

**13490. Misbranding of Lin-A-Cea. U. S. v. Parke D. Brollier (Park-Lee Products Co.). Plea of nolo contendere. Fine, \$300 and costs. (F. D. C. No. 28242. Sample No. 38406-H.)**

**INDICTMENT RETURNED:** February 16, 1948, Northern District of Ohio, against Parke D. Brollier, trading as the Park-Lee Products Co., Lorain, Ohio.

**ALLEGED SHIPMENT:** On or about August 22, 1946, from the State of Ohio into the State of Michigan.

**PRODUCT:** Examination showed that the product was ground, roasted flaxseed.

**NATURE OF CHARGE:** Misbranding, Section 403 (a), certain statements in the labeling of the article were false and misleading.

The article was alleged also to be misbranded under the provisions of the law applicable to drugs, as reported in notices of judgment on drugs and devices, No. 2418, in which is set forth the nature of the false and misleading statements referred to above.

**DISPOSITION:** May 10, 1948. A plea of nolo contendere having been entered, the court imposed a fine of \$300 and costs.

**13491. Alleged misbranding of Protecto. U. S. v. Bess J. Levine (Miracle Food Co.). Plea of not guilty. Tried to the court. Verdict of not guilty. (F. D. C. No. 23588. Sample No. 41022-H.)**

**INFORMATION FILED:** February 13, 1948, Eastern District of Pennsylvania, against Bess J. Levine, trading as the Miracle Food Co., Philadelphia, Pa.

**ALLEGED SHIPMENT:** On or about January 31, 1947, from the State of Pennsylvania into the State of Tennessee.

**LABEL IN PART:** "Protecto contains Milk Whey Powder, Malt Sugar 200,000,000 of Acidurid Bacteria per 1 C.C. 16 ozs. \* \* \* Expir. date Apr. 2, 1947."

**NATURE OF CHARGE:** Misbranding, Section 403 (a), the label statements "Contains \* \* \* 200,000,000 of Acidurid Bacteria per 1 C.C. \* \* \* Expir. date Apr. 2, 1947" were false and misleading, since the statements represented and suggested that prior to April 2, 1947, the article would contain not less than 200,000,000 acidurid bacteria per 1 cc., whereas the article on a date prior to April 2, 1947, namely, March 17, 1947, contained less than .4 percent of the acidurid bacteria represented.

The article was alleged also to be misbranded under the provisions of the law applicable to drugs, as reported in notices of judgment on drugs and devices, No. 2419.

**DISPOSITION:** A plea of not guilty having been entered, the case came on for trial before the court without a jury on the basis of the stipulation and briefs of the parties. On July 1, 1948, the court found the defendant not guilty. The opinion handed down by the court in pronouncing judgment is set forth in notices of judgment on drugs and devices, No. 2419.

**13492. Alleged misbranding of Ayds vitamin and mineral candy. U. S. v. 61 Boxes, etc. Libel ordered dismissed. (F. D. C. No. 9461. Sample No. 19667-F.)**

**LIBEL FILED:** March 1, 1943, District of Massachusetts.

**ALLEGED SHIPMENT:** On or about January 25, 1943, by the Carlay Co., from Chicago, Ill.

**PRODUCT:** 61 1-pound boxes and 69 2-pound boxes of Ayds vitamin and mineral candy at Boston, Mass. Examination indicated that the product was essentially caramel candy.

**NATURE OF CHARGE:** Misbranding, Section 403 (a), certain statements in the labeling of the article were false and misleading, since they represented and suggested that use of the product made easy the loss of body weight, either quickly or slowly, whereas the use of the article would have no effect in causing loss of body weight; and the label designation "Ayds," by reason of representations made by or on behalf of the manufacturer and owner, had acquired the meaning "aids in reducing" when used in association with candy which was to be eaten by obese individuals as part of a plan for reducing excess fat, and having acquired and attained such meaning in such association, was false and misleading as applied to candy that did not aid in reducing weight.

