The article was also charged to be misbranded under the provisions of the law applicable to foods as reported in F. N. J. No. 4488.

On October 10, 1942, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

820. Adulteration and misbranding of nicotinic acid amide. U. S. v. 57 Bottles and 314 Bottles of Nicotinic Acid Amide. Default decrees of condemnation. Product ordered relabeled and delivered to State hospitals. (F. D. C. No. 8069, 8099. Sample Nos. 28408–F, 29121–F, 29131–F.)

On August 10 and 12, 1942, the United States attorneys for the Northern and Southern District of Georgia filed libels against 57 bottles and 314 bottles of nicotinic acid amide at Atlanta and Savannah, Ga., alleging that the article had been shipped in interstate commerce on or about July 1 and 24, 1942, by Schieffelin & Co. from New York, N. Y. The article was labeled in part: "Nicotinic Acid Amide."

The article was alleged to be adulterated in that nicotinic acid had been substituted in whole or in part for nicotinic acid amide.

It was alleged to be misbranded in that the declaration on the label "Nicotinic Acid Amide" was false and misleading, and in that it was offered for sale under the name of another drug.

On September 15 and December 21, 1942, no claimant having appeared, judgments of condemnation were entered and the courts ordered that the article be delivered to the Florida State Hospital and to a State hospital at Midgeville, Ga., after it had been relabeled under the supervision of the Food and Drug Administration.

DRUGS ACTIONABLE BECAUSE OF FALSE AND MISLEADING CLAIMS[4]

DRUGS FOR HUMAN USE

821. Action to restrain interstate shipments of Catalyn and other drugs. U. S. v. Royal Lee (Vitamin Products Co.). Permanent injunction granted. (Inj. No. 12.)

On June 19, 1941, the United States attorney for the Eastern District of Wisconsin filed a complaint against Royal Lee, trading as Vitamin Products Co., Elm Grove, Wis., alleging: (1) That the defendant was engaged in the manufacture, processing, and packing of vitamin and mineral products at Milwaukee, Wis., for introduction and delivery for introduction, distribution, and sale in interstate commerce under the firm name Vitamin Products Co. (2) That in connection with such business the defendant had designated, appointed, directed, and managed agents and distributors located in various cities in the United States and Canada and was continuing to do so. (3) That the following products, Catalyn, also known as V-P No. 710 Vitamin Tablets; V-P Vitamin A Complex, also known as V-P No. 711 Vitamin Tablets; V-P Vitamin B complex, also known as V-P No. 712 Vitamin Tablets; V-P Vitamin C Complex, also known as V-P No. 713 Vitamin Tablets; V-P Vitamin D Complex, also known as V-P No. 714 Vitamin Tablets; V-P Vitamin F Complex, also known as V-P No. 716 Vitamin Tablets; V-P Vitamin G Complex, also known as V-P No. 717 Tablets; V-P Phosphate, also known as V-P No. 718 Liquid; Cerol, also known as V-P No. 719 Vitamin Tablets; V-P Organic Mineral Tablets, also known as V-P No. 721 Mineral Tablets; and Cerodyn, had been manufactured, processed, and packed by the defendant at Milwaukee, Wis., and had been and were being introduced and delivered for introduction into interstate commerce by the defendant at Milwaukee, Wis., to his agents and distributors for sale, were being sold to the public, and remained in interstate commerce under the direction and control of the defendant.

The complaint alleged further that the product "Catalyn," also known as V-P No. 710 Vitamin Tablets, was fabricated from more than two active ingredients, namely, wheat flour, wheat bran, crystalline milk sugar, powdered rice bran, powdered carrots, and glandular material; that the product V-P Vitamin A Complex, also known as V-P No. 711 Vitamin Tablets, was fabricated from more than two active ingredients, namely, wheat starch and tissues, rice bran, root tissues resmbling those of dried carrot, milk sugar, and animal tissues suggestive of glandular material; that the product V-P Vitamin B Complex, also known as V-P No. 712 Vitamin Tablets, was fabricated from more than two active ingredients, namely, wheat tissues and starch, rice bran, animal tissues apparently from

