

ALLEGED SHIPMENT: On or about September 9, 1943, from the State of California into the State of Utah.

PRODUCT: The product was ocean water to which had been added small amounts of calcium acetate, iron chloride, and potassium iodide.

LABEL, IN PART: "Delamer A Mineralized Water * * * Ocean Sea Water Specially Processed."

NATURE OF CHARGE: Misbranding, Section 502 (a), the statements in the circulars accompanying the article were misleading since they represented, suggested, and implied that the "wearing out" of the body as evidenced by the slowing of the function of the blood, lack of vitality and pep, general poor physical condition, and lack of mental vigor, is usually the result of lack of minerals in the diet; that the user might reasonably expect that the consumption of the article would retard the "wearing out" processes of the body and prolong life; that the article would prevent the slowing of the function of the blood; that it would restore vitality and pep and improve the general physical condition and mental vigor; and that it was a rich source of all minerals. The "wearing out" of the body is a natural process with which lack of minerals is not ordinarily associated; the conditions referred to in the labeling are not usually the result of lack of minerals in the diet, but result from many and varied causes; the user might not reasonably expect that the consumption of the article would prevent or correct such conditions, since it would not be ordinarily efficacious for such purposes; and the article was not a rich source of all minerals.

Further misbranding, Section 502 (a), certain statements in the circulars were misleading since they represented and suggested that the ordinary diet of children does not provide them with calcium in amounts sufficient to attain normal growth; that the ordinary diet does not contain sufficient minerals for the normal needs of the body; that it is necessary to supplement the ordinary diet with additional minerals; and that it is practically impossible to obtain foods which contain sufficient minerals for the needs of the body. The ordinary diet of children provides them with calcium in amounts sufficient to attain normal growth; the ordinary diet contains sufficient minerals for the normal needs of the body; and, therefore, it is not necessary to supplement the ordinary diet with additional minerals.

The article was also charged to be misbranded under the provisions of the law applicable to foods, as reported in notices of judgment on foods.

DISPOSITION: October 2, 1945. The defendant having entered a plea of nolo contendere, a fine of \$1 on each count was imposed.

1780. Alleged misbranding of Moffett's Teethina. U. S. v. 208 Packages of Moffett's Teethina. Tried to the court and jury. Verdict for the claimant; libel dismissed. Appeal taken to Circuit Court of Appeals for the Fifth Circuit. Appeal dismissed on motion of the Government. (F. D. C. No. 7956. Sample No. 29523-F.)

LABEL FILED: July 25, 1942, Western District of South Carolina.

ALLEGED SHIPMENT: On or about June 30, 1942, by the C. J. Moffett Medicine Co., from Columbus, Ga.

PRODUCT: 208 packages of *Moffett's Teethina* at Greenville, S. C. Analysis showed that the product consisted essentially of calomel, 0.0492 grain, bismuth subnitrate, 1.91 grains, and cinnamon.

LABEL, IN PART: (Carton) "TEETHINA is a soothing relief for teething babies when the stomach or bowels are upset from improper feeding. * * * DIARRHEA OR LOOSE BOWELS WHEN DUE TO IMPROPER FEEDING * * * COLIC WHEN DUE TO GAS OR SOUR STOMACH * * *"; (circular) "* * * FOR DIARRHEA OR LOOSE BOWELS WHEN DUE TO IMPROPER FEEDING. Children under 2 years of age, give 1 powder every 4 hours until actions are improved. If the child is over 2 years of age, give 1 powder every 3 hours. If not relieved in 2 days, consult your physician. FOR COLIC WHEN DUE TO GAS OR SOUR STOMACH. Give a powder two or three times a week until relief has been obtained. TEETHINA is a soothing relief for teething babies when the stomach or bowels are upset from improper feeding."

