

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

DISPOSITION: September 11, 1944. No claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

6809. Misbranding of spaghetti and macaroni. U. S. v. 39 Cases of Spaghetti and 39 Cases of Macaroni. Default decree of condemnation and destruction. (F. D. C. No. 13505. Sample Nos. 75462-F, 75463-F.)

LIBEL FILED: September 5, 1944, Western District of New York.

ALLEGED SHIPMENT: On or about August 23, 1944, by the Vimco Macaroni Products Co., from Carnegie, Pa.

PRODUCTS: Spaghetti and macaroni: 39 cases of each, each case containing 24 packages, at Buffalo, N. Y.

LABEL, IN PART: "Net Weight One Pound Long Spaghetti [or "Elbow Macaroni"]."

VIOLATION CHARGED: Misbranding, Section 403 (d), the containers were so filled as to be misleading since the spaghetti occupied, on an average, about 44 percent, and the macaroni occupied, on an average, about 73 percent of the volume of the package.

DISPOSITION: October 9, 1944. No claimant having appeared, judgment of condemnation was entered and the products were ordered destroyed. They were distributed to various charitable institutions.

6810. Misbranding of spaghetti. U. S. v. 95 Cases of Spaghetti. Default decree of condemnation. Product ordered delivered to charitable institutions. (F. D. C. No. 13631. Sample No. 88021-F.)

LIBEL FILED: On or about September 11, 1944, District of Connecticut.

ALLEGED SHIPMENT: On or about July 18, 1944, by the Prince Macaroni Manufacturing Co., from Boston, Mass.

PRODUCT: Spaghetti: 95 cases, each containing 36 8-ounce packages, at East Hartford, Conn.

LABEL, IN PART: (Packages) "White Spray Spaghetti Guaranteed Made From Pure Durum Semolina Distributed By First National Stores, Inc., Somerville, Mass."

VIOLATION CHARGED: Misbranding, Section 403 (d), the container was so filled as to be misleading since the product occupied, on an average, less than 50 percent of the volume of the package.

DISPOSITION: October 5, 1944. No claimant having appeared, judgment of condemnation was entered and the product was ordered delivered to charitable institutions.

FLOUR*

6811. Adulteration and misbranding of flour. U. S. v. 650 Bags of Flour. Tried to the court. Judgment for the Government. Decree of condemnation entered and product ordered released under bond. (F. D. C. No. 9777. Sample No. 37659-F.)

LIBEL FILED: April 9, 1943, Eastern District of Michigan.

ALLEGED SHIPMENT: On or about February 26, 1943, by the Wolf Milling Co., Ellinwood, Kans.

PRODUCT: 650 98-pound bags of flour at Detroit, Mich.

LABEL, IN PART: (Tag) "A Baking Specialty W M C No. 1 Unbleached Hard Wheat Flour containing unbleached hard wheat flour artificially aged with oxides of nitrogen, commercial vegetable lecithin, soya bean flour, monocalcium phosphate, and salt (NaCl)."

VIOLATIONS CHARGED: Adulteration, Section 402 (b) (2); misbranding, Section 403 (g) (1). The details of the adulteration and misbranding charges are set forth below in the findings of fact and conclusions of law.

DISPOSITION: On or about April 4, 1944. The Wolf Milling Co., claimant, having denied that the product was adulterated or misbranded, and a jury having been waived, the case came on for trial. On April 10, 1944, the court, having considered the evidence and arguments of counsel, handed down the following findings of fact and conclusions of law:

ARTHUR F. LEDERLE, *District Judge:*

*See also Nos. 6859-6862, 6991.