[4] See also Nos. 801, 805–809, 811–820.

a glandular source, milk sugar, root tissues resembling those from carrot, and apparently a yeast by-product; that the product V-P Vitamin C Complex, also known as V-P No. 713 Vitamin Tablets, was fabricated from more than two active ingredients, namely, wheat starch and tissues, milk sugar, rice bran, animal tissues closely resembling glandular material, and material of the nature of small droplets of a light green color suggesting chlorophyl origin; that the product V-P Vitamin D Complex, also known as V-P No. 714 Vitamin Tablets, was fabricated from more than two active ingredients, namely, crystalline calcium lactate, crystalline milk sugar, and material closely resembling calcium glycerophosphate; that the product V-P Vitamin F Complex, also known as V-P No. 716 Vitamin Tablets, was fabricated from more than two active ingredients, namely, wheat bran, starchy material, rice bran, animal tissues from glandular source, and occasional alfalfa hairs; that the product V-P Vitamin G Complex, also known as V-P No. 717 Vitamin Tablets, was fabricated from more than two active ingredients, namely, crystalline milk sugar, wheat starch and wheat tissues, and animal tissues apparently from a glandular source; and charged that the said products were misbranded in that their labels failed to bear the common or usual name of their active ingredients.

The complant alleged further (1) that prior to February 8, 1939, the defendant manufactured, processed, and packed, and introduced and delivered for introduction into interstate commerce, the product known as Catalyn; (2) that labels and circulars packed with the product, prior to that date, bore false and misleading claims and representations as to its therapeutic value in the treatment of human ailments and diseases; (3) that on February 8, 1939, in the District Court for the Western District of Wisconsin, the defendant was convicted of violation of the Food and Drugs Act of 1906 in that he had introduced into interstate commerce a quantity of Catalyn which was misbranded by reason of false and fraudulent therapeutic claims for it; and (4) that since February 8, 1939, the defendant had removed from the labels of his product Catalyn all claims and representations therefor of therapeutic value in the treatment of human ailments and diseases, and since that date none of the other above-mentioned products had contained, either on the labels of the products or packages or in circulars enclosed therewith, any direct statement or representation of therapeutic value for the products in the treatment of human ailments and diseases.

The complaint alleged further (paragraph 15) that since February 8, 1939, the defendant had written and caused to be written and printed at Milwaukee, Wis., various circulars, pamphlets, booklets, and other literature relative to the articles, wherein and whereby the defendant had and was representing that they were efficacious in the cure, prevention, and treatment of a wide variety of human diseases and ailments.

Paragraphs 16 to 22 of the complaint charged that the defendant by means of the said circulars, pamphlets, booklets, and other literature had, and was representing (1) that the products when taken individually or collectively as prescribed, recommended, or suggested in the labeling would cure, prevent, and constitute an adequate treatment for human diseases such as pneumonia, tuberculosis, influenza, colds, whooping cough, measles, and mumps, which representations were false and misleading since such diseases are caused by infection with germs or viruses and not by a deficiency of vitamins or minerals, and no vitamin or mineral, or any combination thereof, or any product or combination of products manufacturerd by the defendant was capable of curing, preventing, or constituting an adequate treatment for any of such diseases: (2) that representations that such products would cure, prevent and constitute an adequate treatment for puerperal sepsis, infection of ear, infections of genito-urinary tract, infections of mucous tract, infections of gastro-intestinal tract, infection of respiratory tract, infections of sinuses, focal infections, and infectious diseases, were false and misleading since no mineral or vitamin or combination thereof nor any product or combination of products above-mentioned manufactured by the defendant, was capable of curing, preventing, or constituting an adequate treatment for any such diseases; (3) that representations that they would cure, prevent, or constitute an adequate treatment for high blood pressure, low blood pressure, overweight, and underweight, were false and misleading since no substance or combination of substances would correct or constitute a cure, preventive, or adequate treatment for both high blood pressure and low blood pressure, overweight and underweight; (4) that representations that they would cure, prevent, and constitute an adequate treatment for arteriosclerosis, high blood pressure, aortic aneurism, aortic insufficiency, valve leakage,

