

**PRODUCT:** 49 cases, each containing 24 jars, of concentrated orange juice, at Chicago, Ill.

**LABEL, IN PART:** (Jars) "Four-in-One-Brand Concentrated California Orange Juice. Four Gallons Standardized Orange Juice Concentrated to One Contents 12 Fluid Ounces," or "Four-in-One-Brand Concentrated California Orange Juice. Three Pints Concentrated To Contents 12 Fluid Ounces \* \* \* High in Vitamin 'C' content."

**VIOLATIONS CHARGED:** Adulteration, Section 402 (b) (2), orange juice which had been concentrated at the rate of approximately three parts of fresh orange juice to one part of concentrated orange juice had been substituted for the article, and in addition (portion), concentrated orange juice low in vitamin C content had been substituted for concentrated orange juice high in vitamin C content.

Misbranding, Section 403 (a), the statements in the labeling, (portion) "Four-in-One \* \* \* Four Gallons Standardized Orange Juice Concentrated to One Contents 12 Fluid Ounces Makes Three Pints Orange Juice," and (portion) "Four-in-One \* \* \* Three Pints Concentrated to Contents 12 Fluid Ounces \* \* \* Add Water to Make Three Pints \* \* \* High in Vitamin 'C' content," were false and misleading as applied to orange juice which had been concentrated at the rate of approximately three parts of fresh orange juice to one part of concentrated orange juice, and (portion) which was low in vitamin C content; and the statement "Contents 12 Fluid Ounces" was false and misleading as applied to the article, which was short volume; Section 403 (b), the article was offered for sale under the name of another food, "Four-in-One Concentrated Orange Juice"; and, Section 403 (e) (2), the article was in package form and failed to bear a label containing an accurate statement of the quantity of the contents.

**DISPOSITION:** March 17, 1944. No claimant having appeared, judgment of condemnation was entered and the product was ordered delivered to a Federal agency, for its use and not for sale.

**6588. Misbranding of peanut butter. U. S. v. Pacific Food Products Co. Plea of nolo contendere. Fine, \$750 and costs. (F. D. C. No. 11377. Sample Nos. 42854-F, 42878-F, 43116-F.)**

**INFORMATION FILED:** On May 12, 1944, in the Western District of Washington, against the Pacific Food Products Co., a corporation, Seattle, Wash.

**ALLEGED SHIPMENT:** From on or about June 28 to August 21, 1943, from the State of Washington into the States of Idaho and Oregon.

**LABEL, IN PART:** "Sunny Jim Brand \* \* \* Contents 2 Lbs."

**VIOLATIONS CHARGED:** Misbranding, Section 403 (a), the statement "Contents 2 Lbs." on the label of the article, was false and misleading as the article contained less than the declared weight; Section 403 (a), the statement on the label, "Processed Rich in Vitamin D", was false and misleading as applied to the article, which contained an inconsequential amount, if any, of vitamin D; Section 403 (e) (2), the article was in package form and did not bear a label containing an accurate statement of the quantity of the contents in terms of weight; and, Section 403 (j), it purported to be and was represented as a food for special dietary use by man by reason of its vitamin properties, and its label did not bear, as required by the regulations, a statement of the proportion of the minimum daily requirement for vitamin D which would be supplied by the food when consumed in a specified quantity during a period of 1 day.

**DISPOSITION:** May 29, 1944. A plea of nolo contendere having been entered, a fine of \$250 and costs on count 1, and \$250 on each of counts 2 and 3 was imposed.

**6589. Adulteration and misbranding of Spark O'Life. U. S. v. 33 Cases of Spark O'Life. Tried to the court. Judgment for the Government. Decree of condemnation and destruction. (F. D. C. No. 10055. Sample No. 3706-F.)**

**LIBEL FILED:** June 7, 1943, Northern District of Oklahoma.

**ALLEGED SHIPMENT:** On or about April 3 and 22, 1943, by the Kansas Milling Co., Wichita, Kans.

**PRODUCT:** 33 cases, each containing 12 1-pound bottles, of Spark O'Life, at Tulsa, Okla.

**LABEL, IN PART:** "Spark O'Life New Process, Sugar Coated Treated to Preserve the Rich Qualities of Wheat Germ." (Vignette of football player, baseball player, golfer, and swimmer.)