**DISPOSITION:** The Carlay Co. appeared as claimant and filed an answer denying the allegations of misbranding. The claimant also filed a motion for removal of the proceeding to another district, which motion was opposed by the Government on the grounds that the law does not authorize removal of an action based upon an alleged misbranding when such misbranding has been the basis of a prior judgment in favor of the Government in criminal, injunction, or libel proceedings, and that judgments had been entered in favor of the Government in several libel proceedings involving labeling which although differing substantially in wording, raised the same issue, namely, whether Ayds candy is effective in causing loss of body weight. After considering the brief of the parties, the court ruled as follows:

HEALY, *District Judge*: "Since the prior proceedings cited by the United States in its brief were not 'based upon the same \* \* \* misbranding' within the meaning of Section 334 of Title 21 of the United States Code, I am of the opinion that this libel comes within the removal provision of that section. The proceedings will be removed to the United States District Court for the Eastern District of Wisconsin."

In accordance with the foregoing opinion, an order was entered on April 28, 1943, for removal of the case for trial to the Eastern District of Wisconsin. Thereafter, the claimant filed a motion in the Eastern District of Wisconsin for removal of the case to the Northern District of Illinois for trial, for the reason that the trial in the Eastern District of Wisconsin would cause undue and unnecessary hardship to the claimant and would cause great inconvenience to the claimant's witnesses. On June 7, 1943, and without objection by the Government's attorney, an order was entered directing the removal of the case to the Northern District of Illinois. A motion to vacate the order of June 7 was subsequently filed in the Eastern District of Wisconsin and was denied on April 24, 1944. On September 18, 1944, pursuant to a motion by the United States Attorney for the Northern District of Illinois, the case was dismissed.

**13493. Adulteration and misbranding of Enricho No. 1 and Enricho No. 2. U. S. v. Dawe's Mfg. Co. Plea of guilty. Fine, \$1,500. (F. D. C. No. 23223. Sample Nos. 19334-H, 51504-H.)**

**INFORMATION FILED:** December 4, 1947, Southern District of Illinois, against the Dawe's Mfg. Co., a corporation, Peoria, Ill.

**ALLEGED SHIPMENT:** On or about March 21 and 27, 1946, from the State of Illinois into the States of Iowa and Minnesota.

**PRODUCT:** Analyses disclosed that the Enricho No. 1 contained per gram 70 U. S. P. units of vitamin D, 50 U. S. P. units of vitamin A, more than 100 micrograms of riboflavin, approximately 86 micrograms of vitamin B<sub>1</sub>, approximately 70 micrograms of ascorbic acid, and 119 micrograms of niacin; and that the Enricho No. 2 contained per gram 200 U. S. P. units of vitamin D, 53 micrograms of riboflavin, 50 micrograms of vitamin B<sub>1</sub>, less than 25 U. S. P. units of vitamin A, and approximately 80 micrograms of ascorbic acid and 75 micrograms of niacin.

**NATURE OF CHARGE:** Enricho No. 1. Adulteration, Section 402 (b) (1), valuable constituents, vitamins A and D and ascorbic acid, had been in part omitted and abstracted from the article. Misbranding, Section 403 (a), the label statements "Vitamin D<sub>3</sub> (Chick) 100 AOAC Units (Per Gram) 45,400 AOAC Units (Per Pound) Vitamin D<sub>2</sub> (4-Legged Animals) 100 USP Units (Per Gram) 45,400 USP Units (Per Pound) Vitamin A 100 USP Units (Per Gram) 45,400 USP Units (Per Pound) \* \* \* Ascorbic Acid 100 Mcgm. (Per Gram) 45,400 Mcgm. (Per Pound)" were false and misleading, since the article contained less than those amounts of vitamin D<sub>3</sub>, vitamin D<sub>2</sub>, vitamin A, and ascorbic acid. Further misbranding, Section 403 (a), certain statements on the label of the article were false and misleading, since they represented and suggested that the article by reason of its vitamin C content would be of value to farm animals; that it would be of aid to poultry and livestock in preventing and recovering from setbacks and sickness due to shortage of vitamins; that the use of the article would insure health of animals; that the article would be efficacious by reason of its vitamin content in the cure, mitigation, treatment, and prevention of infections in poultry and livestock; that the article was necessary to supply the vitamins and minerals which are indispensable for