PRODUCT: 51 50-pounds bags and 26 25-pound bags of flour at El Paso, Tex., in possession of the American Grocery Co.

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the product consisted in whole or in part of a filthy substance by reason of the presence of rodent urine and rodent excreta; and, Section 402 (a) (4), it had been held under insanitary conditions whereby it may have become contaminated with filth. The product was adulterated while held for sale after shipment in interstate commerce.

DISPOSITION: March 6, 1952. The American Grocery Co. having appeared as claimant, judgment of condemnation was entered and the court ordered that the goods be released under bond to be denatured and labeled as unfit for human consumption under the supervision of the Food and Drug Administration.

19154. Adulteration and misbranding of enriched flour. U. S. v. 1,223 Bags * * *. (F. D. C. No. 32600. Sample No. 4653–L.)

LIBEL FILED: January 17, 1952, Southern District of West Virginia.

ALLEGED SHIPMENT: On or about December 12, 1951, by the Blair Milling Co., from Atchison, Kans.

PRODUCT: 1,223 25-pound bags of enriched flour at Charleston, W. Va.

LABEL, IN PART: "Enriched 8 Oz. of Enriched Flour Contain Not Less Than the Following Proportions of the Minimum Daily Requirements of Vitamin B_1 100%, Riboflavin 30%, Iron 65%, and 8 Mg. of Niacin. Moon Rose Hard Wheat Flour."

NATURE OF CHARGE: Adulteration, Section 402 (b) (1), valuable constituents, vitamin B_1, riboflavin, iron, and niacin, had been in part omitted from the product.

Misbranding, Section 403 (a), the label statement "8 Oz. of Enriched Flour Contain Not Less Than the Following Proportions of the Minimum Daily Requirements of Vitamin B_1 100%, Riboflavin 30%, Iron 65%, and 8 Mg. of Niacin" was false and misleading since the product contained less than the declared amounts of vitamin B_1, riboflavin, iron, and niacin.

DISPOSITION: March 21, 1952. The Blair Milling Co., claimant, having consented to the entry of a decree, judgment of condemnation was entered and the court ordered that the product be released under bond to be brought into compliance with the law, under the supervision of the Federal Security Agency. The product was brought into compliance with the law by the addition of enriching ingredients.

MISCELLANEOUS CEREAL PRODUCTS

19155. Adulteration of popped popcorn, alleged adulteration of potato chips and Fritos, and alleged misbranding of popped popcorn. U. S. v. So Good Potato Chip Co. and Edward C. Causino. Motion of defendants for return of seized goods and suppression of evidence overruled. Motion of defendants for dismissal of counts 1, 2, 3, 6, and 7 also overruled. Pleas of nolo contendere to counts 1 and 5. Motion of Government for dismissal of counts 2, 3, 4, 6, and 7 granted. Fine of $750 against company and $200 against individual. (F. D. C. No. 31078. Sample Nos. 78039–K, 78040–K, 93802–K, 93804–K, 31456–L, 31457–L.)

INFORMATION FILED: April 23, 1951, Eastern District of Missouri, against the So Good Potato Chip Co., a partnership, St. Louis, Mo., and Edward C. Causino, plant manager.

ALLEGED SHIPMENT: On or about December 4, 1950, and January 15, 1951, from the State of Missouri into the State of Illinois.

LABEL, IN PART: "So Good Pop Corn * * * Net Weight 5 Ounces [or "2 Ounces"]," "Potato Chips * * * Net Wt. 6 Oz.," and "Fritos * * * Net Wt. 4½ Oz."

NATURE OF CHARGE: Adulteration of popcorn (counts 1 and 5), Section 402 (a) (3), the article consisted in part of a filthy substance by reason of the presence of rodent hair fragments, larvae, insect fragments, larval cast skins, and pupae; and, Section 402 (a) (4), a portion of the popcorn had been prepared and packed under insanitary conditions whereby it may have become contaminated with filth.

Alleged misbranding of popcorn (counts 2, 6, and 7), Section 403 (e) (2), portions of the popcorn failed to bear labels containing an accurate statement of the quantity of the contents. The labels on such portions bore the statement "Net Weight 5 Ounces," which statement was inaccurate since the net weight of the packages containing such portions was less than 5 ounces.

Alleged adulteration of potato chips and Fritos (counts 3 and 4), Section 402 (a) (3), the articles consisted in part of a filthy substance by reason of the presence of rodent hair fragments, psocids, larvae, and insect fragments; and, Section 402 (a) (4), the articles had been prepared and packed under insanitary conditions whereby they may have become contaminated with filth.

