DRUGS AND DEVICES ACTIONABLE BECAUSE OF DEVIATION FROM OFFICIAL OR OWN STANDARDS

5387. Digitoxin powder. (F. D. C. No. 40334. S. No. 62–192 M.)

QUANTITY: 1 100-gram btl. at New York, N. Y.

SHIPPED: 1–15–57, from Paris, France, by Expandia.

LABEL IN PART: "Digitoxin U. S. P."

RESULTS OF INVESTIGATION: Examination showed that the article contained not more than 54.1 percent of digitoxin.

LIBELED: 7–5–57, S. Dist. N. Y.

CHARGE: 501 (b)—the strength of the article, when shipped, differed from the standard for digitoxin set forth in the United States Pharmacopeia since the article contained less than 90 percent of digitoxin, the minimum permitted by the standard.

DISPOSITION: 10–17–57. Default—destruction.

5388. Digitoxin powder. (F. D. C. No. 39889. S. No. 59–018 M.)

QUANTITY: One ctn. containing 100 grams at Philadelphia, Pa.

SHIPPED: 1–28–57, from New York, N. Y., by Desmo Chemical Corp.

LABEL IN PART: "Net 100 gms. * * * Digitoxin U. S. P. * * * Assay: Digitoxin 99.1 percent Loss on drying: 0.62 percent."

RESULTS OF INVESTIGATION: Examination showed that the article contained not more than 79 percent of digitoxin.

LIBELED: 3–19–57, E. Dist. Pa.

CHARGE: 501 (b)—the strength of the article, when shipped, differed from the standard for digitoxin set forth in the United States Pharmacopeia since the article contained less than 90 percent of the labeled amount of digitoxin, the minimum permitted by the standard.

DISPOSITION: 8–28–57. Default—destruction.

5389. Vitamin capsules. (F. D. C. No. 40198. S. No. 62–186 M.)

QUANTITY: 162 100-capsule btls. at Bronx, N. Y.

SHIPPED: 1–8–57, from Newark, N. J.

RESULTS OF INVESTIGATION: Analysis showed that the article contained less than 50 percent of the declared amount of vitamin B_{12}.

LIBELED: 5–29–57, S. Dist. N. Y.

CHARGE: 501 (c)—the strength of the article, while held for sale, differed from that which it was represented to possess, namely, 10 micrograms of vitamin B_{12}; and 502 (a)—the label statement "Vitamin B–12 10 Mcgms." was false and misleading.

DISPOSITION: 7–16–57. Default—destruction.

5390. Halazone tablets. (F. D. C. No. 40318. S. No. 67–482 M.)

QUANTITY: 25 cases, containing 2,575 btls., at Falls Church, Va.

SHIPPED: Prior to 10–7–55, from North Chicago, Ill.

LABEL IN PART: (Btl.) "100 Water Purification Tablets for Purifying Drinking Water in Canteens Halazone N. N. R. * * * Each tablet contains: 0.004 Gm. (1/16 grain) of Halazone with sodium carbonate, sodium chloride and boric acid."

RESULTS OF INVESTIGATION: Examination showed that the article contained from 35 to 68 percent of the labeled amount of halazone.

LIBELED: 6–12–57, E. Dist. Va.

CHARGE: 501 (b)—the strength of the article, while held for sale, differed from the standard for halazone tablets set forth in the National Formulary.

DISPOSITION: 1–14–58. Default—destruction.

5391. Orgone Energy Accumulators. (Inj. No. 261.)

COMPLAINT FOR INJUNCTION FILED: 2–10–54, Dist. Maine, against Wilhelm Reich Foundation, a corporation, Rangeley, Maine, Wilhelm Reich, an individual, and Ilse Ollendorff, also known as Mrs. Wilhelm Reich, to enjoin the defendants (1) against causing the introduction and delivery for introduction into interstate commerce of devices known as *Orgone Energy Accumulators* and adulterated and misbranded as described below and (2) against causing such devices to be adulterated and misbranded while held for sale after shipment in interstate commerce.

NATURE OF DEVICE: The complaint alleged that the *Orgone Energy Accumulator* devices were available in several styles and models, such as:

(1) The *box-style Orgone Energy Accumulator* which was designed to stand upright and was large enough to permit an adult to sit inside. The height, width, and depth were several inches less than those of an ordinary telephone booth. The top, bottom, sides, and door were constructed with alternating layers of organic and metallic material. The outer layer was of Celotex or plywood, then alternating layers of steel wool and rock or glass wool, with the inside layer of galvanized sheet metal or plastic wire mesh. The door was hinged to one side and usually had an open window or portions cut out at the top and bottom for ventilation. There was a two-section removable seat also made in layers. A small section was cut out at a corner of the seat for the insertion of a length of B–X type cable, into the other end of which a funnel could be placed. The drop section might be used as a chestboard by placing it upright in front of the chest of the person sitting in the box; chestboards were also made and sold separately. A device with six layers was called a three-fold *Orgone Energy Accumulator;* one with two additional layers was called four-fold, and so on;

