

unfit to be consumed. The test for determining whether an item is a food under the Act can not be one of intended use. *United States v. 52 Drums Maple Syrup*, 110 F. 2d 914. It must of necessity be one which regards items as food which are generally so regarded when sold in a food form. Thus a rotten egg is one differing only in degree rather than kind from a sound egg. Eggs being sound or rotten are food under the statutory definition. If a dealer in inedible eggs, such as the defendants here, desires to utilize the channels of interstate commerce, with immunity from the provisions of the Federal Food, Drug and Cosmetic Act, it is necessary that he change the very nature of the product in which he deals. So long as the product retains a semblance of the identity it possessed as a food, the product must be considered as a food. *United States v. Thirteen Crates of Frozen Eggs*, 208 F. 950, affirmed, 215 F. 584.

"The plaintiff is entitled to an injunction by virtue of the provisions of § 332 of Title 21, U.S.C. Let the temporary restraining order be prepared and presented and let it be specific in its terms enjoining the defendants herein, their agents, attorneys and servants until the further order of the Court from shipping or causing to be shipped in interstate or foreign commerce the incubator reject eggs unless they are first denatured so as to render them incapable of being used for food."

Pursuant to the findings and conclusions of law, the court on 2-5-59, entered a temporary restraining order enjoining the defendants, until further order of the court, from introducing into interstate commerce:

(a) incubator reject shell eggs which consist in part of a decomposed substance by reason of the presence in the eggs of decomposed material and which are otherwise unfit for food because they are incubator reject eggs, unless and until the incubator reject eggs are completely denatured so as to preclude their use in human food products; and

(b) any of the stocks of incubator reject shell eggs now on hand at the defendants' Gainesville plant, or incubator reject shell eggs elsewhere, unless and until all such eggs are completely denatured so as to preclude their use in human food products, and thus brought into compliance with the law.

26478. Frozen eggs. (F.D.C. No. 43998. S. Nos. 71-261 P, 71-266 P.)

QUANTITY: 60 30-lb. cans at Collegedale, Tenn.

SHIPPED: 9-23-59, from Forest Park, Ga., by Superior Eggs, Inc.

LABEL IN PART: "Superior * * * Whole Eggs * * * Packed by Superior Eggs, Inc. Forest Park, Ga. * * * 869T 16251."

LIBELED: 12-18-59, E. Dist. Tenn.

CHARGE: 402(a) (3)—contained decomposed eggs when shipped.

DISPOSITION: 3-21-60. Consent—claimed by Superior Eggs, Inc. Segregated; 21 cans destroyed.

26479. Frozen eggs (2 seizure actions). (F.D.C. Nos. 43606, 43607. S. No. 63-989 P.)

QUANTITY: 28 30-lb. cans at Lynn, Mass., and 119 30-lb. cans at Danvers, Mass.

SHIPPED: The article was shipped in the form of shell eggs from various producers in Massachusetts, Connecticut, Vermont, Maine, and New Hampshire, sometime prior to 7-2-59, to Lynn, Mass., where the article was packed in the form of frozen eggs.

LIBELED: 10-19-59, Dist. Mass.

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

DISPOSITION: 2-11-60. Tobin's Egg Store, Lynn, Mass., having appeared as claimant and the libel actions having been consolidated, judgment of con-

demnation was entered and the court ordered that the product be released under bond to be brought into compliance with the law. The article was examined with the result that 141 30-lb. cans were found unfit and were denatured for tannery use.

FEEDS AND GRAINS

26480. Apple pomace silage. (F.D.C. No. 44250. S. No. 84-355 P.)

QUANTITY: 275 tons at Charles Town, W. Va.

SHIPPED: 10-1-59 and 11-15-59, from Winchester, Va., by National Fruit Product Co., Inc.

LIBELED: 2-26-60, N. Dist. W. Va.

CHARGE: 402(a)(2)—when shipped, the article contained an added poisonous and deleterious substance, DDT, which is unsafe within the meaning of 408 since the quantity of DDT contained on the article was greater than the tolerance fixed by the Secretary for such pesticide chemical on apples.

DISPOSITION: 3-31-60. Consent—claimed by John P. Burns, Jr., Charles Town, W. Va., and destroyed by spreading the article upon the owner's land in such a manner as to be kept inaccessible to livestock.

26481. Meat scraps. (F.D.C. No. 44064. S. No. 56-143 P.)

QUANTITY: 140 100-lb. bags at Tampa, Kans.

SHIPPED: 11-6-59, from Lincoln, Nebr., by Weeks Sales & Service, Inc.

LABEL IN PART: (Tag) "Black Hills Packing Co. Rapid City, South Dakota, Rushmore Meat Scraps * * * Crude Protein 50%."

RESULTS OF INVESTIGATION: Examination showed that the article contained approximately 47 percent protein.

LIBELED: 2-17-60, Dist. Kans.

CHARGE: 402(b)(2)—when shipped, a mixture of hair, bristle, stomach content, horn, hoof, and sand, had been substituted in part for meat scraps; and 403(a)—the label statement "Crude Protein 50%" was false and misleading.

DISPOSITION: 4-4-60. Default—destruction.

FISH AND SHELLFISH

26482. Frozen halibut. (F.D.C. No. 43904. S. No. 85-237 P.)

QUANTITY: 108 halibut fish, weighing a total of approximately 1,646 lbs., at New York, N.Y.

SHIPPED: From Nova Scotia.

RESULTS OF INVESTIGATION: The article was shipped unfrozen and subsequently frozen at New York, N.Y.

LIBELED: 11-20-59, S. Dist. N.Y.

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

DISPOSITION: 12-16-59. Default—destruction.

26483. Frozen haddock fillets. (F.D.C. No. 43644. S. No. 90-141 P.)

QUANTITY: 551 boxes, each containing 5 1-lb. cello-wrapped pkgs., at Boston, Mass.