

90. Misbranding of S-T-D "The" Hair Tonic. U. S. v. 4 Bottles, 21 Bottles, and 1 Bottle of S-T-D "The" Hair Tonic. Default decree of condemnation and destruction. (F. D. C. No. 7339. Sample No. 90314-E.)

The labeling of this product bore false and misleading claims regarding its efficacy in the treatment of dandruff, falling hair, itching scalp, and all scalp ailments and falsely represented that it was a tonic.

On April 14, 1942, the United States attorney for the District of Massachusetts filed a libel against the above-named product at Springfield, Mass., alleging that it had been shipped in interstate commerce on or about December 17, 1941, by George A. Dustin from Chicago, Ill.; and charging that it was misbranded.

Analysis showed that it consisted essentially of small proportions of potassium arsenite, sodium borate, and water. The potassium arsenite contained arsenic equal to 0.2 gram per 100 cc.

The article was alleged to be misbranded in that the following statements on the bottle labels were false and misleading: (Front) "Stops the Dandruff 'The' Hair Tonic for Dandruff Falling Hair Itching Scalp and all Scalp Ailments"; (back) "Wet Scalp with Ess-Tee-Dee Hair Tonic and massage every day until scalp is free from dandruff. * * * For best results, shampoo the hair once each week, then apply Ess-Tee-Dee Hair Tonic after hair has dried and continue applications every third or fourth day until scalp is free from dandruff and then use Tonic only as often as it is necessary to keep the scalp in a clean and healthy condition. * * * 'The' Hair Tonic."

The libel alleged that the article was also misbranded under the provisions of the law applicable to drugs, as reported in notices of judgment on drugs and devices.

On June 15, 1942, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

COSMETICS IN DECEPTIVE CONTAINERS

91. Misbranding of Caroid Dental Powder. U. S. v. 4 Dozen Ounce Packages and 9 Dozen 2-Ounce Packages of Caroid Dental Powder. Default decree of condemnation and destruction. (F. D. C. No. 5329. Sample No. 48057-E.)

The contents of the 2-ounce cans of this product occupied on an average about 61 percent of the capacity of the can, and the contents of the 1-ounce cans occupied on an average about 57 percent of the capacity of the can.

On August 9, 1941, the United States attorney for the Northern District of Georgia filed a libel against the above-named product at Atlanta, Ga., alleging that it had been shipped on or about June 4 and July 5, 1941, by the American Ferment Co., Inc., from Buffalo, N. Y.; and charging that it was misbranded in that its container was so made, formed, or filled as to be misleading.

On September 10, 1941, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

92. Misbranding of Ipana Tooth Paste. U. S. v. 570 Gross Packages of Ipana Tooth Paste. Consent decree of condemnation with provision for release under bond for repackaging. Amended decree ordering product delivered to a Federal institution. (F. D. C. No. 688. Sample No. 82422-E.)

The tubes containing this product occupied approximately only 23 percent of the capacity of the carton.

On October 28, 1939, the United States attorney for the Northern District of Georgia filed a libel against 570 gross packages of Ipana Tooth Paste at Fulton, Ga., alleging that the article had been shipped in interstate commerce on or about September 18, 1939, by the Bristol-Myers Co. from Hillside, N. J.; and charging that it was misbranded in that its containers were so made, formed, and filled as to be misleading.

On October 26, 1939, Bristol-Myers Co., claimant, filed an answer denying the allegation in the libel that the containers were misleading.

On January 8, 1941, upon application of the claimant, the cause was ordered removed for further proceedings and trial in the District Court for the District of New Jersey, and the clerk was ordered to transmit to such court all records necessary for it to exercise jurisdiction.

On January 21, 1942, the claimant having filed an amended answer admitting, for the sole purpose of the proceeding, the allegations of the libel and consenting to the entry of a decree, judgment of condemnation was entered, the decree containing a provision, however, that the product might be released to the claimant upon the execution of a bond conditioned that it be repackaged in

containers identical with those which had been used by the claimant subsequent to July 1940, such repackaging to be done under the supervision of the Food and Drug Administration.

