

**28533. Misbranding of canned tomatoes. U. S. v. 374 Cases and 209 Cases of Tomatoes. Decree of condemnation. Product released under bond to be relabeled.** (F. & D. Nos. 41027, 41028. Sample Nos. 47287-C, 47288-C.)

This product was substandard because the tomatoes were not normally colored, and it was not labeled to indicate that it was substandard.

On December 6, 1937, the United States attorney for the Eastern District of Kentucky, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 583 cases of tomatoes at Middlesboro, Ky., consigned on or about August 20 and September 17, 1937, alleging that the article had been shipped in interstate commerce by R. O. Giles from Tazewell, Tenn., and charging misbranding in violation of the Food and Drugs Act. The article was labeled in part: "Fairfax Hall Brand \* \* \* Tomatoes Packed For Wholesale Grocers Exchange, Inc. Richmond, Va."

It 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 the tomatoes were not normally colored and its package or label did not bear a plain and conspicuous statement prescribed by the Secretary indicating that such canned food fell below such standard.

On January 10, 1938, R. O. Giles having appeared as claimant, judgment of condemnation was entered, and the product was ordered released to claimant under bond conditioned that it be relabeled under the supervision of this Department.

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

**28534. Misbranding of canned pears. U. S. v. 218 Cases of Canned Diced Bartlett Pears. Consent decree of condemnation. Product released under bond for relabeling.** (F. & D. No. 41014. Sample No. 64573-C.)

This product fell below the standard established by this Department because the units were not of uniform size, and it was not labeled to indicate that it was substandard.

On or about December 9, 1937, the United States attorney for the Eastern District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 218 cases of canned pears at St. Louis, Mo., alleging that the article had been shipped in interstate commerce on or about October 20, 1937, by Van Nouhuys & Co., from Campbell, Calif., and charging misbranding in violation of the Food and Drugs Act as amended. The article was labeled in part: "Diced Tast-Good Brand Bartlett Pears Packed For Empire Distributing Company, St. Louis, Mo."

It was alleged to be misbranded in that it fell below the standard of quality and condition promulgated by the Secretary of Agriculture for such canned food since the units were not of uniform size, and its package or label did not bear a plain and conspicuous statement prescribed by regulation of this Department indicating that it fell below such standard.

On February 15, 1938, Van Nouhuys & Co. having appeared as claimant and having consented to the entry of a decree, judgment of condemnation was entered and the product was ordered released under bond conditioned that it be relabeled.

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

**28535. Misbranding of canned tomatoes. U. S. v. 157 Cases and 540 Cases of Tomatoes. Portion of product condemned and destroyed; one lot ordered destroyed; remainder released under bond to be relabeled.** (F. & D. Nos. 41175, 41176. Sample Nos. 64574-C, 65018-C.)

This product fell below the standard established by this Department because it consisted of tomatoes with puree from trimmings, and it was not labeled to indicate that it was substandard.

On December 17, 1937, the United States attorney for the Eastern District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the district court libels praying seizure and condemnation of 157 cases of canned tomatoes at St. Louis, Mo., and 540 cases of canned tomatoes at Malden, Mo., alleging that the article had been shipped in interstate commerce on or about July 13 and September 24, 1937, by the Dupont Canning Co., in part from Dupont, Ind., and in part from Kingston, Ind., and charging misbranding in violation of the Food and Drugs Act. The article was labeled in part: (Cans) "Dupont Brand Tomatoes \* \* \* Standard Quality Packed by Dupont Canning Co. Dupont, Ind."

It 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 the labels did not bear a plain and conspicuous statement prescribed by the Secretary indicating that it fell below such standard, namely, "Tomatoes with puree from trimmings."

On January 8, 1938, no claimant having appeared for the lot seized at St. Louis, judgment of condemnation was entered and it was ordered destroyed. On February 11, 1938, the Dupont Canning Co. having appeared as claimant for the lot seized at Malden, Mo., and having admitted the allegations of the libel, judgment was entered finding the product misbranded and ordering that it be released under bond conditioned that it be relabeled so as to comply with the law.

