

dating from the time of the promulgation of the regulations to the present time, permit this separate identity. As shown in the main opinion, the manufacture, appearance and preparation of defendant's product do not yield legal differentiation. Applicability of 21 U. S. C. § 343 (g) is not a historical one, but a practical administrative judgment made from the consumer's standpoint. In short, the standard is not denied application merely because a precise historical tracing will not support it, but because the buying and consuming practices of the public reject its application. Moreover, the administrative record in this case indicates the Federal Security Administrator's ruling limiting gum gluten content to 13% has not been disturbed by any judicial ruling by any court and especially since claimant's petition for review to the Court of Appeals for the Second Circuit was dismissed. Accordingly, I adhere to my original determination defendant's product is controlled by § 343 (g) and may not be brought within the coverage of § 343 (i) as a product for which no standard has been promulgated.

"2. Other points raised by defendant in its reargument are merely variations of its basic contention, i. e., its product has a separate identity. My disposition of the separate identity argument has equal application to the corollaries of defendant's main argument.

"For the reasons stated, the Court reaffirms the conclusions set forth in its opinion of September 30, 1954."

Pursuant to the reargument, the court entered an order on May 13, 1955, for condemnation and destruction. Execution was suspended when the claimant noted an appeal to the United States Court of Appeals for the Third Circuit. The National Macaroni Manufacturers Association again entered the case as amicus curiae. The case was argued on December 8, 1955, and on January 3, 1956, the court of appeals handed down an opinion [228 F. 2d 912] stating that the district court completely and correctly disposed of the case and affirming the opinion of the district court.

The cases of spaghetti were destroyed.

23666. Spaghetti. (F. D. C. No. 39542. S. No. 55-313 M.)

QUANTITY: 7 cases, 12 8-oz. pkgs. each, at Findlay, Ohio.

SHIPPED: On an unknown date, from Bridgeport, Pa.

LIBELED: 8-27-56, N. Dist. Ohio.

CHARGE: 402 (a) (3)—contained insects while held for sale.

DISPOSITION: 11-5-56. Default—destruction.

23667. Macaroni and spaghetti. (F. D. C. No. 39714. S. Nos. 33-661 M, 33-664 M.)

QUANTITY: 5 cases, 24 7-oz. ctns. each, of macaroni, and 4 cases, 24 boxes each, of spaghetti at Parsons, Kans.

SHIPPED: On various dates between 1944 and May 1956, from Kansas City, Mo., and Des Moines, Iowa.

LIBELED: 1-11-57, Dist. Kans.

CHARGE: 402 (a) (3)—contained insects while held for sale.

DISPOSITION: 4-2-57. Default—destruction.

23668. Egg noodles. (F. D. C. No. 39560. S. Nos. 41-032/7 M.)

QUANTITY: 56 cases, 12 1-lb. bags each, and 26 cases, 24 8-oz. bags each, at Mason City, Iowa.

SHIPPED: Between 1-1-55 and 7-5-56, from Milwaukee, Wis.

LIBELED: 9-8-56, N. Dist. Iowa.

CHARGE: 402 (a) (3)—contained insects while held for sale.
DISPOSITION: 10-10-56. Default—denatured for use as animal feed.

MISCELLANEOUS CEREALS AND CEREAL PRODUCTS*

23669. Barley. (F. D. C. No. 39144. S. No. 25-075 M.)

QUANTITY: 118,000 lbs. at Helix, Oreg.

SHIPPED: 6-1-56, from Pasco, Wash. This was a return shipment.

LIBELED: 6-8-56, Dist. Oreg.

CHARGE: 402 (a) (2)—the article was a raw agricultural commodity and contained, when shipped, a mercurial compound, a pesticide chemical, which is unsafe within the meaning of 408 (a) since no tolerance or exemption from the requirement of a tolerance for such pesticide chemical on barley has been prescribed by regulations.

DISPOSITION: 10-18-56. Consent—claimed by Farmers Mutual Warehouse Co. Segregated; 18,760 lbs. destroyed.

23670. Brewers grits. (F. D. C. No. 39655. S. No. 39-659 M.)

QUANTITY: 300 100-lb. bags at Charlotte, N. C., in possession of Atlantic Co.

SHIPPED: 6-29-56, from Mount Vernon, Ind., and Paris, Ill.

LIBELED: 10-31-56, W. Dist. N. C.

CHARGE: 402 (a) (3)—contained rodent excreta and insects; and 402 (a) (4)—held under insanitary conditions.

DISPOSITION: 11-9-56. Consent—claimed by Atlantic Co. and denatured for use as poultry feed.

23671. Rice. (F. D. C. No. 39572. S. Nos. 28-785/6 M.)

QUANTITY: 150 100-lb. bags of milled rice and 200 100-lb. bags of pearl rice at Honolulu, T. H.

SHIPPED: 8-23-56, from Stockton, Calif., by Rocca Cuvi, Inc., and Pacific International Rice Mills, Inc.

LABEL IN PART: (Bag) "U. S. No. 1 Extra Fancy California Pearl Milled Rice" and "U. S. No. 1 Extra Fancy California Pearl Rice Fukusuke Mai."

LIBELED: 9-19-56, Dist. Hawaii.

CHARGE: 402 (a) (3)—contained rodent urine; and 402 (a) (4)—prepared under insanitary conditions.

DISPOSITION: 11-26-56. Consent—150 bags claimed by Rocca Cuvi, Inc., and 200 bags claimed by Pacific International Rice Mills, Inc. Segregated; 250 full and 2 partially filled 100-lb. bags denatured for use as animal feed.

23672. Rice. (F. D. C. No. 39726. S. No. 62-786 M.)

QUANTITY: 317 100-lb. bags at New York, N. Y., in possession of Sun Warehouses, Inc.

SHIPPED: 9-29-56, from Houston, Tex.

LIBELED: 12-28-56, S. Dist. N. Y.

CHARGE: 402 (a) (3)—contained rodent excreta and rodent urine; and 402 (a) (4)—held under insanitary conditions.

DISPOSITION: 1-24-57. Consent—claimed by Connell Rice & Commission Co., Inc., New York, N. Y. Segregated; 19 100-lb. bags destroyed.

*See also No. 23660.