

5641. Misbranding of confectionery. U. S. * * * v. Hardie Bros. Co., a corporation. Plea of nolo contendere. Fine, \$10 and costs. (F. & D. No. 7352. I. S. Nos. 2681-k, 2686-k.)

On January 30, 1917, the United States attorney for the Western District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Hardie Bros. Co., a corporation, Pittsburgh, Pa., alleging shipment by said company, in violation of the Food and Drugs Act, on or about April 9, 1915, and March 5, 1915, from the State of Pennsylvania into the State of West Virginia, of quantities of articles labeled in part, "Creamed Marbles * * * Hardie's Highland Chocolates * * * " and "Ice Cream Drops * * * Hardie's Highland Chocolates * * *," which were misbranded.

Analyses of the coatings of each article by the Bureau of Chemistry of this department showed the following results:

	" Creamed Marbles."	" Ice Cream Drops."
Total ash (sugar and fat free basis) (per cent) -----	8.03	9.87
Acid-insoluble ash (sugar and fat free basis) (per cent)-----	0.78	1.08
Crude fiber (sugar and fat free basis) (per cent) -----	7.80	9.38

Constants on the fat of the coating:

Temperature of miscibility with acetic acid (degrees)-----	-----	89.0
Reichert-Meissl number-----	1.7	0.86
Saponification number-----	201.22	202.0
Iodin number-----	30.62	33.2
Refractive index 40° C-----	1.4570	1.4580

These analyses show the coatings on these products to contain cocoa shells or dust and a fat or fats foreign to chocolate.

Misbranding of the article in each shipment was alleged in the information for the reason that the statements regarding the article and the ingredients and substances contained therein appearing on the labels, to wit, "Creamed Marbles * * * (or Ice Cream Drops) Hardie's Highland Chocolates * * *," together with the appearance of the article, were false and misleading in that they indicated to the purchaser thereof that the article was a genuine chocolate-coated product, and for the further reason that it was labeled as aforesaid, and bore the appearance of a chocolate-coated product, so as to deceive and mislead purchasers into the belief that the article was a genuine chocolate-coated product, when, in truth and in fact, it was not, but was a product coated with, to wit, a mixture of chocolate, a fat or fats foreign to chocolate, and cocoa shells or dust, and for the further reason that it was an imitation product, to wit, a product coated with a mixture of chocolate, a fat or fats foreign to chocolate, and cocoa shells or dust, and was offered for sale under the distinctive name of another article, to wit, creamed marbles chocolates (or ice cream drops chocolates).

On June 4, 1917, the defendant company entered a plea of nolo contendere to the information, and the court imposed a fine of \$10 and costs.

C. F. MARVIN, *Acting Secretary of Agriculture.*