represented and suggested that the article had been so tested, whereas such was not the case.

DISPOSITION: On October 28, 1952, Harris Laboratories, Inc., claimant, filed an answer denying that the product was misbranded. Interrogatories then were served upon the claimant by the Government, after which answers to certain interrogatories were filed by the claimant, together with objections to the remainder of the interrogatories. A motion for removal of the libel proceedings for trial in the Southern District of New York was filed also by the claimant. On April 4, 1953, the court denied the claimant's motion for removal, and on April 13, 1953, the court held a hearing on the interrogatories and ruled that the claimant should fully and completely answer certain interrogatories, but that it need not answer the remainder of the interrogatories.

On June 4, 1953, upon motion of the Government, the libel was amended to include the additional misbranding charge described above. Thereafter, the Government filed a motion for summary judgment, and on August 24, 1953, after hearing the argument on the motion and considering the labeling and the answers to the interrogatories, the court concluded that there existed no genuine issue as to any material fact. Accordingly, the court granted the Government's motion and entered a decree of condemnation and destruction.

**4077. Alleged misbranding of Ridd medicated powder. U. S. v. 52 Cases * * *. Motions for removal denied. Tried to the court; verdict for the Government. Decree of condemnation. Judgment reversed upon appeal. Action subsequently dismissed.** (F. D. C. No. 33105. Sample No. 22304–L)

LIBEL FILED: May 6, 1952, Northern District of Texas.

ALLEGED SHIPMENT: On or about February 18, 1952, by Ridd Laboratories, Inc., from Edmonds, Wash.

PRODUCT: 52 cases, each containing 144 1-ounce bottles, of *Ridd medicated powder* at Dallas, Tex. Analysis showed that the product was boric acid with a small amount of iodine.

NATURE OF CHARGE: Misbranding, Section 502 (a), certain statements on the bottle label and display carton of the article were false and misleading. The statements represented and suggested that the article was an adequate and effective treatment for skin troubles, pimples, acne, barber's itch and skin itch, skin rash, ringworm, fungus, industrial skin irritations, boils, and varicose ulcers, whereas the article was not an adequate and effective treatment for such conditions.

DISPOSITION: Ridd Laboratories, Inc., claimant, filed an answer denying that the product was misbranded, and on May 27, 1952, it filed a motion for removal of the libel proceedings to the Western District of Washington. The court denied the motion on June 3, 1952, after which the claimant moved for removal to a district of reasonable proximity to the claimant's principal place of business.

This motion was denied on June 9, 1952, and the case came on for trial before the court without a jury on June 13, 1952. At the conclusion of the testimony, the court returned a verdict for the Government, and on June 16, 1952, entered a decree of condemnation and destruction. The claimant took an appeal to the United States Court of Appeals for the Fifth Circuit, and on April 2, 1953, the following opinion was handed down by that court:

HUTCHESON, *Chief Judge:* "This is an appeal from a judgment of condemnation and forfeiture entered pursuant to a libel charging misbranding under Sec. 301 et seq of the Federal Food, Drug, and Cosmetic Act.[1] Bringing them up for our review, claimant below, appellant here, makes serious complaint of three adverse rulings of the district judge, including his finding that the powder was misbranded.

"The primary one of the rulings and the one of which appellant makes vigorous complaint is the denial by the district judge of appellant's motion filed under Sec. 334 (a),[2] 21 U. S. C. A., to remove and transfer the cause.

"If the district judge had a discretion to refuse to remove the cause, and we do not think he had because the statute provides that the court 'shall by order unless good cause to the contrary is shown, specify a district of reasonable proximity to the claimant's principal place of business, to which the case shall be removed for trial,' we think he abused that discretion here. For no good cause to the contrary was shown.

"While it is quite plain that the district judge thought that he was acting in accordance with the statute, it is equally plain that he was laboring under a mistaken opinion as to its provisions and effect.

"In view of the fact that, because of the error in denying removal of the cause, the judgment must be reversed, it is unnecessary, indeed inappropriate, for us to canvass and discuss the other errors assigned.

"For the error, therefore, of denying removal of the cause, the judgment is reversed and the cause is remanded to the district court with directions to 'specify a district of reasonable proximity to the claimant's principal place of business to which the case shall be removed for trial.'

"REVERSED and REMANDED with directions."

In accordance with the above opinion, the case was ordered transferred from the Northern District of Texas to the Eastern District of Washington. On October 5, 1953, the United States District Court for the Eastern District of Washington ordered that the libel action be dismissed since it appeared that the product under seizure had been inadvertently destroyed.

**4078. Misbranding of Muscle-Rub. U. S. v. 1 Lot, etc.** (F. D. C. No. 32468. Sample Nos. 427–L to 429–L, incl.)

LIBEL FILED: January 30, 1952, Western District of Texas.

ALLEGED SHIPMENT: On or about December 1, 1951, by Muscle-Rub Distributors, from Los Angeles, Calif.

PRODUCT: 1 lot of *Muscle-Rub* consisting of 8 dozen 2-ounce bottles, 33⅓ dozen 6-ounce bottles, and 6 dozen 12-ounce bottles at El Paso, Tex. A leaflet containing statements relating to the product was attached to each bottle.

RESULTS OF INVESTIGATION: To establish the setting in which the labeling statements would be read by the consumer, Muscle-Rub Distributors supplied advertising mats for advertising in various editions of the El Paso newspapers, which pictured for contrast a gnarled, deformed hand of a person suffering from arthritis deformans and a hand in normal condition and which contained the statement in bold type "Rheumatism Arthritis Pains Relieved in a few minutes with Doctor's External Prescription," followed by statements and testimonials relating to the efficacy of the product.

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[1] 21 U. S. C. A., Sec. 321 et seq.

[2] As pertinent here the article provides:

"* * * In any case where the number of libel for condemnation proceedings is limited as above provided the proceeding pending or instituted shall, on application of the claimant, seasonably made, be removed for trial to any district agreed upon by stipulation between the parties, or, in case of failure to so stipulate within a reasonable time, the claimant may apply to the court of the district in which the seizure has been made, and such court (after giving the United States attorney for such district reasonable notice and opportunity to be heard) shall by order, unless good cause to the contrary is shown, specify a district of reasonable proximity to the claimant's principal place of business, to which the case shall be removed for trial."