

and arthritis; that they would relieve indigestion due to bloaty fermentation of foods; that they would normalize the intestinal contents and reduce bacterial formation of toxins, ptomaines, cadaverine, and putrescine; that they would aid food assimilation in old age; that they would enable one to build weight; and that the Neo-Enzymes Plain would replace enzymes destroyed or lost in heat preparation of foods or eliminated by the body. The articles would not be effective for the purposes claimed.

Further misbranding, Section 502 (a), the statements on the labels (both products) were misleading since they failed to reveal the fact that the articles would have little, if any, power to digest starch and proteins, which fact was material in the light of the following representations in the labeling: "Neo-Enzymes digests carbohydrates, proteins and fats—a balanced digestant complex. Effective in acid, alkaline or neutral medium. Amylolytic Activity By modified Wohlgemuth method; splits 475 times its own weight of soluble starch. Proteolytic Activity By electrotitration and spectrophotometric method; hydrolizes 680 times its own weight of casein and albumin."

*Neo-Enzymes With Laxative.* Further misbranding, Section 502 (f) (1), the labeling of the article failed to bear adequate directions for use since the directions displayed on the bottle, provided for continuous use of the article, which was a laxative and should not be used continuously; and, Section 502 (f) (2), the labeling failed to bear adequate warnings against use of the article in those pathological conditions where its use might be dangerous to health. The article was a laxative, and its labeling failed to bear a warning that it should not be used in the presence of symptoms of appendicitis.

The information contained 4 counts, 2 charging violation under the provisions of the law relating to drugs reported in this notice of judgment, and 2 charging misbranding under the provisions of the law applicable to foods, as reported in notices of judgment on foods.

**DISPOSITION:** On January 9, 1947, the defendant having entered a plea of guilty, the court imposed a fine of \$200 on each count. On January 16, 1947, the fine was reduced to \$100 on each count.

**2120. Misbranding of Tyr-Ade. U. S. v. Chester R. Gilliland. Plea of guilty. Defendant placed on probation for a period of 2 years and ordered to pay \$300 in costs.** (F. D. C. No. 21430. Sample Nos. 27871-H, 27872-H.)

**INFORMATION FILED:** January 20, 1947, Northern District of California, against Chester R. Gilliland, Sacramento, California.

**ALLEGED SHIPMENT:** On or about September 7, 1945, the defendant shipped a bottle of the product from the State of California into the State of Washington, and on September 10, 1945, he shipped a booklet entitled "Health From The Ground Up."

**PRODUCT:** Analysis showed that the article consisted essentially of mineral matter, including compounds of calcium, iron, iodine, and phosphorus, together with dulce and green, leafy tissue.

**LABEL, IN PART:** "Tyr-Ade, A Highly Concentrated Food."

**NATURE OF CHARGE:** Misbranding, Section 502 (a), the name "Tyr-Ade" on the label of the article was misleading since it represented, suggested, and created in the mind of the reader the impression that the article would be effective in overcoming tiredness and fatigue, whereas it would not be effective for such purposes.

Further misbranding, Section 502 (a), certain statements in the booklet accompanying the article were false and misleading since they represented, suggested, and created in the mind of the reader the impression that the article would save health and life and prevent sickness and death; that it was vital for healthful body functioning; that it was vital to rebuild healthy, normal blood, bones, and tissue, to keep each organ working, to keep health up to par, and to regain health; that it would be an adequate treatment for anemia; that it would prevent a breakdown of kidney cells and decomposition in the walls of the kidneys; that it would prevent dropsy, albuminuria, and other kidney diseases often fatal; that the use of the article by women would prevent tumors, weakness, anemia, and various other female ailments, surgical operations, and hysteria; that the article would normalize the body; that common vegetables are not a satisfactory source of vitamins and minerals; that the deficiencies in manganese, sulfur, copper, sodium, magnesium, potash, and

