

726. Action to enjoin and restrain distribution of Slend-R-Form, a misbranded candy. U. S. v. Riley Products, Inc., and George C. Riley. Judgment ordering permanent injunction. (Inj. No. 15.)

On February 2, 1942, the United States attorney for the Northern District of Illinois filed a complaint against Riley Products, Inc., a corporation, and George C. Riley, an officer of said corporation, alleging that the defendants for several months past, and more particularly on or about October 28, 1940, had been introducing and delivering for introduction in interstate commerce, a product consisting of a drug and a food, labeled in part "Slend-R-Form the New Candy," alleging that in form and appearance it was like ordinary caramel candy, that it was packed, distributed, and sold by the defendants in cardboard cartons which cartons and smaller cartons contained therein and the accompanying circulars had printed thereon statements referring to its efficacy and the quantity to be consumed.

The complaint alleged further that the labeling of the article was false and misleading since it created the impression in the minds of the purchaser that it was a reducing agent and that when consumed in the manner and in the quantity recommended in the labeling it would be of substantial value in reducing body weight, whereas it contained no ingredients or combination of ingredients capable of producing the effects claimed for it as a reducing agent when consumed in accordance with the directions contained in the labeling.

The complaint alleged further that the defendants, unless restrained by the court, would continue to introduce and deliver for introduction in interstate commerce the said article or a similar article of drug or food misbranded in the manner aforesaid, and prayed that they be permanently enjoined and restrained from doing so and further prayed that a temporary restraining order and preliminary injunction issue. On the same date, the United States attorney filed a motion for an order to show cause why the defendants should not be enjoined and restrained during pendency of the action.

On February 6, 1942, the court entered a preliminary injunction against the defendants pursuant to the prayer contained in the complaint.

On April 10, 1942, the cause having been called for a hearing, judgment was entered permanently enjoining and restraining Riley Products, Inc., and George C. Riley, their agents, employees, and representatives and all others acting by or under their direction or authority or in active concert or participation with them from introducing or delivering for introduction in interstate commerce, the product labeled in part "Slend-R-Form, the New Candy" or a similar article of drug or food similarly labeled. It was provided further that the United States of America recover the costs of the action.

727. Misbranding of Bronchi-Lyptus. U. S. v. Mrs. Millie R. Binz, Mrs. Maude F. Boynton, and Ralph H. Boynton (Bronchi-Lyptus Laboratory). Pleas of nolo contendere. Imposition of sentences suspended and defendants placed on probation for 1 year. (F. D. C. No. 5489. Sample No. 32653-E.)

On October 27, 1941, the United States attorney for the Southern District of California filed an information against Mrs. Millie R. Binz, Mrs. Maude F. Boynton, and Ralph H. Boynton, copartners trading as Bronchi-Lyptus Laboratory at Los Angeles, Calif., alleging shipment on or about September 3, 1940, from the State of California into the State of Arizona of a number of packages, each containing a number of bottles enclosed in cartons, and a number of sample vials, of Bronchi-Lyptus which was misbranded.

Analyses of samples of the product showed that it consisted essentially of oil of eucalyptus, a gum, glycerin, sugar, and water.

The article was alleged to be misbranded in that the name "Bronchi-Lyptus," and certain statements in the labeling which represented and suggested that the article was efficacious in the treatment of affections of the bronchi, would relieve inflamed tissues and soothe the mucous membrane, would be efficacious in the treatment of all throat irritations, would relieve night attacks of spasmodic croup or coughing almost immediately; that it was a treatment accepted by all nose and throat specialists and was highly efficacious in assisting the delicate organs of the throat to throw off conditions that might lead to serious affections, would assist nature in its efforts to bring about recovery from coughs and colds, would provide relief in chronic conditions of the throat or lungs, and would aid one in recovering from such conditions; and that it would correct fermentation in the stomach, were false and misleading since it would not be efficacious for such purposes. The article contained in the sample vial was alleged to be misbranded further in that its label did not bear an accurate statement of the quantity of the contents.

