1228. Adulteration and misbranding of prophylactics. U. S. v. 15 Gross and 4½ Gross of Prophylactics. Decrees of destruction. (F. D. C. Nos. 11186, 11253. Sample Nos. 40792–F, 43852–F.)

On November 26 and December 8, 1943, the United States attorneys for the Western District of Missouri and the District of Minnesota filed libels against 15 gross of prophylactics at Kansas City, Mo., and 4½ gross of the same product at Minneapolis, Minn., alleging that the article had been shipped on or about November 11 and 13, 1943, from Chicago, Ill., by F. G. Karg; and charging that it was adulterated and that the lot at Minneapolis was also misbranded. A portion of the article was labeled in part: "Kargston Aquapac."

The article was alleged to be adulterated in that its quality fell below that which it purported or was represented to possess since it contained holes.

The Minneapolis lot was alleged to be misbranded in that the statement on the unit package, "For Protection Against the Communication of Disease," was false and misleading since the article would not be effective as a prophylactic because of the presence of holes.

On January 29 and February 8, 1944, no claimant having appeared, judgments were entered ordering that the product be destroyed.

DRUGS ACTIONABLE BECAUSE OF FALSE AND MISLEADING CLAIMS*

DRUGS FOR HUMAN USE

1229. Misbranding of Stumicaid. U. S. v. Vernon F. Hoobler (Hoobler & Hazel Laboratory). Plea of guilty. Fine, $500 and costs. (F. D. C. No. 10626. Sample No. 22078–F.)

On January 18, 1944, the United States attorney for the Northern District of Ohio filed an information against Vernon F. Hoobler, trading as the Hoobler & Hazel Laboratory, Dalton, Ohio, alleging shipment of a quantity of Stumicaid, on or about February 25, 1943, from the State of Ohio into the State of Pennsylvania.

Analysis disclosed that the article consisted of yellowish-white, horny masses, consisting chiefly of organic protein material, with a small amount of plant material, including anise and a laxative drug such as senna.

The article was alleged to be misbranded because of false and misleading statements appearing in its labeling which represented and suggested that it would be efficacious in the cure, mitigation, treatment, or prevention of stomach trouble; that it would help restore the stomach to a normal condition; that it would be efficacious in the treatment of unusual distress, sick stomach, vomiting, and similar conditions indicated by the abbreviation "etc.," gas pains after eating, belching, bloating, heartburn, pimples, nervous stomach, stomach ulcers, too much acid and the effect of over-indulgence, stomach disorders developed over a long period of time, stomach trouble in adults and children, and nervous, jittery, or jumpy stomach; that it was an excellent remedy for most stomach ailments; that it would aid nature in renewing the stomach lining; and that it would be efficacious in the correction of automobile, train, or boat sickness, and cankerous sores of the mouth.

It was alleged to be further misbranded (1) in that the statement on its label, "Contents Pure Organic Elements of Ingluvin and Herbs," was false and misleading since the article did not consist of ingluvin and herbs, but did consist essentially of gizzard linings, anise, and compound senna powder; (2) in that the name "Stumicaid" was false and misleading since the article would not aid the stomach; and (3) in that the label of the article bore no statement of the quantity of the contents.

On March 1, 1944, the defendant having entered a plea of guilty, the court imposed a fine of $500 and costs.

1230. Misbranding of Nulfey Tablets, O. B. C. Capsules, Medrex Ointment, and Medrex Soap. U. S. v. Martin A. Levitt (William A. Reed Co.). Plea of nolo contendere. Fine, $500. (F. D. C. No. 11365. Sample Nos. 22654–F, 22655–F, 22867–F, 44456–F, 44457–F.)

On May 23, 1944, the United States attorney for the Eastern District of Pennsylvania filed an information against Martin A. Levitt, an individual trading as the William A. Reed Co., Philadelphia, Pa., alleging shipment from on or about April 7 to June 30, 1943, from the State of Pennsylvania into the States of New Jersey, Delaware, and New York of quantities of the above-named products.

*See also Nos. 1201–1205, 1207–1212, 1219–1228.

