

Docket C-1930. Complaint, June 2, 1971—Decision, June 2, 1971

Consent order requiring a New York City importer and seller of party items, including wood chip leis, to cease violating the Flammable Fabrics Act by selling any fabric which fails to conform with the standards of said Act.

Complaint

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COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Dan Brechner & Company, Inc., a corporation, and Daniel Brechner, Milton Brechner and George Mann, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Flammable Fabrics Act, as amended, 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 Dan Brechner & Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Respondents Daniel Brechner, Milton Brechner and George Mann are officers of said corporate respondent. They formulate, direct and control the acts, practices and policies of said corporation.

Respondents are engaged in the importation and wholesaling of novelty hardgoods and party items, including wood chip leis, with their office and principal place of business located at 43 West 23rd Street, New York, New York.

PAR. 2. Respondents are now and for some time last past have been engaged in the sale, and offering for sale, in commerce, and in the importation into the United States, and have introduced, delivered for introduction, transported and caused to be transported in commerce, and have sold or delivered after sale or shipment in commerce, products as the terms "commerce," and "product" are defined in the Flammable Fabrics Act, as amended, which products failed to conform to an applicable standard or regulation continued in effect, issued or amended under the provisions of the Flammable Fabrics Act, as amended.

Among such products were wood chip leis.

PAR. 3. The aforesaid acts and practices of respondents were and are in violation of the Flammable Fabrics Act, as amended, and the Rules and Regulations promulgated thereunder and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

PAR. 4. Respondents are now and for sometime last past have

been engaged in the advertising, offering for sale, sale and distribution of wood chip leis, in commerce. The aforesaid leis are shipped by respondents from respondents' place of business in the State of New York to customers located in various other States of the United States. Respondents maintained, and at all times mentioned have maintained, a substantial course of trade in said leis in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Said leis, sold and distributed in commerce by respondents, exhibited characteristics of such rapid and intense burning as to render the leis dangerous and unsafe for use by individuals.

PAR. 6. The sale and distribution of the aforesaid leis has had and now has the tendency and capacity to lead the purchasing public into the erroneous assumption that the said leis had been treated so as to make them safe for ordinary use. In truth and in fact the said leis have not been so treated.

PAR. 7. The aforesaid acts and practices of respondents as herein alleged were and are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning 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 Division of Textiles and Furs 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 Flammable Fabrics Act, as amended; 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 Acts, and that complaint should issue stating its charge in that respect, and having thereupon accepted the exe-

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cuted 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 Section 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Dan Brechner & Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 43 West 23rd Street, New York, New York.

Individual respondents Daniel Brechner, Milton Brechner and George Mann are officers of said corporation. They formulate, direct and control the acts, practices and policies of said corporation. Their office is the same as that of the corporate respondent.

Respondents are engaged in the importation and wholesaling of novelty hardgoods and party items, including wood chip leis.

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 Dan Brechner & Company, Inc., a corporation, and its officers, and Daniel Brechner, Milton Brechner and George Mann, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from manufacturing for sale, selling, offering for sale, in commerce, or importing into the United States, or introducing, delivering for introduction, transporting or causing to be transported in commerce, or selling or delivering after sale or shipment in commerce any product, fabric or related material; or manufacturing for sale, selling or offering for sale any product made of fabric or related material which has been shipped or received in commerce, as "commerce," "product," "fabric" and "related material" are defined in the Flammable Fabrics Act, as amended, which product, fabric or related material fails to conform to an applicable standard or regulation continued in effect, issued or amended under the provisions of the aforesaid Act.

It is further ordered, That the respondents notify all of their customers who have purchased or to whom have been delivered the products which gave rise to the complaint, of the flammable nature of said products and effect the recall of said products from such customers.

It is further ordered, That the respondents herein either process the products that gave rise to the complaint so as to bring them into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said products.

It is further ordered, That the respondents herein shall within ten (10) days after service upon them of this order, file with the Commission a special report in writing setting forth the respondents' intentions as to compliance with this order. This special report shall also advise the Commission fully and specifically concerning (1) the identity of the products which gave rise to the complaint, (2) the number of said products in inventory, (3) any action taken and any further actions proposed to be taken to notify customers of the flammability of said products and effect the recall of said products from customers, and of the results thereof, (4) any disposition of said products since October 2, 1969 and (5) any action taken or proposed to be taken to bring said products into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said products and the results of such action. Such report shall further inform the Commission as to whether or not respondents have, in inventory any product, fabric, or related material having a plain surface and made of paper, silk, rayon and acetate, nylon and acetate, rayon, cotton or any other material or combinations thereof in a weight of two ounces or less per square yard, or any product, fabric, or related material having a raised fiber surface. Respondents shall submit samples of not less than one square yard in size of any such product, fabric, or related material with this report.

It is further ordered, That respondents Dan Brechner & Company, Inc., a corporation, and its officers, and Daniel Brechner, Milton Brechner and George Mann, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from the advertising, offering for sale, sale or distribution of leis in commerce, as "commerce" is defined in the Federal Trade Commission Act, unless and until said leis are flame proofed to such an extent that they will not ignite, burn or glow.

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

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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.