On November 30, 1941, the defendants were arraigned and entered pleas of not guilty. On April 21, 1942, the defendants moved for an order requiring greater particularity in certain respects, particularly whether the Government intended to introduce evidence that the word "Bronchi-Lyptus" constituted misbranding, in what respect this word violated the law, and in what respect persons reading the article would be led to believe that it was a competent treatment for all chronic conditions of bronchial and nasal passages. On May 4, 1942, the defendants' motion for a bill of particulars came before the court and the court denied the motion announcing as grounds for such denial, first, that the name "Bronchi-Lyptus" was not misleading and; second, that assuming that it might have been misleading, the information contained no direct averment as to how or in what manner the name could be misleading. Thereupon the defendants changed their pleas of not guilty to pleas of nolo contendere, and the court ordered that the imposition of sentences be suspended and that the defendants be placed on probation for 1 year.

728. Misbranding of Gid Granules. U. S. v. Eberly-Williams Manufacturing Co. and Lawrence M. Williams. Pleas of guilty. Fine, \$250 and costs. (F. D. C. No. 5534. Sample Nos. 36782-E, 36783-E.)

The labeling of a portion of Gid Granules No. 1 (in sample envelopes) failed to bear adequate directions for use and was objectionable in other respects as indicated hereinafter. That of the remainder, in addition to bearing false and misleading curative claims, falsely represented that it was not a laxative drug.

On February 27, 1942, the United States attorney for the Northern District of Illinois filed an information against the Eberly-Williams Manufacturing Co., a corporation, Chicago, Ill., and Lawrence M. Williams, alleging shipment within the period from on or about April 9 to on or about April 17, 1941, from the State of Illinois into the State of Massachusetts of quantities of Gid Granules No. 1 and Gid Granules No. 2, and a number of sample envelopes containing Gid Granules No. 1, which were misbranded.

Analyses showed that Gid Granules No. 1 consisted essentially of the mucilaginous portion of psyllium seed, karaya gum, sodium bicarbonate, calcium carbonate, and sugar; and that Gid Granules No. 2 consisted essentially of the mucilaginous portion of psyllium seed, karaya gum, yeast, and sugar.

Both articles were alleged to be misbranded in that the statements on the packages and cartons, (No. 1) "are scientifically prepared to be of effective value in the treatment of minor irritations and inflammations of the stomach and upper intestines" and (No. 2) "are scientifically prepared to be of effective value in the treatment of minor irritations and inflammations of the lower intestine and colon, and in spastic * * * constipation," and those in an accompanying circular, were false and misleading since they represented that the articles would be efficacious in the treatment of minor irritations and inflammations of the lower intestine and colon and in spastic constipation; that they were appropriate and effective treatments for stomach troubles, intestinal disorders, indigestion, diarrhea, sore stomach, bad breath, gnawing pains, gas pains, dyspepsia, biliousness, headaches, sleeplessness, intestinal stasis, auto-intoxication, colitis, colonic irritation, liver and gall deficiencies (not due to infection), intestinal trouble, lesions, stasis, toxemia, putrefaction, flatulence, stomach ulcer, or tuberculosis or cancer of the gastric tract, sore and lacerated ulcers of the upper parts of the gastric tract, the stomach, duodenum, jejunum, small intestine, troubles located in the lower intestines, cecum, ascending and transverse colon, sigmoid, and rectum; whereas they would not be efficacious for such purposes.

They were alleged to be misbranded further in that the statements "Gid, a mucinoid from cereal * * * it is significant that Gid supplies elements that Nature intended to be in man's natural food, but which have been largely lost in the refinement of food processing, Gid is for that reason essentially a food supplement. Certainly it is not a drug or a medicine in the ordinary sense of the word, * * * this * * * food supplement. Gid is not a laxative or cathartic. It has little or no such action. Its help is altogether different. Those who have had to depend on drug or oil laxatives will find Gid a delightful comfort," appearing in the labeling, were false and misleading since the articles were not prepared from a cereal, would not supply elements that nature intended to be in man's natural food but which had been largely lost in the refinement of food processing, they were not food supplements but were drugs in the ordinary sense of the word, and were laxative or cathartic drugs.

The article contained in the sample envelopes was alleged to be misbranded further (1) in that it was in package form and did not bear a label containing