

Complaint

123 F.T.C.

IN THE MATTER OF
PREMIER PRODUCTS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3720. Complaint, Feb. 26, 1997--Decision, Feb. 26, 1997

This consent order prohibits, among other things, the New Jersey-based corporations, that advertise "Miracle Thaw" food thawing trays, and their officers from misrepresenting, with respect to any product involving the storage or preparation of food, the risk of buildup of harmful or unsafe levels of bacteria on food items defrosted, thawed, prepared, or stored using the product; the amount of time it may take to defrost, thaw, or prepare food items using the product; the process by which the product achieves any claimed defrosting, thawing, or preparation times; or the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research.

Appearances

For the Commission: *John T. Dugan.*

For the respondents: *Jeffrey Edelstein, Hall, Dickler, Kent, Friedman & Wood, New York, N.Y.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Premier Products, Inc., T.V. Products, Inc., and T.V.P. Corporation, corporations, and Michael Sander and Issie Kroll, individually and as officers of the corporations ("respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Premier Products, Inc. is a New Jersey corporation with its principal office or place of business at 23 Vreeland Road, Florham Park, New Jersey.

2. Respondent T.V. Products, Inc. is a New Jersey corporation with its principal office or place of business at 23 Vreeland Road, Florham Park, New Jersey.

3. Respondent T.V.P. Corporation is a New Jersey corporation with its principal office or place of business at 23 Vreeland Road, Florham Park, New Jersey.

4. Respondent Michael Sander is an officer of the corporate respondents. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the corporations,

including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of the corporations.

5. Respondent Issie Kroll is an officer of the corporate respondents. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the corporations, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of the corporations.

6. Respondents have advertised, labeled, offered for sale, sold, and distributed products to the public, including Miracle Thaw, a food defrosting or thawing tray.

7. The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

8. Respondents have disseminated or have caused to be disseminated advertisements and promotional materials for Miracle Thaw, including but not necessarily limited to the attached Exhibits A and B. These advertisements and promotional materials contain the following statements and depictions:

A. "After a hard day at work, it's time for a nice juicy steak. Oh, no! You forgot to defrost.

You need MIRACLE THAW, the incredible new defrosting tray that perfectly thaws any frozen food like magic in just minutes.

No chemicals. No batteries. No wires. No microwave rays. Just a space-age metal from Mother Nature that thaws frozen food faster and better than anything in the world.

Look! This thick frozen steak could take all day to defrost! But watch! Simply place it on Miracle Thaw and incredibly, in just 30 minutes, it's butcher block fresh. [Super: Thaws Food in Minutes.]

These rock hard chicken breasts are perfectly tender in only 13 minutes!

That's frozen fish. 12 minutes later, it's the catch of the day.

Frozen pork chops are thawed, cool and juicy in just 14 minutes.

The secret is in the superconductive metal tray. It absorbs the natural heat energy in the air and then releases it directly into the frozen food.

[Super: Natural Heat Conductor. Absorbs Heat From Air.]

Now, you can defrost any frozen food, just minutes before cooking. Just watch this ice cube demonstration. The tray is cool to the touch, but the ice cube melts away like it was on a hot griddle. The Miracle Thaw defrosting tray simply speeds up the natural thawing process. Incredibly, the ice cube has melted down in just seconds. Amazing!

All day thawing could cause bacteria burgers. But with Miracle Thaw, burgers are safely defrosted in just 10 minutes.

[Visual: Six spoiled thawed hamburger patties on a plate; Six unspoiled thawed hamburger patties on Miracle Thaw.]

[Super: No Dangerous Bacteria.]

Most important, it's lab tested for product and food safety.

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[Super: Miracle Thaw . . . Laboratory Tested . . . 100% Safe.]

Microwave defrosting could ruin your food. You get dry cooked edges, causing poor stale flavor. But Miracle Thaw defrosts perfectly every time. Food retains the natural juices for the best flavor.

[Super: Thaws evenly and safely.]

Miracle Thaw. Instant defrosting."

....

(Exhibit A, television commercial transcript).

B. "Amazing Tray Thaws Food In Minutes!"

....

"Laboratory SAFETY Tested."

....