coronary occlusion, coronary thrombosis, or dementia, were false and misleading since such diseases are almost always accompanied by irreparable anatomical changes that are incurable and for which no substance or combination of substances, including minerals, and/or vitamins, or a product or any combination of products manufactured by the defendant would constitute an adequate treatment, preventive, or cure; (5) that representations that they would cure, prevent, and constitute an adequate treatment for arthritis, hemorrhagic conditions of the urine, albuminuria, heart disorders, menstrual and ovarian disorders, Bright's disease, leg ulcers, anemia, wasting of muscles, paralysis, muscular weakness, chronic diseases, amenorrhea, colitis, cystitis, children's diseases, women's diseases, liver disorders, dysmenorrhea, eczema, gall-bladder disease, gastritis, eye disorders, and cardiovascular disturbances, were false and misleading since such diseases have a multiplicity of causes and no mineral or vitamin or combination thereof, or any product of combination of the products of the defendant, would constitute an adequate or competent treatment for such diseases and conditions; (6) that representations that the drugs would cure, prevent, and constitute an adequate treatment for acne, acute or chronic alcoholism, angina pectoris, Addison's disease, adrenal hypertrophy, agranulocytosis, apoplectic sequellae, atrophy of glands or muscles, achlorhydric anemias, backward children, burns, cataracts, chlorosis, chorea, diabetes mellitus, epilepsy, toxic goiter, hyperthyroidism, hyperglycemia, hypertension, hypotension, asthma, hay fever, hyperemesis of pregnancy, sexual impotency, insanity due to endocrine failure, menopause disorders, migraine, menstrual dysfunction, paralysis agitans, phlebitis, poliomyelitis, paralytic sequellae, pancreatic dysfunction, pernicious anemia, nephritis, ideopathic ovarian disorders, prostate enlargement, peptic ulcers, sclerosis, rheumatic fever and varicose veins, were false and misleading since such diseases are not recognized by experts qualified by scientific training and experience as being caused by a deficiency of either minerals and/or vitamins, and no vitamin or mineral or any combination thereof, or any product or combination of products of the defendant would constitute an adequate or competent treatment, prevention, or cure for any of said diseases; (7) that representations that they would cure, prevent, and constitute an adequate treatment for atrophy of organs and glands (testes, liver, spleen, thyroid, pituitary and salivary), infections and degenerations of eyes, physical weakness, nervousness, insomnia, gland swelling in general, renal calculi, bronchitis, endocrinopathies of childhood, nervous indigestion, neurasthenia, disorders of pregnancy, sterility, hypogalactia, retarded growth, loss of hair, fatty infiltration and degeneration of the liver, symptoms of nerve degeneration, Paget's disease, paresthesias, defective teeth, thyroid dysfunction, diarrhea, vomiting, dermatosis, gastro-enteritis, infantile gastro-intestinal disorders, glycosuria, malnutrition, sprue, low resistance, kidney and bladder disorders, renal dysfunction, formation of stones (calculi), excessive growth of lymphoid tissue, lymphatic gland enlargement, loss of weight and vigor, low vitality, stunted growth, emaciation, enlargement of liver, kidney and spleen, acidosis, and would prevent carcinoma, were false and misleading since such symptoms and conditions are indicative of a wide variety of fundamentally different diseases, which require divergent forms of treatment such as surgery, psychotherapy, endocrine, drug vaccine and physical therapy, and no mineral or vitamin or combination thereof, or any product or combination of products manufactured by the defendant, would constitute an adequate or competent treatment, prevention, or cure for such diseases and conditions

The complaint alleged further (paragraphs 23 and 24) that supplies of the circulars, pamphlets, booklets, and other literature containing false and misleading representations as hereinbefore set forth, were maintained by the defendant at Milwaukee, Wis., and that since February 8, 1939, he had, on his own volition and in response to requests therefor, shipped in interstate commerce to his agents and distributors quantities of said literature which were shipped apart from his products; that he had on occasion shipped quantities of literature in the same shipments as said products; that the agents and distributors had on hand concurrently, quantities of such literature and products and by virtue of the power and control exercised by the defendant over his agents and distributors, he had and was requiring and causing such agents and distributors, to place such literature with his products while being held for sale by the agents and distributors after shipment in interstate commerce, and that thereby the defendant had so acted so as to cause the misbranding of the products in violation of the law.

