

branded within the meaning of the Federal Food, Drug, and Cosmetic Act; that the potency of the vitamin content of all merchandise furnished to the distributor was guaranteed for a period of 6 months from the date of shipment or delivery to the distributor; that labels used on all merchandise furnished under the agreement were to be furnished by the distributor and placed on the merchandise by the defendants; that all labels must conform to all rules and regulations of the Food and Drug Administration; and that the distributor would assume full responsibility for any variation from the above in respect to information added to or omitted from labels used, as required by the Food and Drug Administration, and to accept full responsibility for any charges of adulteration or misbranding that might result therefrom. On or about July 12, 1945, the defendants caused to be delivered to the distributor at Los Angeles, a number of packages of Beir-Nes Blue Label Vitamin B₁ tablets; and on or about December 7, 1945, the distributor shipped the tablets from the State of California into the State of Oregon. The tablets so guaranteed and shipped were misbranded.

NATURE OF CHARGE: Misbranding, Section 403 (a), the label statement "Each Tablet contains Vitamin B₁—100 I. U. (Thiamin Chloride)" was false and misleading since each tablet of the article contained a smaller amount of vitamin B₁ (thiamine chloride) than so labeled.

The indictment alleged also that the defendants caused a false guaranty to be given with respect to the delivery of a drug known as "Tebsin Tablets," as reported in notices of judgment on drugs and devices, No. 2363.

DISPOSITION: The defendants moved to strike from the indictment the allegations with respect to the shipment of the product in interstate commerce, on the grounds that the defendants could not be criminally liable for the act of third parties or for an act in which the defendants did not participate. The defendants' motion was denied by the court on April 21, 1947. Thereafter, a plea of nolo contendere was entered on behalf of the defendants, and on September 15, 1947, the court imposed a fine of \$1,000 against each defendant.

13697. Alleged misbranding of Ays candy. U. S. v. The Carlay Co. and Carl A. Futter. Special plea in bar filed on behalf of individual defendant; plea sustained and case dismissed. (F. D. C. No. 10609. Sample Nos. 485-F, 486-F, 3046-F, 8665-F to 8667-F, incl., 14081-F, 19667-F, 36890-F, 37652-F.)

INFORMATION FILED: During the approximate date of June 1943, Northern District of Illinois, against the Carlay Co., Chicago, Ill., and Carl A. Futter, president and treasurer of the corporation.

ALLEGED SHIPMENT: Between the approximate dates of October 28, 1942, and February 17, 1943, from the State of Illinois into the States of Wisconsin, Minnesota, Massachusetts, California, Missouri, Michigan, and Maryland.

PRODUCT: The product consisted of rectangular pieces of caramel-like candy individually wrapped in wax paper. Analysis disclosed that the candy chiefly contained glucose, sugar, protein, fat, and vitamins A, D, B₁, and flavor.

NATURE OF CHARGE: The information charged the defendants with the introduction into interstate commerce of a misbranded food. The defendants were charged further with causing certain circulars and posters to be brought into association with the food and to accompany the food, resulting in its being misbranded while held for sale after shipment in interstate commerce. The article was charged to be misbranded under Section 403 (a), because of statements in the labeling which represented that the article would be of substantial value as an aid in reducing body weight. These statements were alleged to be false and misleading.

DISPOSITION: On June 19, 1944, a special plea in bar was filed on behalf of Carl A. Futter, claiming immunity from prosecution in the instant case on the basis of evidence given or produced by him in a case involving the same defendants before the Federal Trade Commission. After a hearing in the matter, the court sustained the special plea in bar on September 13, 1944; on August 19, 1944, the case was dismissed as to Carl A. Futter, and on September 12, 1944, the case was dismissed as to the Carlay Co.

13698. Misbranding of Vitawine. U. S. v. 137 Cartons, etc. (F. D. C. No. 22699. Sample Nos. 54133-H to 54135-H, incl.)

LABEL FILED: March 25, 1947, Southern District of Indiana.