"Space-age metal thaws frozen foods safely, evenly, perfectly . . . EVERY TIME!"

....

"Before . . . Rock-hard frozen chicken breasts [depiction of two frozen boneless chicken breasts being placed on tray]. . . After . . . Perfectly thawed . . . moist and tender in as little as 7 MINUTES! [depiction of two fully thawed boneless chicken breasts being removed from tray]."

....

"Up until now you really only had two choices for defrosting or thawing foods. Either in the microwave or on the counter top. . . . So what about defrosting food by leaving it on the counter top all day? This option is not highly recommended or very safe due to bacterias found in most foods which is why safe handling guidelines recommend that you keep raw meat, poultry and fish refrigerated or frozen until you're ready to cook it. The safest, most convenient choice is Miracle Thaw . . ."

....

(Exhibit B, product package).

9. Through the means described in paragraph eight, respondents have represented, expressly or by implication, that laboratory testing proves that food items defrosted or thawed on Miracle Thaw will not develop harmful or unsafe levels of bacteria.

10. In truth and in fact, laboratory testing does not prove that food items defrosted or thawed on Miracle Thaw will not develop harmful or unsafe levels of bacteria. At the time respondents made the representations set forth in paragraph nine, no tests relating to bacteria buildup on food had been conducted on Miracle Thaw. Therefore, the representation set forth in paragraph nine was, and is, false or misleading.

11. Through the means described in paragraph eight, respondents have represented, expressly or by implication, that:

A. There is no risk of buildup of harmful or unsafe levels of bacteria on perishable frozen food items defrosted or thawed on Miracle Thaw.

B. Miracle Thaw will defrost or thaw frozen food items in the following times: steak in 30 minutes; chicken breasts in 7 to 13 minutes; fish fillets in 12 minutes; pork chops in 14 minutes; and hamburgers in 10 minutes.

C. Miracle Thaw achieves the accelerated defrosting or thawing depicted in the advertisements referred to in paragraph eight because it is a superconductive metal tray that transfers heat energy from the air into frozen food items, thereby speeding up the natural defrosting or thawing process.

12 In truth and in fact:

A. There is a potential risk of buildup of harmful or unsafe levels of bacteria on perishable frozen food items defrosted or thawed on Miracle Thaw. Miracle Thaw operates at room temperature, and defrosting or thawing perishable food at room temperature, even for relatively short periods of time, increases the risk of harmful or unsafe bacteria buildup.

B. In many cases, Miracle Thaw will not defrost or thaw frozen food items in the claimed time periods. Defrosting or thawing times will vary depending on several factors, including the size, shape, and thickness of the food item, the number of items placed on the tray at one time, the number of times the tray is reheated during defrosting or thawing, and room temperature. In some cases actual defrosting or thawing times may be three or more times longer than the claimed defrosting or thawing times.

C. Miracle Thaw does not achieve the accelerated defrosting or thawing depicted in the advertisements referred to in paragraph eight by superconducting or transferring heat energy from the air into frozen food items. Miracle Thaw is a Teflon-coated aluminum tray that can only achieve the accelerated defrosting or thawing depicted in the advertisements referred to in paragraph eight if it is preheated before use and reheated during use. Similar results could be achieved with any aluminum pan.

Therefore, the representations set forth in paragraph eleven were, and are, false or misleading.

13. Through the means described in paragraph eight, respondents have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations

set forth in paragraph eleven, at the time the representations were made.

14. In truth and in fact, respondents did not possess and rely upon a reasonable basis that substantiated the representations set forth in paragraph eleven, at the time the representations were made. Therefore, the representation set forth in paragraph thirteen was, and is, false or misleading.

15. In their advertising and sale of Miracle Thaw, respondents have represented that Miracle Thaw is effective, useful, or appropriate for defrosting or thawing frozen food items. Respondents have failed to disclose that defrosting or thawing perishable food on Miracle Thaw may pose a risk of buildup of harmful or unsafe bacteria on the food. These facts would be material to consumers in their purchase or use of the product. Respondents' failure to disclose these facts, in light of the representation made, was, and is, a deceptive practice.