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

**28536. Adulteration and misbranding of food and beverage flavors. U. S. v. 4 Dozen One-Half Ounce Bottles of Cognac (and 14 other seizures of similar products). Default decrees of condemnation and destruction.** (F. & D. Nos. 41610, 41612 to 41623, incl., 41739 to 41754, incl., 41765 to 41771, incl., 41816, 41817. Sample Nos. 292-D, 293-D, 295-D, 297-D, 299-D, 300-D, 350-D, 1067-D to 1080-D, incl., 2365-D, 2369-D, 2370-D, 2371-D, 2373-D, 2375-D, 2376-D, 2378-D, 2380-D, 11341-D, 11342-D, 11344-D to 11348-D, incl., 18604-D, 18613-D.)

These products contained from 7 to 75 percent of carbitol, a solvent composed of a glycol or a glycol ether, or both, poisons. Some of the products also contained isopropyl alcohol.

On February 7, 1938, the United States attorney for the Western District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the district court libels praying seizure and condemnation of 63 dozen bottles of various food and beverage flavors at Pittsburgh, Pa. On or about February 17 and 21, 1938, libels were filed against 38 $\frac{2}{3}$  dozen bottles of similar products at St. Louis, Mo., and 113 dozen bottles at Los Angeles, Calif. The libels alleged that the articles had been shipped in interstate commerce between the dates of August 28, 1936, and January 4, 1938, by the Everbest Products Co. from Brooklyn, N. Y., and that they were adulterated and misbranded in violation of the Food and Drugs Act. The articles were labeled variously: "Ideal Italian Type \* \* \* Rosolio [or other flavor] Everbest Products Company B'klyn [or "New York"]"; "Ideal Italian Extracts \* \* \* Chartreuse Flavor \* \* \*. For Bakery and Confectionery Use Only"; "Cognac [or other] Flavor \* \* \* For Bakery & Confectionery Only."

The articles were alleged to be adulterated in that products containing a glycol or a glycol ether, or both, poisons—and in certain instances also containing isopropyl alcohol—had been substituted in whole or in part for food and beverage flavors, which they purported to be; and in that they contained added poisonous or deleterious ingredients, a glycol or a glycol ether, or both—and in certain instances isopropyl alcohol, which might have rendered them injurious to health.

Certain of the products were alleged to be misbranded in that the statements on the labels, "Cognac [or "Apricot," "Rosolio," "Creme de Menta," "Rum," "Anesone," "Benedictine," "Strega," "Whiskey," "Anisette," "Verdolino," or "Maraschino"] Flavor \* \* \* For Bakery & Confectionery," were false and misleading when applied to products containing isopropyl alcohol and a glycol or a glycol ether, or both, poisons. The remaining products were alleged to be misbranded in that the following statements on the labels, "Flavor \* \* \* Rosolio [or "Mescolanza," "Creme de Rose," "Jasmine Flavor," "Mandarino," "Perfetto Amore," "Orange," "Latte di Vecchia," "Cognac," "Creme de Menta," "Crema di Cacao," "Benedictine," "Apricot," "Verdolino," or "Mille Fiori," "Creme de Cocoa," "Maraschino," "Holland Gin," "Centerbe," "Strawberry," or "Grenadine"]," with respect to certain varieties, and the statements "Extracts \* \* \* Chartreuse Flavor \* \* \* For Bakery and Confectionery Use Only" with respect to one lot, were false and misleading and tended to deceive and mislead the purchaser when applied to products containing a glycol or a glycol ether, or both, poisons. They were alleged to be misbranded further in that they were offered for sale under the distinctive names of other articles, food or beverage flavors.

On March 23, March 30, and April 6, 1938, no claimant having appeared, judgments of condemnation were entered and the products were ordered destroyed.

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