

transmitted to the Southern District of Illinois, the court handing down the following memorandum opinion:

BARNES, *District Judge*: "On May 24, 1943, a libel for condemnation was issued out of the District Court of the United States for the District of Colorado against 479 bottles of 'Grayvita.' On July 24, 1943, a motion was made by the claimant in the District Court of the United States for the District of Colorado at Denver to remove and transfer the said cause to the Northern District of Illinois, Eastern Division, and an order was made on that day transferring and removing the cause to the District Court for the Northern District of Illinois, Eastern Division. Pursuant to the order of July 24, 1943, the clerk of the court for the District of Colorado caused a physical transfer and removal of all papers, documents, complaint and information in said cause to the clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division, and the clerk of this court filed and docketed said cause. Subsequently, the claimant filed its answer and the cause was set for trial in this court.

"On August 18, 1943, on motion of the United States Attorney for the District of Colorado, the District Court for that district, vacated its previous order of July 24, 1943, and transferred the cause to the District Court of the United States for the Southern Division of Illinois at Springfield, Illinois, and ordered the clerk of this court to transfer and remove the cause from Chicago, Illinois, to the District Court Southern Division at Springfield, Illinois.

"It seems that the United States desires to try its case in Springfield, Illinois, while the defendant desires to try the case in Chicago, where it says it has its principal place of business. The court would very much dislike a controversy either with the District Court for the District of Colorado or with the District Court for the Southern District of Illinois. The defendant questions the jurisdiction of the District Court for the District of Colorado to make its second order. No case directly in point has been called to the attention of the court.

"The court will assume that since the orders of July 24, 1943, and August 18, 1943, were both rendered at the same term of the District Court for the District of Colorado, the first order was still in the breast of the court at the time of the making of the second order, and, accordingly, the second order was valid. Had this court proceeded to dispose of the case prior to the making of the second order it is possible that a different question would be presented.

"The clerk of this court is directed to transmit to the clerk of the District Court for the Southern District of Illinois, at Springfield, Illinois, all records in this case that were received by him—in accord with the second order of the District Court for the District of Colorado, above referred to."

On March 24, 1945, the Carlay Co. having notified the court that it would not contest the action further, and having consented to the entry of a decree, judgment of condemnation was entered and the product was ordered destroyed.

7906. Misbranding of Ivita High Potency Capsules, B Family Tablets, StaffTabs, and Capatabs Calcium Pantothenate Tablets. U. S. v. 5 Packages of Ivita High Potency Capsules, 77 Packages of B Family Tablets, 46 Packages of StaffTabs Calcium and Phosphorus Tablets, and 26 Bottles of Capatabs Calcium Pantothenate Tablets. Default decrees of condemnation and destruction. (F. D. C. No. 11631. Sample Nos. 38677-F, 38678-F, 38681-F, 38683-F.)

LIBEL FILED: On or about February 1, 1944, Northern District of Illinois.

ALLEGED SHIPMENT: Between the approximate dates of October 8, 1943, and January 10, 1944, by Modern Products, Inc., from Milwaukee, Wis.

PRODUCT: 5 packages, each containing 30 Ivita High Potency Capsules; 22 100-tablet packages, 48 220-tablet packages, and 7 600-tablet packages of B Family Tablets; 33 100-tablet packages and 13 320-tablet packages of StaffTabs; and 26 bottles, each containing 100 tablets, of Capatabs Calcium Pantothenate, at Chicago, Ill.

Examination showed that the Ivita Capsules contained vitamin A; that the B Family Tablets contained yeast, thiamine, and riboflavin; that the StaffTabs consisted essentially of calcium, phosphorus, vitamin D, sugars, salt, and a mint flavor; and that the Capatabs Calcium Pantothenate consisted essentially of calcium pantothenate, 10 milligrams per tablet.