FINDINGS OF FACT

"1. The Government in this action seized from the premises and possession of the Hall Baking Company, 6165 Fourth Avenue, Detroit, Michigan, several hundred bags of an article labeled as follows: (Front) '98 lbs. A Baking Specialty-WMC-No. 1 Unbleached Hard Wheat Flour containing unbleached hard wheat flour artificially aged with oxides of nitrogen, commercial vegetable lecithin, soya bean flour, monocalcium phosphate, and salt (NaCl). THE WOLF MILLING COMPANY Ellinwood, Kansas [Reverse side] A Baking Specialty RECOMMENDED USE We recommend using 'WMC' as a baking specialty to be added to your favorite brand of flour to suit your formula in all your baked sweet goods. THE WOLF MILLING COMPANY Ellinwood, Kansas.' * * *

"This seizure was made in accordance with the provisions of Section 304 of the Federal Food, Drug and Cosmetic Act, 21 U. S. C. A. 334. The Claimant, Wolf Milling Company, of Ellinwood, Kansas, filed a claim, amended claim and answer to this libel action. It is conceded that the Claimant manufactured and shipped the goods seized, and that the goods moved in interstate commerce prior to such seizure and are subject to the provisions of this Act, as a food defined by the Act, 21 U. S. C. A. 321 (f).

"2. The Government in its libel charged:

"(a) That the article is adulterated in violation of 21 U. S. C. A. 342 (b) (2) in that artificially colored flour has been substituted wholly or in part for wheat flour, which article it is represented to be.

"(b) That the article is misbranded in violation of 21 U. S. C. A. 343 (g) (1) in that it purports to be and is represented as wheat flour, food for which a definition and standard of identity have been prescribed by regulations promulgated pursuant to 21 U. S. C. A. 341, and it fails to conform to such definition and standard because it contains ingredients not permitted or recognized in such definition and standard, namely, yellow nitric acid-treated flour, and lecithin, soya bean flour, monocalcium phosphate and salt.

"(c) That the article is misbranded in violation of 21 U. S. C. A. 343 (k) in that it contains artificial coloring by reason of having been mixed with flour that has been colored yellow by treating with nitric acid and fails to bear labeling stating that fact. During the course of the trial, the Government withdrew the charge of violation of Section 343 (k) of the Act.

"3. It is conceded that the major portion of the contents of the bags was unbleached hard wheat flour, the balance of the mixture being made up as follows: approximately 2% of unbleached flour processed with nitric acid in accordance with the teachings of U. S. Letters Patent 2,223,387, issued December 3, 1940, and a small amount of soy bean flour, monocalcium phosphate, and sodium chloride.

"4. There is no evidence that the Claimant attempted to deceive anyone in connection with the adoption of this label, or that anyone was deceived by the label. Consequently, I find that Claimant acted in good faith.

"5. Notwithstanding the fact that there was no intention of deception involved, the product contained in the bags seized was misbranded, contrary to the provisions of Section 403 (g) (1) of the Federal Food, Drug and Cosmetic Act, 21 U. S. C. A. 343 (g) (1), in that the product purported to be, and was represented to be, a food (flour) for which a definition and standard of identity had been prescribed by regulation as provided by Section 401 of the Federal Food, Drug and Cosmetic Act, 21 U. S. C. A. 341 (according to the regulations issued by the Federal Security Administrator, printed in the Federal Register for May 27, 1941, Page 2574 et seq.; Section 15.000, Volume 6, No. 103, Federal Register), and such product did not conform to the definition and standard of identity for flour because it contains ingredients not recognized nor permitted by the regulation, namely nitric acid treated flour, lecithin, soy bean flour, monocalcium phosphate and salt.

CONCLUSIONS OF LAW

"1. This court has jurisdiction of this libel and condemnation action by virtue of the finding in this District of allegedly misbranded food which had been transported in interstate commerce. 21 U. S. C. A. 334 (a).

"2. The Federal Food, Drug and Cosmetic Act, 21 U. S. C. A. 301, et seq., is constitutional. *Federal Security Adm. v. Quaker Oats Co.*, 1943, 318 U. S. 218.

"3. The seized goods having been shipped in interstate commerce contrary

to the provisions of the Act, it follows that the libel must be sustained. 21 U. S. C. A. 334.

