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UNITED STATES GOVERNMENT

Memorandum

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

TO : Carl Blechschmidt

DATE: DEC 4 1974

THRU : Margaret A. Freeston, MAF Acting Assistant General Counsel
FROM : Alan H. Schoem, AHS Office of the General Counsel

SUBJECT: Jurisdiction Over Crepe Frying Pans with Tin Surface that "Breaks Up" into Tin Pellets Upon Exposure to Heat

This memorandum confirms that the problem of crepe frying pans whose tin surface "breaks up" into tin pellets upon exposure to heat is one properly for the Food and Drug Administration.

Section 3(a)(1)(I) of the CPSA (15 U.S.C. 2052(a)(1)(I)) excludes from the Commission's jurisdiction "food" as that term is defined in the Federal Food, Drug and Cosmetic Act (FFDCA). In view of recent court decisions, it is our view that the subject crepe frying pans would be considered a "food" as that term is defined in the FFDCA because there apparently is a migration of the tin to food. The tin would, therefore, be considered a "food additive" and thus a "food". (See 370 F. Supp 371 (E.D. Mich. 1974)

Other hazards that might be presented by the crepe pans, however, could be subject to the Commission's jurisdiction.

ADVISORY OPINION

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UNITED STATES GOVERNMENT

Memorandum

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

TO : Alan Schoem, OGC

DATE: November 4, 1974

THRU : Carl Blechschmidt, Director, OPDI CWB

FROM : Rod Dwyer, OPDI Rod

SUBJECT: Request for legal opinion as to CPSC or FDA jurisdiction over crepe frying pans, with tin surface that "breaks up" into little tin pellets upon exposure to heat

On October 29, I received a telephone call from Mr. Phil Gragan, Secretary and Legal Counsel to Woodward & Lothrops. The store had an original stock of 12 frying pans, as referenced above. The manufacturer was [redacted] and the product is imported from France.

One of these pans was sold to a customer who cooked about 20 crepes on the pan. She ate one crepe, and her son took a bite of another. Then the customer noted that the surface of the pan had begun to "break up" into little pellets of tin. Afraid of the effects of ingesting tin, the customer checked with her doctor, who informed her, according to what she later reported to Mr. Gragan, that she would not be harmed by the small amount of tin ingested in one crepe. According to the doctor, it would be necessary to consume a large quantity of tin, or to continually ingest amounts of tin, before any ill effects were encountered.

Mr. Gragan was concerned that W&L might be obliged to report the pans to CPSC under Section 15, CPSA. He noted that the pans would function well as a decorative item, but that the pans also carried a label which indicated that the pans were intended to be used for cooking. Mr. Gragan noted that some Woodward & Lothrop cooks had tested the pan and also found that the surface of the pan broke up, although not in exactly the same fashion as did the customer's pan.

After talking with Mr. Gragan, I called you and asked if this were not an FDA concern, because of the transfer of material from the utensil to the food. In a later conversation that same day, you informed me that this was indeed an FDA concern, in the same vein as had been an earlier problem with lead leaching from seams of teakettles into the water in the kettles. After talking with you, I referred Mr. Gragan to the Office of the Commissioner of Compliance, FDA.

This memo is to formalize our conversations, and to put on record my request for an opinion, as well as the gist of our con-

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versations, including your opinion. Thanks for your help on such short notice.