

II.

"That the booklets Calcium The Staff of Life and Cheno Plan the 5 Factor Reducing System and the placard Reduce the Cheno Way. The Five Factor Plan. Safe. Scientific accompanied the articles described in paragraph IV of the above findings of fact at the time and place described in paragraph IV of the above findings of fact and then and there constituted part of the labeling of the aforesaid articles.

III.

"That the Modified Order to Cease and Desist entered by the Federal Trade Commission on June 26, 1939, in the matter of Adah Alberty, etc., Docket No. 2875, is not res judicata to the matters and things alleged in the libel herein and does not estop the libelant herein to allege, assert or maintain that the matters and things in the libel herein constitute labeling within the provisions of 21 USC 352 (a) and does not estop libelant to allege, assert or maintain that the matters and things in the libel herein, alleged to consist of booklets and placards, accompanied the articles in said libel specifically described.

IV.

"That the above-mentioned articles of drugs described in paragraph IV of the findings of fact above, be, and they are hereby, condemned and forfeited to the United States, to be by the United States of America destroyed forthwith.

On October 26, 1942, judgment of condemnation was entered and it was ordered that the product be destroyed and that the clerk of court return the file and record and copy of the decree of condemnation and destruction to the clerk of the United States Court for the District of Columbia, with directions that a certified copy of the decree be furnished the marshal.

On November 7, 1942, the claimant filed a motion for a new trial, which motion was denied by the court February 13, 1943, without opinion.

830. Misbranding of Ecco Hygienic Powder. U. S. v. 501 Bottles of Ecco Hygienic Powder. Default decree of condemnation and destruction. (F. D. C. No. 7638. Sample No. 80612-E.)

On June 15, 1942, the United States attorney for the Southern District of Ohio filed a libel against 501 bottles of the above-named product at Dayton, Ohio, which had been shipped on or about April 13, 1942, alleging that the article had been shipped in interstate commerce by the Eby Chemical Co. from Harrisburg, Pa.

Analysis showed that the article consisted essentially of boric acid and alum together with small quantities of oxyquinoline sulfate, menthol, thymol, phenol, eucalyptol, salicylic acid, and methyl salicylate. Bacteriological tests showed that it was not germicidal in the dilution recommended for use.

The article was alleged to be misbranded: (1) In that the statements in the labeling which represented and suggested that it was a reliable contraceptive, that it was an appropriate treatment for head colds, rhinitis, rectal irritations, bleeding gums, trench mouth, sore throat, tonsillitis, quinsy, laryngitis, sinusitis, pyorrhea, chickenpox, congestion, measles, infected wounds, abscesses, boils, hemorrhoids, vaginal burns, leucorrhea, vaginitis, and gonorrhoea; and that it was an adequate treatment for such skin conditions as dandruff, itchy scalp, sores, impetigo, hives, corns, callouses, bunions, acne, blackheads, bed sores, barber's itch, cold sores, eczema, fever blisters, frost bite, chilblains, poison ivy, skin rash and sunburn, were false and misleading since it would not be efficacious for such purposes; (2) In that the following statements on the label, "Ecco Powder is a concentrated inhibitory antiseptic, efficient and economical. Always use fresh solutions properly diluted with hot or boiling water * * * When possible use wet dressing or cover affected parts with clean sterile bandage or gauze after dusting with Ecco Powder" were misleading since they failed to reveal the material fact that it was not antiseptic except when used as a wet dressing or with a bandage that would permit prolonged contact with the body.

On July 16, 1942, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.