**VIOLATIONS CHARGED:** Adulteration, Section 402 (a) (3), the article consisted in whole or in part of a filthy substance, insect fragments, larvae, and a rodent excreta pellet.

Misbranding, Section 403 (a), the name of the article, "Spark O'Life," was false and misleading since it represented and suggested that the article would have a stimulating effect on the system of the user, whereas use of the article would not have such an effect; and the vignettes and statements in its labeling which represented and suggested that the article was rich in vitamins B, E, and G; that ingestion of the article according to directions afforded one of the best ways of getting necessary amounts of vitamin B, E, and G; that the article, when taken as recommended, would be effective in promoting health, alertness, tuning-up the system, keeping a person fit, maintaining proper appetite, promoting normal functioning of nerves and the digestive system, normal growth, and the normal functioning of the reproductive system; that it would be effective in the prevention and treatment of pellagra, dermatitis, cataract, and skin infections; and that it contained an abundance of highly valuable minerals, were false and misleading since the article was not rich in vitamins B, E, and G; when used as recommended it did not afford one of the best ways of getting necessary amounts of vitamins B, E, and G; the need for vitamin E in human nutrition has not been established, and the article was not effective in promoting the benefits mentioned or in the prevention or treatment of the conditions mentioned; and it did not have an abundance of highly valuable minerals; Section 403 (j), the article purported to be and was represented as a food for special dietary uses by reason of its vitamin and mineral content, and its label failed to bear such information concerning its vitamin and mineral properties as has been determined to be and by regulations prescribed as necessary in order fully to inform purchasers of its value for such uses.

**DISPOSITION:** On September 13, 1943, the Kansas Milling Co., claimant, having filed an answer to the libel and submitted a list of 11 interrogatories, and the Government having filed a motion to quash the interrogatories, the court, after argument of counsel and consideration of authorities, sustained the motion in regard to 8 of the interrogatories and overruled the motion with respect to the other 3, in which information was requested as to (1) the percent of free sugar, wheat bran, starch, insect fragments, and rodent excreta in the product; (2) whether any analytical tests or experiments were made to determine the therapeutic characteristics or vitamin potency of the product; and (3) the basis for the allegations in the libel that the article was not effective in promoting the benefits mentioned and in the prevention and treatment of the conditions mentioned, and that it did not have an abundance of highly valuable minerals.

Answers to these three interrogatories were subsequently filed and on November 12, 1943, the case came on for trial, at the conclusion of which, the court, on November 13, 1943, handed down its findings of fact and conclusions of law incorporated in the following decree of condemnation and destruction:

**Savage, District Judge:** "This matter coming on for hearing this 12th day of November, 1943, in its regular order and the plaintiff, United States of America, appearing by Whit Y. Mauzy, United States Attorney for the Northern District of Oklahoma, and intervener, Kansas Milling Company, appearing by its attorneys, T. E. Scofield and Ray S. Fellows, and all parties announcing ready for trial and the court, after the introduction of evidence and after argument of counsel, finds:

"That the 33 Cases, each containing 12 bottles of an article labeled in part, 1 Lb. Net Weight Spark O' Life and containing a sugar coated wheat germ, was shipped in interstate commerce by the St. Louis-San Francisco Railway Company, on the 3rd day of April, 1943, and on the 22nd day of April, 1943, by shippers truck, said 33 cases having been shipped by the Kansas Milling Company from Wichita, Kansas, to Tulsa, Oklahoma, and was conveyed in interstate commerce and at the time of the filing of the complaint was in the possession of Joe Hodges Warehouse of Tulsa, Oklahoma, which 33 Cases were manufactured by the Kansas Milling Company of Wichita, Kansas.

"The court further finds that said 33 Cases are misbranded in violation of Title 21 U. S. C., Section 343 (a), in the following respects:

"1. That the statement 'A NATURAL FOOD RICH IN VITAMIN B, E AND G' is misleading only in that the term Vitamin B, has no scientific significance.

