

"Under the circumstances herein, however, I do not find it necessary to pass on the first objection to claimant's motion because, under the regulations promulgated by the Administrator, the motion must be denied. So far as the record herein indicates, the sample of one and one-half gross was the estimated quantity necessary for analysis by the Government. The showing is that this entire quantity was in fact used for this purpose and is no longer in existence in that by reason of the tests and analysis made by the Government, the entire sample was necessarily destroyed. Under the regulations, it was incumbent upon 'an officer or employee of the Department' to collect 'twice the quantity estimated by him to be sufficient for analysis' unless 'the cost of twice the quantity so estimated exceeds \$10.' In response to the motion herein, the Government has filed an affidavit from which it appears that the one and one-half gross taken by the Government as a sample for the purpose of analysis cost \$7.05. Twice the cost of the official sample totals \$14.10, which, of course, is in excess of the \$10 limitation provided in Section (b) 2 hereinbefore recited.

"The Department was under no obligation to permit the claimant to examine any part of the sample which it needed for its own analysis. When a sample is obtained, the Department has no means of knowing whether any claimant will request an examination of the official sample or not. Undoubtedly that fact prompted the Administrator to provide that, where the cost of twice the quantity estimated to be sufficient for analysis exceeds \$10, no obligation rests on the officer or employee of the Department to collect twice the quantity. True, the claimant has to make advance payment of the cost of the part of the official sample requested by it for analysis, but the item of initial outlay by the Department is a matter of importance because the Department has no means of knowing whether any demand for inspection will be made by claimant, and therefore has no means of knowing whether any part of the expense in purchasing a sample will be defrayed by the claimant. It appears from the showing herein that, under the regulations, by reason of the cost of the quantity estimated to be sufficient for analysis, it was not necessary for the Government to purchase twice the quantity, and it further appearing that the entire sample has been used for making such analysis and is no longer in existence, it must follow that, if for no other reason, the motion must be denied. It may be pointed out in passing that, by reason of the stipulation entered into between the parties under date of June 10, 1946, and an order of Court made thereon, both the libelant and the claimant were authorized to withdraw representative samples of the property and merchandise seized, not to exceed two gross each, for the purpose of examination, testing and analysis. While the samples thus withdrawn do not constitute a part of the official sample, the claimant must content itself under the circumstances herein with such sample for the purpose of examination, testing and analysis.

"The motion of the claimant is therefore denied. An exception is reserved to the Claimant."

On April 17, 1948, the claimant having withdrawn its answer and consented to the entry of a decree, judgment was entered ordering that the product be destroyed.

2329. Adulteration and misbranding of prophylactics. U. S. v. 38 Gross * * *
(F. D. C. No. 24637. Sample No. 18962-K.)

LIBEL FILED: May 14, 1948, Southern District of Ohio.

ALLEGED SHIPMENT: On or about February 9, 1948, by the Latex Distributing Co., from Chicago, Ill.

PRODUCT: 38 gross of rubber *prophylactics* at Cincinnati, Ohio. Examination of samples showed that 3.4 percent were defective in that they contained holes.

LABEL, IN PART: "Tetratex Prophylactic Mfd. By L. E. Shunk Latex Prod. Inc. Akron, Ohio."

NATURE OF CHARGE: Adulteration, Section 501 (c), the quality of the article fell below that which it purported and was represented to possess.

Misbranding, Section 502 (a), the label statements "Prophylactic," "Prophylactics," and "Germ Proof" were false and misleading as applied to an article containing holes.

DISPOSITION: June 18, 1948. Default decree of condemnation and destruction.

DRUGS AND DEVICES ACTIONABLE BECAUSE OF FALSE AND MISLEADING CLAIMS*

DRUGS FOR HUMAN USE

2330. Misbranding of Radium Ore, Colwell's Penetrating Healing Balm, and Radium Bath Powder. U. S. v. Carry Grace Colwell (Colwell Radium Company). Plea of not guilty. Tried to the jury. Verdict of guilty. Fine, \$500, and probation for 2 years. (F. D. C. No. 21481. Sample Nos. 53096-H, 59069-H to 59071-H, incl.)

INFORMATION FILED: July 23, 1947, District of Minnesota, against Carry Grace Colwell, also known as Mrs. J. H. Colwell, trading as the Colwell Radium Company, St. Paul, Minn.

ALLEGED SHIPMENT: From the State of Minnesota into the States of Ohio and Montana. The products were shipped on or about August 29 and September 20, 1946, and were accompanied by letters addressed to the consignees and by circulars entitled "Colwell Radium Co. Manufacturers of the World's Greatest Healing Remedies."

PRODUCT: Analyses showed that the *Radium Ore* consisted of a yellow and gray rock resembling carnotite, with a radium concentration in one portion of 30 parts per billion, and in another portion of 50 parts per billion; that the *Colwell's Penetrating Healing Balm* was a yellow ointment consisting essentially of glycerin, water, and paraffin, small amounts of borax and perfume, and a negligible radium content; and that the *Radium Bath Powder* was a mixture of magnesium sulfate and sodium sulfate, with small amounts of borax, carnotite, and perfume, and a radium concentration of 1 part per billion.

NATURE OF CHARGE: *Radium Ore.* Misbranding, Section 502 (a), certain statements in the labeling of the article were false and misleading, since they represented and suggested that the article would have a cleansing effect; that it would be helpful to most every ailment of the human body; that it would be a potent treatment for many stomach and intestinal disorders; that it would produce cell action and assist the organs of the body; that it would be efficacious in the cure, mitigation, and treatment of serious gland trouble; that it would build glands; that it was one of the world's greatest healing remedies; that it would be efficacious in the removal of cancer tumors; and that it would be efficacious in the cure, mitigation, and treatment of poliomyelitis (infantile paralysis), prostatic obstruction, gout, rheumatism, lumbago, sciatica, arthritis, neuritis, neuralgia, Bright's disease, liver disorders, high blood pressure, eczema, psoriasis, chronic skin disorders, obesity, chronic diarrhea, gastrointestinal disorders, fermentation, gastric dyspepsia, heart trouble, tonsil trouble, sinus trouble, hay fever, gall bladder trouble, kidney trouble, appendicitis, anemia, impotency, premature old age, paralysis, nervousness, gastric ulcers, nephritis, insomnia, flatulence, goiter, constipation, locomotor ataxia, diabetes, tuberculosis, asthma, bronchial trouble, tumors, and bone infection. The article would not have a cleansing effect; it would not be a potent treatment for many stomach and intestinal disorders; it would not produce cell action and assist the organs of the body; it was not one of the world's greatest healing remedies; it would not build glands; and it would not be efficacious for the other purposes represented.

Colwell's Penetrating Healing Balm. Misbranding, Section 502 (a), certain statements in the labeling of the article were false and misleading, since they represented and suggested that the article was a penetrating healing balm; that it would be efficacious in the cure, mitigation, and treatment of sore muscles, aches, and pains; that it would build tissue, relax the nerves, and relieve sinus colds, skin infection, arthritis, neuritis, sciatica, rheumatism, swelling and inflammatory conditions, sinus, heart, and lung troubles, chronic appendicitis, menses, varicose veins, and similar ailments; and that it would be efficacious in the cure, mitigation, and treatment of serious gland trouble, and would build the glands. The article was not a penetrating healing balm, and it would not be efficacious for the purposes represented.

Radium Bath Powder. Misbranding, Section 502 (a), certain statements in the labeling of the article were false and misleading, since they represented

*See also Nos. 2301-2308, 2310, 2311, 2316, 2317, 2319-2329.