

8584. Misbranding of Limburger cheese. U. S. v. 1 Case of Limburger Cheese. Default decree of condemnation and destruction. (F. D. C. No. 16364. Sample No. 5742-H.)

LIBEL FILED: On or about June 13, 1945, District of New Jersey.

ALLEGED SHIPMENT: On or about April 5, 1945, by Joe Schmid, from Beaver Dam, Wis.

PRODUCT: 1 case of 60 bricks of Limburger cheese at Jersey City, N. J.

LABEL, IN PART: (Wrapper) "Finest Quality June Dairy Limburger Cheese * * * This is not a packaged cheese of guaranteed weight. The net weight must be determined by weighing at the time of sale."

NATURE OF CHARGE: Misbranding, Section 403 (e) (2), the product was food in package form and its label failed to bear an accurate statement of the quantity of the contents.

DISPOSITION: October 8, 1945. No claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

8585. Misbranding of cocktail spreads. U. S. v. 622 Cases of Cocktail Spreads. Default decree of condemnation. Product ordered delivered to a charitable institution. (F. D. C. No. 16691. Sample Nos. 10252-H, 10291-H, 10310-H, 10311-H.)

LIBEL FILED: July 17, 1945, Western District of Pennsylvania.

ALLEGED SHIPMENT: On or about February 24, May 1, and June 8, 1945, by the Borden Cheese Co., from Buffalo, N. Y.

PRODUCT: 288 cases of pimento cocktail spread, 48 cases of relish cocktail spread, 50 cases of smokey cheese cocktail spread, and 236 cases of olive pimento cocktail spread at Pittsburgh, Pa. Each case contained 24 5-ounce jars. Examination showed that the pimento, olive pimento, and relish cocktail spreads contained, among other things, phosphoric acid and dextrose; and that the smokey cheese cocktail spread contained, among other things, pyroligneous acid.

LABEL, IN PART: (Jars) "Borden's Pimento [or "Olive Pimento," or "Relish"] Cocktail Spread Net Wt. 5 Oz. * * * Cream, Pimentos, [or "Olive and Pimentos," or "Sweet Relish and Pimentos"] Non-fat Dry Milk and Whey Solids, Sugars, Vinegar, Salt, Organic Acid, Vegetable Gum and Vegetable Coloring," or "Borden's Smokey Cheese Cocktail Spread Net Wt. 5 Oz. * * * Ingredients: Process Aged Cheddar Cheese, Cream, Salt, Hickory Wood Distillate and Vegetable Coloring."

NATURE OF CHARGE: Misbranding, Section 403 (a), the statement "Organic Acid" on the labels of the pimento, olive pimento, and relish spreads was false and misleading as applied to phosphoric acid, which is an inorganic acid; and, Section 403 (f), the name and place of business of the manufacturer, packer, or distributor, and the common or usual name of each ingredient of the articles, required by law to appear on the labels, were not prominently placed thereon and printed with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) as to render them likely to be read by the ordinary individual under customary conditions of purchase and use, since the ingredient statement appeared quite inconspicuously around the borders of the labels, and the name and address of the manufacturer was printed inconspicuously in small white type on a yellow background.

Further misbranding (pimento, olive pimento, and relish spreads), Section 403 (i) (2), the labels failed to bear the common or usual name of each ingredient, since the name "Sugars" is not the common or usual name for dextrose, "Organic Acid" is not the common or usual name for phosphoric acid, and (smokey cheese spread) "Hickory Wood Distillate" is not the common or usual name for pyroligneous acid.

DISPOSITION: November 5, 1945. The Borden Co., the sole intervener in the case, having indicated that it did not propose to file an answer or exceptions to the libel, judgment of condemnation was entered and the products were ordered delivered to a charitable institution.

8586. Misbranding of nonfat dry milk solids. U. S. v. Blue Moon Foods, Inc. Plea of nolo contendere. Fine, \$300. (F. D. C. No. 15545. Sample No. 76074-F.)

INFORMATION FILED: June 6, 1945, Western District of Wisconsin, against the Blue Moon Foods, Inc., a corporation, Thorp, Wis.

