

8-oz. pkgs. of hominy grits; 5 cases, each containing 30 lbs. of cream drops; and 7 cases, each containing 6 ctns., each ctn. containing 25 3-oz. bags; and 7 cases, each containing 24 1-lb. bags of popcorn, at Charlotte, N.C.

SHIPPED: Between 11-6-63 and 10-1-64, from Chattanooga, Tenn., Birmingham, Ala., and Milford, Ill.

RESULTS OF INVESTIGATION: All of the articles libeled were in the possession of Petrie Wholesalers, Inc., Charlotte, N.C., except the popcorn which had been delivered by them to a local dealer. Inspection of Petrie Wholesalers, Inc., disclosed that all of the articles had been held in an insect-infested warehouse.

LIBELED: 10-26-64, W. Dist. N.C.

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

DISPOSITION: 11-24-64. Default—delivered to a charitable institution for use as animal feed.

29924. **Unpopped popcorn.** (F.D.C. No. 50826. S. Nos. 4-957/8 A.)

QUANTITY: 100 bales, each containing 12 2-lb. bags, and 14 bales, each containing 24 1-lb. bags, at Lincolnton, N.C., in possession of Dixie Grocery Co.

SHIPPED: 8-25-64, from Greenville, S.C.

LIBELED: 11-16-64, W. Dist. N.C.

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

DISPOSITION: 1-4-65. Default—delivered to a charitable institution for use as animal feed.

CONFECTIONERY AND SIRUP

CONFECTIONERY*

29925. **Lik-M-Aid candy and Pixy Stix candy.** (F.D.C. No. 47664. S. Nos. 21-758/9 T, 22-308/9 T.)

QUANTITY: 104 cases, each containing 24 ctns., each ctn. containing 32 1-oz. packets of Lik-M-Aid candy; and 86 cases, each containing 24 display ctns., each ctn. containing 32 cellophane 22½-gram pkgs. of Pixy Stix candy, at Salt Lake City, Utah.

SHIPPED: Between 2-2-62 and 6-11-62, from St. Louis, Mo., by Sunline, Inc.

LABEL IN PART: (Packet-each section) "Lik-M-Aid Candy * * * Sunline, Inc., St. Louis, Mo. & Salt Lake City, Utah * * * Contains: Dextrose, Citric Acid, Artificial Color & Flavor"; and (case) "Pixy Stix 5 Flavors Cello Wrapped Candy Filled Fun Straws Sunline, Inc., St. Louis, Mo. Salt Lake City, Utah," and (ctn.) "Pixy Stix Candy Filled Fun Straws * * * Made and Guaranteed by Fruzola Co., St. Louis Mo. Salt Lake City, Utah * * * Ingredients: Dextrose, Citric Acid, Artificial Flavors and Colors."

RESULTS OF INVESTIGATION: Investigation showed that each Lik-M-Aid candy packet was perforated into five sections, each printed in a different color, each similarly labeled as above and each containing approximately 1/5th of an ounce of a powdered confection. Each Pixy Stix cellophane package

*See also No. 29923.

contained five items resembling soda straws and each containing approximately $\frac{1}{8}$ th of an ounce of powdered confection.

The quantity of contents statements were not shown on the label of the Lik-M-Aid candy; and the name and address of the manufacturer, quantity of contents and ingredients statements and declaration of artificial flavors and colors were stamped in blurred black ink on the cellophane package of Pixy Stix candy and was wholly or in part illegible.

LIBELED: 6-22-62, Dist. Utah; libel amended on or about 8-1-63.

CHARGE: Pixy Stix candy, 403(a)—when shipped, the statement on the article's carton label, namely, "Made * * * by Fruzola Co." was false or misleading as applied to the article which was not made by Fruzola Co., but was made by Sunline, Inc.; 403(e) (2)—the labeling of the article failed to bear an accurate statement of the quantity of contents in term of weight, measure, or numerical count, in that a number of the packages bore a statement of the quantity of contents in terms of metric weight and not in terms of avoirdupois ounce as provided by regulation; 403(f)—the information required to appear on the label under 403(e) (1) and (2), 403(i) (2), and 403(k), namely, the name and place of business of the manufacturer, an accurate statement of the quantity of contents, the common or usual name of each ingredient, and the declaration of artificial flavors and colors, was not prominently placed on the label with such conspicuousness (as compared with other words and statements on the label) and in such terms as to render such information likely to be read and understood by the ordinary individual under customary conditions of purchase and use, in that such required information was on some packages blurred and illegible and in that the information required by 403(e) (2) appeared on some packages in terms of metric weight rather than ounce avoirdupois as provided by regulation.