VIOLATION CHARGED: Ivita Capsules, misbranding, Section 403 (a). The labeling statements quoted below were false and misleading since they represented and suggested that the administration of vitamin A would be effective in overcoming flash blindness during night driving and in the prevention of infections of the body; whereas the administration of vitamin A would not be so effective: (Circular entitled "Vitamin A") "The importance of maintaining adequate

Vitamin A reserves to avoid any degree of nyctalopia cannot be over-stressed in this age of night driving. When there is even a slight deficiency the eyes do not respond to changes in light intensity as quickly as they should. A flash from an approaching headlight might produce only a short period of blindness, but it may be long enough to cause a fatal accident. Lowered Resistance When the body reserves of Vitamin A are exhausted and there is a deficiency of this vitamin in the daily diet, the resistance of the body to infections in general is lowered. Colds, influenza and other infections are more likely to take hold. Taking Vitamin A after the infection has set in is like locking the stable after the horse is gone. The function of Vitamin A is that of maintaining the resistance at a high point, not to cure infections. The value of essential food elements lies largely in the robust health they help promote. * * * When the body reserves of Vitamin A become exhausted, night-blindness and lowered resistance to infections occur. There is also interference with normal growth."

B Family Tablets, misbranding, Section 403 (a). The following and similar statements in the labeling were false and misleading since they represented and suggested that the article was effective in the prevention or cure of the diseases, symptoms, and conditions mentioned, whereas the article was not so effective: (Circular entitled "Your Diet and Your Nerves") "Vitamin B₁ and The Nerves * * * Many authorities hold that even though the Vitamin B₁ intake may be sufficient to prevent symptoms of frank deficiency it may not be enough to yield the full natural benefits of this vitamin. * * * Of all the vitamins, Vitamin B₁ is most likely to become deficient in a diet because of its presence in foods in only very small quantities. That is the principal reason that supplementation of the diet with B vitamins is so universally recognized by authorities as a desirable feature"; (circular entitled "Laugh At Your Former Self") "Many people are accused of laziness or suffer nervous irritability not because they are naturally so disposed but because they are vitamin deficient. * * * Many Children Lack Energy Due to Vitamin B Deficiency . . . * * * Niacin Essential to Prevent * * * Certain Skin Disorders * * * (Pantothenic Acid) Prevents Skin Disease in Chicks B₂ (Riboflavin) Essential * * * to Prevent Certain Skin Disorders * * * B₃ Essential to Maintain Weight in Pigeons * * * B₅ Maintains Weight in Pigeons * * * Growth in Rats B₆ Prevents Nervous Disease and Disturbances of the Alimentary Tract in Rats Factor W Essential for Growth in Rats * * * In a carefully executed clinical study of intestinal disorders, it has actually been shown that the conditions studied were not improved when separate factors of the B complex were administered. But, when the whole B complex was used, these intestinal conditions were greatly improved, even though the amount administered was considerably less when the same vitamins were given separately. As a further example, a serious deficiency of niacin produces the disease pellagra. However, in treatment of pellagra it was found desirable to administer not only extra quantities of niacin but also extra quantities of thiamine and riboflavin in order to clear up associated symptoms. * * * Vitamin B₁ (Thiamine) Helps you get energy from foods. You must have a plentiful supply of vitamin B₁ in order to properly utilize the energy producing foods. If the diet is deficient in Vitamin B₁ you are subject to 'that tired feeling.' Deficiency also causes lack of appetite, mental depression, and muscular cramps and aches. * * * Vitamin B₂ (Riboflavin) We need riboflavin for normal growth and health. It helps keep our skin, eyes and hair healthy—especially the skin around the mouth—and it promotes growth in children. Niacin— * * * An adequate amount is needed for general well-being. Mild deficiencies may result in rendering the skin rough. * * * Pantothenic acid and pyridoxine (vitamin B₆) are two other known factors of the vitamin B Complex. Nutritional authorities generally agree that these two factors play some essential role in sound nutrition but the specific need and least quantity required have not yet been definitely established. * * * Some scientific work would indicate that pantothenic acid and possibly other members of the B Family may aid in the restoration of color to gray hair. 10 Known Vitamins and Vitamin Factors All ten of the known vitamins and vitamin factors present in the B complex as it occurs in Nature, are present in B Family Tablets. B Family Tablets contain all the vitamins of the B complex known to be essential to proper nutrition of man * * *. Nervousness Bickering Irritability The Jitters These symptoms may indicate a deficiency in vitamins of the B complex family. * * * The B complex vitamins are most essential because they govern many of the vital processes of the body which are necessary in the proper utilization of energy producing food. When they are deficient, the carbohydrates are not properly metabolized in the body and symptoms

such as nervousness, fatigue, irritability and vague aches and pains occur. * * * mild deficiencies, giving rise to milder forms of these symptoms, are not uncommon. Be Alert It is Your Patriotic Duty to Keep Healthy."

