

out the necessity of catching, greasing, and other local treatment; that it would protect little and big chicks from mites; and that it would increase egg production and improve the health of the flock so that more and stronger chicks would be raised were false and misleading since the article would not be efficacious to accomplish such purposes. It was alleged to be misbranded further in that it was in package form and did not bear a label containing an accurate statement of the quantity of the contents, since the label of the container bore no statement of the quantity of the contents; and in that its label did not bear the common or usual name of the article, potassium arsenite.

The Demytin was alleged to be misbranded in that representations on the bottle label and in the accompanying circular to the effect that it would increase egg yield by freeing hens from mites; that it would be efficacious in preventing diarrhea; that it would promote prompter molting, and induce an earlier return to laying conditions; that it would tend to brighten plumage; that it would protect little and big chicks from mites; that it would increase egg production and improve the health of the flock so that more and stronger chicks were raised; and that it would supply a ration ingredient which is often absent and which is required to produce the egg, build bone, strength, and vigor, were false and misleading since the article would not be efficacious for such purposes.

The solution of citrate of magnesia was alleged to be adulterated in that it purported to be and was represented as a drug the name of which is recognized in the United States Pharmacopoeia, an official compendium, and its strength differed from and its quality fell below the standard set forth in that compendium since the article contained, in each 100 cc., an amount of magnesium citrate corresponding to not more than 0.653 gram of magnesium oxide, and 10 cc. of the solution contained citric acid equivalent to not more than 13.1 cc. of half-normal hydrochloric acid, whereas the Pharmacopoeia provides that solution of magnesium citrate shall contain, in each 100 cc., an amount of magnesium citrate corresponding to not less than 1.6 gram of magnesium oxide, and that 10 cc. of the solution shall contain citric acid equivalent to not less than 26 cc. of half-normal hydrochloric acid.

The solution of citrate of magnesia was alleged to be misbranded in that its labeling did not bear adequate warnings against use in those pathological conditions wherein its use might be dangerous to health, since it was a cathartic or laxative drug and should not be used when abdominal pain, nausea, vomiting, or other symptoms of appendicitis are present, and a statement that frequent and continued use might result in dependence upon laxatives. It was alleged to be misbranded further in that it was in package form and did not bear a label containing an accurate statement of the quantity of the contents.

On November 3, 1943, the defendant having entered a plea of guilty, the court imposed a fine of \$1, which was applicable to the 2 informations, with the understanding that the defendant immediately discontinue interstate business and discontinue business entirely on or before January 1, 1944.

1010. Misbranding of Iowa Worm Powder and Iowa Regulator for Hogs. U. S. v. Howard-Iowa Products Co. Demurrer to count 1 of the information filed and sustained. Pleas of guilty entered to remaining counts. Fine of \$100 on each of 2 counts, together with costs. (F. D. C. No. 8734. Sample Nos. 94545-E, 94546-E.)

On January 8, 1943, the United States attorney for the Southern District of Iowa filed an information in 2 counts against the Howard-Iowa Products Co., a corporation, Jefferson, Iowa, alleging shipment on or about March 23, 1942, from the State of Iowa into the State of Illinois of a quantity of Iowa Worm Powder and Iowa Regulator for Hogs.

Analysis of the Iowa Worm Powder showed that it consisted essentially of sodium bicarbonate, compounds of calcium, magnesium, iron and aluminum, santonin, charcoal, and plant material, including flaxseed.

Count 1 of the information alleged that the Iowa Worm Powder was misbranded in that certain statements and designs borne on the carton containing the article, and certain statements in the circular enclosed in the carton were false and misleading since they represented and suggested that the article would be efficacious in the cure, mitigation, treatment, or prevention of all species of worms that infest hogs, and that it would correct unthriftiness in hogs resulting from all species of worms, whereas the article would not be efficacious for the purposes recommended.

Analysis of the Iowa Regulator for Hogs showed that it consisted essentially of sodium sulfate, sodium bicarbonate, sodium chloride, ammonium chloride, calcium carbonate, calcium phosphate, sulfur, a compound of iron, charcoal, and unidentified plant material.