Lik-M-Aid candy, 403(e) (2)—when shipped, the article failed to bear a label containing a statement of the quantity of contents.

DISPOSITION: On 8-13-62, upon petition of the claimant, Sunline, Inc., of St. Louis, Mo., the case was transferred to the Eastern District of Illinois. On 5-22-63, the claimant filed an answer, denied that the articles were misbranded, denied that Lik-M-Aid candy as packaged was required to bear a statement of the weight of the contents and alleged that the packages of Lik-M-Aid candy were specifically exempted from stating the weight of the packages or the number of packages by regulation (21 CFR 1.8(m)).

Thereafter, the Government moved to amend the libel and served interrogatories upon the claimant. On 8-16-63, Sunline, Inc., served an answer to the Government's amended libel. On 8-16-63, the claimant also served objections to some of the Government's interrogatories and answers to some of the Government's interrogatories. On 10-30-63, the Government filed a motion to compel further and more complete answers to written interrogatories.

On 6-5-64, upon consideration of the defendant's objections and the Government's motion to compel further and more complete answers to written interrogatories, the court rendered the following opinion:

JUERGENS, District Judge: "For consideration is defendant's objections to certain interrogatories and libelant's motion to compel further and more complete answers to written interrogatories.

"Defendant objects to interrogatories numbered 1, 2, 9, 10, 11, 49, 50, 51, 52, 53, 54 and 55 for the reason that they are too general and so vague that they cannot be intelligently answered.

"Defendant objects to interrogatory numbered 56 because it seeks the work product of defendant's attorneys and confidential and privileged information.

"Interrogatory numbered 1 reads as follows :

'1. Does claimant admit that Exhibit A is a true and accurate copy of Lik-M-Aid Candy packages?'

"Interrogatory numbered 2 seeks the same information concerning Exhibit B and refers to Lik-M-Aid cartons.

"Interrogatories numbered 9, 10 and 11 are as follows :

'9. Does claimant admit that the only price marked on either the Lik-M-Aid package or carton is 5¢?

'10. Does claimant admit that the only statement of contents on the carton is 32 count?'

'11. If the answers to the preceding two interrogatories are any but unqualified affirmative responses, state in full what claimant contends the true facts to be and the name and address of the person having personal knowledge as to the truth of such responses.'

"Interrogatories numbered 49 through 55 ask :

'49. Does claimant admit that the only declaration of manufacturer or distributor appearing on the Pixy Stix carton is :

FRUZOLA CO., St. Louis, Mo., Salt Lake City, Utah In Canada by
O-PEE-CHEE CO., LTD., London, Ont.

'50. Does claimant admit that there is no net weight of contents declaration on the carton of Pixy Stix?'

'51. If the answers to the preceding two interrogatories are any but unqualified affirmative responses, state in full what the claimant contends the true facts to be and the name and address of the person having personal knowledge as to the truth of such responses.'

'52. Does claimant admit that the article Pixy Stix is in the custody of the United States Marshal?'

'53. Does claimant admit that the article Pixy Stix was in the custody of the claimant at the time it was seized?'

'54. Does claimant admit that the article Pixy Stix is located within the State of Utah in the jurisdiction of the District Court for the District of Utah?'

'55. If the answers to the preceding three interrogatories are any but unqualified affirmative responses, state in full what the claimant alleges the true facts to be.'

"Interrogatory numbered 56 asks the name and address of all witnesses claimant intends to call at the trial. Such a request is improper. The libelant may obtain the names and addresses of all persons having knowledge of the facts surrounding the circumstances involved, but to ask the opposing party to identify what witnesses it will call or will not call is not proper and the objection will be sustained.