16. The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

EXHIBIT A

Miracle Thaw TV Commercial, 120 Second, Original Version

Super: [Copyright] 1994. T.V.P. Corp. All Rights Reserved [small print].

Audio: After a hard day at work, it's time for a nice juicy steak. Oh, no! You forgot to defrost.

Super: Miracle Thaw.

Audio: You need MIRACLE THAW, the incredible new defrosting tray that perfectly thaws any frozen food like magic in just minutes.

Visual: 1 steak on tray, before and after.

Audio: No chemicals. No batteries. No wires. No microwave rays. Just a space-age metal from Mother Nature that thaws frozen food faster and better than anything in the world.

Visual: 1 whole chicken on tray, before and after.

Super: No breakable Parts. Natural Thawing Method.

Audio: Look! This thick frozen steak could take all day to defrost! But watch! Simply place it on Miracle Thaw and incredibly, in just 30 minutes, its butcher block fresh.

Visual: 1 steak on tray, before and after.

Super: Thaws Food in Minutes.

Audio: These rock hard chicken breasts are perfectly tender in only 13 minutes!

Visual: 3 breasts on tray at once, before and after.

Audio: That's frozen fish. 12 minutes later, it's the catch of the day.

Visual: 1 fish fillet on tray, before and after.

Audio: Frozen pork chops are thawed, cool and juicy in just 14 minutes.
Visual: 6 chops on tray at once, before and after.
Audio: The secret is in the superconductive metal tray. It absorbs the natural heat energy in the air and then releases it directly into the frozen food.
Super: Natural Heat Conductor. Absorbs Heat From Air.
Audio: Now, you can defrost any frozen food, just minutes before cooking. Just watch this ice cube demonstration. The tray is cool to the touch, but the ice cube melts away like it was on a hot griddle. The Miracle Thaw Defrosting Tray simply speeds up the natural thawing process. Incredibly, the cube has melted down in just seconds. Amazing!
Super: Ice Cube Demonstration.
Audio: All day thawing could cause bacteria burgers. But with Miracle Thaw, burgers are safely defrosted in just 10 minutes.
Visual: 6 spoiled thawed hamburger patties on a plate; 6 unspoiled hamburger patties on tray at once, before and after.
Super: No Dangerous Bacteria.
Audio: Most important, it's lab tested for product and food safety.
Super: Miracle Thaw . . . Laboratory Tested . . . 100% Safe.
Audio: Microwave defrosting could ruin your food. You get dry cooked edges, causing poor stale flavor. But Miracle Thaw defrosts perfectly every time. Food retains the natural juices for the best flavor.
Visual: 5 assorted cuts on tray at once, before and after.
Super: Thaws evenly and safely.
Audio: Miracle Thaw. Instant defrosting. Quick clean-up. Easy storage. Now, only \$19.95.
Visual: 6 hamburger patties on tray at once, before and after.
Audio: Designed to last a lifetime, it's the incredible kitchen miracle you'll use every day.
Visual: 1 whole chicken on tray, before and after.
Super: Miracle Thaw. Only \$19.95. Risk-Free Money Back Guarantee.
Audio and Super: [ordering information].

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EXHIBIT B

THE JAW
DEFROSTING MACHINE

ROASTING FOOD IN MINUTES!

TV DEMO! AS SEEN ON **TV**

SAFETY

Before
Rock-hard frozen chicken.

After
Thawed perfectly...
fresh in minutes!

- NO ELECTRICITY
- NO CHEMICALS
- NO BATTERIES
- NO MICROWAVES

EXHIBIT B

EXHIBIT B

ON EL

Before
Rock hard frozen
chicken breasts.

Space-age metal thaws frozen foods
safely, evenly, perfectly... EVERY TIME!

After
Perfectly thawed...
moist and tender in as little as 7 MINUTES!

When you use the Gene DeLuxe you'll see the difference in thawing time. It's a space-age, safe, and delicious miracle.

Defrosting is the simple, quick way to thaw frozen foods. It's a space-age miracle that's been perfected by Gene DeLuxe. It's a space-age, safe, and delicious miracle.

When you use the Gene DeLuxe you'll see the difference in thawing time. It's a space-age, safe, and delicious miracle.