ALLEGED SHIPMENT: On or about July 6, 1944, from the State of Wisconsin into the State of New York.

NATURE OF CHARGE: Misbranding, Section 403 (g) (1), the product purported to be nonfat dry milk solids or defatted milk solids, a food for which a definition and standard of identity has been prescribed by the regulations, but it failed to conform to such definition and standard since it was not made from sweet milk of cows but was made from neutralized sour skim milk; and, Section 403 (g) (2), it further failed to conform to the definition and standard of identity since its label failed to bear the name of the food specified in the definition and standard, i. e., nonfat dry milk solids or defatted milk solids.

DISPOSITION: July 16, 1945. A plea of nolo contendere having been entered on behalf of the defendant, the court imposed a fine of \$300.

FEEDS AND GRAINS

8587. Action to enjoin and restrain the interstate shipment of alfalfa meal and alfalfa leaf meal. U. S. v. Saunders Mills, Inc., Clarence M. Saunders, and Evelyn M. Crow. Consent decree granting permanent injunction against Saunders Mills, Inc. Action dismissed with respect to individual defendants. (Inj. No. 66.)

COMPLAINT FILED: June 9, 1944, Southern District of Ohio, against the Saunders Mills, Inc., Toledo, Ohio, and Clarence M. Saunders, president, and Evelyn M. Crow, treasurer, of the corporation; amended December 30, 1944.

NATURE OF CHARGE: That since on or about August 4, 1941, the defendants had been manufacturing, preparing, distributing, and delivering, and causing to be manufactured, prepared, distributed, and delivered for shipment in interstate commerce quantities of alfalfa meal and alfalfa leaf meal which contained a smaller amount of protein and a larger amount of crude fiber than was declared on the labels;

That the defendant corporation had been subjected to criminal prosecution for violation of the Federal Food, Drug, and Cosmetic Act, and on October 12, 1942, had entered a plea of guilty to an information charging such violation; and that on April 30, 1943, the defendant entered a plea of nolo contendere to an information containing similar charges;

That on September 11, 1941, a libel was filed against a quantity of alfalfa leaf meal and alfalfa meal shipped by the defendant corporation; and that on October 30, 1941, a decree was entered based upon an admission of the allegations of the libel on behalf of the corporation;

That prior to the enactment of the Federal Food, Drug, and Cosmetic Act, four criminal prosecutions were brought against this firm under the Federal Food and Drugs Act of 1906; and that in three instances the defendant entered a plea of nolo contendere and in one instance a plea of guilty.

PRAYER OF COMPLAINT: That a temporary restraining order issue; that after due proceedings a preliminary injunction be granted; and that after further appropriate proceedings a permanent injunction issue restraining the defendants from introducing and causing the introduction into interstate commerce of alfalfa products which were misbranded.

DISPOSITION: November 30, 1944. A motion was filed on behalf of the corporation to strike various allegations from the complaint. On December 7, 1944, the court handed down the following memorandum opinion sustaining the defendant's motion in part and overruling it in part:

FRANK L. KLOEB, District Judge: "This is an action brought by the plaintiff for the purpose of obtaining an injunction restraining the defendants from violating the provisions of the Federal Food, Drug, and Cosmetic Act by placing in interstate commerce alfalfa meal products which are alleged to be misbranded. The defendant corporation has filed a motion to strike certain allegations of the complaint on the ground that the same are 'redundant, immaterial and impertinent to the cause of action,' and the individual defendants have filed a similar motion to strike the same allegations on the ground that they are 'redundant, immaterial and impertinent as to each of said defendants.'

"The matters sought to be stricken are recitals of criminal proceedings, condemnation proceedings and the results thereof, brought against the defendant corporation. The complaint alleges that, as to the criminal proceedings, pleas of guilty were entered at various times, and in one instance a plea of nolo contendere. It is alleged that, in one condemnation proceeding, the defendant admitted the allegations of the libel. The defendants contend that 'an adjudication in a criminal case is not an adjudication in a civil action concerning the same transaction,' and that a plea of nolo contendere is limited to the case in which it is made, is not an admission for any other purpose, and