on drugs and devices. Subsequently, a motion and petition dated February 13, 1942, for the removal of the case to the Southern District of New York, was filed by the claimant and, the motion having been consented to by the government's attorney, an order was entered on February 16, 1942, for the removal of the case to the United States District Court for that District. On February 23, 1942, a motion to revoke the transfer was filed in the aforesaid court for the District of Connecticut and thereafter the court denied the motion, stating that, since the case had been removed and all papers transferred to the Southern District of New York, a proper motion should be addressed to the court for that District. A motion was then filed in the United States District Court for the Southern District of New York for the retransfer of the case to the District of Connecticut and, at the conclusion of the argument thereon, which took place on May 8, 1942, the court handed down the following opinion in denial of the motion:

GODDARD, *District Judge:*

"The United States Attorney for the Southern District of New York moves for an order transferring this proceeding back to the United States District Court of Connecticut. It is urged in support of this motion that the case had been transferred from the United States District Court for the Western District of Pennsylvania to the United States District Court of Connecticut, and that under the provisions of the Federal Food, Drug, and Cosmetic Act (21 U. S. C. A. § 334 (a)) the Connecticut Court was without power to transfer the case a second time, or to transfer the case to a district where the claimant has his principal place of business.

"Claimant contends that the order transferring the case to this court had been consented to by the United States Attorney for the District of Connecticut, and, accordingly, such transfer was permissible under the statute. I agree with this contention. The statute specifically provides that a proceeding 'pending or instituted' shall on application of the claimant be removed to any district agreed upon by stipulation between the parties. The consent of the United States Attorney for the District of Connecicut was in effect a stipulation. Nowhere is it provided that by stipulation a proceeding may be transferred only once, and then only to a district where the claimant does not have his principal place of business.

"Motion denied. Settle order on notice."

The case came on for trial before the court on October 29 and 30, 1942. At the conclusion of the trial the court took the case under advisement, and on November 19, 1942, judgment of condemnation was entered holding that the product was both a cosmetic and a drug and ordering that it be destroyed.

105. Alleged misbranding of Nutri-Tonic Oil Permanent Wave Solution, and Nutri-Tonic Wave Set. U. S. v. 45 12-Ounce Bottles and 117 1-Quart Bottles of Nutri-Tonic Oil. Tried to a jury; verdict for the claimant. Decree ordering goods returned to the claimant. (F. D. C. No. 6800. Sample Nos. 79164-E, 81105-E.)

On January 31, 1942, the United States attorney for the Middle District of Tennessee filed a libel against 45 12-ounce bottles and 117 1-quart bottles of Nutri-Tonic Oil at Nashville, Tenn., alleging that the article had been shipped or caused to be shipped by the Waval Permanent Wave Supply Company and Thermal Wavpaks, Inc., on or about November 17, 1941, from Hollywood, Calif.; and charging that it was misbranded.

Examination of a sample of the article showed that it consisted essentially of water, ammonia, and ammonium sulfite.

The libel alleged that the article was misbranded in that the designation "Nutri-Tonic Oil" was false and misleading since it was a cosmetic and not a nutrient, a tonic, or an oil.

On February 25, 1942, Samuel O. Ronk of Los Angeles, Calif., without entering his appearance for any other purpose, moved the court for removal of the case to the District Court for the Southern District of California at Los Angeles. On March 23, 1942, the Government filed a motion to strike the motion of Samuel O. Ronk, on the ground that he had no standing in court and because the court was without jurisdiction to order the removal of the proceedings to the principal place of business of the intervenor. On March 26, Samuel O. Ronk, with permission of the court, amended the motion of February 25, 1942, and for the purpose of entering his appearance generally, moved that the court transfer the cause to a District of reasonable proximity to the claimant's principal place of business in the event that the court was of the opinion that the cause should not be transferred to the District of his residence.

