

1323. Adulteration of prophylactics. U. S. v. Trutex Products, Inc., and Frank Fenwick. Pleas of guilty. Each defendant fined \$300 and costs; sentence suspended against individual defendant. (F. D. C. No. 11363. Sample Nos. 1757-F, 1759-F, 47389-F.)

On April 18, 1944, the United States attorney for the Northern District of Ohio filed an information against Trutex Products, Inc., Cleveland, Ohio, and Frank Fenwick, vice president of the corporation, alleging shipment between the approximate dates of April 10 and July 14, 1943, from the State of Ohio into the State of Illinois of a quantity of prophylactics.

The article was alleged to be adulterated in that its quality fell below that which it purported and was represented to possess, since it purported to be and was represented as a prophylactic, but the article was ineffective for prophylaxis because of the presence of perforations or holes.

On June 19, 1944, pleas of guilty having been entered by the defendants, the court imposed a fine of \$300 and costs against each defendant. The sentence of fine and costs against Frank Fenwick was suspended.

1324. Adulteration and misbranding of prophylactics. U. S. v. 32 Gross of Prophylactics (and 13 other seizure actions against prophylactics). Default decrees of condemnation and destruction. (F. D. C. Nos. 11963, 12291, 12292, 12327, 12513, 13059, 13191, 13204, 13234 to 13236, incl., 13278, 13354, 13390. Sample Nos. 8640-F, 39576-F, 52419-F, 60918-F, 60919-F, 63718-F, 67066-F, 67087-F, 67089-F, 67636-F, 67691-F, 72689-F, 76382-F, 79419-F, 79923-F, 87219-F.)

Between March 7 and August 26, 1944, the United States attorneys for the Southern District of New York, the Eastern and Western Districts of Missouri, the Southern District of West Virginia, the District of Minnesota, the Western District of North Carolina, the Southern District of California, the Middle District of Tennessee, the Western District of Kentucky, the Northern District of Alabama, the District of Maryland, and the District of Massachusetts filed libels against the following quantities of prophylactics: 32 gross at New York, N. Y.; 5-7/12 gross at St. Louis, Mo.; 134½ gross at Kansas City, Mo.; 31 gross at Huntington, W. Va.; 215-5/6 gross at Minneapolis, Minn.; 28 gross at Charlotte, N. C.; 242 gross at Los Angeles, Calif.; 46¾ gross at Nashville, Tenn.; 392 gross at Camp Campbell, Ky.; 42½ gross at Birmingham, Ala.; 43 gross at Boston, Mass.; and 1,725¾ dozen at Aberdeen Proving Ground, Md. It was alleged in the libels that the article had been shipped between the approximate dates of October 16, 1943, and July 26, 1944, by W. H. Reed and Co., from Atlanta, Ga., with the exception of the lot at Huntington, which was alleged to have been packed by that company and shipped from Kansas City, Mo., by the B and N Sales Co. The article was labeled in part: "Malecaps," "Genuine XXXXX Goldbeaters," "Red Pak," "Xcello's Prophylactics * * * Mfd. By The Killian Mfg. Co. Akron, Ohio," "Surete Prophylactics," "Golden Pheasant Prophylactics," or "Pan Tested Fine Quality."

Examination of samples disclosed that the article was defective in that it contained holes.

The article, with the exception of the Malecaps brand, was alleged to be adulterated in that its quality fell below that which it purported or was represented to possess.

The article, with the exception of a portion of the Red Pak brand, was alleged to be misbranded in the following respects: (Malecaps brand) the statements, "Malecaps A Liquid Latex Product carefully tested and manufactured to comply with the Federal Pure Food and Drug Act. Sold as an aid to prevent disease," were false and misleading since the article would not be effective as an aid in the prevention of such diseases as syphilis, chancroid, granuloma inguinale, and lymphogranuloma inguinale, and might afford only a limited protection against gonorrhoea, because of its short length; and the reference to the "Federal Pure Food and Drug Act" created the misleading impression that the article complied with the provisions of the Federal Food, Drug, and Cosmetic Act; and (Goldbeaters, Xcellos, Surete, and Golden Pheasant brands, and a portion of the Red Pak brand) certain statements which represented and suggested that the article was efficacious for the prevention of disease, and (Pan brand) the statement, "Tested Fine Quality," were false and misleading since the article contained holes.

The article was alleged to be misbranded further in that the label of the Malecaps brand failed to contain an accurate statement of the quantity of contents in terms of numerical count, since the number contained in each envelope was not stated; and in that the label of the Goldbeaters brand failed to bear the name and address of the manufacturer, packer, or distributor.