The complaint alleged further that the defendant would continue to ship the product in interstate commerce and would continue to cause the circulars, pamphlets, booklets, and other literature containing the false and misleading representations to accompany the product unless enjoined; that it was distinctly in the public interests that an injunction should issue for the reason, among others, that many of the diseases for which the products were recommended, suggested, or prescribed in the labeling, such as diabetes, Addison's disease, coronary thrombosis, pernicious anemia, agranulocytosis, pneumonia, and tuberculosis, are serious conditions requiring prompt, adequate treatment; that reliance on the use of the products of the defendant, in the treatment of said diseases would preclude prompt, appropriate, and adequate treatment of the person suffering therefrom with resulting irreparable injury and even death; that because of inability to sample, examine, and seize each interstate shipment of these products, many shipments of the misbranded products would enter into interstate commerce and the practice of the defendant in misbranding the products while they were held by his agents and distributors after shipment in interstate commerce could not be eliminated effectively except through the process of injunction, and that the purpose of the law would thus be frustrated and endangered unless an injunction issue; and prayed that the court grant a preliminary injunction to be effective until the conclusion of the trial of the case, and that on final hearing the preliminary injunction be made permanent.

On July 17, 1941, the defendant filed an answer alleging that all the persons and firms listed in the complaint as agents and distributors, with the exception of (1) Vitamin Products Co., Boston, Mass.; (2) Catalyn California Co., M. R. Pexton and A. L. Jason, Los Angeles, Calif.; (3) Catalyn California Co., and J. W. Egan, San Francisco, Calif.; (4) W. A. Pansky, Mandan, N. Dak., and; (5) Mrs. W. F. Madden, Orlando, Fla., were jobbers buying the products from the defendant and reselling them for their own account and profit; that these designated "1," "2," and "3," were factory branches of the defendant and that those designated "4," and "5," were agents of said "jobbers." The defendant in his answer admitted the shipment of the drugs and the literature substantially as alleged in the complaint, except that he denied that the drugs and the literature were ever shipped together. The answer also denied that the business and affairs of the jobbers were directed by the defendant, that the jobbers were agents of the defendant, that the literature described was labeling, and that the defendant had so acted as to cause the misbranding of his products as alleged.

On April 12, 1941, as the result of a pre-trial conference, it was stipulated that the question of whether the facts set forth in paragraphs 15 to 24, inclusive, of the complaint stated a cause of action, be submitted to the court.

On September 11, 1941, the issues having been submitted to the court on written briefs and arguments of counsel, the following opinion was handed down:

F. RYAN DUFFY, *District Judge.*

"This is a civil action wherein the plaintiff seeks an injunction against the defendant under the provisions of the Federal Food, Drug, and Cosmetic Act (Sec. 332, U. S. C., Title 21), for alleged violation of Sec. 331 (a), (b), and (k), Title 21, U. S. C., for shipment of misbranded articles of drugs, as defined by Sec. 352 (a) and (e), Title 21, U. S. C.

"At the pre-trial conference herein, the parties entered into a stipulation, for the purpose of clarifying the issues, that prior to the trial of this action, the court should determine whether plaintiff's complaint, paragraphs 15 to 24 inclusive, states a claim upon which relief can be granted against the defendant; that is to say, whether the acts alleged in said paragraphs constitute such acts with reference to a food or drug, while held for sale after shipment in interstate commerce, as are prohibited in Sec. 331 (k), Title 21, U. S. C.

