

leading, since such statements and design implied that the article was famous and would work wonders for man and wife, and that it never failed. The article was not famous and would not work wonders for man and wife, and there is no known disease condition in which use of the article would be infallible. Further misbranding, Section 502 (a), certain statements, together with the designs of a rooster, of a rooster chasing a hen, and of an elderly man kissing a young woman, which appeared in the above-mentioned circular accompanying a portion of the article, and certain statements in a circular wrapped around the boxes containing a portion of the article, were false and misleading, since they represented and suggested that the article never failed to give pep for man and for wife; that it was world famous; and that it would stimulate sexual desire, give new pep and vigor to users, and keep one young. The article was not world famous and would not be effective for the purposes represented.

DISPOSITION: November 19, 1947. Default decree of condemnation. A portion of the *Gen Tablets* and the *Red Rooster Pills* was ordered destroyed, and the remainder of the products was ordered delivered to the Food and Drug Administration to be used for technical and exhibit purposes.

2373. Adulteration and misbranding of Large Round Worm Rx and misbranding of Korum. U. S. v. 287 Bottles, etc. (F. D. C. No. 20559. Sample Nos. 66888-H, 66889-H.)

LIBEL FILED: August 1, 1946, District of Nebraska.

ALLEGED SHIPMENT: On or about June 26, 1946, from Kansas City, Mo., to Lincoln, Nebr. The products were shipped by the I. D. Russell Co., via a common carrier, and a number of pamphlets relating to the products were personally transported by the consignee.

PRODUCT: 409 bottles of *Korum* and 80 packages of *Large Round Worm Rx* at Lincoln, Nebr., together with 400 pamphlets entitled "Russell's Poultry Medicines and Biologics." The bottles were in 1-gallon, ½-gallon, 1-quart, and 1-pint sizes, and the packages were in 7-ounce and 14-ounce sizes. Analyses disclosed that the *Korum* consisted of 90 percent water, with small amounts of sodium chlorate, potassium dichromate, saltpeter, and epsom salt; and that the *Large Round Worm Rx* consisted of nicotine sulfate 3 percent, copper and iron sulfates, and plant drugs such as areca nuts, capsicum, kamala, aniseed, and nux vomica.

NATURE OF CHARGE: *Large Round Worm Rx*. Adulteration, Section 501 (c), the strength of the article differed from that which it was represented to possess, i. e., nicotine sulfate 6 percent, since the article contained not more than 3 percent of nicotine sulfate. Misbranding, Section 502 (a), certain statements on the label of the article and in the pamphlets were false and misleading, since they represented and suggested that the article was effective as an aid in the control of large roundworms or any other species of worms which infest poultry. The article was not effective for such purposes.

Korum. Misbranding, Section 502 (a), certain statements on the label of the article and in the pamphlets were false and misleading, since they represented and suggested that the article was effective as a mild astringent for chicks, pullets, layers and breeders, turkeys, and poults, and that the article was effective in the prevention and treatment of disease conditions of poultry. The article was not effective for such purposes.

DISPOSITION: February 20, 1948. I. D. Russell Co., claimant, having withdrawn its claim and answer, and the libel being considered as confessed for default of pleading or answer, judgment of condemnation was entered. The court ordered that the product be destroyed and that the cost of the proceedings be taxed against the claimant.

2374. Action to enjoin and restrain the interstate shipment of prophylactics. U. S. v. Perfection Rubber Co., William B. Augustine, Ralph N. Turnbaugh, and M. E. Turnbaugh. Injunction granted. (Inj. No. 122.)

COMPLAINT FILED: October 19, 1945, Northern District of Ohio, against the Perfection Rubber Co., a corporation, Akron, Ohio, William B. Augustine, president, Ralph N. Turnbaugh, vice-president, and M. E. Turnbaugh, secretary and treasurer.