"4. In view of the fact that the Claimant proceeded in good faith, although contrary to the provisions of said Act, the decrees sustaining the libel shall authorize Claimant to repossess the seized goods in accordance with the provisions of Section 304 (d) of the Act, 21 U. S. C. A. 334 (d)."

On April 10, 1944, a judgment of condemnation was entered and the product was ordered released under bond to be disposed of in compliance with the law, under the supervision of the Food and Drug Administration. The product was mixed with fish meal, for use as stock feed.

6812. Adulteration and misbranding of enriched, phosphated flour. U. S. v. 49 Boxes of Flour. Default decree of condemnation. Product ordered delivered to charitable institutions. (F. D. C. No. 12772. Sample No. 61345-F.)

LIBEL FILED: June 27, 1944, Southern District of Texas.

ALLEGED SHIPMENT: On or about March 12, 1944, by the Pillsbury Flour Mills Co., from Enid, Okla.

PRODUCT: Flour; 49 boxes, each containing 25 2-pound bags, at Houston, Tex.

LABEL, IN PART: (Bags) "Pillsbury's Best XXXX Bake-proved All-Purpose Enriched Phosphated Flour Bleached."

VIOLATIONS CHARGED: Adulteration, Section 402 (b) (1), a valuable constituent, thiamine (vitamin B₁), had been in part omitted from the product.

Misbranding, Section 403 (g) (1), the product failed to conform to the definition and standard for enriched flour since it contained approximately 1.33 milligrams of thiamine (vitamin B₁) per pound, whereas the standard requires not less than 2.0 milligrams per pound; and, Section 403 (a), the label statements, "Enriched * * * Flour * * *," and "Contains not less than the following proportions of the minimum daily requirements Vitamin B₁ 100% * * * per 8 ounces of enriched * * * flour," were false and misleading as applied to the product, which failed to conform to the definition and standard for enriched flour and contained less than 100 percent of the minimum daily requirements of vitamin B₁ per 8 ounces.

DISPOSITION: August 29, 1944. No claimant having appeared, judgment of condemnation was entered and the product was ordered delivered to charitable institutions.

Nos. 6813 to 6847 report actions involving flour that was contaminated with one or more of the following types of filth: Insects, insect fragments, insect excreta pellets, larvae, pupae, cast skins, webbing, rodent excreta, rodent hairs and hair fragments, and urine. (In those cases in which the time of contamination was known that fact is stated in the notice of judgment.)

6813. Adulteration of flour. U. S. v. 1,489 Bags of Flour. Consent decree of condemnation. Product released under bond. (F. D. C. No. 13755. Sample Nos. 86938-F to 86941-F, incl.)

LIBEL FILED: On or about October 6, 1944, Northern District of Illinois.

ALLEGED SHIPMENT: From on or about June 24 to August 3, 1944, by the Spokane Flour Mills Co., from Spokane, Wash.

PRODUCT: 1,489 100-pound bags of flour at Chicago, Ill.

LABEL, IN PART: "Golden Harvest Pie Unbleached."

VIOLATION CHARGED: Adulteration, Section 402 (a) (3), the product consisted in whole or in part of a filthy substance by reason of the presence of weevils and larvae.

DISPOSITION: November 3, 1944. The claimant, the Wagner Baking Corporation, Chicago, Ill., having admitted the facts in the libel, judgment of condemnation was entered and the product was ordered released under bond for reprocessing into animal feed, under the supervision of the Food and Drug Administration.

6814. Adulteration of flour. U. S. v 100 Bags of Flour. Consent decree of condemnation. Product ordered released under bond. (F. D. C. No. 13273. Sample No. 75917-F.)

LIBEL FILED: August 18, 1944, Western District of Pennsylvania.

ALLEGED SHIPMENT: On or about April 15, 1944, by the Duluth Universal Milling Co., from Duluth, Minn.

PRODUCT: Flour: 100 bags, each containing 100 pounds, at Pittsburgh, Pa.