"The paragraphs in question allege that the defendant has caused to be written and printed various circulars, pamphlets, booklets, and other literature making therapeutic claims for the products which are manufactured by the defendant. In particular, the Government claims that said literature falsely represents that the products will cure and constitute adequate treatment for a long list of human ailments. It is alleged that such literature is sent in interstate commerce to agents and distributors of said products, separately from the products to which they relate. It is further alleged that the defendant, by virtue of his power and control over said agents and distributors, requires that they place the separately shipped literature so as to be displayed with the products of the defendant while

held for sale. The question to be determined is whether the act of bringing written, printed, or graphic matter containing false and misleading therapeutic claims, in the presence of, proximity of, and in association with an article, after shipment in interstate commerce, is a misbranding of that article within the meaning of the term 'misbranding' as that term is defined in the act.

"Sec. 331, Title 21, U. S. C. A. provides:

> The following acts and the causing thereof are hereby prohibited: * * * (k) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a food, drug, device, or cosmetic, if such act is done while such article is held for sale after shipment in interstate commerce and results in such article being misbranded.

"Sec. 352 (a) provides that a drug is deemed misbranded if its labeling is false or misleading in any particular. Sec. 321 (m) defines labeling:

> The term "labeling" means all labels and other written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) accompanying such article.

"The allegations of the complaint concerning the falsity and misleading character of defendant's literature are, for the purpose of deciding this question, deemed to be true.

"Plaintiff admits that the alleged misbranding is not a physical tampering with the labeling, or a tampering with the product itself. Plaintiff contends that the misbranding occurs through the device of causing written, printed, and graphic matter, containing false and misleading therapeutic claims, to be shipped through interstate commerce separately from the product; and that at the destination, such written, printed, and graphic matter becomes associated with and used in proximity and in the presence of the transported product on the shelves, display counters, and in the window displays on the premises of defendant's agents and distributors.

"In determining the intent of Congress, it may be helpful to recall some of the legislative history of the act in question, which at that time was commonly called the 'Copeland Bill.' The bill, as introduced, gave jurisdiction to enforce same to the Department of Agriculture. It was generally known at that time that the Federal Trade Commission desired to enforce any provisions as to false advertising. While the Copleand Bill was pending, Public Act. No. 477 was passed (approved March 21, 1938), which measure specifically gave jurisdiction over false advertising of foods, drugs, and cosmetics to the Federal Trade Commission. Thereafter the Copeland Bill was amended and, as passed (approved June 25, 1938), gave jurisdiction to the Department of Agriculture to enforce the provisions as to adulteration, packaging, and labeling; but the enforcement as to false advertising remained in the Federal Trade Commission. On June 30, 1940, the enforcement of the Federal Food, Drug, and Cosmetic Act was transferred from the Department of Agriculture to the Federal Security Agency.

"As this action is brought under the Federal Food, Drug, and Cosmetic Act, we are not here concerned with any false advertising by the defendant. We must determine whether there was a misbranding by false or misleading labeling.

"The plaintiff necessarily contends for an extremely broad interpretation of the language of the act defining labeling:

> (m) The term 'labeling' means all labels and other written, printed, or graphic matter * * * (2) accompanying such article.

The Government contends that when Congress said 'accompanying such article', it did not necessarily mean accompanying in the ordinary sense of the word, as long as the literature eventually came together with the products before or when offered for sale.

"Congress did intend that labeling should be something more than the printed or written matter actually affixed to the article itself. It undoubtedly had in mind the practice of manufacturers of placing circulars and printed matter in cartons, which literature would not be affixed to the product to be sold.

"However, it would be a case of legislation by judicial construction to say that literature 'placed on shelves, display counters, or in window displays' (to use the language of the Government) comes within the definition of labeling. It is advertising, pure and simple. The Congress could have provided that all written or printed matter displayed near or in proximity of the article was labeling but it did not do so. Suppose defendant provided a sign, extolling the virtues of his product, to be hung on the wall? Under the construction contended by the Government, it could be considered labeling. What about a

billboard across the street? At what point could a line be drawn where labeling would end and advertising begin?

