

directed was not effective in the treatment of such diseases, conditions, and symptoms.

DISPOSITION: April 28, 1948. Default decree of condemnation. The product was ordered delivered to the Food and Drug Administration, for clinical and experimental uses.

2388. Misbranding of Cosmo-Light device. U. S. v. 1 Device, etc. (F. D. C. No. 22289. Sample No. 70813-H.)

LIBEL FILED: February 18, 1947, Southern District of California.

ALLEGED SHIPMENT: On or about November 15, 1946, by Dr. Fred Gerkey, from Kansas City, Mo.

PRODUCT: 1 *Cosmo-Light device*, together with two accessory applicators at Glendale, Calif., and a leaflet headed "Instructions," which was shipped with the device. The device consisted of tubes for producing colored lights similar to the so-called neon lights, together with the electrical connections needed to operate them.

NATURE OF CHARGE: Misbranding, Section 502 (a), certain statements in the labeling of the article were false and misleading, since they represented and suggested that the device was effective when used as directed in the treatment of asthma, every kind of a condition, nervousness, eye troubles, female diseases, and sinus trouble. The article was not effective when used as directed in the treatment of such conditions.

DISPOSITION: On April 3, 1947, an order was entered directing that the case be removed for trial to the Western District of Missouri. On March 18, 1948, the interveners withdrew their claim and answer, and on April 16, 1948, judgment of condemnation was entered and the product was ordered delivered to the Food and Drug Administration, for use as an educational exhibit.

2389. Misbranding of Spectro-Chrome. U. S. v. Dinshah P. Ghadiali and Dinshah Spectro-Chrome Institute. Pleas of not guilty. Tried to the jury. Verdict of guilty. Institute fined \$12,000. Individual fined \$8,000; sentenced to 1 year in jail on each of first 3 counts, the execution of which sentence was suspended, and placed on probation for 5 years; imposition of sentence on last 4 counts suspended. Judgment affirmed on appeal to United States Circuit Court of Appeals. Petition for writ of certiorari denied by United States Supreme Court. (F. D. C. No. 16547. Sample Nos. 76870-F, 76872-F, 82254-F, 85045-F, 4061-H, 4094-H, 4174-H, 4175-H, 13743-H, 13887-H, 16303-H, 23316-H.)

INDICTMENT FILED: August 7, 1945, District of New Jersey, against Dinshah P. Ghadiali and Dinshah Spectro-Chrome Institute, a corporation, Malaga, N. J.

ALLEGED SHIPMENT: Between September 3, 1942, and July 9, 1945, from the State of New Jersey into the States of New York, Pennsylvania, Ohio, Wisconsin, Michigan, Missouri, and Delaware.

PRODUCT: The construction and appearance of the device is described in the quoted court opinion set forth below.

Each device was accompanied by one or more of the following pieces of printed and graphic matter: "Spectro-Chrome Home Guide," "Rational Food of Man," "Favorscope," "Spectro-Chrome, December 1941 Issue," "Spectro-Chrome, May [or "August,"] 1944 Issue," "Spectro-Chrome in Every Home," "Key to Radiant Health," "Auxiliary Benefit Notice," "Request for Enrollment as Benefit Student," "Certificate of Benefit Studentship," "Spectro-Chrome Free Guidance Request," "Spectro-Chrome Free Guidance," "Spectro-Chrome, March 1945 Issue," "Spectro-Chrome, January 1945 Issue," "Spectro-Chrome Metry Encyclopedia—Volumes 1, 2, and 3," and "Here is the Work that Shattered All the False Conceptions in Healing."

NATURE OF CHARGE: Misbranding, Section 502 (a), the labeling of the device contained false and misleading curative and therapeutic claims in substantially the same respect as the device involved in notices of judgment on drugs and devices, No. 2098.

