

defendant was suspended, and he was placed on probation for a period of 10 days.

### COSMETICS ACTIONABLE BECAUSE OF FALSE AND MISLEADING CLAIMS

**151. Misbranding of Miracle-Aid. U. S. v. Norval C. Douglas (Miracle Products).** Plea of not guilty. Tried to the jury. Verdict of guilty. Sentence of 1 year's imprisonment and fine of \$4,000. Judgment reversed on appeal to the Circuit Court of Appeals; case returned to the District Court. Plea of nolo contendere subsequently entered and fine of \$2,000 and costs imposed. (F. D. C. No. 14292. Sample Nos. 41209-F, 63481-F.)

**INFORMATION FILED:** On or about June 20, 1945, Northern District of Illinois, against Norval C. Douglas, trading as Miracle Products, at Chicago, Ill.

**ALLEGED SHIPMENT:** On or about March 2 and April 26, 1944, from the State of Illinois into the States of Texas and Georgia.

**PRODUCT:** Examination showed that the product consisted essentially of water, with a small proportion of protein, such as egg white, and perfume.

**NATURE OF CHARGE:** Misbranding, Section 602 (a), certain statements on the label of the article and in an accompanying circular entitled "For the Preservation and Enhancement of Beauty," and an accompanying counter display card, were false and misleading, since they represented and suggested that the article would be efficacious in the correction and removal of wrinkles and double chin; that it would supply tissue proteins to the body; and that it would be efficacious in the correction and removal of the weather-beaten and mottled condition of the neck just under the ear. The article would not be efficacious for the purposes represented.

The information alleged also that another product, Miracle Slenderizing Cream, was misbranded under the provisions of the law applicable to drugs, as reported in notices of judgment on drugs and devices, No. 2121.

**DISPOSITION:** The defendant entered a plea of not guilty, and on December 3, 1945, the case came on for trial before a jury. At the conclusion of the trial, the jury, on December 5, 1945, returned a verdict of guilty, and the court sentenced the defendant to serve 1 year in jail and imposed a fine of \$1,000 on each of the 4 counts of the information. Subsequently, the case was appealed to the United States Circuit Court of Appeals for the Seventh Circuit, and on June 15, 1946, an opinion was handed down by that court, reversing the judgment of the lower court. The opinion is reported in the above-mentioned notices of judgment on drugs and devices, No. 2121.

A petition for rehearing was filed, and following its denial on July 6, 1946, the case was returned to the district court. On February 25, 1947, the defendant entered a plea of nolo contendere, on which date the court imposed a fine of \$2,000 and costs, which included charges against both the cosmetic and drug.

**152. Alleged misbranding of Eau de Quinine Compound Hair Lotion. U. S. v. Pinaud, Inc. Plea of not guilty. Tried to the jury. Verdict of not guilty.** (F. D. C. No. 20124. Sample No. 5745-H.)

**INFORMATION FILED:** On or about September 30, 1946, Southern District of New York, against Pinaud, Inc., New York, N. Y.

**ALLEGED VIOLATION:** The defendant was charged with giving a false guaranty to the Gladiator Co., Inc., New York, N. Y., on or about April 19, 1945. The guaranty was set forth on an invoice covering a delivery of the product, made by the defendant to the Gladiator Co., Inc., on or about April 19, 1945, which guaranty provided that the product was guaranteed by the defendant under the Federal Food, Drug, and Cosmetic Act; and on or about April 20, 1945, the Gladiator Co., Inc., shipped the product from the State of New York into the State of Pennsylvania.

**NATURE OF CHARGE:** Misbranding, Section 602 (a), the label statement "Eau de Quinine Compound Hair Lotion" was alleged to be false and misleading.

**DISPOSITION:** A plea of not guilty having been entered, the case came on for trial before a jury on January 22, 1947. At the conclusion of the trial on January 23, 1947, the following charge was given to the jury:

*WATKINS, District Judge:* "At the conclusion of the evidence by counsel in this case it becomes the duty of the Judge to instruct you as to the law of the case, and when you go to your jury room it becomes your duty under your oath