"In view of the fact that Congress decided that evils in the field of advertising as to food, drugs, and cosmetics were to be handled by the Federal Trade Commission, and the Copeland Bill was therefore amended accordingly, there is no justification for any court to put a strained and unnatural construction upon the term 'labeling.' Furthermore, the Food and Drug Act is a criminal statute. In *U. S.* v. *Weitzel*, 246 U. S. 533, the Supreme Court stated (p. 543):

> * * * Statutes creating and defining crimes are not to be extended by intendment because the court thinks the legislature should have made them more comprehensive * * *.

To the same effect, see *Walter W. Oeflein, Inc.*, v. *The State*, 177 Wis. 394, 396.

"It is my opinion that paragraphs 15 to 24 inclusive of the complaint do not state a claim against the defendant upon which relief can be granted."

On November 24, 1941, on motion of the United States attorney the complaint was amended in order to strike the charge that the labels did not bear the common or usual name of each active ingredient of the products. On December 5, 1941, on motion of the defendant, the court ordered the complaint dismissed. On December 15, 1941, the Government filed a notice of appeal to the Circuit Court of Appeals for the Seventh Circuit from the order dismissing the complaint. On November 25, 1942, the Circuit Court of Appeals overruled the District Court's decision, handing down the following opinion:

Before EVANS and KERNER, Circuit Judges, and LINDLEY, District Judge.

KERNER, *Circuit Judge*. "This is an appeal from a decree dismissing plaintiff's complaint for an injunction against violations of § 301 (a), (b), and (k) for the shipment of misbranded articles of drug and § 502 of the Federal Food, Drug, and Cosmetic Act of 1938, c. 675, 52 Stat. 1040; 21 U. S. C. A., § 331 (a), (b), and (k) and § 352 (a).

"The complaint charged that defendant had caused to be printed circulars making therapeutic claims for the products which he manufactures, falsely claiming that the products will cure and constitute adequate treatment for human ailments; that such circulars were sent in interstate commerce to agents and distributors of said products, separately from the products to which they relate; and that by virtue of defendant's power and control over his agents and distributors, he required them to display the separately shipped circulars with defendant's products.

"We must decide whether the act of bringing printed matter containing false and misleading therapeutic claims in the presence of, and in association with, an article after shipment in interstate commerce, results in the article being misbranded in violation of § 301 (k) of the act.

"The Federal Food, Drug, and Cosmetic Act, so far as material, provides:

> Sec. 201. For the purposes of this Act—* * *
> (m) The term 'labeling' means all labels and other written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) accompanying such article.
> Sec. 301. The following Acts and the causing thereof are * * * prohibited:
> (a) The introduction or delivery for introduction into interstate commerce of any * * * drug, * * * that is * * * misbranded.
> (b) The * * * misbranding of any * * * drug * * * in interstate commerce.
> (k) The alteration, * * * of * * * any part of the labeling of, or the doing of any other act with respect to a * * * drug * * * if such act is done while such article is held for sale after shipment in interstate commerce and results in such article being misbranded.
> Sec. 502. A drug or device shall be deemed to be misbranded—
> (a) If its labeling is false or misleading in any particular.

"In the District Court counsel for plaintiff contended that the phrase 'accompanying such article' means that misbranding occurs through any device which causes printed matter containing false therapeutic claims to be shipped through interstate commerce, including printed matter shipped separately from the product, and constitutes a violation of § 201 (m) if at the destination it becomes associated with and is used in proximity to the transported product on the shelves and display counters of the defendant's agents and distributors.

"The District Court, however, was of the opinion that literature 'placed on the shelves, display counters, or in window displays' was advertising within the meaning of the Federal Trade Commission Act, 15 U. S. C. A. § 55, providing that '"false advertisement" means an advertisement, other than labeling,' and consequently was not a misbranding of an article in interstate commerce.

