

**27076. Misbranding of canned tomatoes. U. S. v. 830 Cases and 1,000 Cases of Canned Tomatoes. Consent decrees of condemnation. Product released under bond to be relabeled.** (F. & D. nos. 38862, 39078. Sample nos. 30241-C, 33901-C.)

This product fell below the standard for canned tomatoes established by this Department, since it contained puree from trimmings and it was not labeled to indicate that it was substandard.

On December 23, 1936, and February 11, 1937, the United States attorneys for the Northern District of Illinois and the Western District of Missouri, acting upon reports by the Secretary of Agriculture, filed in their respective district courts libels praying seizure and condemnation of 830 cases of canned tomatoes at Chicago, Ill., and 1,000 cases of canned tomatoes at Kansas City, Mo., alleging that the article had been shipped in interstate commerce by the Fettig Canning Corporation in part from Elwood, Ind., on or about October 17, 1936, and in part from Daleville, Ind., on or about January 15, 1937, and charging misbranding in violation of the Food and Drugs Act as amended. A portion of the article was labeled: "Harvest Inn Brand Tomatoes Distributed by Marshall Food Products Co. Marshalltown, Iowa." The remainder was labeled: "Mary's Choice Hand Packed Indiana Tomatoes \* \* \* Packed by Fettig Canning Corporation, Elwood, Ind."

The article was alleged to be misbranded in that it was canned food and fell below the standard of quality and condition promulgated by the Secretary of Agriculture, since it consisted of tomatoes with puree from trimmings, and its package or label did not bear a plain and conspicuous statement prescribed by the Secretary of Agriculture indicating that it fell below such standard, namely, "Tomatoes with puree from trimmings."

On February 11 and May 26, 1937, the Fettig Canning Corporation and the Great Atlantic & Pacific Tea Co., having appeared as claimants for their respective lots and having consented to the entry of decrees, judgments of condemnation were entered and it was ordered that the product be released under bond to be relabeled.

W. R. GREGG, *Acting Secretary of Agriculture.*

**27077. Misbranding of Malt-O-Milk. U. S. v. 37 Cases of Chocolate Flavor Malt-O-Milk. Default decree of destruction.** (F. & D. no. 38865. Sample no. 30220-C.)

This product was labeled to convey the impression that it consisted essentially of malted milk but in fact consisted principally of sugar with small amounts of cocoa, cornstarch, and malted milk present. It contained no malt. The labeling also bore false and misleading claims regarding its food value, and other misrepresentations.

On December 22, 1936, the United States attorney for the Western District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 37 cases of Chocolate Flavor Malt-O-Milk at Kansas City, Mo., consigned by the Williamson Candy Co., Chicago, Ill., alleging that it had been shipped in interstate commerce on or about October 16, 1936, and charging misbranding in violation of the Food and Drugs Act.

The article was alleged to be misbranded in that the following statements appearing in the labeling were false and misleading and tended to deceive and mislead the purchaser, (carton, can label, and leaflet) The name "Malt-O-Milk" carried the definite implication that the article consisted essentially of malted milk, which was further stressed by the statement on the can label "Contains \* \* \* malted milk", whereas the article contained no malted milk; (carton and can label) the designation "Chocolate Flavor Malt-O-Milk" and "An All Food Drink" implied that the article was chocolate-flavored malted milk and contained all the ingredients necessary to make an all food drink, whereas it consisted essentially of sugar with small amounts of cocoa and malted milk present, and the purchaser would have to supply the ingredient milk; (can label) "Contains \* \* \* malt" represented that the article contained malt and was an invigorating drink, whereas it contained no malt and was not an invigorating drink; (leaflet) "Malt-O-Milk is the \* \* \* body builder \* \* \* is a carefully prepared blend of the finest cocoa, malted milk, malt and sugar \* \* \* Suggested for \* \* \* those that want a pep tonic" represented that Malt-O-Milk was a body builder, was a carefully pre-