On June 19, 1942, the claimant having failed to repackage the seized goods, which amounted to 13 gross, an amended decree was entered providing for their delivery to a United States Army Post, but on July 29, 1942, the decree was again amended to provide for delivery to a Federal penal institution on condition that the cartons be destroyed.

93. Misbranding of Pepsodent Tooth Paste. U. S. v. 66½ Dozen Packages of Pepsodent Brand Tooth Paste. Consent decree of destruction. (F. D. C. No. 636. Sample No. 82412-D.)

Examination of this product showed that the tube occupied less than one-fifth, namely, 16.4 percent, of the capacity of the carton and that the carton was of sufficient size to hold two tubes.

On or about September 25, 1939, the United States attorney for the Northern District of Georgia filed a libel against 66½ dozen packages of the above-named product at Atlanta, Ga., alleging that it had been shipped in interstate commerce on or about August 1, 1939, by the Pepsodent Co. from Chicago, Ill.; and charging that it was misbranded in that its container was so made, formed, and filled as to be misleading.

On October 24, 1939, an order was entered extending the time for filing claims and defensive pleadings until November 13, 1939, and on November 14, 1939, the time was again extended until November 21, 1939. On November 21, 1939, on motion of the claimant, the Pepsodent Co., the case was ordered removed from the Northern District of Georgia to the Eastern District of Wisconsin.

On June 24, 1942, the case having been set for trial and the court having heard the statements of counsel, and the United States attorney having sought an adjournment but the court having determined that the case should proceed to trial and that the libel would be either dismissed or a decree entered in accordance with the stipulation proffered by the claimant prior to trial, and the United States attorney having opposed the dismissal of the libel, it was ordered by the court, upon the claimant's admission that the containers of the article were larger than was required for insertion of the tubes of tooth paste contained therein, but without finding that the containers were misleading within the meaning of the law, and with the consent of the counsel for the claimant, that the United States marshal destroy the product or to deliver it to any charitable institution.

94. Misbranding of shaving cream. U. S. v. 10½ Gross Packages of Shapleigh's Lily of the Valley Shaving Cream. Consent decree of condemnation. Product ordered released under bond to be repackaged. (F. D. C. No. 5111. Sample Nos. 57883-E to 57885-E, incl.)

The cartons in which this product was packed were 6¼ inches in length while the tubes contained therein were but 5 inches in length.

On July 8, 1941, the United States attorney for the Eastern District of Missouri filed a libel against 10½ gross packages of the above-named product at St. Louis, Mo., alleging that it had been shipped in interstate commerce on or about April 11, 22, and 24, 1941, by the Wm. A. Webster Co. from Memphis, Tenn.; and charging that it was misbranded in that its containers were so made or formed as to be misleading.

On November 7, 1941, the Shapleigh Hardware Co., St. Louis, Mo., claimant, having admitted the allegations of the libel, judgment of condemnation was entered and it was ordered that the product be released under bond conditioned that it be repackaged under the supervision of the Food and Drug Administration so as to comply with the law.

95. Misbranding of Arrid. U. S. v. 119½ Dozen Jars of Arrid. Consent decree of condemnation and destruction. (F. D. C. No. 338. Sample No. 45575-E.)

This product was contained in jars which, because of the thickness of the glass and the manner in which they were formed, contained about one-third the amount indicated by their outward appearance.

On or about August 2, 1939, the United States attorney for the Northern District of Georgia filed a libel against 119½ dozen jars of Arrid at Atlanta, Ga., alleging that the article had been shipped in interstate commerce on or about July 8, 1939, by the Feminine Products Co. from Jersey City, N. J.; and charging that its containers were so made, formed, and filled as to be mislead-