DISPOSITION: The defendants entered a plea of not guilty on May 3, 1951. On May 15, 1951, a motion for the return of the seized property and the suppression of evidence was filed on behalf of the defendants on the basis that permission to enter and inspect the factory premises of the company had not been given by an authorized person. The matter came on for hearing on or about June 19, 1951, after which the matter was taken under advisement by the court for consideration of the arguments and briefs of counsel. On August 28, 1951, the court entered an order overruling the motion.

The defendants, on September 6, 1951, submitted a request for portions of the samples collected from the shipments alleged in the information. Pursuant to this request, portions of the samples were furnished from the shipments alleged in counts 4 and 5. No portion of the samples involved in the other counts of the information was furnished. Thereafter, the defendants filed a motion to dismiss counts 1, 2, 3, 6, and 7, based upon the Government's refusal to furnish portions of the samples, as required by Section 702 (b) of the Act [21 U. S. C. 372 (b)]; and on or about September 21, 1951, a hearing was held in the matter. During the hearing, the defendants were offered a portion of the sample of the popcorn from the shipment involved in counts 1 and 2. It was pointed out, however, that for the purposes of the misbranding charge against such shipment, as alleged in count 2, such sample portion was not suitable to make a check analysis for net weight. Briefs subsequently were filed by counsel for the parties, and after consideration thereof, the court, on December 21, 1951, overruled the defendants' motion and made the following comments:

HARPER, *District Judge*: "I am today entering an order overruling the defendant's motion to dismiss Counts 1, 2, 3, 6 and 7 of the Information. I think that the 9th Circuit Court of Appeals in the Triangle Company case, 44 Fed. 2nd 195, correctly stated the law with respect to Section 372 (b) of Title 21.

However, I do not believe that this section applies to Counts 2, 6 and 7 for the reason that I do not understand that 'analysis' has any reference to weighings.

"With reference to Counts 1 and 3, while I am overruling the motion, this letter will serve to put the plaintiff on notice that unless Section 372 (b) is complied with that when this matter is reached for trial I will entertain a motion to dismiss those two and will dismiss them.

"With respect to Count 1, the plaintiff admits that the defendant's request can be complied with. With respect to Count 3, the plaintiff's testimony discloses that it could not be complied with. In this particular instance the testimony disclosed that there were twice as many bags of the potato chips as there were of the popcorn collected, and had the same judgment been used with respect to the potato chips as was used with respect to the popcorn, 372 (b) could have been complied with. The fact that they used it all when the testimony disclosed there were six samples would indicate that they could have complied with the section had they wanted to, and while the sample they have now may not serve the purposes, unless it does so, when the trial is reached upon the proper motion I will strike the count."

On March 21, 1952, the defendants entered pleas of nolo contendere to counts 1 and 5 of the information, and upon the motion of the United States attorney, the court dismissed counts 2, 3, 4, 6, and 7 and imposed a fine of $750 against the company and a fine of $200 against the individual.

CHOCOLATE, SUGAR, AND RELATED PRODUCTS

19156. Adulteration of cocoa beans, sugar, chocolate, coconut, shelled almonds, raisins, and rice flour. U. S. v. 8 Bags, etc. (F. D. C. No. 32553. Sample Nos. 26200–L, 26201–L, 26203–L to 26209–L, incl.)

LIBEL FILED: February 27, 1952, Eastern District of Pennsylvania.

ALLEGED SHIPMENT: Between the approximate dates of November 17, 1948, and January 24, 1952, from New York, N. Y., Rochester, N. Y., Newark, N. J., Hoboken, N. J., Fresno, Calif., and Trinidad.

PRODUCT: 8 200-pound bags of cocoa beans, 2,420 100-pound bags of sugar, 77 200-pound bags of chocolate, 11 100-pound bags of coconut, 15 80-pound bags of shelled almonds, 140 30-pound bags of raisins, and 8 100-pound bags of rice flour, at Reading, Pa., in the possession of Luden's, Inc.

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the products consisted in whole or in part of filthy substances by reason of the presence of insects in the cocoa beans, rodent excreta in the sugar, chocolate, coconut, shelled almonds, and rice flour, and insects in the raisins; the cocoa beans consisted in part of a decomposed substance by reason of the presence of mold.

Further adulteration, Section 402 (a) (4), the products had been held under insanitary conditions whereby they may have become contaminated with filth. The products were adulterated while held for sale after shipment in interstate commerce.

DISPOSITION: April 22, 1952. Default decree of condemnation and destruction.

19157. Adulteration of cocoa beans. U. S. v. 298 Bags * * * . (F. D. C. No. 33102. Sample No. 33352–L.)

LIBEL FILED: April 29, 1952, Eastern District of Wisconsin.

ALLEGED SHIPMENT: On or about May 9, 1951, from New York, N. Y.

PRODUCT: 298 bags, each containing 130 pounds, of cocoa beans at Milwaukee, Wis.