

merce in violation of the Act and not to consignors of such goods, such as defendant.

"The judgment is affirmed."

The defendant filed before the Supreme Court of the United States a petition for a writ of certiorari, which was denied on January 12, 1948.

COSMETIC ACTIONABLE BECAUSE OF CONTAMINATION WITH FILTH

148. Adulteration of Elmo Special Nite Cream. U. S. v. 250 Cartons * * * (F. D. C. No. 23976. Sample No. 33313-K.)

LIBEL FILED: November 21, 1947, Northern District of California.

ALLEGED SHIPMENT: On or about July 3, 1947, by the Elmo Sales Corp., from Philadelphia, Pa.

PRODUCT: 250 cartons, each containing 12 6¼-ounce jars, of Elmo Special Nite Cream at San Francisco, Calif. Examination showed that the cartons were moldy and had a putrescent odor and that the same odor permeated the contents of the jars.

NATURE OF CHARGE: Adulteration, Section 601 (b), the article consisted in whole or in part of a filthy substance; and, Section 601 (c), it had been held under insanitary conditions whereby it may have become contaminated with filth.

DISPOSITION: January 5, 1948. Default decree of condemnation and destruction.

USE OR DISTRIBUTION OF UNCERTIFIED COAL-TAR COLORS

149. Adulteration of Tropical Sun Tan Oil. U. S. v. Park Drug Co., Inc., and Louis Klatzkie. Plea of guilty. Fines, \$750. (F. D. C. No. 20187. Sample Nos. 7835-H, 41801-H.)

INFORMATION FILED: December 26, 1946, Southern District of New York, against the Park Drug Co., Inc., and Louis Klatzkie.

ALLEGED SHIPMENT: July 30 and August 22, 1945, from the State of New York into the States of New Jersey and Virginia.

LABEL, IN PART: "Tropical Sun Tan Oil * * * Distributed by Park Laboratories, New York, N. Y."

NATURE OF CHARGE: Adulteration, Section 601 (e), the article was not a hair dye and contained coal-tar colors, Butter Yellow (Colour Index No. 19) and Sudan IV (Colour Index No. 258), which have not been listed for use in cosmetics in accordance with the regulations and were other than colors from batches that had been certified.

DISPOSITION: January 24, 1947. Pleas of guilty having been entered, fines of \$500 and \$250 were imposed against the corporation and Louis Klatzkie, respectively.

150. Adulteration of coal-tar color. U. S. v. Evergreen Chemical Co., Inc., and Arthur M. Strang. Pleas of guilty. Fine of \$300 against corporation. Imposition of sentence against individual was suspended, and he was placed on probation for 10 days. (F. D. C. No. 20205. Sample No. 10293-H.)

INFORMATION FILED: November 25, 1946, Southern District of New York, against the Evergreen Chemical Co., Inc., New York, N. Y., and Arthur M. Strang, secretary.

Between the dates of June 19, 1942, and March 15, 1945, the defendant mixed a quantity of Tartrazine (FD&C Yellow No. 5) and Guinea Green B (FD&C Green No. 1), coal-tar colors, and shipped in interstate commerce the colors so mixed, on or about March 15, 1945.

LABEL, IN PART: "Liquid Evergreen 'C' Certified Color For Foods, Drugs and Cosmetics * * * Lot #B-992."

NATURE OF CHARGE: Section 301 (i), the defendant, by designating the coal-tar color as hereinbefore indicated, falsely represented and without proper authority, used an identification device authorized and required by regulations; and, Section 601 (e), the article was not a hair dye, and it contained a coal-tar color other than one from a batch that had been certified in accordance with the regulations.

DISPOSITION: December 10, 1946. Pleas of guilty having been entered on behalf of both defendants, the court imposed a fine of \$150 on each count against the corporation, a total fine of \$300; imposition of sentence against the individual

defendant was suspended, and he was placed on probation for a period of 10 days.

