

On March 24, 1942, after hearing on the motions filed, the court ordered the case removed to the District Court of the United States for the Southern District of California at Los Angeles. A motion was filed by the United States Attorney for the Southern District of California to remand the case to the Middle District of Tennessee, which motion was heard on June 8, 1942, and was denied by the court without opinion.

On August 17, 1942, the United States attorney for the Southern District of California filed an amended libel because of the fact that a larger amount of the product had been seized than was covered by the original libel. The amended libel covered 24 12-ounce bottles and 116 1-quart bottles of Nutri-Tonic Oil Permanent Wave Solution, Extra Strength, 61 12-ounce bottles of Waval Nutri-Tonic Oil Permanent Wave Solution Protein-ized, Extra Strength, 140 1-quart bottles of Waval Nutri-Tonic Oil Permanent Wave Solution, Protein-ized, Extra Strength, and 84 bottles of Waval Nutri-Tonic Wave Set. The amended libel also covered 59 kits labeled in part: "Waval Nutri-Tonic Oil Permanent Wave Solution Extra Strength"; containing in each kit 1 12-ounce bottle of the cosmetic, 100 pads, and 2 circulars, but was later dismissed with respect to the kits and contents.

The libel, as amended, alleged that the designation "Nutri-Tonic Oil," with respect to portions, and the statement, "Nutri-Tonic," with respect to the remainder, were false and misleading since in the former instance the product was not a nutrient, tonic, or an oil, and in the latter it was not a nutrient or a tonic.

On January 5, 1943, the case came on for trial before the court and a jury. Evidence was introduced on behalf of the Government and the claimant, the trial concluding on the same day with the return of a verdict for the claimant.

On January 7, 1943, a decree was entered ordering the product returned to the claimant.

106. Misbranding of Eff-Remin Dentifrice. U. S. v. 34 Packages and 11 Packages of Eff-Remin Dentifrice. Default decree of condemnation and destruction. (F. D. C. No. 7455. Sample No. 98285-E.)

On May 4, 1942, the United States attorney for the District of Massachusetts filed a libel against 34 packages, each containing 150 grams, and 11 packages, each containing 300 grams, of Eff-Remin Dentifrice at Boston, Mass., alleging that the article had been shipped in interstate commerce on or about April 22, 1942, by Goodrich & Love, from New York, N. Y.; and charging that it was misbranded. Analysis of samples of the article showed that it consisted essentially of tartaric acid and salt, and compounds of calcium, magnesium, and sodium, including carbonates and sulfates, flavored with volatile oils and sweetened with saccharin.

The article was alleged to be misbranded in that the statements in the labeling, (tin container) "Rub powder directly on gum margins or place some powder on thin layer of moist cotton-wool and apply to affected areas," and (circular) "'Eff-Remin' Dentifrice is an effervescent remineralizing powder. It is of value in reducing sensitivity, for controlling decalcification due to erosion or dental caries; for 'soft' teeth, * * * apply to affected areas," were false and misleading since they represented and suggested that the article, when applied to affected areas, would be of value in reducing sensitivity and in controlling decalcification due to erosion or dental caries, and for "soft" teeth, whereas, when applied to affected areas, it was of no value for such purposes.

The article was also alleged to be misbranded in violation of the provisions of the law applicable to drugs, as reported in drugs and devices notices of judgment, No. 781.

On June 15, 1942, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

107. Misbranding of Howard's Buttermilk Cream. U. S. v. 109 Dozen Packages of Howard's Buttermilk Cream. Decree of condemnation. Product ordered released under bond to be relabeled. (F. D. C. No. 7889. Sample No. 95206-E.)

On July 14, 1942, the United States attorney for the Northern District of California filed a libel (amended August 10, 1942) against 109 dozen packages of Howard's Buttermilk Cream at San Francisco, Calif., alleging that the article had been shipped in interstate commerce on or about April 24, 1942, by the Howard Bros. Chemical Co. from Buffalo, N. Y.; and charging that it was misbranded.

Analysis of a sample of the article showed that it consisted essentially of stearic acid, water, buttermilk, and a small amount of borax. The contents of the tube were found to weigh approximately $2\frac{1}{2}$ ounces avoirdupois.