THAW
DEFROSTING TRAY

AS SEEN ON
TV

3 Solid Reasons Why
You'll Love Miracle Thaw Jr.:
Instant Defrosting!
Quick Clean Up!
Easy Storage!

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 Boston Regional Office 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, their attorney, 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, or that the facts as alleged in such complaint, other than jurisdictional facts, are true 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 a 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 sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Premier Products, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its offices and principal place of business located at 23 Vreeland Road, Florham Park, New Jersey.

Respondent T.V. Products, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its offices and principal place of business located at 23 Vreeland Road, Florham Park, New Jersey.

Respondent T.V.P. Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its offices and principal place of business located at 23 Vreeland Road, Florham Park, New Jersey.

Respondent Michael Sander is an officer of said corporations. He formulates, directs and controls the policies, acts and practices of said corporations, and his office or principal place of business is located at the above stated address.

Respondent Issie Kroll is an officer of said corporations. He formulates, directs and controls the policies, acts and practices of said corporations, and his office or principal place of business is located at the above stated address.

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

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. *"Competent and reliable scientific evidence"* shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

2. *"Clearly and prominently"* shall mean as follows:

A. In a television or video advertisement, the disclosure shall be presented simultaneously in both the audio and video portions of the advertisement. The audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The video disclosure shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it.

B. In a radio advertisement, the disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it.

C. In a print advertisement, the disclosure shall be in a type size, and in a location, that are sufficiently noticeable so that an ordinary consumer will see and read it, in print that contrasts with the background against which it appears. In multipage documents, the disclosure shall appear on the cover or first page.

D. On a product label, the disclosure shall be in a type size, and in a location on the principal display panel, that are sufficiently noticeable so that an ordinary consumer will see and read it, in print that contrasts with the background against which it appears.

E. On a product insert, the disclosure shall be in a type size that is sufficiently noticeable so that an ordinary consumer will see and read it, in print that contrasts with the background against which it appears, and it shall appear before all written text, other than the name of the product or product slogans.

Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement or on any product label or insert.

3. Unless otherwise specified, "*respondents*" shall mean Premier Products, Inc., T.V. Products, Inc., T.V.P. Corporation, corporations, their successors and assigns and their officers; Michael Sander and Issie Kroll, individually and as officers of the corporations; and each of the above's agents, representatives and employees.

4. "*In or affecting commerce*" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

I.

It is ordered, That respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product involving the preparation or storage of food in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication:

A. The existence, contents, validity, results, conclusions or interpretations of any test, study, or research;

B. The risk of buildup of harmful or unsafe levels of bacteria on food items defrosted, thawed, prepared, or stored using such product;

C. The amount of time it may take to defrost, thaw, or prepare food items using such product; or

D. The process by which such product achieves any claimed defrosting, thawing, or preparation times.

II.

It is further ordered, That respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product for use in the preparation or storage of food in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the benefits, performance, efficacy or safety of such product, unless, at the time the representation is made, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.

III.

It is further ordered, That respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Miracle Thaw or any substantially similar product in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the effectiveness, usefulness, or appropriateness of such product for defrosting or thawing frozen food items, unless it discloses, clearly and prominently:

A. In any advertisement, promotional material, and product label for Miracle Thaw or any substantially similar product:

"SEE INSTRUCTIONS FOR IMPORTANT INFORMATION ABOUT POTENTIAL FOOD SAFETY RISKS ASSOCIATED WITH THAWING FOOD AT ROOM TEMPERATURE"; and

B. In a product insert enclosed in each product package for Miracle Thaw or any substantially similar product:

"CAUTION: THERE IS A POTENTIAL RISK OF HARMFUL OR UNSAFE BACTERIA BUILDUP ON PERISHABLE FOOD THAWED AT ROOM TEMPERATURE. For more information about thawing food safely, please contact the U.S. Dept. of Agriculture's Meat and Poultry Hotline at 1-800-535-4555, or the FDA's Seafood Hotline at 1-800-332-4010."

IV.

It is further ordered, That respondents Premier Products, Inc., T.V. Products, Inc., and T.V.P. Corporation, and their successors and assigns, and respondents Michael Sander and Issie Kroll shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All advertisements and promotional materials containing the representation;

B. All materials that were relied upon in disseminating the representation; and

C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

V.