"Section 8 of the Food and Drugs Act of 1906 provided that the term 'misbranded' should apply to all drugs or articles of food the package or label of which bore any statement, design, or device regarding such article, which was false or misleading in any particular, 21 U. S. C. A. § 9. In interpreting this section, it was held that a circular *enclosed* with an article inside the carton in which it was offered for sale was not within the purview of this section, *U. S.* v. *American etc.*, 186 F. 387. Thereafter, in 1912, the act was amended, specificaly extending the definition to include statements, designs, and devices *contained* in the package, 'to hit precisely the case of circulars or printed matter placed inside the package.' *Seven Cases* v. *United States*, 239 U. S. 510, 515. The act was again amended in 1938 so as to include within the term 'labeling,' all 'labels,' and 'other written, printed, or graphic matter * * * accompanying such article.'

"We have not had the benefit of a brief on behalf of the defendant, but in the District Court the defendant contended that the word 'accompanying' did not include literature which did not go along with the product—in other words, that the test was not nearness, concurrence of display, or availability for reading. With this contention we cannot agree.

"The word 'accompany' is not defined in the act, but we observe that among the meanings attributed to the word are 'to go along with,' 'to go with or attend as a companion or associate,' and 'to occur in association with,' Webster's New International Dictionary (2d edition). There can be no question that among the usual characteristics of labeling is that of informing a purchaser of the uses of an article to which the labeling relates, and that the basic character of the Federal Food, Drug, and Cosmetic Act is not directly concerned with the sale of the products therein described, or whether the literature is carried away by the purchaser. It was enacted to protect the public health and to prevent fraud, and it ought to be given a liberal construction. Consequently, we are impelled to the conclusion that misbranding is cognizable under the act if it occurs while the articles are being held for sale.

"This conclusion is sustained by the legislative history of the act, from which it appears that it was not the purpose of Congress to limit the scope of the phrase 'accompanying such articles' to printed matter placed in the carton in which the article is contained. See Senate Report 1944, 73d Cong., 1st and 2d Sessions, and Senate Report No. 493 of the Committee on Commerce, 73d Cong., 2d Session.

"Our conclusion is also sustained by the decision in the case of *U. S.* v. *Research Laboratories*, 126 F. (2) 42, decided after the District Court had dismissed the complaint in the instant case. The defendant in the *Research* case contended that the circulars constituted advertising and did not constitute labeling within the meaning of the act. In disposing of the contention, the court said, p. 45:

> The contention assumes that printed matter (such as a circular) cannot constitute both advertising and labeling. The assumption is unwarranted. Most, if not all, labeling is advertising. The term 'labeling' is defined in the Act as including all printed matter accompanying any article. Congress did not, and we cannot, exclude from the definition printed matter which constitutes advertising.

"The court also said:

> * * * nor is it material, whether the packages and the circulars did or did not travel in the same crate, carton or other container or on the same train, truck or other vehicle during their interstate journey. The packages and the circulars had a common origin and a common destination and arrived at their destination simultaneously. Clearly, therefore, they accompanied each other, regardless of whether, physically, they were together or apart during their journey.

"The decree of the District Court is reversed, and the cause is remanded for further proceedings in conformity with this opinion."

On December 31, 1942, judgment was entered that the defendant, Royal Lee, individually, and trading as the Vitamin Products Co., or otherwise, its successors or assigns, agents, distributors, servants and all other persons acting on his behalf be perpetually enjoined and restrained as follows: From introducing or delivering for introduction into interstate commerce any food or drug that is misbranded by reason of any false or misleading therapeutic or curative claims for it in the treatment, mitigation, cure, or prevention of human ailments or diseases, such claims appearing either upon the label or labeling, or in literature accompanying the article; for misbranding any food or drug in interstate commerce that is held for sale after shipment in interstate commerce by or through the use of written, printed, or graphic matter containing false or misleading therapeutic or curative claims for the article, i. e., the display or presentation of such written, printed, or graphic matter in the proximity of, or in company

with, such article so as to create in the mind of the purchaser or prospective purchaser a false or misleading impression or belief in regard to the therapeutic or curative value of such article in the treatment of human ailments or diseases, and from doing or performing any acts for the purpose, or which has the effect of evading the foregoing prohibition.