It was alleged to be misbranded (count 2), because of false and misleading statements in its labeling which represented and suggested that it would be efficacious as a regulator for hogs; that it would be an effective aid in keeping hogs thrifty; that it would prevent indigestion and poisoning of the blood, and would cause the bowels to become normal; that it would be efficacious as a treatment for scours in young pigs; that it would clean the poison out of sows and correct the sow's milk; that it was an expectorant which would act upon the bronchial tubes and lungs; and that it would be efficacious in the treatment of colds and congestion of the lungs; would prevent pneumonia in hogs, and was an effective treatment for sick hogs that are thumping.

On May 22, 1943, the defendant pleaded guilty to count 2 of the information and entered a demurrer to count 1, and on May 29, 1943, an order was entered continuing the hearing on the demurrer and permitting the information to be amended by adding additional counts. An amended information was accordingly filed on August 30, 1943, in which was added a third count, alleging that the Iowa Worm Powder was misbranded further (1) in that the statements appearing in the aforesaid circular which represented and suggested that the Iowa Regulator would be efficacious as a regulator of the physiological functions of hogs, and that the Iowa Worm Powder and the Iowa Regulator, when used together, would be efficacious to relieve congestion of the lungs in hogs, were false and misleading, since the Iowa Regulator would not be efficacious as a regulator for any physiological function of hogs and the Iowa Worm Powder and the Iowa Regulator, whether used alone or together, would not be efficacious to relieve congestion of the lungs in hogs; (2) in that the worm powder was in package form and did not bear a label containing an accurate statement of the quantity of the contents; (3) in that it was not designated solely by a name recognized in an official compendium and was fabricated from two or more ingredients and its label did not bear the common or usual name of each active ingredient; and (4) in that its labeling did not bear adequate directions for use, since the directions on the label did not state or indicate the quantity of the article to be administered to each hog or to a given number of hogs.

On September 11, 1943, the defendant having entered a plea of guilty to the third count of the information, the court proceeded with the hearing on the demurrer, and on October 13, 1943, handed down the following ruling sustaining the demurrer:

DEWEY, *District Judge*: "To an Amended and Substituted Information the defendant has filed a demurrer to Count 1, in effect, claiming that such count does not charge an offense against it.

"The charge is misbranding of drugs.

"The drugs complained of are labeled 'IOWA WORM POWDER FOR ASCARIS WORMS IN HOGS' and this statement appears on the outside of the package.

"Accompanying the package and inside thereof is a circular directing the use of the worm powder on hogs. The circular in its direction for use refers to 'the Worm Powder' as being 'the Iowa Worm Powder' and it is difficult to see how it refers to any other powder than that stated on the package as being 'Worm Powder for Ascaris Worms in Hogs.'

"The charge in Count 1 is that the label on the outside of the package showing two hogs, one thin and unthrifty and the other fat and thrifty looking, with the statement thereunder: 'Take Iowa Worm Powder and be Fat,' together with the directions for the use of the powder contained in the package, which does not specifically refer to Ascaris Worms in hogs, but only to 'the Worm Powder' and to the 'Iowa Worm Powder,' is false and misleading in this: 'that the said statements represented and suggested that said drug would be efficacious in the cure, mitigation, treatment or prevention of all species of worms that infest hogs.'

"Specifically, then, the charge is that the label on the outside of the package, together with the directions for the use of the worm powder, by suggestion and inference, states and represents that the worm powder would be efficacious in the cure of all worms that infest hogs instead of Ascaris Worms alone.

"The court raised the question as to whether the circular enclosed in a package should be considered on the question of misbranding, but the statement in the new act of 1938 that 'the term 'labeling' means all labels and other written, printed, or graphic matter * * * accompanying such article', and the case of *Eckman's Alterative v. United States*, 239 U. S. 510, definitely determine that the circular contained within the package is to be considered on the question of whether the labeling was a misbranding.

"However, I am unable to find anything in the label or in the statement enclosed in the package that indicates, let alone, suggests or states, that the Iowa

Worm Powder in the package was efficacious in the cure or mitigation of all worms in hogs.

"The label in large type expressly states that it is 'Worm Powder for Ascaris Worms in Hogs' and designates it as 'Iowa Worm Powder.' The directions for the use of the powder refers to either 'the Worm Powder,' which certainly means the Worm Powder contained in the package, or 'Iowa Worm Powder,' which even more definitely refers to the Worm Powder in the package, and the worm powder in the package is labeled as clearly and distinctly as it could be as a Worm Powder for Ascaris Worms without any suggestion or inference that it could be used or was efficacious in any manner or degree in destroying other worms in hogs.

