ltd. He formulates, directs and controls the acts and practices of the corporate respondent and his address is the same as that of the corporation.

Respondent Donovan S. Bonnavitz is an individual and officer of United Marketing Corporation. He formulates, directs and controls the acts and practices of the corporate respondent and his address is the same as that of the 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 Master Chinchilla Breeders Association, Ltd., a corporation, and its officers, and Lewis H. Van Meter, individually and as an officer of said corporation, and United Marketing Corporation, a corporation, and its officers, and Donovan S. Bonnavitz, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of chinchilla breeding stock or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, that:

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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 in spare time or without 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. Female chinchillas purchased from respondents and female offspring thereof will produce two or three litters of two offspring per year.

5. The number of litters or sizes thereof or the number of live offspring produced per female chinchilla is any number or range thereof; or representing, in any manner, the past number or range of numbers of litters or sizes produced per female chinchilla of purchasers of proposed 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.

6. 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.

7. Pelts from the offspring of chinchilla breeding stock sell for an average price of \$25 per pelt.

8. 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.

9. Purchasers of respondents' breeding stock will realize earnings, profits, or income in any amount or range of amounts, or sufficient for financial security, retirement, college education or a higher living standard; 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 prospective purchaser to whom the representation is made.

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

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

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

D. 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 respondents' products or services, and failing to secure from each such individual a signed statement acknowledging receipt of said order.

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

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents 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 corporations 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.

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IN THE MATTER OF

COLONIAL STORES INCORPORATED

ORDER, OPINION, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket 8768. Complaint, September 20, 1968—Decision, May 7, 1970*

Order requiring a major chain of grocery supermarkets headquartered in East Point, Ga., to cease knowingly inducing or receiving discriminatory promotional payments from suppliers in connection with its special promotions.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, has violated and is now violating the provisions of Section 5 of the Federal Trade Commission Act (15 U.S.C. 45), and it appearing to the Commission that a proceeding by it would be in the public interest, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Colonial Stores Incorporated is a corporation organized, existing and doing business under and by virtue of the laws of the State of Virginia with its principal office located at 2251 Sylvan Road, East Point, Georgia.

PAR. 2. Respondent is now, and for many years has been, engaged in the operation of a chain of retail grocery stores, selling a great variety of food, grocery, and non-edible household products. There are presently about 438 retail grocery stores composing respondent's chain, which stores are located in the States of Virginia, Georgia, North Carolina, South Carolina, Alabama, Florida, Maryland, Ohio, Kentucky, and Tennessee, and grouped geographically into divisions by respondent and designed as its Atlanta, Columbia, Jacksonville, Raleigh, Norfolk, Columbus, and Cincinnati Divisions.

In the course of its business respondent purchases food, grocery and non-edible household products of many types from a large number of manufacturers, suppliers, and handlers of such products. To create consumer demand and acceptance for the products it sells, and to attract business to its stores, respondent engages in extensive advertising. Respondent's sale of its products are substantial, exceeding \$535,000,000 annually.

PAR. 3. In the course and conduct of its business, respondent has engaged and is now engaged in commerce, as "commerce" is defined