

FEDERAL SECURITY AGENCY**FOOD AND DRUG ADMINISTRATION****NOTICES OF JUDGMENT UNDER THE FEDERAL FOOD, DRUG,
AND COSMETIC ACT**

[Given pursuant to section 705 of the Food, Drug, and Cosmetic Act]

6401-6600

FOODS

The cases reported herewith were instituted in the United States District Courts by the United States attorneys acting upon reports submitted by direction of the Federal Security Administrator.

WATSON B. MILLER, *Acting Administrator, Federal Security Agency.*

WASHINGTON, D. C., *March 23, 1945.*

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BEVERAGES AND BEVERAGE MATERIALS*

6401. Adulteration and misbranding of cocoa beverage powder. U. S. v. 5 Cases of Cocoa Beverage Powder. Default decree of condemnation. Product ordered delivered to charitable institutions. (F. D. C. No. 11873. Sample No. 66179-F.)

LABEL FILED: On or about February 23, 1944, District of Connecticut.

ALLEGED SHIPMENT: On or about December 3, 1943, by the Manhattan Coffee & Sugar Co. from Brooklyn, N. Y.

PRODUCT: 5 cases, each containing 10 cartons of 50 envelopes each, of cocoa beverage powder at New Haven, Conn.

LABEL, IN PART: (Envelopes) "Mrs. Brooks Brand—A Sweet Milk Chocolate and Cocoa Preparation for Hot Chocolate"; (cases) "Mrs Brooks Hot Chocolate."

VIOLATIONS CHARGED: Adulteration, Section 402 (b) (1), a valuable constituent, chocolate, had been in whole or in part omitted from the article; and, Section 402 (b) (2), a mixture consisting essentially of sucrose, cocoa, and dried skim milk had been substituted for a sweet milk chocolate and cocoa preparation for hot chocolate, which the article was represented to be.

Misbranding, Section 403 (a), the statements on the labeling, "Hot Chocolate," and "A Sweet Milk Chocolate and Cocoa Preparation for Hot Chocolate" * * * A choice blend of high-grade Cocoas, Chocolate, Skimmed Milk Powder, Sugar and Flavoring," were false and misleading as applied to a mixture consisting essentially of sucrose, cocoa, and dried skim milk, and containing no chocolate.

*See also Nos. 6584, 6585, 6587, 6590, and 6595.

DISPOSITION: May 12, 1944. No claimant having appeared, judgment of condemnation was entered and the product was ordered delivered to local charitable institutions after removal of the labels.

6402. Adulteration of green coffee. U. S. v. 420 Bags and 268 Bags of Green Coffee. Decrees of condemnation. Product ordered released under bond. (F. D. C. No. 11792. Sample Nos. 41519-F to 41521-F, incl.)

LIBEL FILED: February 12, 1944, Eastern District of Louisiana.

ALLEGED SHIPMENT: From the city of Parangua and the city of Santos, Republic of Brazil; arrived at New Orleans, La., on or about August 2 and October 17, 1943.

PRODUCT: 688 bags of green coffee at New Orleans, La., in possession of the Standard Warehouse Co.

The coffee was stored under insanitary conditions after shipment. The bags had been cut by rodents, and rodent excreta and urine strains were found on them. Examination of samples showed that the product contained rodent excreta, rodent hairs, and insect fragments.

VIOLATIONS CHARGED: Adulteration, Section 402 (a) (3), the product consisted in whole or in part of a filthy substance; Section 402 (a) (4), it had been held under insanitary conditions whereby it might have become contaminated with filth.

DISPOSITION: March 9 and 15, 1944. The David G. Evans Coffee Co., St. Louis, Mo., claimant for one lot, and Westfeldt Bros., New Orleans, La., claimant for the remaining lot, having admitted the allegations of the respective libels, judgments of condemnation were entered and the product was ordered released under bond to be cleaned and reconditioned under the supervision of the Food and Drug Administration. All filth was eliminated and the product was thoroughly cleaned.

6403. Misbranding of roasted malted barley (coffee substitute). U. S. v. 650 Bags of Roasted Malted Cereal, and 100 Cases of Malted Beverage Cereal. Tried to the court. Judgment for the Government. Decree of condemnation entered and the product ordered released under bond to be used in making animal feed. (F. D. C. No. 10031. Sample Nos. 3356-F, 3357-F, 43402-F.)

LIBEL FILED: June 7, 1943; amended libel filed, October 1, 1943, Western District of Missouri.

ALLEGED SHIPMENT: March 12 and 22, and April 7, 1943, by the Froedtert Grain & Malting Co., Inc., Milwaukee, Wis.

PRODUCT: 650 100-pound bags of roasted malted cereal and 100 cases, each containing 24 1-pound cartons, of malted beverage cereal at Kansas City, Mo.

LABEL, IN PART: "Froemco Roasted Malted Cereal."

VIOLATIONS CHARGED: Misbranding, Section 403 (a), the statement, "A Coffee Substitute," on the label, was false and misleading since the article was not a coffee substitute in that it had no stimulating ingredient such as caffeine, nor did it have the taste of coffee; and, Section 402 (i) (1), the label failed to bear the common or usual name of the product, roasted malted barley.

DISPOSITION: The Froedtert Grain & Malting Co., Inc., and the Klopff Sales Co., Kansas City, Mo., having filed exceptions to the libel on December 2, 1943, the court overruled the exceptions and handed down the following memorandum opinion:

REEVES, District Judge: "It is contended by the intervenors that the amended libel fails to state a cause of action for the forfeiture of either one of the articles mentioned therein and moreover that the amended libel lacks definiteness and fullness in the respect that the misbranding asserted is not set out with particularity. In addition to the above, one of the intervenors charged that the libel did not assert it had moved one of the articles complained against in interstate commerce.

"The amended libel charges the violation of subsection (a) Section 343, Title 21 U. S. C. A. and subdivision (1) of subsection (i) of said section. Subsection (a) provides in substance that 'a food shall be deemed to be misbranded (a) if its labeling is false or misleading in any particular.' Subdivision (1) of subsection (i) of said section provides as follows with respect to the label, 'if it is not subject to the provisions of paragraph (g) of this section unless its label bears (1) the common or usual name of the food, if any there be.'