It is further ordered, That respondents Premier Products, Inc., T.V. Products, Inc., and T.V.P. Corporation, and their successors and assigns, and respondents Michael Sander and Issie Kroll shall:

A. Send a copy of this order by first class mail, return receipt requested to:

1. Each purchaser for resale of Miracle Thaw or any substantially similar product who purchased from respondents since January 1, 1992, and each licensee who sells Miracle Thaw or any substantially similar product under any licensing agreement with respondents entered into prior to the date of service of this order. Such copy shall be sent within thirty (30) days after the date of service of this order; and

2. For a period of three (3) years following service of this order, each purchaser for resale of Miracle Thaw or any substantially similar product who purchases from respondents after the date of service of this order and who has not already received a copy of this order, and each licensee who sells Miracle Thaw or any substantially similar product under any licensing agreement with respondents entered into

after the date of service of this order and who has not already received a copy of this order. Such copy shall be sent within thirty (30) days of the initiation of any business transaction with the purchaser for resale or licensee;

B. In the event respondents receive any evidence that subsequent to its receipt of a copy of this order any purchaser for resale or licensee is using or disseminating any advertisement or promotional material that contains any representation prohibited by this order or that fails to disclose any information required by this order, respondents shall immediately notify the purchaser for resale or licensee that respondents will terminate their business arrangement with said purchaser for resale or licensee if it continues to use such advertisements or promotional materials; and

C. Terminate their business arrangement with any purchaser for resale or licensee if respondents receive any evidence that such purchaser for resale or licensee has continued to use advertisements or promotional materials that contain any representation prohibited by this order or that fail to disclose any information required by this order after receipt of the notice required by subparagraph B of this part.

VI.

It is further ordered, That respondents Premier Products, Inc., T.V. Products, Inc., and T.V.P. Corporation, and their successors and assigns, and respondents Michael Sander and Issie Kroll shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondents shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

VII.

It is further ordered, That respondents Premier Products, Inc., T.V. Products, Inc., and T.V.P. Corporation and their successors and assigns shall notify the Commission at least thirty (30) days prior to

any change in the corporation(s) that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondents learn less than thirty (30) days prior to the date such action is to take place, respondents shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C.

VIII.

It is further ordered, That respondents Michael Sander and Issie Kroll, for a period of ten (10) years after the date of issuance of this order, shall notify the Commission of the discontinuance of their current business or employment, or of their affiliation with any new business or employment. The notice shall include respondent's new business address and telephone number and a description of the nature of the business or employment and his duties and responsibilities. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C.

IX.

It is further ordered, That respondents Premier Products, Inc., T.V. Products, Inc., and T.V.P. Corporation, and their successors and assigns, and respondents Michael Sander and Issie Kroll shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

X.

This order will terminate on February 26, 2017, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any Part in this order that terminates in less than twenty (20) years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Complaint

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IN THE MATTER OF

J.C. PENNEY COMPANY, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-3721. Complaint, Feb. 28, 1997--Decision, Feb. 28, 1997

This consent order requires, among other things, J.C. Penney and Thrift Drugs, its wholly-owned subsidiary, to divest by March 21, 1997, to a Commission-approved acquirer, a total of 161 drug stores in North and South Carolina. The consent order settles allegations that J.C. Penney's proposed acquisition of Eckerd Corporation, and 190 Rite Aid drug stores in these two states, violated antitrust laws by substantially reducing drug store competition.

Appearances

For the Commission: *George S. Cary, Michael Moiseyev, Ann Malester and William Baer.*

For the respondents: *Peter Standish, Weil, Gotshal & Manges, New York, N.Y.*

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that J.C. Penney Company, Inc., through two wholly-owned subsidiaries, Omega Acquisition Corporation and Thrift Drug, Inc., all subject to the jurisdiction of the Commission, has agreed to acquire Eckerd Corporation and certain assets of Rite Aid Corporation, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 45; and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. DEFINITION

1. For the purposes of this complaint, "MSA" means Metropolitan Statistical Area as defined by the United States Department of Commerce, Bureau of the Census.