Analysis of the Nulfey Tablets disclosed that they consisted essentially of sodium salicylate, sodium biphosphate, methenamine and plant drugs including a laxative plant drug. The article was alleged to be misbranded because of false and misleading statements in the labeling which represented and suggested that it would be efficacious in the cure, mitigation, treatment, or prevention of rheumatism, arthritis, neuritis, sciatica and kidney dysfunction; and that diuretics and analgesics are efficacious in the cure, mitigation, treatment, or prevention of kidney dysfunction.

Analysis of the O. B. C. Capsules disclosed that they consisted essentially of phenolphthalein, caffeine, and clay. The article was alleged to be misbranded because of false and misleading statements in the labeling which represented and suggested that it would be efficacious in the treatment of obesity.

Analysis disclosed that the Medrex Ointment consisted essentially of zinc oxide and petrolatum with small amounts of acetanilid, starch, methyl salicylate, benzoic acid, carbolic acid, and salicylic acid. The article was alleged to be misbranded because of false and misleading statements in the labeling which represented and suggested that it would be efficacious in the cure, mitigation, treatment, or prevention of the itching and irritation accompanying eczema; and that, when used alone or in conjunction with Medrex Soap, it would be efficacious in the cure, mitigation, treatment, or prevention of eczema, pimples, skin blotches, and surface skin conditions.

Analysis of the Medrex Soap disclosed that it was a soap containing small amounts of a zinc compound, starch, and salicylic acid. The article was alleged to be misbranded because of false and misleading statements in the labeling which represented and suggested that, when used alone or in conjunction with the Medrex Ointment, it would be efficacious in the cure, mitigation, treatment, or prevention of eczema, pimples, skin blotches, and surface skin conditions.

On May 23, 1944, a plea of nolo contendere having been entered by the defendant, the court imposed a fine of $100 on each of 5 counts, a total fine of $500.

1231. Misbranding of "666." U. S. v. 70½ Dozen Bottles and 76½ Dozen Bottles of "666." Tried to a jury. Verdict for the Government. Decree of condemnation and destruction. (F. D. C. Nos. 10914 to 10916, incl., 11043 to 11045, incl. Sample Nos. 35187–F, 35189–F, 35623–F, 35851 to 35853–F, incl.)

On October 12 and November 3, 1943, the United States attorney for the Middle District of Georgia filed libels against a total of 147 dozen bottles of "666" at Valdosta, Ga., alleging that the article had been shipped between the approximate dates of March 31 and October 21, 1943, from Jacksonville, Fla., by the Monticello Drug Co.; and charging that it was misbranded. On February 22 and March 20, 1944, the libels were amended.

Examination of samples disclosed that the article contained as medicinal ingredients antipyrine (an analgesic drug), ammonium chloride, and Epsom salt; and that it contained no quinine or other ingredient useful in the treatment of malaria. The article was colored yellow with a coal-tar dye, in simulation of a drug of similar appearance and packaging which contained quinine sulfate and which was previously marketed by the Monticello Drug Company for the treatment of malaria.

The article was alleged to be misbranded (1) in that the bottle, the bottle top, the color and appearance of the article, the price, and the labels and cartons with the numerals "666" printed in red color on the yellow background, and with the other portions of the label and carton in yellow, red, and black, were misleading since in combination they constituted a statement and device which created in the minds of purchasers the impression and belief that the article was the product which had been formerly for many years advertised and sold as a treatment for malaria; (2) in that the article was an imitation of the former product; and (3) in that it was offered for sale under the name of another drug, the former product.

On March 20, 1944, the Monticello Drug Co., claimant, filed exceptions to the amended libels on the ground that there was no authority for the seizure of the product since its label clearly stated the active ingredients and did not mention that it was an antimalarial preparation. The claimant's motion to sustain those exceptions was denied by the court. On March 27, 1944, the claimant having filed answers to the libels, denying that the product was misbranded, and the libels having been consolidated, the case came on for trial before a jury. The taking of testimony was concluded on March 29, 1944, on which date the court delivered the following instructions to the jury:

DEAVER, *District Judge:* "Gentlemen of the jury, an act of Congress known to some of us as the Pure Food and Drug Act, prohibits the shipment in interstate commerce of any drug—of course, there are a great many other things in the Act