

"6. When introduced into and while in interstate commerce, and while held for sale, the following statements appeared on each package label:

A chemical preparation which, when mixed with salt as directed, is designed for feeding sheep and cattle while pasturing in green alfalfa, Clover or in Corn and Wheat fields. \* \* \*

1. Mix entire contents of this package (3½ lbs.) with 100 lbs. of finely ground salt. \* \* \* REMOVE ALL OTHER SALT FROM YOUR LIVESTOCK. Place this mixture in troughs conveniently accessible to livestock.

Note: Feed above mixture to livestock for several days before turning them into green pastures and constantly thereafter.

"7. The statements contained on the labels suggest and imply that the article is effective in the prevention and treatment of bloat in sheep and cattle.

"8. This Court in *United States v. Ten Cartons* \* \* \* *Blake's Stop-Bloat Chemicals*, No. 2960 Civil, decided March 11, 1946, after a trial on the merits, that an article made up of the same components as that of the articles under seizure, was misbranded when it was offered as an effective treatment for bloat in livestock.

"9. The products 'Blake's Stop-Bloat Chemicals' and Blake's Mineral Compound involved in this and the previous action have substantially the same composition. The small quantitative differences in the composition would cause no difference in their effect upon sheep or cattle.

"10. The Claimant Hy-Life Mineral Company in this case was the same Claimant in Case No. 2960, though the owner at that time was J. P. Rosenbaum and the present owner is Harvey Rosenbaum. That the same issue involving the same parties has also been adjudicated in the District of Idaho in an action entitled *United States v. 14 105 Pound bags, etc.*, cited in 118 F. Supp. 837, the Court there holding the matter *res judicata* by reason of District of Wyoming No. 2960.

"11. No genuine issue of material fact exists between the parties.

#### CONCLUSIONS OF LAW

"1. The seized article is a drug within the meaning of 21 USCA Section 321 (g) (2).

"2. The article of drug was shipped in interstate commerce.

"3. The drug was misbranded within the meaning of 21 USC 352 (a), in that such statements represent and suggest that the article is effective for treating and preventing bloat in sheep and cattle, whereas the article is not effective for such purposes.

"4. The Claimants are estopped by the principle of *res judicata* from contesting the issue as to whether the drug is effective in treating or preventing bloat in livestock, this issue having been decided adversely to them in prior litigation.

"5. The drug was misbranded while held for sale after shipment in interstate commerce within the meaning of 21 USCA Section 352 (a), in that the statements in its labeling which recommended it for prevention, treatment or cure of bloat in sheep and cattle are false and misleading.

"6. The Libellant is entitled to summary judgment as a matter of law since there exists no genuine issue as to any material fact.

"To all of which the Claimants duly except, which exceptions are by the Court allowed."

On 2-8-56, the court entered a decree of condemnation and ordered that the article be destroyed.

4958. Cattle mineral, hog mineral, and stock tonic. (F. D. C. No. 38430. S. Nos. 18-819/20 M, 18-822 M.)

QUANTITY: 8 bags of *cattle mineral*, 9 bags of *hog mineral*, and 16 bags of *stock tonic* at New Philadelphia, Ohio.

SHIPPED: 7-27-55, from Roaring Spring, Pa., by Young's Stock Food Co.

**LABEL IN PART:** *Cattle mineral.* (Bag) "50 lbs. net Young's \* \* \* Cattle Mineral Fortified with Vitamins A and D"; (tag) "Guaranteed Analysis Calcium 22.00% Phosphorus 17.00% Iodine 0.02% Salt None Drugs None Ingredients Precipitated Bone Phosphate, Monocalcium Phosphate, Magnesium Carbonate, Potassium Iodine, Iron Oxide, Iron Sulfate, Copper Sulfate, Cobalt Sulfate, Zinc Sulfate, Manganese Sulfate, Vitamin A Feeding Oil, D—Activated Plant Sterol (source of Vitamin D<sub>2</sub>) Natural Flavors Added."

*Hog mineral.* (Bag) "50 Lbs. net Young's \* \* \* Hog Mineral Fortified with Vitamins A and D"; (tag) "Guaranteed Analysis Calcium 23.00% Phosphorus 16.00% Iodine 0.02% Salt None Drugs None Ingredients Dicalcium Phosphate, Monocalcium Phosphate, Magnesium Carbonate, Potassium Iodine, Iron Sulfate, Iron Oxide, Manganese Sulfate, Monohydrate, Zinc Sulfate, Vitamin A Feeding Oil, D—Activated Plant Sterol (source of Vitamin D<sub>2</sub>)."

*Stock tonic.* (Bag) "50 lbs. net Young's \* \* \* Old Prescription Stock Tonic and Mineral Supplement"; (tag) "Guaranteed Analysis not less than Calcium 17.00% Phosphorus 13.00% Iodine 0.10% Salt None Vitamin D<sub>2</sub> 75,000 U. S. P. units per pound Ingredients Foengreek, Licorice Root, Poke Root, Fennel Seed, Nux Vomica (minimum strychnine content .017%), Precipitated Bone Phosphate, Monocalcium Phosphate, Iron Oxide, Magnesium Carbonate, Potassium Iodide, Copper Sulfate, Cobalt Sulfate, Zinc Sulfate, Manganese Sulfate, Molasses, Distillers Dried Solubles, D—Activated Plant Sterol (source of Vitamin D<sub>2</sub>)."

**ACCOMPANYING LABELING:** Pamphlets designated "Breeding Record Book" and leaflets designated "Are Your Cattle Being Held Back?" "Would you like to make hog production more profitable," and "You Asked For It."

**LIBELED:** 9-9-55, N. Dist. Ohio.

**CHARGE:** 502 (a)—the labeling accompanying the articles, when shipped, contained false and misleading representations that the *cattle mineral* was adequate and effective for treating and preventing bowel trouble, udder trouble, breeding and freshening problems, breeding disorders, rundown conditions, fall slump, calving problems, digestive disorders, and irregular heat periods, and that it would eliminate disease in general; that the *hog mineral* was an adequate and effective treatment for lameness, stiffness, and swollen joints, that it would make hogs stronger, healthier, and gain weight faster, and that it would produce more and stronger hogs at birth; and that the *stock tonic* was an adequate and effective treatment for stimulating the appetite, aiding digestion, increasing milk production, reducing breeding troubles, purifying the blood, providing better health and vigor, and providing healthier offspring.

**DISPOSITION:** 10-24-55. Default—destruction.

#### DRUGS ACTIONABLE BECAUSE OF FAILURE TO COMPLY WITH PACKAGING REQUIREMENTS OF AN OFFICIAL COMPENDIUM\*

**4959. Physiological saline solution.** (F. D. C. No. 37091. S. No. 68-719 L.)

**QUANTITY:** 214 vials at Brooklyn, N. Y.

**SHIPPED:** 7-21-54, from Baltimore, Md., by Bio-Ramo Drug Co., Inc.

**LABEL IN PART:** (Vial) "100 cc. Single Dose Vial Physiological Saline Solution U. S. P. Sodium Chloride 0.9% W/V \* \* \* Caution Contains no preservative."

\*See also No. 4923.