

"Bearing in mind that our function in such a case is not to reverse the trial court unless the fact conclusions are clearly erroneous, we shall affirm in this instance. The findings were responsive to the questions involved. They were based upon consideration of a large amount of testimony. Whether we would agree with each one had we the initial responsibility is not the point here. The sustaining of the findings because not clearly erroneous is, of course, no foundation for a similar conclusion in cases presenting other questions of fact.

"The judgment of the district court will be affirmed."

On 12-10-62, the district court ordered that the article be restored to the claimant on 12-21-62, and that from that date the claimant should be in exclusive possession and control of the article and should bear all subsequently accruing costs for the storage of the article. It was further ordered that the libel of information filed on 1-26-59 be dismissed with prejudice but without costs. On 12-21-62, the article was delivered to the claimant.

29131. Deran thin mints. (F.D.C. No. 43281. S. No. 44-802 P.)

QUANTITY: 172 ctns., each containing 24 10-oz. boxes, at Atlanta, Ga.

SHIPPED: Between 3-5-59 and 4-13-59, from Cambridge, Mass., by Deran Confectionery Co., Inc.

LABEL IN PART: (Box) "Deran's Thin Mints * * * Chocolate Covered Deran Confectionery Co., Inc., Cambridge, Mass."

RESULTS OF INVESTIGATION: Examination showed that each box contained 28 round, chocolate-covered mints which were packed in a two-piece, rectangular cardboard box, the lower part of which was lined with corrugated paper and was separated into three equal parts by means of built-in, hollow, cardboard dividers, with a similar hollow construction at each end.

LIBELED: 6-25-59, N. Dist. Ga.; amended libel 9-18-59.

CHARGE: 403(d), when shipped, the container of the article was so filled as to be misleading, since the use of hollow dividers between each section of candy and a hollow divider at each end of the container utilized available space in the container so that the candy occupied only about 65 percent of the volume of a container of this size; such excess packaging material was unnecessary in the packaging of this article, and additional pieces of candy could be packed in the containers with no physical packaging difficulty.

DISPOSITION: On 7-22-59, Deran Confectionery Co., Inc., filed an answer denying that the article was misbranded and that the use of dividers was unnecessary in the packaging of the article; claimant also moved that the libel be dismissed.

On 9-18-59, the Government filed a motion to amend the libel and served written interrogatories on the defendants. On 12-10-59, the claimant's motion to dismiss was overruled and denied. On 12-14-59, an order for the release of samples to the Government and claimant was filed. On 8-12-62, claimant answered the interrogatories served by the Government. On 1-17-63, the court, with the consent of the Government and the claimant, entered an order which dismissed the action upon motion of the Government without prejudice to the Government's right to have the action reinstated after a final decision in a case entitled: "*United States of America v. 174 cases . . . of an article labeled in part: Delson Thin Mints Chocolate Covered,*" and which directed the marshal to retain the custody of the article until otherwise directed by the United States attorney. On 1-17-63, the libel having been dismissed and the claimant having failed to post bond or pay any costs, the court ordered that

the marshal should cause the article to be destroyed after 10 days' notice of the order to the claimant; and providing that the claimant should be entitled to the article upon payment of all costs or by posting a cost bond within 10 days. Thereafter, the article was destroyed.

29132. Candy. (F.D.C. No. 48918. S. Nos. 2-028 V, 2-038 V.)

INFORMATION FILED: 7-24-63, E Dist. S.C., against Imperial Candy Co., Inc., Cayce, S.C., and Charles E. Finley, president and treasurer.

SHIPPED: 10-17-62, from South Carolina to Georgia.

LABEL IN PART: (Pkg.) "Imperials PAT'S NOUGAT * * * NET WT. 1-OZ. OR OVER"; "Imperial's * * * COCONUT BAR 10¢ * * * NET WT. 2½ OZ. OR OVER."

CHARGE: 402(a)(3)—contained insects and insect parts; and 420(a)(4)—prepared and packed under insanitary conditions.

PLEA: Nolo contendere.

DISPOSITION: 10-1-63. Fine of \$500 or 6 months in jail against the defendants jointly.

29133. Candy. (F.D.C. No. 48203. S. Nos. 45-701 V, 45-704 V.)

INFORMATION FILED: 3-4-63, E. Dist. Ark., against Hoffman Candy Co., Inc., North Little Rock, Ark., and Joseph C. Hoffman, president.

SHIPPED: 9-14-62, from Arkansas to Tennessee.

LABEL IN PART: (Pkgs.) "Rainbow Slice 1 Oz. or Over [or "Crunch ⅞ Oz. or Over"] Hoffman Candy Company, North Little Rock, Arkansas."

CHARGE: 402(a)(3)—the Rainbow Slices contained insect fragments, the Crunch contained insects, insect fragments, and rodent hairs; and 402(a)(4)—prepared and packed under insanitary conditions.

PLEA: Guilty.

DISPOSITION: 6-24-63. Sentence of probation for 2 years.

29134. Candy. (F.D.C. No. 48546. S. Nos. 61-791 T, 6-602 V.)

INFORMATION FILED: 5-1-63, S. Dist. Fla., against Shenandoah Candies, Inc., Miami, Fla.

SHIPPED: 8-3-62 and 9-10-62, from Florida to Massachusetts.

LABEL IN PART: "Date Nut Coconut Tropical Treats Weight 8 Oz. Shenandoah Candies Miami, Florida."

CHARGE: 402(a)(3)—contained insects, insect parts, and rodent hairs; and 402(a)(4)—prepared and packed under insanitary conditions.

PLEA: Guilty.

DISPOSITION: 8-16-63. \$300 fine.

29135. Candy, flour, and cornmeal mix. (F.D.C. No. 48563. S. Nos. 47-079/82 T, 47-085/6 T, 47-091/3 T, 47-098 T.)

INFORMATION FILED: 9-25-63, W. Dist. Tenn., against Associated Grocers of Memphis, Inc., and Roy S. Carman, general manager.

ALLEGED VIOLATIONS: Between 3-29-62 and 7-28-62, while quantities of candy, flour, and cornmeal mix were being held for sale after shipment in interstate commerce, the defendants caused such articles to be held in a building accessible to insects and to be exposed to contamination by insects which acts resulted in the articles being adulterated.