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, 67686-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.; 42⅓ 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 gonorrhea, 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.

Between March 29 and October 26, 1944, no claimant having appeared, judgments were entered condemning the product and ordering its destruction.

1325. Adulteration and misbranding of prophylactics. U. S. v. 19 Packages and 40½ Gross of Prophylactics. Decrees of destruction. (F. D. C. Nos. 12156, 13028. Sample Nos. 67053-F, 80829-F to 80831-F, incl.)

On or about April 11 and July 27, 1944, the United States attorney for the Western District of Missouri filed libels against 40½ gross of prophylactics and 19 packages, each containing 1 dozen, of the same product at Kansas City, Mo., alleging that the article had been shipped between the approximate dates of March 7 and June 6, 1944, by the Crown Rubber Sundries Co., from Akron, Ohio; and charging that it was adulterated and misbranded. The article was labeled in part: "Genuine Gold Beaters," "Tetratex Genuine Latex Prophylactics Mfd. By L. E. Shunk Latex Products Inc. Akron, Ohio," or "Genuine Latex * * * Apris Prophylactics Mfd. by The Killian Mfg. Co. Akron, Ohio."

Samples of the article were found to be defective because of the presence of holes.

The article was alleged to be adulterated in that its quality fell below that which it purported and was represented to possess.

It was alleged to be misbranded in that the statements in the labeling of one lot, "Prophylactics," and of the other lot, "for prevention of diseases" and "for the prevention of disease only," were false and misleading since the article contained holes. A portion of the product was further misbranded in that its label failed to bear the name and place of business of the manufacturer, packer, or distributor.

On July 28 and October 26, 1944, no claimant having appeared, judgments were entered ordering the product destroyed.

DRUGS AND DEVICES ACTIONABLE BECAUSE OF FALSE AND MISLEADING CLAIMS*

DRUGS FOR HUMAN USE

1326. Misbranding of Sugretus and Sunol. U. S. v. Elmer J. Dailey (Dailey's Laboratories). Plea of not guilty. Tried to the jury. Verdict of guilty. Fine of $250 on count 1; imposition of sentence on count 2 suspended and defendant placed on probation for 5 years. (F. D. C. No. 11424. Sample Nos. 57639-F, 57640-F.)

On July 5, 1944, the United States attorney for the Southern District of California filed an information against Elmer J. Dailey, trading as Dailey's Laboratories, San Diego, Calif., alleging shipment of a quantity of the above-named products from the State of California into the State of Texas on or about August 14, 1943.

Analysis of a sample of the Sugretus disclosed that it consisted of dark gray, uncoated, compressed tablets with a slight aromatic odor, and that it contained plant material, probably cactus, together with an iron compound. It was alleged to be misbranded because of false and misleading statements on its label and in an accompanying circular letter headed "Dailey's Laboratories," which represented and suggested that the article would be efficacious in the cure, mitigation, treatment, or prevention of diabetes, Buerger's disease, and pancreas, liver, and kidney troubles; that it would make diabetics sugar-free and keep them so; that its use would enable persons who were using insulin and dieting to live normal lives, i.e., give up insulin and dieting; and that it would build up the pancreas, liver, and kidneys.

Analysis of a sample of the Sunol disclosed that it consisted essentially of volatile oils including oil of eucalyptus, camphor, and thymol dissolved in a fatty oil. The article was alleged to be misbranded in that the statement, "For soreness in Bunions," borne on its label, was false and misleading since the article would not be efficacious in the cure, mitigation, treatment, or prevention of soreness in bunions; and in that its label failed to bear any statement of the quantity of the contents or of the active ingredients of the article.

On July 15, 1944, the defendant entered a plea of not guilty, and on September 5, 1944, the case came on for trial before a jury. The trial was concluded on September 7, 1944, on which date the court delivered the following instructions to the jury:

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*See also Nos. 1301-1307, 1312-1315, 1324, 1325.