DISPOSITION: Following the entry of pleas of not guilty, the case came on for trial before the court and jury on October 21, 1946. The trial was concluded on January 7, 1947, at which time the jury returned a verdict of guilty. Motions for a directed verdict of acquittal and for a new trial were filed on behalf of the defendant on January 13, 1947, and after consideration of the arguments for and against such motions, the court, on January 22, 1947, denied the motions. On January 31, 1947, the court imposed the following sentences: (1) Against the institute, a fine of \$12,000; (2) against the individual de-

fendant, a fine of \$1,000 on each of counts 1, 2, and 3, and imprisonment of 1 year on each of those counts, to run consecutively, with execution of the jail sentences to be suspended; a fine of \$1,000 on each of counts 4, 5, 6, 7, and 8; and imposition of sentence suspended on counts 9, 10, 11, and 12, and probation for 5 years. Under the terms of probation, the individual defendant was directed to disassociate himself directly and indirectly from the promotion of *Spectro-Chrome*, or Spectro-Chrome Metry, its teaching and literature, and so forth, in every form under which it might be projected; to dissolve the corporation known as Dinshah Spectro-Chrome Institute; to turn over all the literature to the Government for destruction; to discontinue directly or indirectly the services of free guidance and the editing of the magazine; and to freely and voluntarily open his books and records at reasonable times to the inspection of the proper officers of the Government in control of the matter.

Following imposition of sentence, an appeal was taken on behalf of the defendants to the United States Circuit Court of Appeals for the Third Circuit, and on January 9, 1948, the following decision was handed down by that court:

MARIS, McLAUGHLIN, AND KALODNER, *Circuit Judges*: "The defendants have appealed from their conviction in the district court for the district of New Jersey upon twelve counts of an indictment charging them with introducing into interstate commerce in violation of the Federal Food, Drug and Cosmetic Act (21 U. S. C. A. chap. 9), certain devices known as Spectro-Chromes intended for use in the cure, mitigation, treatment and prevention of disease in man which were misbranded. The devices in question consisted of a cabinet equipped with a 1000 watt electric light bulb, an electric fan and water container for cooling purposes, two glass condenser lenses to focus the rays from the electric light bulb and five ordinary glass slides, each of a different color. Attached to the devices were plate labels bearing, in part, the following:

SPECTRO-CHROME METRY
MEASUREMENT AND RESTORATION OF THE HUMAN
RADIO-ACTIVE AND RADIO-EMANATIVE EQUILIBRIUM
(NORMALATION OF IMBALANCE)
BY
ATTUNED COLOR WAVES
THE SCIENCE OF AUTOMATIC PRECISION
NO DIAGNOSIS—NO DRUGS—NO MANIPULATION—NO SURGERY
ORIGINATED, DEVELOPED, APPLIED, COPYRIGHTED 1920 BY
COLONEL DINSHAH P. GHADIALI, M. S. C., M. D., M. E., D. C., PH. D., L. L. D.,
N. D., D. OPT., D. F. S., D. H. T., D. M. T., D. S. T., ETC.
METAPHYSICIAN AND PSYCHOLOGIST

"The devices were accompanied by various pieces of printed matter, two of them being entitled in part 'Spectro-Chrome Home Guide' and 'Favorscope,' which related to the devices and contained statements relative to their therapeutic value in the cure, mitigation, treatment or prevention of disease, and directions for their use. The directions called for doing what the defendants call 'irradiating' the body of the patient with what the defendants describe as 'attuned color waves' projected by the device through the colored glass slides. The particular slide or combination of slides required to produce the exact color said to be needed to treat a given disorder was specified in the 'Spectro-Chrome Home Guide.' The patient was advised to adhere to a designated diet. He was directed to subject himself to 'irradiation' while facing south or lying in a north and south position with his head to the north. The 'tonations' from the Spectro-Chrome were to be taken at times specified by the defendants in the 'favorscope' which accompanied the device and which, they alleged, was compiled on the basis of solar, lunar and terrestrial radiant, gravitational influence.