822. Misbranding of Clearwater's Combination Medicine. U. S. v. Henry P. Clearwater (H. P. Clearwater and Pope Laboratories). Plea of nolo contendere. Fine, $150. (F. D. C. No. 5574. Sample Nos. 24345-E, 26965-E.)

On March 17, 1942, the United States attorney for the District of Maine filed an information against Henry P. Clearwater, trading as H. P. Clearwater and Pope Laboratories, Hallowell, Maine, alleging shipment on or about July 18 and August 12, 1940, from the State of Maine into the States of Pennsylvania and Washington of quantities of Clearwater's Combination Medicine which was misbranded.

The combination consisted of three products. Analysis showed that No. 1 was a pink pill consisting essentially of ferrous carbonate, potassium iodide, calcium glycerophosphate, manganese dioxide, sulfur, and a compound of zinc; that No. 2 was a white tablet containing cascara; and that No. 3 was a pink compressed tablet consisting largely of aspirin and starch.

The article was alleged to be misbranded in that certain statements in the labeling which represented and suggested that it would be efficacious as a reconstructive systemic tonic and would be efficacious in the treatment and prevention of rheumatism and arthritis were false and misleading since it would not be efficacious for such purposes.

On July 16, 1942, the defendant entered a plea of nolo contendere and the court imposed a fine of $150.

823. Misbranding of Blue Ridge Mountain Mineral. U. S. v. Robert T. Sides C. S. & W. Mineral Co.). Plea of nolo contendere. Fine, $200 and probation for 2 years. (F. D. C. No. 6424. Sample No. 37792-E.)

On April 21, 1942, the United States attorney for the Middle District of North Carolina filed an information against Robert T. Sides, trading as the C. S. & W. Mineral Co., Kannapolis, N. C., alleging shipment on or about February 21, 1941, from the State of North Carolina into the State of South Carolina of a quantity of Blue Ridge Mountain Mineral which was misbranded.

Examination of the article showed that it consisted of a natural mineral which when prepared according to directions on the label, consisted essentially of a dilute solution of ferric sulfate with minute amounts of sulfates of other minerals and some ferric hydroxide in suspension.

The article was alleged to be misbranded in that statements in the labeling which represented and suggested that it would be efficacious in the treatment of high blood pressure, pellagra, nervousness, inability to sleep, nervous indigestion, rheumatism, kidney, bladder and stomach trouble, piles, sore eyes, blood poison, all skin infections, erysipelas or tetter, flux, female complaints, irregularities, all blood diseases, loss of appetite, old sores, bed wetting and all skin infections; that it was a powerful germicide and ferruginous tonic, intestinal astringent and internal hemostatic; that it was efficacious in building up new red blood and would promote normal circulation; that it was efficacious in the treatment of gastric indigestion, and would be efficacious as a tonic for blood disorders, indigestion and other forms of stomach trouble and neuritis; that it was efficacious in the treatment of diarrhea and dysentery; and was efficacious in the treatment of boils, carbuncles, skin disease, eczema, leucorrhea or whites, heart trouble and heartburn, and that the user would derive the benefits usually derived from a sojourn at a health resort, were false and misleading since the product would not be efficacious for such purposes.

On October 19, 1942, the defendant having entered a plea of nolo contendere, the court sentenced him to pay a fine of $200, and placed him on probation for a period of 2 years on the general conditions of probation and the additional condition that he was not to sell any more of the product covered by the information.

824. Misbranding of McFadden 3 Sisters Springs mineral water. U. S. v. Roy A. Whipple and Ruth A. Whipple (McFadden 3 Sisters Springs). Pleas of nolo contendere. Imposition of sentence suspended. (F. D. C. No. 4177. Sample No. 15891-E.)

On October 16, 1941, the United States attorney for the Western District of Arkansas filed an information against Roy A. Whipple and Ruth A. Whipple, copartners trading as McFadden 3 Sisters Springs at Hot Springs, Ark., alleging