

"The collection of moneys not held in trust or earmarked from an individual by an executive department without limitation in amount and without detailed means outlined for disbursement to persons supposed to have paid them constitutes a penalty for violation of a regulation. Indeed, it is with great difficulty, as suggested above, that either the remedy or the word 'restitution' can be twisted or tortured to cover the relief which the agency seeks in this case.

"The holding of the Court is that neither the statute nor any other legislation gives the District Court jurisdiction to grant the relief sought. The equitable powers of the court can not be invoked in the situation because of lack of statutory authority, express or implied.

"We have construed the consent judgment granting injunction and the separate judgment denying so-called 'restitution' as one instrument. The appeal was taken only from the latter part.

"Appeal dismissed."

5770. Skin cream. (F.D.C. No. 42061. S. No. 26-445 P.)

QUANTITY: 143 cartoned jars at Des Moines, Iowa.

SHIPPED: 4-17-58, from New York, N.Y., by Plymouth Cosmetic Corp.

LABEL IN PART: (Jar and carton) "Queen Helene Gift of Life Cream with Placental Substance and Skin Nutritives Vital New Medical Cosmetic Formula Containing Youth-Supporting Biogenic Stimulators * * * Para Labs. New York * * * 4 oz."

ACCOMPANYING LABELING: Carton insert designated "An Exciting Adventure in Turning Back the Clock" and an advertisement from a Des Moines newspaper prepared from a newspaper mat furnished by the shipper and used as part of a counter display in conjunction with the article.

LIBELED: 7-21-58, S. Dist. Iowa.

CHARGE: 502(a)—the labeling of the article, when shipped and while held for sale, contained false and misleading representations that the article would act as a skin nutritive; that it would provide biogenic stimulators, youth-producing properties, and the source of life itself; that it would produce a skin that showed no hint of age; and that it would revitalize flabby, loose skin, stimulate circulation, and reinvigorate fibers, bands and cells of the skin.

DISPOSITION: 9-10-58. Default—delivered to the Food and Drug Administration.

5771. DuBarry Creme Natale. (F.D.C. No. 41939. S. No. 26-554 P.)

QUANTITY: 39 cartoned jars at Minneapolis, Minn.

SHIPPED: 5-14-58, from Point Lititz, Pa., by Richard Hudnut.

LABEL IN PART: (Carton) "Dubarry Creme Natale * * * DuBarry Div. New York Paris Net Wt. 1¾ oz." and (jar) "DuBarry Creme Natale * * * Blended with Placentine, New Scientific Discovery made from the Source of Life Itself."

ACCOMPANYING LABELING: Leaflet in carton entitled "Creme Natale Elixir" and display placards designated "New from DuBarry Amazing Preparations."

LIBELED: 7-24-58, Dist. Minn.

CHARGE: 502(a)—the labeling of the article, when shipped, contained false and misleading representations that the article contained a "Vital Substance" which would provide rebirth of the skin, thus enabling the skin to remain in the "bloom" of babyhood; that the article would provide one with a younger appearance and with a look that was "incredibly younger"; that the article would provide both a softening effect and a tightening effect on the skin; that