

Between March 29 and October 26, 1944, no claimant having appeared, judgments were entered condemning the product and ordering its destruction.

1325. Adulteration and misbranding of prophylactics. U. S. v. 19 Packages and 40½ Gross of Prophylactics. Decrees of destruction. (F. D. C. Nos. 12156, 13028. Sample Nos. 67053-F, 80829-F to 80831-F, incl.)

On or about April 11 and July 27, 1944, the United States attorney for the Western District of Missouri filed libels against 40½ gross of prophylactics and 19 packages, each containing 1 dozen, of the same product at Kansas City, Mo., alleging that the article had been shipped between the approximate dates of March 7 and June 6, 1944, by the Crown Rubber Sundries Co., from Akron, Ohio; and charging that it was adulterated and misbranded. The article was labeled in part: "Genuine Gold Beaters," "Tetratex Genuine Latex Prophylactics Mfd. By L. E. Shunk Latex Products Inc. Akron, Ohio," or "Genuine Latex * * * Apris Prophylactics Mfd. by The Killian Mfg. Co. Akron, Ohio."

Samples of the article were found to be defective because of the presence of holes.

The article was alleged to be adulterated in that its quality fell below that which it purported and was represented to possess.

It was alleged to be misbranded in that the statements in the labeling of one lot, "Prophylactics," and of the other lot, "for prevention of diseases" and "for the prevention of disease only," were false and misleading since the article contained holes. A portion of the product was further misbranded in that its label failed to bear the name and place of business of the manufacturer, packer, or distributor.

On July 28 and October 26, 1944, no claimant having appeared, judgments were entered ordering the product destroyed.

DRUGS AND DEVICES ACTIONABLE BECAUSE OF FALSE AND MISLEADING CLAIMS*

DRUGS FOR HUMAN USE

1326. Misbranding of Sugretus and Sunol. U. S. v. Elmer J. Dailey (Dailey's Laboratories). Plea of not guilty. Tried to the jury. Verdict of guilty. Fine of \$250 on count 1; imposition of sentence on count 2 suspended and defendant placed on probation for 5 years. (F. D. C. No. 11424. Sample Nos. 57639-F, 57640-F.)

On July 5, 1944, the United States attorney for the Southern District of California filed an information against Elmer J. Dailey, trading as Dailey's Laboratories, San Diego, Calif., alleging shipment of a quantity of the above-named products from the State of California into the State of Texas on or about August 14, 1943.

Analysis of a sample of the Sugretus disclosed that it consisted of dark gray, uncoated, compressed tablets with a slight aromatic odor, and that it contained plant material, probably cactus, together with an iron compound. It was alleged to be misbranded because of false and misleading statements on its label and in an accompanying circular letter headed "Dailey's Laboratories," which represented and suggested that the article would be efficacious in the cure, mitigation, treatment, or prevention of diabetes, Buerger's disease, and pancreas, liver, and kidney troubles; that it would make diabetics sugar-free and keep them so; that its use would enable persons who were using insulin and dieting to live normal lives, i.e., give up insulin and dieting; and that it would build up the pancreas, liver, and kidneys.

Analysis of a sample of the Sunol disclosed that it consisted essentially of volatile oils including oil of eucalyptus, camphor, and thymol dissolved in a fatty oil. The article was alleged to be misbranded in that the statement, "For soreness in Bunions," borne on its label, was false and misleading since the article would not be efficacious in the cure, mitigation, treatment, or prevention of soreness in bunions; and in that its label failed to bear any statement of the quantity of the contents or of the active ingredients of the article.

On July 15, 1944, the defendant entered a plea of not guilty, and on September 5, 1944, the case came on for trial before a jury. The trial was concluded on September 7, 1944, on which date the court delivered the following instructions to the jury:

*See also Nos. 1301-1307, 1312-1315, 1324, 1325.