

6605. Misbranding of macaroni. U. S. * * * v. Cleveland Macaroni Co., a corporation. Plea of nolo contendere. Fine, \$50 and costs. (F. & D. No. 7656. I. S. Nos. 11219-1, 11232-1.)

On January 26, 1917, the United States attorney for the Northern District of Ohio, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Cleveland Macaroni Co., a corporation, Cleveland, Ohio, alleging shipment by said company, in violation of the Food and Drugs Act, on or about September 30, 1914, and September 24, 1915, from the State of Ohio into the State of Michigan, of quantities of an article labeled in part, "Golden Egg Brand Macaroni," which was misbranded.

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

	Shipment	Shipment
	of Sept. 30.	of Sept. 24.
Lecithin phosphoric acid as P ₂ O ₅ (per cent) -----	0.012	0.02

The above results showed the product contained no egg.

Misbranding of the article in the shipment of September 30, 1914, was alleged in the information for the reason that the following statement, regarding the article and the ingredients and substances contained therein, appearing on the label of the box, to wit, "Golden Egg Macaroni," was false and misleading in that it indicated to purchasers thereof that the article contained eggs as one of its ingredients; and for the further reason that it was labeled as aforesaid so as to deceive and mislead the purchaser into the belief that it contained eggs as one of its ingredients, when, in truth and in fact, it did not contain any eggs whatever. Misbranding of the article was alleged for the further reason that the following statement, design, and device, regarding the article and the ingredients and substances contained therein, appearing in conspicuous type on the label of the retail packages, to wit, "Golden Egg Macaroni," and the representations of eggs, not corrected by the statements appearing on the label in inconspicuous type, to wit, "Brand," and "Contain no egg," were false and misleading in that they indicated to purchasers thereof that the article contained eggs as one of its ingredients, and for the further reason that it was labeled as aforesaid so as to deceive and mislead purchasers into the belief that it contained eggs as one of its ingredients, when, in truth and in fact, it did not contain any eggs whatever.

Misbranding of the article in the shipment of September 24, 1915, was alleged for the reason that the following statement, design, and device, regarding the article and the ingredients and substances contained therein, appearing in conspicuous type on the label of the retail packages, to wit, "Golden Egg Macaroni," and the representations of eggs, not corrected by the statements appearing on the label in inconspicuous type, to wit, "Brand," and "Contain no egg," were false and misleading in that they indicated to purchasers thereof that the article contained eggs as one of its ingredients; and for the further reason that it was labeled as aforesaid so as to deceive and mislead purchasers into the belief that it contained eggs as one of its ingredients, when, in truth and in fact, it did not contain any eggs whatever.

On February 23, 1917, the defendant filed a demurrer to the information, on February 2, 1918, the case came on for hearing on the demurrer, and on April 17, 1918, said demurrer was overruled. In overruling the demurrer the court (Westenhaver, D. J.) remarked in part as follows: "Upon examination of the information and briefs of counsel, I am of opinion that proper pleading does