On March 24, 1942, after hearing on the motions filed, the court ordered the case removed to the District Court of the United States for the Southern District of California at Los Angeles. A motion was filed by the United States Attorney for the Southern District of California to remand the case to the Middle District of Tennessee, which motion was heard on June 8, 1942, and was denied by the court without opinion.

On August 17, 1942, the United States attorney for the Southern District of California filed an amended libel because of the fact that a larger amount of the product had been seized than was covered by the original libel. The amended libel covered 24 12-ounce bottles and 116 1-quart bottles of Nutri-Tonic Oil Permanent Wave Solution, Extra Strength, 61 12-ounce bottles of Waval Nutri-Tonic Oil Permanent Wave Solution Protein-ized, Extra Strength, 140 1-quart bottles of Waval Nutri-Tonic Oil Permanent Wave Solution, Protein-ized, Extra Strength, and 84 bottles of Waval Nutri-Tonic Wave Set. The amended libel also covered 59 kits labeled in part: "Waval Nutri-Tonic Oil Permanent Wave Solution Extra Strength"; containing in each kit 1 12-ounce bottle of the cosmetic, 100 pads, and 2 circulars, but was later dismissed with respect to the kits and contents.

The libel, as amended, alleged that the designation "Nutri-Tonic Oil," with respect to portions, and the statement, "Nutri-Tonic," with respect to the remainder, were false and misleading since in the former instance the product was not a nutrient, tonic, or an oil, and in the latter it was not a nutrient or a tonic.

On January 5, 1943, the case came on for trial before the court and a jury. Evidence was introduced on behalf of the Government and the claimant, the trial concluding on the same day with the return of a verdict for the claimant.

On January 7, 1943, a decree was entered ordering the product returned to the claimant.

106. Misbranding of Eff-Remin Dentifrice. U. S. v. 34 Packages and 11 Packages of Eff-Remin Dentifrice. Default decree of condemnation and destruction. (F. D. C. No. 7455. Sample No. 98285–E.)

On May 4, 1942, the United States attorney for the District of Massachusetts filed a libel against 34 packages, each containing 150 grams, and 11 packages, each containing 300 grams, of Eff-Remin Dentifrice at Boston, Mass., alleging that the article had been shipped in interstate commerce on or about April 22, 1942, by Goodrich & Love, from New York, N. Y.; and charging that it was misbranded. Analysis of samples of the article showed that it consisted essentially of tartaric acid and salt, and compounds of calcium, magnesium, and sodium, including carbonates and sulfates, flavored with volatile oils and sweetened with saccharin.

The article was alleged to be misbranded in that the statements in the labeling, (tin container) "Rub powder directly on gum margins or place some powder on thin layer of moist cotton-wool and apply to affected areas," and (circular) "'Eff-Remin' Dentifrice is an effervescent remineralizing powder. It is of value in reducing sensitivity, for controlling decalcification due to erosion or dental caries, for 'soft' teeth, * * * apply to affected areas," were false and misleading since they represented and suggested that the article, when applied to affected areas, would be of value in reducing sensitivity and in controlling decalcification due to erosion or dental caries, and for "soft" teeth, whereas, when applied to affected areas, it was of no value for such purposes.

The article was also alleged to be misbranded in violation of the provisions of the law applicable to drugs, as reported in drugs and devices notices of judgment, No. 781.

On June 15, 1942, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

107. Misbranding of Howard's Buttermilk Cream. U. S. v. 109 Dozen Packages of Howard's Buttermilk Cream. Decree of condemnation. Product ordered released under bond to be relabeled. (F. D. C. No. 7889. Sample No. 95206–E.)

On July 14, 1942, the United States attorney for the Northern District of California filed a libel (amended August 10, 1942) against 109 dozen packages of Howard's Buttermilk Cream at San Francisco, Calif., alleging that the article had been shipped in interstate commerce on or about April 24, 1942, by the Howard Bros. Chemical Co. from Buffalo, N. Y.; and charging that it was misbranded.