

## MEMORANDUM AND ORDER

RIDGE, *District Judge*: "This is an action in libel, seeking forfeiture of certain drugs allegedly misbranded and shipped in interstate commerce in violation of the Federal Food, Drug & Cosmetic Act, (21 U.S.C.A. 301, etc.).

"Pursuant to the provisions of 21 U.S.C.A., Section 334(a), defendant has moved for an order transferring this case for trial to the United States District Court for the Eastern District of New York, at Brooklyn. The parties have been unable to stipulate for such removal because the Government urges that a transfer to the Eastern District of New York would be injudicious in light of the congestion of the court docket in that district. The Government suggests, instead, that the action be transferred to the District of New Jersey, a 'district of reasonable proximity to the claimant's principal place of business' where an early trial of this case may be had.

"Claimant's principal place of business is located in the Southern District of New York. The Court takes judicial notice of the fact that court in the Eastern District of New York is held at Brooklyn; court in the District of New Jersey is held at Newark; and that it is approximately an equal distance from both these places to Manhattan, in the City of New York, where court is held in the Southern District of New York. The 'Annual Report of the Director of the Administrative Office of the United States Courts,' dated September, 1959, reflects the comparative docket conditions and time interval involved in the disposition of civil cases filed and terminated in such jurisdiction during the fiscal year ending June 30, 1959.

"From an examination of Table C-5, C-5A, and C-6, appended to said report, it is revealed that the congestion of the docket in the Eastern District of New York is one of the heaviest in all the United States District Courts in the country; that the median time for the termination of business of cases filed in that district is one of the longest in the country; while the median time for disposition of business in the District of New Jersey is well below the average of all the other districts.

"Nothing in Section 334(a), *supra*, militates or prevents the transfer of this case to the District of New Jersey, a 'district in reasonable proximity to the claimant's principal place of business.' We can perceive no prejudice to claimant by such a transfer. Claimant will not be prejudiced in securing the attendance of any witnesses found in, or residents of, the Southern District of New York, nor will it be prejudiced by earlier trial of this case in the District of New Jersey, than if this case is transferred to the Eastern District of New York, which is a matter for consideration in the interest of justice.

"THEREFORE, IT IS ORDERED BY THE COURT that the Clerk transfer all papers on file in this case to the United States District Court for the District of New Jersey, at Newark, New Jersey, for further proceedings herein."

Following the removal of the case to the District of New Jersey the Government filed written interrogatories. The claimant filed answers to the interrogatories after which the Government filed a motion to compel more complete answers to the interrogatories. Such motion was granted by the court on 9-23-60. The claimant failed to file further answers to the interrogatories and, on 11-14-60, the court entered a default decree of condemnation and destruction.

6747. Various prescription drugs. (F.D.C. No. 46265. S. Nos. 97-714/15 R, 97-717 R.)

QUANTITY: Various quantities of prescription drugs and 1 25-tablet btl. labeled *Deronil*, at Corry, Pa., in possession of Corry Pharmacy.

SHIPPED: On unknown dates, from various drug handlers.

LABEL IN PART: (Some labels) "Professional Sample" or similar wording.

RESULTS OF INVESTIGATION: Some of the articles were prescription drugs originally intended for use as samples for physicians and others lawfully engaged

in dispensing prescription drugs, and bearing labels containing the words "Professional Sample," or similar wording, and the names and addresses of manufacturers, packers, or distributors located outside the State of Pennsylvania. The bottle labeled *Deronil* had been repacked by the dealer.

**LIBELED:** 8-18-61, W. Dist. Pa.

**CHARGE:** 502(a)—while held for sale, the words "Professional Sample," and similar wording on the labels of a number of articles, were false and misleading as applied to these articles then in possession of a repacker and intended for sale, and not then intended for use as "complimentary - not for sale" samples for physicians and others lawfully engaged in dispensing prescription drugs; and 502(f)(1)—the labeling of the article of drug labeled *Deronil* failed to bear adequate directions for use and it was not exempt from that requirement since it was a drug subject to the provisions of 503(b)(1) and its label failed to bear the correct identifying lot number as required by regulations.

**DISPOSITION:** 10-13-61. Default—destruction.

**6748. Electronic Magnetic Model G device.** (F.D.C. No. 46061. S. Nos. 26-992/93 R.)

**QUANTITY:** 3 devices at Ontario, Calif.

**SHIPPED:** 4-11-50 and 4-11-53, from Tiffin, Ohio.

**RESULTS OF INVESTIGATION:** The article was a suitcase-type unit which on opening displayed a control panel and detector plates. The control panel contained an array of switches, dials, push buttons, electrode terminals, and indicator lights. The electronic components within the case formed a power supply, oscillator, and amplifier for the detection and/or operation of hertzian waves.

**LIBELED:** 7-7-61, S. Dist. Calif.

**CHARGE:** 502(f)(1)—while held for sale, the labeling of the article failed to bear adequate directions for use in the diagnosis or treatment of any disease conditions, and it was not feasible to devise any directions for use because the article was worthless for any medical purposes.

**DISPOSITION:** 8-16-61. Default—delivered to the Food and Drug Administration.

**6749. Electronic Magnetic Model G device.** (F.D.C. No. 46065. S. No. 25-436 R.)

**QUANTITY:** 1 *Electronic Magnetic Model G device* at Yucaipa, Calif.

**SHIPPED:** 6-27-60, from Tiffin, Ohio, by L. L. Roby Manufacturing Corp.

**LABEL IN PART:** (Front) "Electronic Magnetic Model G" and (back) "Manufactured by L. L. Roby Manufacturing Corp. Tiffin, Ohio."

**ACCOMPANYING LABELING:** One instruction leaflet entitled "Electronic Magnetic Instrument Model G."

**RESULTS OF INVESTIGATION:** The article was a suitcase-type unit which on opening displayed a control panel and detector plates. The control panel contained an array of switches, dials, push buttons, electrode terminals, and indicator lights. The electronic components within the case formed a power supply, oscillator, and amplifier for the detection and/or operation of hertzian waves.

**LIBELED:** 7-7-61, S. Dist. Calif.