chlorine represented nutritional problems in this country; that the use of the article would insure against all vitamin and mineral deficiencies; that the article would be effective to prevent and correct lack of vitality, sterility, impotence, neurasthenia, nervousness, sleeplessness, poor memory, impurities of the skin, psychoneurosis enfeeblement of the mind, psychocoma, morning sickness in pregnancy, arteriosclerosis, varicose veins, gout, creaking joints, congestion of the bowels, constipation, arthritis, bone ailments, poor complexion, brain tumors, diabetes, syphilis and other sexual diseases, cancer, obesity, rheumatism, autointoxication, and heart disease; that the article would relax the brain, promote sleep, cool the liver, assuage fever, calm nerve ends and nerve nets, stop certain kinds of heat, soothe the generative system, stop contraction in motor nerves, relieve neurotic cramps, reduce temper, and relieve pain in periosteal structures of the body and in linings containing fine nerves capable of intensive pain sensations; and that it would prevent germs from taking hold, prevent impairment of the lining of the lungs, throat, and bronchial tubes, and prevent and correct tension in the spleen. The article would not be efficacious for the purposes stated and implied.

**DISPOSITION:** April 30, 1947. The defendant having entered a plea of guilty, the court ordered that he be placed on probation for a period of 2 years and that he pay a sum of \$300 as costs and expenses.

**2121. Misbranding of Miracle Slenderizing Cream. U. S. v. Norval C. Douglas (Miracle Products). Plea of not guilty. Tried to the jury. Verdict of guilty. Sentence of 1 year's imprisonment and fine of \$4,000. Judgment reversed on appeal to the Circuit Court of Appeals. Case returned to the district court for retrial. Plea of nolo contendere subsequently entered and a fine of \$2,000 and costs imposed. (F. D. C. No. 14292. Sample Nos. 41208-F, 63480-F.)**

**INFORMATION FILED:** On or about June 20, 1945, Northern District of Illinois, against Norval C. Douglas, trading as Miracle Products at Chicago, Ill.

**ALLEGED SHIPMENT:** From the State of Illinois into the States of Texas and Georgia. The product was shipped on or about March 2 and May 22, 1944. A number of circulars entitled "The Miracle Plan For A Slender Body" and "For the Preservation and Enhancement of Beauty" were shipped with a portion of the product, and a number of the circulars were shipped separately on or about April 26, 1944.

**PRODUCT:** Examination showed that the product was a semi-solid, consisting essentially of water, magnesium stearate, epsom salt, and sodium sulfate, perfumed with methyl salicylate.

**NATURE OF CHARGE:** Misbranding, Section 502 (a), the labeling of the product was false and misleading since it represented and suggested that the article would be efficacious in the reduction of body weight, whereas it would not be efficacious for such purpose.

The information charged also that another product, *Miracle Aid*, was misbranded under the provisions of the law applicable to cosmetics, as reported in notices of judgment on cosmetics.

**DISPOSITION:** The defendant having entered a plea of not guilty, the case came on for trial before a jury on December 3, 1945. The jury returned a verdict of guilty. The court thereupon sentenced the defendant to serve 1 year in jail, and imposed a fine of \$1,000 on each of the 4 counts of the information. The case was subsequently appealed to the United States Circuit Court of Appeals for the Seventh Circuit, and on June 15, 1946, the following opinion was handed down by that court:

**MAJOR, Circuit Judge:** "This is an appeal from a judgment of conviction predicated upon an information filed by the United States District Attorney, which charged a violation of numerous sections of the Federal Food, Drug, and Cosmetic Act, 21 U. S. C. A. 301, et seq.

"Defendant urges numerous grounds for reversal, but inasmuch as we are of the view that the judgment must be reversed on one of such grounds, it is unnecessary to state or discuss the others. The court sent to the jury the information, to which were attached two affidavits, each of which contained convincing proof in support of the charges contained in the information. One of the affidavits was made by a person called as a witness at the trial, the other was not. We see no reason to set forth the contents of these affidavits.