

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 B<sub>1</sub>, 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."

On March 23, 1945, the Government having filed a motion in the Western District of Michigan for the return of the action to the Western District of Missouri, the court, after considering the pleadings and arguments of counsel, granted the Government's motion with the following memorandum opinion:

FRED M. RAYMOND, *District Judge*: "Application of the principles of statutory construction discussed by Judge McAllister in the case of *Commissioner of Internal Revenue v. Strong Mfg. Co.*, 6 Cir., 124 F. (2d) 360, 364, results in the conclusion that the words "district of reasonable proximity to the claimant's principal place of business" as used in Section 334 (a) of Title 21 U. S. C., providing for removal for trial to another district of a libel for condemnation proceedings under the Federal Food, Drug and Cosmetic Act, do not include authority to remove to the district within which claimant's principal place of business is located. (See *U. S. vs. Six Dozen Bottles, etc.*, 55 F. Supp. 458; *U. S. v. 168 Dozen, etc. Bromo Seltzer*, (unreported) decided May 25, 1939, by Judge Clancy, S. District of New York; *U. S. v. 74 Cases, etc.*, 55 F. Supp. 745.)

"An order will accordingly be entered remanding said cause to the United States District Court for the Western District of Missouri, Western Division."

On September 17, 1945, the claimant having failed to appear, judgment was entered finding the product misbranded and ordering that it be destroyed.

**1782. Misbranding of Mafoliata products. U. S. v. 7 Bottles of Ma-Ta Tablets, 20 Cartons of Ma-Fol Suppositories, 22 Bottles of Liquid Ma-Ta, 22 Cartons of Ma-Ta Vegetable Compound, and a quantity of printed matter. Default decree of condemnation and destruction. (F. D. C. No. 16384. Sample Nos. 23848-H to 23851-H, incl.)**

**LIBEL FILED:** July 5, 1945, Northern District of Texas.

**ALLEGED SHIPMENT:** By the Mafoliata Corporation, from Chicago, Ill. The products were shipped between the approximate dates of March 15 and May 9, 1945, and the printed matter was shipped on or about May 9, 1945.

**PRODUCT:** 7 100-tablet bottles of *Ma-Ta Tablets*, 20 cartons of *Ma-Fol Suppositories*, 22 1-quart bottles of *Liquid Ma-Ta*, 22 cartons of *Ma-Ta Vegetable Compound*, a number of accompanying leaflets entitled "*Ma-Ta Mafoliata*," and a number of accompanying testimonial letters, at Abilene, Tex.

Examination showed that the *Ma-Ta Tablets* consisted essentially of an extract of plant material containing the alkaloid berberine coated with calcium carbonate and iron oxide; that the *Ma-Fol Suppositories* consisted essentially of an extract of plant material containing the alkaloid berberine incorporated into a greasy base; that the *Liquid Ma-Ta* consisted essentially of an extract of plant material containing the alkaloid berberine, water, and a small proportion of sodium benzoate; and that the *Ma-Ta Vegetable Compound* consisted essentially of an extract of plant material containing the alkaloid berberine.

**LABEL, IN PART:** "Tablets Ma-Ta (Mafoliata)," "Ma-Fol Suppositories," "Liquid Ma-Ta (Mafoliata)," or "Ma-Ta (Mafoliata) Vegetable Compound."

**NATURE OF CHARGE:** *Ma-Ta Tablets* and *Ma-Ta Vegetable Compound*. Misbranding, Section 502 (a), certain statements in the testimonial letters were false and misleading since they represented and suggested that the articles would be effective in the treatment of the conditions, symptoms, and diseases stated and implied, whereas they would not be effective for such purpose. The conditions, symptoms, and diseases referred to were urinary difficulties, including those due to disorder of the prostate gland, pulmonary tuberculosis, carbuncle of the kidney, pain and soreness in the back, weakness, sleeplessness, lack of appetite, rheumatism, arthritis, and syphilis.

*Ma-Fol Suppositories*. Misbranding, Section 502 (a), the following label statements were false and misleading since the article would not be effective to accomplish the results stated and implied: "Stop Pain Stop Bleeding Heal and Absorb An Ideal Suppository that usually clears up bleeding and painful hemorrhoids in a few days time"; and, Section 502 (e), the label failed to bear the common or usual name of each active ingredient.

*Liquid Ma-Ta*. Misbranding, Section 502 (a), certain statements appearing in the leaflets and in the testimonial letters were false and misleading since they represented and suggested that the article would be efficacious in the treatment of the conditions mentioned, whereas it would not be efficacious for such purpose. Among the conditions mentioned were the following: Acne, acute septicemia, arthritis, asthma, athlete's foot, abscess in the ear drum, Gerger's or Renault's disease, blood clots, bronchial troubles, burns, cancer, carbuncles, cartilaginous tumor, common colds, constipation, cuts, lacerations,