around the machinery and equipment of the plant; and that the defendants continued to ship in interstate commerce products prepared under these conditions, which products were contaminated with insect parts, rodent hair, and feather barbules.

The complaint alleged further, on information and belief, that unless restrained, the defendants would continue to introduce and deliver for introduction into interstate commerce, foods adulterated as above-described. The complaint prayed the issuance of a permanent injunction to restrain such acts, and that the defendants be cited to show cause why they should not be enjoined during the pendency of the proceedings.

DISPOSITION: On May 29, 1947, pursuant to a stipulation entered into between counsel for the Government and the defendants, the court entered a permanent injunction restraining and enjoining the defendants from directly or indirectly introducing, or causing the introduction, into interstate commerce of chocolate, chocolate coating, and cocoa, or similar foods, adulterated as charged in the complaint.

CANDY

17508. Action to enjoin and restrain the interstate shipment of adulterated candy. U. S. v. Mrs. Dora E. (Mrs. Louis S.) Horowitz, et al. Temporary injunction granted. (Inj. No. 139.)

COMPLAINT FILED: On or about May 17, 1946, Northern District of Georgia, against Mrs. Dora E. (Mrs. Louis S.) Horowitz and Eleanor T. Horowitz, partners, trading as the Beckham Candy Co., Atlanta, Ga., Louis S. Horowitz, plant manager, and Leonard Salenfriend, superintendent.

NATURE OF CHARGE: That beginning in 1942 and at all times subsequent to that date until the time of filing the complaint, the defendants had been and were introducing and delivering for introduction into interstate commerce, at Atlanta, Ga., candy which was adulterated in the following respects: Section 402 (a) (3), the product consisted in whole or in part of a filthy substance by reason of the presence of rodent excreta and rodent hair fragments; and, Section 402 (a) (4), the product had been manufactured and prepared under insanitary conditions whereby it may have become contaminated with filth, in that the building in which the candy was manufactured was not rodentproof and was heavily infested with rodents; and in that rats and mice had free access to the raw materials from which the candy was manufactured, and infested the candy-making equipment during the night and had access to unpacked candy which was cooked and left unprotected.

The complaint alleged further that despite warnings, the defendants failed to remedy the defects in their method of operation in their plant and were continuously manufacturing, preparing, and packing candy which was adulterated.

The complaint alleged further, on information and belief, that the defendants would continue to ship, introduce, and deliver for introduction into interstate commerce such adulterated candy unless enjoined from so doing, and prayed that they be perpetually enjoined from commission of such acts and that a preliminary injunction be granted during the pendency of the action.

DISPOSITION: June 14, 1946. The case came on for hearing before the court, and a motion was filed by the defendants' counsel that the case be continued until after pending criminal proceedings were disposed of against one of the defendants. Continuance was granted upon stipulations between the Government and the defendant, that a temporary injunction be granted until after the criminal proceedings had been disposed of. The temporary injunc-

tion enjoined and restrained the defendants and all persons acting on their behalf from shipping in interstate commerce any adulterated candy manufactured, or to be manufactured, by the defendants at their Atlanta, Ga., plant.

17509. Alleged misbranding of candy. U. S. v. 116 Boxes, etc. Tried to the court. Judgment for claimant. Libel ordered dismissed without costs. Government's motion for new trial denied. (F. D. C. No. 23869. Sample Nos. 4141-K to 4144-K, incl.)

LIBEL FILED: October 27, 1947, District of Massachusetts.

ALLEGED SHIPMENT: On or about August 28 and September 5, 1947, by the Up-To-Date Candy Mfg. Co., from New York, N. Y.

PRODUCT: 176 boxes, each containing 24 1½-ounce packages, of candy drops at Boston, Mass.

LABEL, IN PART: (Package) "Arden Assorted Candy Drops [or "Root Beer Drops," "Lemon Drops," or "Kandy Mints"]."

NATURE OF CHARGE: Misbranding, Section 403 (d), the container was so filled as to be misleading since 6 additional candy drops could be placed in each package.

DISPOSITION: The Up-To-Date Candy Mfg. Co., claimant, having filed an answer denying that the product was misbranded, the case came on for trial before the court on October 27, 1948. The trial was concluded on the same day, and the case was taken under advisement by the court. On November 12, 1948, the court handed down an opinion deciding the issues for the claimant, and on November 15, 1948, the court entered a decree dismissing the libel without costs and ordering that the seized articles be returned to the persons from whom they were seized. The court handed down the following opinion:

WYZANSKI, *District Judge:* "This is a libel brought under the Federal Food, Drug and Cosmetic Act of 1938, 52 Stat. 1040, 21 U. S. C. 301 et seq. for the condemnation of packages of confections manufactured and shipped in interstate commerce by Up-To-Date Candy Manufacturing Company. These packages contain either 'Arden Assorted Candy Drops' or 'Arden Root Beer Drops' or 'Arden Lemon Drops' or 'Arden Kandy Mints.'

"The libel charges misbranding within the meaning of [Section] 403 (d) of the Act, 21 U. S. C. 343 (d) which provides that 'A food shall be deemed to be misbranded . . . . if its container is so made, formed or filled as to be misleading.'

"It is conceded that the packages were shipped by the company in interstate commerce. The only question is whether there was misbranding within the statutory definition.

"All the packages are substantially alike despite differences in the particular type of candy. All the types of candy are manufactured in a uniform size and style of lozenge. The company has changed the style over the years. In the packages seized, the style used is a slightly rounded rectangle which creates no peculiar packaging problem.

"Each box measures in inches: 3¾ x 2½ x 1¼. A box is intended to sell at retail at five cents. Each bears a legend stating the name of the drop and showing the weight of the box as 1½ ounces. And in fact all the boxes contained candy which weighed at least 1½ ounces. There is no statement as to the number of pieces of candy. Most of the boxes contain 17 pieces. Some, however, contain 18 or 19. When 17 pieces are in the box and a reasonable time has elapsed since manufacture, the candy settles so that there is an average air space in the box of 33%.

"Each box in evidence was packaged by a standard packaging machine, manufactured by a third party, of the type used by a majority of leading concerns packaging candy or cough drops intended to retail at five or ten cents. Such a packaging machine is made with only slight variations necessary for