COSMETICS ACTIONABLE BECAUSE OF FALSE AND MISLEADING CLAIMS

151. Misbranding of Miracle-Aid. U. S. v. Norval C. Douglas (Miracle Products). Plea of not guilty. Tried to the jury. Verdict of guilty. Sentence of 1 year's imprisonment and fine of \$4,000. Judgment reversed on appeal to the Circuit Court of Appeals; case returned to the District Court. Plea of nolo contendere subsequently entered and fine of \$2,000 and costs imposed. (F. D. C. No. 14292. Sample Nos. 41209-F, 63481-F.)

INFORMATION FILED: On or about June 20, 1945, Northern District of Illinois, against Norval C. Douglas, trading as Miracle Products, at Chicago, Ill.

ALLEGED SHIPMENT: On or about March 2 and April 26, 1944, from the State of Illinois into the States of Texas and Georgia.

PRODUCT: Examination showed that the product consisted essentially of water, with a small proportion of protein, such as egg white, and perfume.

NATURE OF CHARGE: Misbranding, Section 602 (a), certain statements on the label of the article and in an accompanying circular entitled "For the Preservation and Enhancement of Beauty," and an accompanying counter display card, were false and misleading, since they represented and suggested that the article would be efficacious in the correction and removal of wrinkles and double chin; that it would supply tissue proteins to the body; and that it would be efficacious in the correction and removal of the weather-beaten and mottled condition of the neck just under the ear. The article would not be efficacious for the purposes represented.

The information alleged also that another product, Miracle Slenderizing Cream, was misbranded under the provisions of the law applicable to drugs, as reported in notices of judgment on drugs and devices, No. 2121.

DISPOSITION: The defendant entered a plea of not guilty, and on December 3, 1945, the case came on for trial before a jury. At the conclusion of the trial, the jury, on December 5, 1945, returned a verdict of guilty, and the court sentenced the defendant to serve 1 year in jail and imposed a fine of \$1,000 on each of the 4 counts of the information. Subsequently, the case was appealed to the United States Circuit Court of Appeals for the Seventh Circuit, and on June 15, 1946, an opinion was handed down by that court, reversing the judgment of the lower court. The opinion is reported in the above-mentioned notices of judgment on drugs and devices, No. 2121.

A petition for rehearing was filed, and following its denial on July 6, 1946, the case was returned to the district court. On February 25, 1947, the defendant entered a plea of nolo contendere, on which date the court imposed a fine of \$2,000 and costs, which included charges against both the cosmetic and drug.

152. Alleged misbranding of Eau de Quinine Compound Hair Lotion. U. S. v. Pinaud, Inc. Plea of not guilty. Tried to the jury. Verdict of not guilty. (F. D. C. No. 20124. Sample No. 5745-H.)

INFORMATION FILED: On or about September 30, 1946, Southern District of New York, against Pinaud, Inc., New York, N. Y.

ALLEGED VIOLATION: The defendant was charged with giving a false guaranty to the Gladiator Co., Inc., New York, N. Y., on or about April 19, 1945. The guaranty was set forth on an invoice covering a delivery of the product, made by the defendant to the Gladiator Co., Inc., on or about April 19, 1945, which guaranty provided that the product was guaranteed by the defendant under the Federal Food, Drug, and Cosmetic Act; and on or about April 20, 1945, the Gladiator Co., Inc., shipped the product from the State of New York into the State of Pennsylvania.

NATURE OF CHARGE: Misbranding, Section 602 (a), the label statement "Eau de Quinine Compound Hair Lotion" was alleged to be false and misleading.

DISPOSITION: A plea of not guilty having been entered, the case came on for trial before a jury on January 22, 1947. At the conclusion of the trial on January 23, 1947, the following charge was given to the jury:

WATKINS, District Judge: "At the conclusion of the evidence by counsel in this case it becomes the duty of the Judge to instruct you as to the law of the case, and when you go to your jury room it becomes your duty under your oath