The article was alleged to be misbranded in that certain statements in a leaflet entitled "Howard's Buttermilk Cream Soap," and in a leaflet entitled "How to Beautify With Howard's Butybring Products Howard's Buttermilk Cream," enclosed in the carton containing the article, represented and suggested that it would be effective to clear the skin and would clear and revivify a neglected or impoverished skin; that it would smooth wrinkles and make old, hardened, coarse skin become fresh, soft, and youthful looking; that it would keep the skin in perfect condition; that it would smooth and clear dull and lifeless complexions; and that it would build up the throat, were false and misleading since the article would not be effective for such purposes. It was alleged to be misbranded further in that it was in package form and its label failed to bear an accurate statement of the quantity of the contents, since the statement on the carton, "Net Wgt. $1\frac{3}{4}$ Oz.," was incorrect.

On November 21, 1942, the Howard Bros. Chemical Co. having appeared as claimant, judgment of condemnation was entered and the product was ordered released under bond, conditioned that it be relabeled by correcting the carton labeling and removing the enclosed leaflets, under the supervision of the Food and Drug Administration.

108. Misbranding of Vita-Ray Vitamin Cream. U. S. v. 86 Jars, 12 Jars, and 8 Jars of "Vita-Ray Vitamin Cream." Consent decree of condemnation. Product ordered delivered to a public institution. (F. D. C. No. 4475. Sample No. 56763-B.)

On April 25, 1941, the United States attorney for the Southern District of New York filed a libel against 86 4-ounce jars, 12 8-ounce jars, and 8 16-ounce jars of Vita-Ray Vitamin Cream at New York, N. Y., alleging that the article had been shipped in interstate commerce within the period from on or about January 28 to April 2, 1941, by the Vita Ray Corporation from Lowell, Mass.; and charging that it was misbranded.

Analysis of a sample of the article showed that it consisted essentially of mineral oil and waxes, emulsified with water by means of borax, and lightly perfumed. It was essentially a perfumed cold cream. Biological examination showed that it contained 5 U. S. P. units of vitamin D per gram.

The article was alleged to be misbranded in that the following statements, "Vita-Ray Sun-Ray VITAMIN CREAM * * * Just as vitamins help make a healthy body, so they help make a beautiful skin. Vita-Ray Cream brings directly to your skin Vitamins A and D and gives the skin a soft, radiant smoothness," were false and misleading since they represented that the article was of superior cosmetic value because of the presence of vitamins, whereas the presence of vitamins would not beneficially affect its cosmetic value; and since they represented that it would be efficacious for the purposes recommended, whereas it would not be efficacious for such purposes.

On October 16, 1942, the sole intervenor having withdrawn its answer and consented to the entry of a decree, judgment of condemnation was entered and it was ordered that the product be delivered to a public institution for use of the inmates.

109. Misbranding of corrective texture cream and revitalized formula cream. U. S. v. 118 Jars and 89 Jars of Corrective Texture Cream and 630 Jars and 421 Jars of Revitalized Formula Cream. Consent decree of condemnation. Product ordered released under bond for relabeling. (F. D. C. No. 13004. Sample Nos. 51098-F, 51099-F.)

On July 20, 1944, the United States attorney for the Eastern District of Pennsylvania filed a libel against 118 jars, each containing $2\frac{1}{2}$ ounces, and 89 jars, each containing $7\frac{1}{2}$ ounces, of corrective texture cream, and 630 jars, each containing $2\frac{1}{2}$ ounces, and 421 jars, each containing $7\frac{1}{2}$ ounces, of revitalized formula cream at Philadelphia, Pa., alleging that the articles had been shipped by the Florita Laboratories, Inc., from New York, N. Y., within the period from on or about November 10, 1943, to June 15, 1944; and charging that the articles were misbranded. The articles were labeled in part: (Jars) "Madame Olga Pataky Corrective Texture Cream [or "A re-vitalized formula"]."

Analyses showed that both articles consisted essentially of petrolatum, lanolin, and water, with small amounts of borax and perfume.

The corrective texture cream was alleged to be misbranded in that the statements appearing on its label, "Corrective Texture Cream * * * Corrective