"2. That the statements 'FOR HEALTH—FOR ZIP—A TUNE-UP!' are merely sales talk and not misleading.

"3. That the statement 'It's one of the best ways of getting necessary amounts of Vitamins B-1, B-2, E, and G,' is misleading with respect to the inclusion of the terms B-2 and G, which are synonymous and tend to indicate that they are two different vitamins.

"4. That the statement 'Vitamin B essential for appetite, normal function of nerves and digestive system, promotes natural growth' is ambiguous in that Vitamin B has no scientific significance.

"5. That the statement on the label as to Vitamin E is misleading.

"6. That the statement 'Essential in prevention of Pellagra, Dermatitis, Cataract' is misleading and that the statement as to skin infection is too broad.

"7. That the statement on the label 'Also an abundance of highly valuable minerals' is misleading.

"The court further finds that said article is misbranded in violation of Title 21 U. S. C., Section 343 (j) in that it purports to be and is represented as a food for special dietary uses by reason of its vitamin and mineral content and that said label fails to bear the necessary information required under the regulations prescribed for label statements concerning dietary properties as promulgated by the Administrator as published in the Federal Register of November 22, 1941.

"The court further finds that the trademark 'SPARK O' LIFE' standing alone or apart from the label is not misleading nor misbranding of the product in violation of Title 21, U. S. C., Section 343 (a).

"The court further finds that all other statements on the label are not misleading.

"The court further finds and concludes for the reasons above stated, that said 33 Cases of Spark O' Life should be condemned, forfeited and confiscated.

"IT IS THEREFORE ORDERED, ADJUDGED and DECREED that the said 33 Cases of Spark O' Life be and the same hereby are condemned, forfeited and confiscated.

"IT IS FURTHER ORDERED, ADJUDGED and DECREED that the said 33 Cases of Spark O' Life be destroyed."

**6590. Misbranding of Vbev. U. S. v. 16 Cans of Vbev. Decree of condemnation and destruction.** (F. D. C. No. 5457. Sample No. 74285-E.)

**LABEL FILED:** September 25, 1941, Southern District of New York.

**ALLEGED SHIPMENT:** On or about July 8, 1941, from Jersey City, N. J., by Health-aids, Inc.

**PRODUCT:** 16 10-ounce cans of Vbev, at New York, N. Y.

Examination disclosed that the article's content of calcium was 796 milligrams per ounce.

**LABEL, IN PART:** "Vbev A Food Beverage A Food Supplement Rich In Natural Vitamin B Complex with Vitamins A, D, and Essential Minerals \* \* \* Purity Products Inc. Jersey City New Jersey Ingredients: Diastasic Malt Syrup, Dextrose, Whole Liquid Milk, Tricalcium Phosphate, Ferric Pyrophosphate—Soluble, Molasses, Natural Vitamin B Complex and Vitamin A and D Concentrate."

**VIOLATIONS CHARGED:** Misbranding, Section 403 (a), the statement on the label, "Not less than the following values for each ounce of Vbev are maintained through periodic laboratory assays \* \* \* Calcium 1000 milligrams," was false and misleading; the statements in the labeling to the effect that Vbev was a new discovery and a new food beverage, developed after years of scientific research and investigation, was false and misleading since the article was merely a combination of well-known foods; and the statements in the labeling which represented and implied that the article was efficacious in the cure, mitigation, treatment, or prevention of nervousness, tiredness, sleeplessness, underweight, infections, digestive disorders such as diarrhea, lack of appetite, gas pains, stunted growth, loss of hair, and general failure in physical well-being; and that it was efficacious to form and preserve strong bones and teeth, develop proper skin tone, prevent night blindness, over-brittle fingernails, dietary anemia, and many skin disorders; that it would protect eyes from degeneration and cataract, promote proper assimilation of calcium and phosphorus, provide quick energy between meals, and aid clotting of blood and red pigmentation of blood; and that it would provide a valuable supplementary