

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.