NATURE OF CHARGE: Misbranding, Section 502 (a), certain statements on the label of the article and in the circular which accompanied it were false and misleading since they represented and suggested that the article would be effective for soothing teething babies; that it would be effective for diarrhea or loose bowels when due to improper feeding; and that it would be effective

for colic when due to gas or sour stomach. The article would not be effective for the purposes represented and suggested.

DISPOSITION: Mrs. Minnie L. Flournoy and Mrs. Mattie H. Flournoy, trading as the C. J. Moffett Medicine Company, claimants, filed an answer denying that the product was misbranded and demanding a jury trial. They also filed a motion for removal of the action to the Middle District of Alabama for trial. On August 6, 1942, pursuant to stipulation between counsel for the claimants and the Government, the court ordered the case removed to that district. On March 31, 1943, the claimants filed an amendment to the answer, praying judgment in their favor and alleging that the Government was estopped from maintaining the action and that the issues had been adjudicated against the Government as the result of alleged compliance by the claimants with a cease and desist order of the Federal Trade Commission. The Government's motion to strike the claimants' answer was denied on April 6, 1943. The case then came on for hearing before a jury. At the conclusion of the testimony, the court reversed its former ruling and ordered the amended answer of the claimant stricken from the records and the evidence on the issues raised by the amended answer excluded from consideration by the jury. On April 7, 1943, the jury returned a verdict in favor of the claimants, and the libel was ordered dismissed. An appeal by the Government to the Circuit Court of Appeals for the Fifth Circuit was dismissed on motion of the Government.

1781. Misbranding of Wheatamin Brand Cevigards. U. S. v. 26 Bottles of Wheatamin Brand Cevigards. Default decree of condemnation and destruction. (F. D. C. No. 13380. *Sample No. 81364-F.)

LIBEL FILED: August 26, 1944, Western District of Missouri.

ALLEGED SHIPMENT: On or about June 30, 1944, by the De Pree Co., from Holland, Mich.

PRODUCT: 26 dozen bottles, each containing 100 tablets, of *Wheatamin Brand Cevigards* at Kansas City, Mo. Analysis showed that the product contained vitamin C, vitamin B₁, yeast, and riboflavin.

LABEL, IN PART: "Wheatamin Brand Cevigards Each Tablet Provides Ascorbic Acid (Civitaminic Acid) 50.0 mg."

NATURE OF CHARGE: Misbranding, Section 502 (a), certain statements appearing in the labeling (leaflet and display card) were false and misleading since they represented and suggested that the article would be an effective treatment for the symptoms of hay fever. The article would not be effective for that purpose.

DISPOSITION: On October 5, 1944, the De Pree Co., claimant, filed an answer denying the allegations of the libel and petitioned the court to direct that the case be transferred from the Western District of Missouri to the Western District of Michigan. In accordance with claimant's petition, the order for removal and transfer of the case was entered on November 2, 1944. On January 3, 1945, the Government having filed a motion to vacate the order of removal, the court, after hearing the arguments of counsel, denied the Government's motion and refused to rescind the order in a decision reading as follows:

J. C. COLLETT, *District Judge*: "The claimant of the property libeled herein whose principal place of business is at Grand Rapids, Michigan, requested the transfer of this cause to that District. After determining that there was no suggestion of any possible actual injury, prejudice or disadvantage to the Government from such an order, the request was granted in the interest of economy in time, expense, and transportation facilities. The Clerk has transmitted all of the original files to the United States District Court at Grand Rapids. The Government now seeks to have the order rescinded because in the opinion of counsel the statute does not authorize the transfer of the cause to a District in which the principal place of business of the claimant is located and that to permit the order to stand will establish a precedent inconsistent with the spirit and intent of the law. The order made was, as stated, in the interest of economy consistent with the necessity of the present national emergency and should not be treated as a precedent. In view of the fact that any order made by this Court at this time would not return the cause to this docket without the further action of the Court to which the cause was sent, it is appropriate that the determination of that Court's jurisdiction be left to the better informed judgment of that Court—with appropriate apologies."