StafTabs, misbranding, Section 403 (a). The labeling statements quoted below were false and misleading since they represented and suggested that calcium would be effective to bring about the conditions mentioned, whereas calcium would not be so effective: (Circular entitled "Calcium in Human Nutrition") "The Importance Of Blood Calcium Heart—When blood calcium is low the contractability of the muscles becomes impaired. This means all the muscles. Since the heart is the most important muscle of the body when low blood calcium persists the heart cannot beat as strong and true. The whole muscular strength of the body also becomes reduced. Nerves—Adequate calcium in the blood helps protect the nerves from irritation. When the blood calcium is low the excitability of the nerve is increased. Blood—On wounding, blood will not clot properly if its calcium supply is low. Calcium combines with prothrombin, on exposure to air, to produce one of the principal factors in clot formation. Thus when blood calcium is inadequate, what otherwise might be a minor injury may well become serious. Growth—Inadequate dietary calcium in children retards growth. Tall, strong adults cannot result unless the calcium supply is adequate during the growth period. Thus We See That For Stature, Strength, Stamina And Fortitude We Depend, In Demonstrable Measure, Upon An Adequate Daily Calcium Supply."

Capatabs Calcium Pantothenate Tablets, misbranding, Section 403 (a). The following and similar statements in the labeling were false and misleading since they represented and suggested that the article was effective to restore color to gray hair, whereas the article was not so effective: (Counter display card entitled "Modern Products, Inc. Proudly Presents Capatabs") "Grey hair is usually considered a badge of old age. Yet, many people become prematurely grey, or develop patches of grey hair in their twenties or thirties. This often causes social disappointments and interferes with business advancement. Latest Scientific Discoveries About Grey Hair Recently, the 'Anti-grey-hair' factor of the Vitamin B Complex has been identified as pantothenic acid, and its most desirable form for administration is Calcium Pantothenate. In a recent experiment with this Vitamin by a prominent laboratory, most men and women in the test found it successful and showed positive evidence of a return of hair color. Results were obtained in periods ranging from three to six months. * * * In making a personal test of the relation of nutrition to natural hair color, it is important that you use a dependable product. * * * Try Capatabs in your fight against grey hair"; (circular entitled "A Challenge to All Who Have Grey Hair") "At Last Science Holds Out A Hope Of Restoration Of Natural Color To Grey Hair Through The Medium Of An Essential Food Factor A Challenge To All Who Have Grey Hair * * * Here then is a challenge to all who long for natural hair color, and the more youthful appearance it gives. Twenty-two people out of twenty-five responded favorably to a test. This is indeed a high percentage in any experiment involving physiological reactions. * * * more than a decade ago research workers in nutrition, with no thought of grey hair, made a discovery. Laboratory animals when fed a diet deficient in certain factors of the Vitamin B-Complex displayed 'achromotrichia'—the scientific word for loss of color of the hair. * * * Following the identification of pantothenic acid with possible anti-grey hair activity, several investigators have published successful results obtained with its use in laboratory animals."

The articles, with the exception of the Capatabs Calcium Pantothenate Tablets, were also alleged to be misbranded under the provisions of the law applicable to drugs, as reported in notices of judgment on drugs and devices, No. 1282.

DISPOSITION: March 9, 1944. No claimant having appeared, judgments of condemnation were entered and the products were ordered destroyed.

7907. Misbranding of Dr. Charles Northen's Minerals and B Vitamins and Dr. Charles Northen Minerals. U. S. v. 31 Bottles of Minerals and B Vitamins, 16 Bottles of Minerals, and 900 Folders. Consent decree of condemnation. Product ordered released under bond. (F. D. C. No. 15730. Sample Nos. 27534-H, 27535-H.)

LIBEL FILED: March 27, 1945, District of Oregon.

ALLEGED SHIPMENT: Minerals and vitamins, between the approximate dates of January 8 and February 6, 1945, by Colloidal Products, from Tampa, Fla.; folders, in the summer of 1944 and in January 1945, by the same firm.