"In support of the validity and propriety of the interrogatories, libelant sets out in its brief what purports to be an explanation of the information sought by the various interrogatories.

"Together with the interrogatories libelant presents several exhibits. Interrogatory numbered 9 asks an admission that the only price marked on Lik-M-Aid packages or cartons is 5¢. The exhibits show to the contrary.

"Interrogatories 1, 2, 9, 10, 11, and 49 through 55 fail to identify the packages or cartons referred to therein with sufficient completeness and accuracy to permit unqualified answers and are accordingly so deficient that answers should not be required.

"While courts should be liberal in permitting discovery and should follow a liberal policy in discovery procedures, yet interrogatories should be couched in such language that the party answering them is not required to go into elaborate detail to properly restrict its answer so as to provide the necessary information sought without jeopardizing its position by a short brief answer. Here it may well be that the interrogatories might be answered by defendant supplying a number of exceptions to which the answer would not apply. This, however, it should not be required to do. By presenting proper interrogatories the inquirer can obtain forthright direct answers without the necessity of detailed explanation.

"The information sought by the libelant may be proper meat for interrogatories and should be answered if interrogatories are worded in the proper form. Here, however, the interrogatories have not been so worded and the objections will be sustained.

"Libelant seeks more complete answer to interrogatories numbered 5, 8 and 19.

"These interrogatories read :

'5. If any answer to the preceding four interrogatories is any but an unqualified affirmative response, state in detail what claimant contends the true facts to be.

'8. If the answers to the preceding two interrogatories are any but unqualified affirmative responses, state in full what claimant contends the true facts to be and the name and address of the person having personal knowledge as to the truth of such responses.

'19. If the answer to the preceding interrogatory is any but an unqualified affirmative response, state in detail what claimant alleges the true facts to be.'

"In answering interrogatory numbered 5 defendant states that Exhibits C and D are not a true and accurate copy of the carton or package of Lik-M-Aid used prior to the designed carton under seizure.

"In answering interrogatory numbered 8 defendant refers back to its answer to interrogatory numbered 7, which is :

'Yes, however, the carton is designed simply as a display carton and not to be sold as a unit to the consumer.'

"In answering interrogatory numbered 19 defendant states :

'Strips are sold with three or four envelopes.'

"In its brief libelant states that the claimant should identify the packages and cartons as to the period of time they were in use as requested by its interrogatory; that claimant should state as called for in the interrogatories the name and address of the person having personal knowledge of facts; and that by interrogatory numbered 19 it seeks to ascertain the quantity of contents in terms of weight.

"If libelant desires to have the information it seeks as explained in its brief concerning interrogatories numbered 5, 8 and 19, it could have asked interrogatories which would require the specified information rather than in the manner in which it did, wherein it asked that the defendant state the true facts in detail. In answering such an interrogatory a great burden is placed upon the answering party which could so easily be avoided if the specific information desired had been set out.

"If the libelant seeks additional information as shown in its brief concerning interrogatories numbered 5, 8 and 19, it could obtain such information by submitting interrogatories asking specifically the information it apparently seeks. Its motion for more complete answers to interrogatories numbered 5, 8 and 19 will be denied."

On 12-21-64, a consent decree of condemnation was filed which permitted the articles to be released under bond to the claimant for shipment or delivery at its own expense to an organization agreeable to the Food and Drug Administration for charitable distribution of the article and not for resale, with the understanding that the organization receiving the goods be informed that the goods were not labeled with the information required by the Federal Food, Drug, and Cosmetic Act.

29926. Stuckey's Crunch (candy). (F.D.C. No. 49917. S. No. 704 A.)

QUANTITY: 198 cans at Apopka, Fla.

SHIPPED: 1-7-64, from Eastman, Ga., by Stuckey's, Inc.

LABEL IN PART: (Can) "Stuckey's Old Fashioned nut-butter crunch * * * 12 Ounces Net * * * Ingredients: * * * Stuckey's Eastman, Georgia."

LIBELED: 3-16-64, M. Dist. Fla.

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

DISPOSITION: 6-10-64. Default—destruction.