"The government presented a large amount of evidence which, if believed, was amply sufficient to support a finding by the jury that the labeling of the defendants' Spectro-Chrome device was false and misleading within the meaning of Sec. 502 (a) of the Federal Food, Drug and Cosmetic Act (21 U. S. C. A. § 352 (a)) in that the device did not have the therapeutic value which the labeling claimed for it. The jury, evidently believing the government's evidence, found the defendants guilty of violating the act. The defendants upon the present appeal have presented eleven points which they assert require the reversal of the judgment of the district court. We have examined with care each of the points raised by the defendants and we find each to be wholly lacking

in merit. It would serve no useful purpose to discuss them in detail. Suffice it to say that our consideration of the case has left us completely satisfied that the defendants had a fair trial. Indeed the trial judge, if anything, leaned over backward to afford them the fullest opportunity to establish their defense and he submitted their case to the jury in a charge to which no objection was or fairly could be made.

"The judgment of the district court will be affirmed."

A petition for writ of certiorari was filed subsequently in the Supreme Court of the United States on behalf of the defendants, and on May 17, 1948, the appeal for such writ was denied.

2390. Misbranding of Spectro-Chrome. U. S. v. 1 Device * * *. Decree of dismissal reversed upon appeal. Petition for certiorari denied by U. S. Supreme Court. Decree of condemnation and destruction. (F. D. C. No. 16781. Sample No. 4163-H.)

LIBEL FILED: July 26, 1945, District of Oregon.

ALLEGED SHIPMENT: On or about June 14, 1945, from Newfield, N. J., by Dinshah Spectro-Chrome Institute.

PRODUCT: 1 *Spectro-Chrome* device at Portland, Oreg., together with a number of pieces of printed and graphic matter which were shipped with the device and which were entitled "Spectro-Chrome Home Guide," "Favorscope for 1945," "Rational Food of Man," "Key to Radiant Health," "Request for Enrollment as Benefit Student," "Auxiliary Benefit Notice—Make Your Own Independent Income as Our Introducer," "Spectro-Chrome General Advice Chart for the Service of Mankind—Free Guidance Request," "Certificate of Benefit Studentship," "Spectro-Chrome—December 1941—Scarlet," and "Spectro-Chrome—March 1945—Yellow." The construction and appearance of the device was essentially the same as the device involved in the case which was reported in notices of judgment on drugs and devices, No. 2098.

NATURE OF CHARGE: Misbranding, Section 502 (a), the labeling of the device contained false and misleading curative and therapeutic claims in substantially the same respect as the device involved in the above-mentioned notice of judgment, No. 2098.

DISPOSITION: Following the seizure of the device, William Ray Olsen, Portland, Oreg., appeared as claimant and filed an answer on August 31, 1945, alleging that he was the owner of the device and that it had been unlawfully and forcibly seized and taken from his possession in his home, over his protests and against his consent. The claimant alleged also that the device was not subject to the jurisdiction of the court and that it was not misbranded. On February 20, 1946, a motion was made on behalf of the Government for an order directing that the colored slides of the device be detached and delivered to the Food and Drug Administration for the purpose of scientific examination. After consideration of the argument and briefs of counsel, the court, on April 4, 1946, handed down the following memorandum opinion:

McCOLLOUGH, *District Judge*: "Because I was told that the Department of Justice was making this a test case for many similar cases throughout the country, I took some time before ruling, although it seemed plain to me at the outset that defendant's constitutional rights had been invaded.

"Defendant has purchased a Spectro-Chrome for the use of himself and his mother. The prospectus promises many cures. A color, or a combination of colors, will cure this, another combination of color will cure that. The Government obtained a judgment that the machine was fraudulent in proceedings against the manufacturer and, because this machine was shipped in interstate commerce, the Government claims the right to take it from defendant, though he has bought and paid for it and is using it in his home. In fact, the Marshal now has the machine in his possession, and this is a motion by the Government for permission to dismantle the machine for examination.

"On what conceivable basis, under our Constitutional guaranties can the Government deny to an adult individual the right to believe in and seek to cure himself of physical ailments by any means he chooses, so long as the means chosen is not inherently dangerous or harmful? I know many people who wear charms, including some who carry the lowly potato, to keep diseases away, and I had always thought they had the right to do this. Incidentally, I have no doubt that many get help in this manner.