

On April 10, 1951, upon stipulation of the parties that the cases presented no questions for adjudication for the reasons that (1) the products under seizure may have become below label potency and therefore unmarketable by reason of lapse of time and that (2) the use of the labeling involved had been covered by a final consent decree entered in the Southern District of California in the injunction suit referred to hereinbefore, the court ordered that the products be delivered to charitable institutions, with the explanation that the products may be below label potency, and that any literature in possession of the marshal be sent to Mytinger & Casselberry, Inc., Long Beach, Calif., to be disposed of in accordance with the said decree.

3382. Suit for injunction to restrain prosecution of pending seizures of Nutrilite Food Supplement; to enjoin institution of additional seizures; and to test constitutionality of Section 304 (a) of the Act and administrative action taken thereunder. Mytinger & Casselberry, Inc., v. Oscar R. Ewing, Paul B. Dunbar, Charles W. Crawford, Louis D. Elliott, George P. Larrick, and Tom C. Clark. Motion for dismissal denied; defendants' petition to Supreme Court for writ of prohibition denied. Tried before three-judge court. Decree of permanent injunction; decree reversed upon appeal to Supreme Court.

COMPLAINT FILED: On December 30, 1948, Mytinger & Casselberry, Inc., of Long Beach, Calif., filed in the District of Columbia a complaint for temporary and permanent injunction and temporary restraining order against Oscar R. Ewing, Administrator, Federal Security Agency; Paul B. Dunbar, Commissioner, Charles W. Crawford, Associate Commissioner, Louis D. Elliott, Assistant Commissioner, and George P. Larrick, Assistant Commissioner, Food and Drug Administration; and Tom C. Clark, Attorney General of the United States.

NATURE OF COMPLAINT: The complaint alleged that the plaintiff, Mytinger & Casselberry, Inc., had established a large and lucrative business in the distribution of *Nutrilite Food Supplement*, which is an encapsulated concentrate of alfalfa, parsley, and water cress, fortified with vitamins and minerals; that distribution was made by direct contact with consumers through field agents who used a sales booklet entitled "How to Get Well and Stay Well"; and that the booklet contained a general discussion of nutrition, the need for vitamins and minerals, and the consequences of the lack of such factors in the diet, but contained no statements that were false, fraudulent, or misleading.

The complaint recited a history of the firm's contacts with the Food and Drug Administration, which allegedly resulted in elimination of all false labeling claims, and stated that, nevertheless, an indictment had been returned against the firm.

The complaint alleged further that the defendants had caused to be initiated a number of libel actions against, and had been instrumental in having a number of state and local embargoes placed upon, the products of the plaintiff; that additional libel actions were in contemplation; that all such seizure for condemnation actions involved the same issues of law and fact, and that one such case would result in determination of the validity of the claims made by the plaintiff; and the multiple seizure actions had tied up large amounts of *Nutrilite*, which was subject to deterioration and loss of potency with the passage of time, and would be of no value to the plaintiff when the cases had been determined; that no necessity existed for harassing the plaintiff with numerous actions; that the business and good will of the plaintiff were threatened by the arbitrary and illegal actions of the several defendants; and