he acted upon Gerkey's instructions; that the instructions were brought to Oklahoma City by Gerkey on or about July 15, 1948; that he had additional copies of the instructions typewritten, and that the devices or the unassembled parts thereof were shipped to him in Oklahoma from points outside the State of Oklahoma. Lee admitted that the instructions were false and misleading.

"From the foregoing, other than the evidence introduced at the original hearing, the following facts were established without contradiction and no issue existed with respect thereto, namely: The devices had been shipped in interstate commerce and were thereafter held for sale by Lee; the original set of instructions were transported in interstate commerce; from those original instructions typewritten copies were made; the instructions were false and misleading; copies of the instructions were kept by Lee in his place of business, which was a room in his house, where the assembled devices were kept and displayed for sale; the instructions explained the devices, directed the manner of using them to cure disease and were textually related to the devices; prior to the seizure and while the devices were held for sale after shipment in interstate commerce, the false and misleading instructions accompanied the devices; Gerkey was the owner of the devices; and Lee acted as the agent of Gerkey and followed Gerkey's instructions.

"Therefore, if any issue of fact remained, it arose because of the allegation by Lee in his intervention that sometime before the seizure Lee had abandoned the use of the false and misleading instructions.

"Section 334 (a), supra, provides that any device that is 'misbranded when introduced into or while in interstate commerce or while held for sale * * * after shipment in interstate commerce, * * * shall be liable to be proceeded against while in interstate commerce, *or at any time thereafter*, on libel of information and condemned in any district court of the United States within the jurisdiction of which the article is found.' [Italics added.]

"Once a device is misbranded when introduced into or while in interstate commerce, or while held for sale after shipment in interstate commerce, it is subject to seizure at any time, and the fact that at the time of seizure, the false label is not upon the device or does not accompany the device does not purge the device of its prior false labeling or render it immune from seizure and condemnation.[4]"

3458. Misbranding of violet ray device. U. S. v. 2 Cases * * *. (F. D. C. No. 30801. Sample No. 3858-L.)

LIBEL FILED: Between March 2 and April 24, 1951, District of Maryland.

ALLEGED SHIPMENT: On or about July 24, 1950, by Master Appliances, Inc., from Marion, Ind.

PRODUCT: 2 imitation leather cases, each containing a violet ray device, a general electrode, a rake electrode, a throat electrode, and circulars entitled "The Master High Frequency Violet Ray," "The Master High Frequency Violet Ray A Professional Aid to Health and Beauty," and "Directions For Operating," at Baltimore, Md.

Examinations showed that the product consisted essentially of Geissler tubes of various shapes with a transformer assembly to activate them, designed to apply an intermittent ray discharge to the body.

NATURE OF CHARGE: Misbranding, Section 502 (a), certain statements in the circulars were false and misleading. The statements represented and suggested that the device would produce pleasing, invigorating, and corrective effects; that it would be effective as a general treatment by stimulating the circulation; that it would be effective for beauty, health, and strength; that it would be efficacious in the treatment of rheumatic pain in the shoulder,

[4] United States v. Various Quantities of Articles of Drug, D. C. 83 F. Supp. 882, 887; United States v. 1 Dozen Bottles, etc., 4 Cir., 146 F. 2d 361, 363. See also, United States v. Olsen, 9 Cir., 161 F. 2d 669, 671; United States v. 52 Drums Maple Syrup, 2 Cir., 110 F. 2d 914, 915; United States v. Two Bags, etc., 6 Cir., 147 F. 2d 123, 128.

nervous disorders, rheumatism, lumbago, and neuritis; that it would produce a sedative or quieting effect and establish a normal equilibrium of the nervous system; that it would relieve painful sensations; that it would be efficacious as a stimulant and tonic; that it would be efficacious for facial, body, spinal, and scalp treatments; that it would stimulate the hair; that it would be efficacious for treatment of the eyes and ears; that it would be efficacious in the treatment of cystitis, strictures, gonorrhea, and prostate and vaginal troubles; that it would promote circulation; that it would aid beauty and health by gently stimulating the flow of blood; that it would be helpful in relieving pain and congestion and in restoring good health and vigor; that it would be helpful in removing facial blemishes and in promoting a clear, healthful complexion; and that it would aid in the removal of dandruff and assist in stopping falling hair. The device was not an effective treatment for the conditions stated and implied, and it was not capable of producing the effects claimed.

DISPOSITION: April 24, 1951. Default decree of condemnation. The court ordered that the devices be released to the Food and Drug Administration.

3459. Misbranding of Duframe Anal Tubette. U. S. v. 5,000 Devices, etc (F. D. C. No. 30250. Sample No. 58803–K.)

LIBEL FILED: November 21, 1950, Northern District of Illinois.

ALLEGED SHIPMENT: On various dates between April 14 and October 21, 1948, from Detroit, Mich.

PRODUCT: 5,000 devices known as *Duframe Anal Tubette* at Chicago, Ill., in possession of the Duframe Tubette Co. Some of the devices were unlabeled, and others had been packed and labeled in part by the consignee. They were accompanied by a number of copies of leaflets entitled "About Gas * * * About Constipation" and "Instructions," a testimonial letter signed "Mrs. Anne Schwab," and form letters starting "Thank you for your inquiry" and "Thank you for your letter and order."

The device consisted of a hollow rubber tube about 80 millimeters long and 14 millimeters outside diameter. The inside diameter was about 8 millimeters at one end, constricted to about 3 millimeters at the other end. The tube was bent at a right angle near the constricted end.

RESULTS OF INVESTIGATION: A copy of each leaflet and testimonial was packed with each device, and the form letters were sent to interested persons.

LABEL, IN PART: (Carton) "Duframe Anal Tubette."

NATURE OF CHARGE: Misbranding, Section 502 (a), certain statements in the accompanying leaflets and letters were false and misleading. The statements represented and suggested that the device was effective in the relief of dizziness, headache, pain in the abdomen and other parts of the body, bloat, swelling due to gas, and chronic constipation and gas pains due to intestinal disorders or organic complaints; that the device was effective in regulating the bowel, normalizing the bowel, and preventing constipation; and that the device would help release toxic poisons. The device would not be effective for the purposes represented. The device was misbranded while held for sale after shipment in interstate commerce.

DISPOSITION: July 6, 1951. The Duframe Tubette 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 the purpose of bringing them into compliance with the law, by destroying the existing labeling