

judgment. We agree with this statement and have examined the facts upon which the regulation was issued. The evidence as to the poisonous and pernicious effect liable to be caused by the application of any coal-tar color to the orbital area was not controverted by any direct and positive testimony of record. At the hearing on the proposed regulation for listing of colors suitable for use, the administrator found that coal-tar colors are not harmless for use in preparations applied in the orbital area, which includes the eyebrows, the eyelids, the eyelashes, the conjunctival sac of the eye, the eyeballs, and the soft areolar tissue that lies within the perimeter of the infra-orbital ridge. He found that the application of coal-tar colors to this area may cause serious injury and even loss of sight. Thereupon, he issued the regulation that no coal-tar color should be certified for use in a product to be applied in the area of the eye. Such quasi-legislative action was not arbitrary or capricious but was the reasonable exercise of a sound judgment and discretion.

AFFIRMED."

SIBLEY, *Circuit Judge*, concurring: "I agree to the judgment, but think it a more direct and satisfactory thing to say simply that the Statute, 21 U. S. C. A., § 361 (e), positively declares that a cosmetic is adulterated if it is not a hair dye and bears or contains a coal tar color other than one from a batch that has been certified according to regulations as provided by § 364; and that this cosmetic is not a hair dye and does contain a coal tar color not from a certified batch. It cannot be sold and may be forfeited by the terms of the statute alone. If the Administrator ought under § 364 to make a list of harmless coal tar colors, and ought to include this one, some procedure must be resorted to other than to sell the cosmetic in defiance of the statute."

114. Adulteration of Nu-Charme Perfected Brow Tint. U. S. v. 14 Cartons of Nu-Charme Perfected Brow Tint. Default decree of condemnation and destruction. (F. D. C. No. 13799. Sample No. 61816-F.)

LIBEL FILED: On or about September 19, 1944, Eastern District of Texas.

ALLEGED SHIPMENT: On or about June 8, 1944, by the Nu-Charme Laboratories, Texarkana, Ark.-Tex.

PRODUCT: 14 cartons, each containing, among other items, 4 bottles of solutions labeled "Nu-Charme No. 1," "Nu-Charme No. 2," "Nu-Charme No. 4," and "Nu-Charme No. 5" and a package of a powder labeled "Nu-Charme No. 3," at Kilgore, Tex.

Examination showed that Nu-Charme No. 1 consisted essentially of 4 percent paraphenylenediamine dissolved in water; that Nu-Charme No. 2 was a solution of hydrogen peroxide; that Nu-Charme No. 3 consisted of magnesium oxide; that Nu-Charme No. 4 was a solution of boric acid; and that Nu-Charme No. 5 was light mineral oil.

LIBEL IN PART: "Nu-Charme Perfected Brow Tint Jet Black."

NATURE OF CHARGE: Adulteration, Section 601 (a), the product contained a poisonous or deleterious substance, paraphenylenediamine, which might have rendered it injurious to users under the following conditions of use prescribed in the labeling: "Use Glass, China, or Wooden Dish for Mixing Fifteen (15) drops Solution No. 1 with Fifteen (15) drops Solution No. 2; to this add enough Powder No. 3 to make thick paste. Be sure paste will not run. Application Using small clean orange stick apply dye mixture to lashes . . . then to brows. Leave mixture on until dry . . . 10 to 15 minutes. * * * Do Not Let Patron Open Eyes Until All of Mixture Has Been Removed."

DISPOSITION: October 25, 1944. No claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

115. Adulteration of Kix Kinks—Hair Straiter. U. S. v. Dorosy, Inc., and Dorothy Herrmann. Pleas of guilty. Each defendant fined \$300. (F. D. C. No. 7741. Sample Nos. 66337-E, 71260-E, 77883-E, 87596-E, 87600-E, 92578-E.)

INFORMATION FILED: November 15, 1944, Southern District of New York, against Dorosy, Inc., New York, N. Y., and Dorothy Herrmann, president of the corporation.

ALLEGED SHIPMENT: Between the approximate dates of April 6 and June 13, 1942, from the State of New York into the States of Illinois, Ohio, New Jersey, Maryland, and California, and the District of Columbia.

PRODUCT: Analysis of the product showed that it consisted essentially of free al-