

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

COMMISSIONERS:

Robert Pitofsky, Chairman
Mary L. Azcuenaga
Janet D. Steiger
Roscoe B. Starek, III
Christine A. Varney

In the Matter of)
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PREMIER PRODUCTS, INC., and) DOCKET NO. C-3720
T.V. PRODUCTS, INC., and)
T.V.P. CORPORATION,)
corporations, and)
)
MICHAEL SANDER,) DECISION AND ORDER
individually and as an officer)
of the corporations, and)
)
ISSIE KROLL,)
individually and as an officer)
of the corporations.)
)

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 § 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 07932.

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 07932.

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 07932.

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 Kröll 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. 20580.

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. 20580.

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.

By the Commission.

Donald S. Clark
Secretary

ISSUED: February 26, 1997