"The defendant's demurrer to Count 1 of the Amended and Substituted Information is sustained and said Count is dismissed as not stating an offense against the defendant. The United States of America excepts. Signed at Des Moines, Iowa, this 13th day of October, 1943."

On November 30, 1943, no appeal having been noted with respect to the ruling on the demurrer, the court imposed a fine of \$100 on each of counts 2 and 3, a total of \$200, together with costs.

1011. Misbranding of Speagolax, Hunt's Salve, Triple-X Medicine, Booth's Balm, Booth's Pills, Liver-Cure, Fem-Re-Ills, Targosine, Jew David's or Hebrew Plaster, B. P. Stomach and Intestinal Corrective, Irogen, and Colonex Tablets; and adulteration and misbranding of Tansy. U. S. v. Allen Dobson and Matt H. Dobson, Jr. (Dobson & Co.). Pleas of nolo contendere. Fine, \$150 against each defendant. (F. D. C. No. 8766. Sample Nos. 59789-E, 59791-E to 59797-E, incl., 59799-E, 78301-E, 78302-E.)

On February 18, 1943, the United States attorney for the Western District of North Carolina filed an information against Allen Dobson and Matt H. Dobson, Jr., trading as Dobson & Co., at Nashville, Tenn., and Rutherfordton, N. C., alleging shipment on or about April 16, 1942, from the State of North Carolina into the State of Virginia of quantities of the above-named products. The articles were labeled in part: "Speagolax * * * Put up and Guaranteed by Speagolax Medicine Co., Durham, N. C.," "Hunt's Salve * * * Manufactured by A. B. Richards Med. Co., Sherman, Texas," "Triple-X * * * Medicine * * * Triple X Laboratories Scotland Neck, N. C.," "Booth's Balm * * * [or 'Booth's Pills'] * * * Booth's Hyomei Co., Ithaca, N. Y.," "Tansy * * * S. W. Gould & Bros. * * * Malden, Mass.," "Liver-Cure Munyon's Homeopathic Home Remedies," "Fem-Re-Ills * * * Guaranteed by the Henry S. Wampole Company * * * Baltimore, Maryland," "Targosine * * * Manufactured and Guaranteed by the Targosine Co. Monroe, N. C.," "Jew David's or Hebrew Plaster All Genuine. Signed E. Taylor Right Secured Comstock & Co. Rochester, N. Y.," "B. P. Stomach and Intestinal Corrective Burwell & Dunn Co. * * * Charlotte, N. C.," "Irogen [or 'Colonex Tablets'] * * * Guardian Health Products Co. Incorporated Atlanta, Georgia."

Analysis of the Speagolax showed that it was a brown liquid, having a bitter taste and consisting essentially of an iron salt, nux vomica extract, benzoates, cascara, iodides, alcohol, sugar, and water. It was alleged to be misbranded because of false and misleading statements in its labeling which represented and suggested that the article would be efficacious as a tonic for the stomach and blood; that it would be efficacious in the cure, mitigation, treatment, or prevention of rheumatism, lumbago, indigestion, liver and kidney trouble, and diseases due to impure blood; and that it would aid digestion and restore tone to a run-down system. It was alleged to be misbranded further (1) in that its labeling failed to bear adequate directions for use, since the directions on the label, "Dose:—One tablespoonful three times a day before meals," suggested that the article should be used continuously, whereas it was a laxative and should not be used continuously, and the direction, "Children according to age," was not explicit, whereas directions should be explicit; (2) in that its labeling failed to bear adequate warnings against use in those pathological conditions wherein its use might be dangerous to health, or against unsafe dosage or methods or duration of administration, in such manner and form as are necessary for the protection of users, since the article contained a laxative, cascara, and its labeling did not warn that it should not be used when abdominal pain, nausea, vomiting, or other symptoms of appendicitis are present, and that frequent or continued use might result in dependence upon laxatives; and (3) in that its container was so made, formed, or filled as to be misleading since the container was larger than was necessary to contain the article.

Analysis of the Hunt's Salve showed that it was a greenish-brown ointment consisting essentially of sulfur, oil of sassafras, a mercury salt present as a