NATURE OF CHARGE: That the defendants since about November 1938, had been engaged and were still engaged in the business of manufacturing, purchasing, packing, distributing, and selling quantities of devices, and were causing the

introduction, and delivery for introduction, into interstate commerce of large quantities of said devices known as rubber *prophylactics*; that the said devices manufactured, purchased, packed, distributed, and sold by the defendants were recommended and purported to be sold for the prevention of venereal diseases; and that the devices were adulterated and misbranded in the following respects: Adulteration, Section 501 (c), the devices consisted of defective, imperfect, and old materials, and contained holes, defects, and other imperfections, so that their strength differed from, and their quality fell below, that which they purported and were represented to possess; and, misbranding, Section 502 (a), the statements in the labeling "Perfection Supreme Quality Prophylactics" were false and misleading.

The complaint alleged further that the defendants had shipped large quantities of devices in interstate commerce; that many of the shipments had been examined, found defective, and seized; that the methods of manufacture were primitive and inefficient; that the resulting product would be ineffective to prevent disease; that the defendants had in their possession a large supply of defective prophylactics which were adulterated and misbranded as aforesaid and which they intended to introduce, and were introducing, into interstate commerce; and that unless restrained and enjoined, they would continue such introduction and delivery into interstate commerce.

PRAYER OF COMPLAINT: That a temporary restraining order be granted, followed by a preliminary injunction enjoining the defendants from the commission of the acts complained of, and that upon final hearing the preliminary injunction be made permanent.

DISPOSITION: On November 27, 1945, a preliminary injunction was entered enjoining the defendants during the pendency of the action from commission of the acts complained of. On September 4, 1947, the defendants having admitted the allegations of the complaint and consented to the entry of a decree, the court entered a decree making the preliminary injunction permanent.

DRUGS AND DEVICES ACTIONABLE BECAUSE OF FALSE AND MISLEADING CLAIMS

DRUGS FOR HUMAN USE*

2375. Alleged misbranding of Alberty's products. U. S. v. Ada J. Alberty (Alberty Food Products). Defendant's demurrer to information overruled. Plea of not guilty. Tried to the court. Judgment of guilty by district court, with probation for 3 years. Judgment reversed by Circuit Court of Appeals for Ninth Circuit. (F. D. C. No. 16522. Sample No. 81338-F, et al.)

INFORMATION FILED: On or about December 5, 1945, Southern District of California, against Ada J. Alberty, trading as Alberty Food Products, Hollywood, Calif. The information included 14 shipments of 14 different products of the defendant. All counts of the information were dismissed, with the exception of count 23 involving *Alberty Calcium Pantothenate Tablets*.

ALLEGED SHIPMENT: The products were shipped between the approximate dates of October 18, 1943, and April 18, 1944, from the State of California into the State of Missouri. Certain printed matter which related to the article, and which had been shipped to the consignee on or about February 7, 1944, was alleged to constitute accompanying labeling. The *Alberty Calcium Pantothenate Tablets* were shipped on or about April 18, 1944.

LABEL, IN PART: (*Alberty Calcium Pantothenate Tablets*, bottle label) "100 Tablets 10 Mg. (10,000 Micrograms) each of Calcium Pantothenate per tablet. Contains Dextrorotatory, Calcium Pantothenate, Dextrose and Vegetable Stearin."

NATURE OF CHARGE: *Alberty Calcium Pantothenate Tablets*. Misbranding, Section 502 (a), certain statements in leaflets entitled "So it's You again, is it?" shipped on or about February 7, 1944, were alleged to be false and misleading, in that they represented and suggested that the article would be efficacious to restore color to gray hair and to prevent hair from turning gray, whereas the article would not be efficacious for such purposes.

The information alleged also that the other products shipped by the defendant, as stated above, were misbranded because of false and misleading statements contained in the literature shipped on February 7, 1944, and that in some instances they were misbranded further with respect to their labels.

*See also Nos. 2352, 2354, 2358-2362, 2365, 2366, 2372, 2374.