

13. It is the finding and holding of the Court that the Claimant in the present action is attempting to relitigate and re-try the same issues that were litigated and adjudicated in Civil Action No. 325. It is not permissible for the Claimant to do so. *George H. Lee Co. v. Federal Trade Commission* (8th Cir. 1940) 113 F. 2d 583; *George H. Lee Co. v. United States* (9th Cir. 1930) 41 F. 2d 460; *Lee v. United States* (10th Cir. 1951) 187 F. 2d 1005; *United States v. 14 105 Pound Bags* (D. C. Idaho 1953) 118 F. Supp. 837.

14. It is the finding and holding of the Court that there is no genuine issue of material fact in any of the present actions which is now subject to being litigated or tried.

15. It is the finding and holding of the Court that the Libelant is entitled to judgment in each of the present actions as a matter of law.

"It is hereby ordered that the motions of the Libelant for summary judgment in the present actions be and the same are hereby sustained and judgment shall be entered accordingly."

Pursuant to the above opinion, the court, on 1-6-55, entered decrees condemning the article and ordering its destruction. The claimant filed a motion for rehearing on 1-17-55 and a motion to amend findings and decrees on 1-28-55, both of which were denied by the court on 2-1-55.

4670. Hog Tabs. (F. D. C. No. 37529. S. No. 8-621 M.)

QUANTITY: 11 drums containing a total of 136,400 tablets and 21 250-tablet cans at Omaha, Nebr., in the possession of Standard Chemical Mfg. Co.

SHIPPED: 6-17-54, from Cleveland, Ohio, by Strong, Cobb & Co., Inc.

LABEL IN PART: (Can) "Standard Hog Tabs An Intestinal Astringent Contain Potassium Permanganate and Copper Sulphate * * * Directions Dissolve one tablet in each gallon of water. * * * Give in the drinking water night and morning, * * * Feed hogs a milk of mill feed slop until they are well on the road to recovery."

RESULTS OF INVESTIGATION: The tablets had been shipped in bulk, and upon receipt by the consignee, a number of the tablets were repackaged into cans.

Analysis showed that the tablets contained approximately 27 grains of copper sulfate and 3.6 grains of potassium permanganate per tablet.

LIBELED: 12-14-54, Dist. Nebr.

CHARGE: 502 (a)—the label of the article while held for sale contained false and misleading representations that the article was effective as an intestinal astringent for the treatment of "sick" hogs; and, 502 (f) (1)—the labeling of the article when shipped failed to bear adequate directions for use, and the article was not entitled to any exemption from that requirement.

DISPOSITION: 2-8-55. Default—destruction.

DRUG ACTIONABLE BECAUSE OF CONTAMINATION WITH FILTH

4671. Bulk tablets. (F. D. C. No. 37404. S. No. 42-170 L.)

QUANTITY: 4 15,000-tablet drums at San Francisco, Calif.

SHIPPED: 8-24-54, from Cleveland, Ohio.

RESULTS OF INVESTIGATION: Examination showed that the tablets were contaminated with petroleum oil and were brownish in color and obnoxious in odor. It was assumed that the tablets became contaminated with petroleum oil while in transit.

LIBELED: 11-10-54, N. Dist. Calif.

CHARGE: 501 (d)—while in interstate commerce petroleum oil had been mixed with the article so as to reduce its quality; and, 501 (a) (2)—the article had been held under insanitary conditions while held for sale.

DISPOSITION: 1-10-55. Default—destruction.

DRUGS ACTIONABLE BECAUSE OF DEVIATION FROM OFFICIAL OR OWN STANDARDS*

4672. Tu Tone capsules. (F. D. C. No. 37114. S. No. 72-050 L.)

QUANTITY: 4,000 capsules in a bulk container and 21 100-capsule btl. at Freeport, N. Y.

SHIPPED: Between 6-29-54 and 7-10-54, from East Newark, N. J., by Jabert Pharmacal Co., Inc.

LABEL IN PART: (Bulk container) "Tu Tone Capsules"; (btl.) "Pharmak Caution: Federal Law Prohibits dispensing without Prescription Dephar Each Capsule Contains 50,000 U. S. P. Units of Vitamin D."

RESULTS OF INVESTIGATION: The capsules in the bottles had been repackaged and relabeled by the consignee from the bulk shipment. Analysis showed that the article contained 25,000 units of vitamin D per capsule.

LIBELED: 10-6-54, E. Dist. N. Y.

CHARGE: 501 (c)—the strength of the article when shipped differed from that which is purported and was represented to possess, namely, 50,000 units of vitamin D per capsule.

DISPOSITION: 11-16-54. Default—destruction.

4673. Rauwolfia serpentina (powder and tablets). (F. D. C. No. 37598. S. Nos. 10-213/9 M.)

QUANTITY: 6 100-lb. drums, 1 43-lb. drum, 139 100-tablet btl., 2 500-tablet btl., and 41 1,000-tablet btl. at Cedar Rapids, Iowa.

SHIPPED: Between 6-18-54 and 9-24-54, from New York, N. Y., by Prentiss Drug & Chemical Co.

LABEL IN PART: (Drum) "Pow. Rauwolfia Serpentina"; (btl.) "Raufia Encotes S. C. Light Orange Each tablet contains: * * * Rauwolfia Serpentina Alkaloids—0.75 mg. (Represented by approximately 100 mg. of the powdered whole root.) Paul Maney Laboratories Cedar Rapids, Iowa," "100 * * * Encotes Loten S. C. Gray Each tablet contains: * * * Rauwolfia Serpentina Alkaloids—0.75 mg. (As supplied by approximately 100 mg. of powdered whole root) * * * Paul Maney Laboratories Cedar Rapids, Iowa," and "Abten Sugar coated Pink Each tablet contains Rauwolfia Serpentina Alkaloids— 1.0 mg. (Represented by approximately 50 mg. powdered whole drug) * * * Paul Maney Laboratories Cedar Rapids, Iowa."

RESULTS OF INVESTIGATION: The article in the bottles was shipped from New York, N. Y., in bulk drums in powder form; and, after its receipt at Cedar Rapids, it was tableted, repacked into bottles, and relabeled by the consignee.

LIBELED: On or about 1-18-55, N. Dist. Iowa.

*See also Nos. 4667, 4671.