

based on research which they have done at claimant's instance in preparation for trial. Libellant insisted that the discovery was necessary not to elicit their opinions as experts but rather to ascertain the factual scope and nature of the research done so that it possibly may be in a better position to cross-examine these witnesses on trial and prepare a rebuttal to the claimant's defense. Having in mind that the field in question here is one of scientific controversy wherein without prior discovery cross-examination cannot be expected successfully to perform its historic function and effective evidence in rebuttal, though perhaps in existence, cannot be produced forthwith upon the close of the claimant's defense, I feel that here there is sufficient showing of necessity, within the rule of *Hickman v. Taylor* if applicable here, to allow the discovery to proceed.

"I hold also that this court is without power, especially in view of 28 U. S. C. 2412, to condition the government's right of discovery under the rules upon the payment of the claimant's attorneys' fees and expenses incurred in connection with the proposed depositions. If the government is not conditionally chargeable with costs (when its suit is unsuccessful), it seems scarcely consistent to rule that it may be unconditionally subjected to a substantial item irrespective of the outcome of its action."

Before the depositions were taken, the claimant advised that it desired to withdraw its claim. On June 13, 1950, the claimant filed a formal withdrawal of its claim, and on June 27, 1950, judgment of condemnation was entered. Thereupon, the court ordered that the product be delivered to a charitable institution.

3178. Misbranding of Farador device. U. S. v. 1 Device * * *. (F. D. C. No. 28723. Sample No. 61356-K.)

LIBEL FILED: February 16, 1950, Eastern District of Missouri.

ALLEGED SHIPMENT: On or about August 6, 1949, by the E. S. Robbins Forwarding Co., from Englewood, Ohio.

PRODUCT: 1 *Farador device* at Moberly, Mo., together with 1 direction booklet. The device consisted of a metallic cylinder closed at both ends. To one end was attached, by means of wires, two metallic plates which were to be applied to various parts of the body while the cylinder was immersed in cold water.

NATURE OF CHARGE: Misbranding, Section 502 (a), certain statements in the direction booklet were false and misleading. These statements represented and suggested that the device was adequate and effective for the prevention, treatment, and cure of most of the diseases of the human body, including, but not limited to, appendicitis, blood poison, tuberculosis, syphilis, spinal meningitis, apoplexy, convulsions, sexual debility, epilepsy, gonorrhoea, infantile paralysis, malaria, paralysis, and heart disease. The device was not adequate or effective for the prevention, treatment, or cure of the diseases, conditions, and symptoms stated and implied.

DISPOSITION: May 22, 1950. Default decree of condemnation. The court ordered that the device and booklet be delivered to the Food and Drug Administration.

3179. Misbranding of steam cabinet device. U. S. v. 6 Devices, etc. (F. D. C. No. 28501. Sample No. 68350-K.)

LIBEL FILED: January 6, 1950, Western District of Washington.

ALLEGED SHIPMENT: On or about November 1, 1949, by the Healthmaster Steamette Co., from Burbank, Calif.

PRODUCT: 6 *steam cabinet devices* at Seattle, Wash., together with a number of accompanying leaflets. Examination showed that the device was a portable steam cabinet or Turkish bath. It consisted of plastic stretched over an alumi-

num frame with an opening at the front to permit entry, and was equipped with a seat and an electrically operated water boiler.

NATURE OF CHARGE: Misbranding, Section 502 (a), the following statements on the labeling of the article were false and misleading since the device was not effective in the treatment of the diseases, conditions, and symptoms stated and implied: (On leaflet entitled "Healthmaster Steamette") "Healthmaster * * * Circulation Reducing Nervousness Kidneys Liver Have a Cold? Arthritis Rheumatism * * * Complexion Elimination * * * speed in producing * * * circulation"; (on leaflet entitled "Means Easier Profits for You") "Healthmaster * * * Induces stimulation of circulatory system and excretion of waste materials through skin. * * * as a general body conditioning and health aid"; and (on leaflet entitled "Facts About The Healthmaster Steamette") "Healthmaster * * * improving his health through the use of steam * * * For persons who are overweight a steam bath is very beneficial in reducing. Healthful in eliminating toxic poison from your system through the pores. Colds are many times broken more easily after excessive perspiration. Persons who suffer from insomnia are greatly benefited by a steam bath before retiring. Will aid in cases of over-indulgence. If you are tired and nervous a treatment in the cabinet will relax and rest you. Cases of arthritis, rheumatism, or muscular fatigue are many times greatly improved by the relaxing action of a steam bath."

DISPOSITION: June 21, 1950. The case having been removed to the Northern District of California for final disposition and the Healthmaster Steamette Co., claimant, having consented to the entry of a decree, judgment of condemnation was entered and the court ordered that the devices be released under bond for relabeling, under the supervision of the Federal Security Agency.

DRUG FOR VETERINARY USE

3180. Misbranding of Sulfa-Tome. U. S. v. 1½ Drums * * *. (F. D. C. No. 29320. Sample No. 81105-K.)

LABEL FILED: May 15, 1950, District of Delaware.

ALLEGED SHIPMENT: On or about April 27, 1950, by C. J. Lurenz, from Salisbury, Md.

PRODUCT: 1½ drums (approximately 150 pounds) of *Sulfa-Tome* at Frankford, Del. Analysis showed that the product contained no sulfathiazole sodium or any other sulfonamide drug.

LABEL, IN PART: "Sulfa-Tome Soluble Veterinary."

NATURE OF CHARGE: Misbranding, Section 502 (a), the name of the drug and the following label statements were false and misleading: "Sulfa-Tome Soluble * * * (Brand of Sulfathiazole Sodium) * * * For Infectious Coryza In Poultry:—When symptoms of common Colds or Coryza occur in the Flock, add this powder to all the drinking water for 3 to 5 days. When the majority of the birds are free from symptoms use the Powder for one more day. * * * Dosage for Coryza in Poultry * * * Amount of Sulfa-Tome * * * Warning—Dosage to excess with Sodium Sulfathiazole will cause Toxic reactions." The article contained no form of any sulfonamide drug, as the name of the drug and other label reference to sulfathiazole represented and suggested, and the article was not effective in the prevention and treatment of common colds or coryza of poultry.

DISPOSITION: June 6, 1950. Default decree of condemnation and destruction.