

tion's order which directs the filing of a report of compliance be, and it hereby is, stricken.

IN THE MATTER OF

ALEX KIRSCHNER TRADING AS KIRSCHNER BRUSH
COMPANY

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FED-
ERAL TRADE COMMISSION ACT

Docket C-1292. Complaint, Jan. 30, 1968—Decision, Jan. 30, 1968

Consent order requiring a New York City paint and varnish brush manufacturer to cease misrepresenting the true composition of the bristles used in its brushes and using the word "Chinese" for bristles not originating in that country.

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 Alex Kirschner, an individual trading and doing business as Kirschner Brush Company, hereinafter referred to as respondent, has 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 Alex Kirschner is an individual, trading and doing business as Kirschner Brush Company, with his principal office and place of business located at 58 West 15th Street, New York, New York.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the manufacture, offering for sale, sale and distribution of paint and varnish brushes and other products to distributors and retailers for resale to the public.

PAR. 3. In the course and conduct of his business, respondent now causes, and for some time last past has caused, his said products, when sold, to be shipped from his place of business in the State of New York to purchasers thereof located in various other States of the United States, and maintains, and at all times mentioned herein has 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 his business, and for the purpose of inducing the purchase of his products, respondent has made numerous representations concerning the quality, composition and origin of his products by the following methods and means:

(1) The handles or ferrules of certain of respondent's brushes are marked or stamped with the words "Pure Chinese Bristle." Respondent thereby represents, directly or by implication, that the brushing part of said brushes is composed entirely of hog or swine bristle (hereinafter referred to as bristle) imported from China.

(2) The handles or ferrules of certain of respondent's brushes are marked or stamped with the words "All Pure Bristle." Respondent thereby represents, directly or by implication, that the brushing part of said brushes is composed entirely of bristle.

PAR. 5. In truth and in fact:

(1) The brushing part of respondent's brushes marked or stamped "Pure Chinese Bristle" is not composed entirely of bristle imported

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from China. The brushing part of said brushes is composed of a mixture of bristle obtained from various sources, or in some instances of a mixture or combination of bristle and other material.

(2) The brushing part of respondent's brushes marked or stamped "All Pure Bristle" is not composed entirely of bristle. The brushing part of said brushes is composed of a mixture or combination of bristle and other material.

Therefore, the aforesaid statements and representations as set forth in Paragraph Four hereof were, and are, false, misleading and deceptive.

PAR. 6. When the brushing part of paint and varnish brushes is composed of a mixture or combination of bristle and other material which has the appearance of bristle, such brushes are readily accepted by the purchasing public as having brushing parts composed entirely of bristle in the absence of any disclosure to the contrary, a fact of which the Commission takes official notice.

There is a preference among the purchasing public for paint and varnish brushes having a brushing part composed entirely of bristle as contrasted with brushes having a brushing part made with a combination or mixture of bristle and other material, a fact of which the Commission also takes official notice.

Respondent's failure to disclose on paint and varnish brushes having a brushing part composed of a mixture of bristle and other material, all constituent materials, in the order of their predominance, by means of a legible marking or stamping on the handles or ferrules of said brushes is therefore to the prejudice and injury of the purchasing public.

PAR. 7. By the practices as set forth in Paragraphs Four, Five and Six hereof, respondent places in the hands of retailers the means and instrumentalities by and through which they may mislead and deceive the public as to the quality and composition of said brushes and as to the origin of the bristle of which the brushing part of said brushes is made.

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 respondent's products by reason of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and

of respondent's competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of the Federal Trade Commission Act, and the respondent having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent 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 considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of 30 days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Alex Kirschner is an individual trading and doing business as Kirschner Brush Company with his office and principal place of business located at 58 West 15th Street, in the city of New York, State of New York.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent Alex Kirschner, an individual trading and doing business as Kirschner Brush Company, or under any other trade name or names, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of paint or varnish

brushes or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Offering for sale or selling brushes having a brushing part composed in part of bristle of the hog or swine and in part of material other than such bristle but which has the appearance of bristle without truthfully describing, in the order of their predominance, all constituent materials by means of a legible marking or stamping on the handle or ferrule of the brush of such size, conspicuousness and degree of permanency as to be noticeable and readable upon casual inspection when the brush is offered for sale to consumer purchasers.

(2) Using the word "Chinese" or any other word of similar import or meaning, either alone or in conjunction with other words, to designate or refer to bristle of the hog or swine not imported from China; or misrepresenting, in any manner, the origin of respondent's brushes or the bristle or any other component of said brushes.

(3) Using the words "All Pure Bristle" or any other words or term of similar import or meaning, either alone or in conjunction with other words to designate describe or refer to any brush which does not have a brushing part composed wholly of the bristle of the hog or swine; or misrepresenting in any manner the composition of respondent's brushes.

(4) Placing in the hands of others the means or instrumentalities whereby they may mislead the public as to any of the matters or things prohibited in Paragraphs 1, 2 and 3 hereof.

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

IN THE MATTER OF

FAIRWAY MANUFACTURING COMPANY TRADING AS
FAIRWAY-SHANE CO. ET AL.