(2) The *"Shooter" type Orgone Energy Accumulator* which was a box approximately one cubic foot in size, all sides of which were made in the manner described above;

(3) The *blanket style Orgone Energy Accumulator* which was constructed of wire mesh, with several alternating layers of organic and metallic material covered on the outside with plastic. It was made in three portions which could fold down flat. It was for use in bed or local application; one section could be placed under the mattress and the other two over the patient;

(4) The *funnel style Orgone Energy Accumulator* which also was constructed of wire mesh, with several alternating layers of organic and metallic material covered with plastic.

The *Orgone Energy Accumulators* were not connected with, or plugged into, any source of electrical or other type of energy or power.

The above-described *Orgone Energy Accumulators* were offered by the defendants both for sale and for rental.

The complaint alleged also that the defendants had made the following claims with respect to orgone energy and the operation of the *Orgone Energy Accumulators;* that Defendant Wilhelm Reich had discovered a form of energy present in the atmosphere for which he coined the term "orgone energy"; that the alleged energy was life energy, had therapeutic value, and was beneficial in the cure, mitigation, treatment, and prevention of disease; that Wilhelm Reich had invented a device in 1940 which collected this alleged energy from the atmosphere and accumulated it in the device, where it was usable for scientific, educational, and medical purposes; that the organic material, which should constitute the outermost layer of the accumulator, attracted and absorbed the alleged orgone energy; that metallic material, though it attracted the energy, quickly reflected it; that by layering the accumulators with the organic material always on the outside, as above-described, a direction was thereby given to the alleged energy from the outside to the inside where the alleged energy was collected and concentrated; that the enclosure within the device constituted an alleged orgone energy field and the person in the enclosure constituted another such field; that the energy fields of the two systems would make contact; that both the person and the energy field would begin to "luminate," become excited and, making contact, drive each other to higher levels of excitation; and that the user would become aware of this alleged phenomenon through feelings of prickling, warmth, relaxation and reddening of the face, accompanied by an increase of body temperature from ½ to 1½ degrees Fahrenheit.

The complaint alleged further that the defendants stated that there was no mechanical rule as to the length of time a person should sit in the devices; that, on the average, a person required from 5 to 30 minutes daily; that, with regular use, this time could be shortened from 30-minute to 10-minute sessions; that the necessary time for the sittings was decreased in accordance with the number of layers the devices happened to have; that a patient could sit in the devices clothed or unclothed, but woolen or too heavy clothing was not recommended since such clothing prevented quick contact and lumination; and that it was better for a person to indulge in two or more short sittings rather than one protracted sitting as the latter could cause serious damage.

ACCOMPANYING LABELING: Books entitled "The Discovery of the Orgone" by Wilhelm Reich (Vol. I—"The Function of the Orgasm" and Vol. II—"The Cancer Biopathy"); "The Orgone Energy Accumulator—Its Scientific and Medical Use"; "Ether, God and Devil" by Wilhelm Reich; "Annals of the Orgone Institute"; "Listen Little Man" by Wilhelm Reich; "The Mass Psychology of Fascism" by Wilhelm Reich; "Character Analysis" by Wilhelm Reich; "International Journal of Sex-Economy and Orgone Research" (4 vols. published 1942 through 1945); "The Murder of Christ" by Wilhelm Reich; "People in Trouble" by Wilhelm Reich; "The Oranur Experiment"; Cosmic Superimposition" by Wilhelm Reich; and "The Sexual Revolution."

Booklets entitled "Orgone Energy Bulletin" (a quarterly publication); "Emotional Plague Versus Orgone Biophysics"; "Internationale Zeitschrift Fur Orgonomie"; "Orgone Energy Emergency Bulletin"; "Oranur Project"; and "Additional Information Regarding Soft Orgone Irradiation."

Miscellaneous circulars and sheets entitled "Application For Use Of The Orgone Energy Accumulator"; "How To Use The Orgone Accumulator"; "In structions For Assembling The Orgone Accumulator"; "Catalogue Sheet"; and "Physicians Report"; "To All Users of The Orgone Energy Accumulator"; and "Instructions For The Orgone Energy Accumulator Blanket."

The complaint alleged further that the items of written, printed, and graphic matter published and distributed by the Orgone Institute Press, the publishing house of the defendant, Wilhelm Reich Foundation, consisted of books, book covers, booklets, periodicals, journals, pamphlets, bulletins, brochures, order blanks, announcements, catalogs, catalog sheets, form sheets, application forms for sale and rental of the *Orgone Energy Accumulators*, and instruction sheets.

The complaint charged that there were many ways in which prospective purchasers of the devices could learn about them. These encompassed conversations with persons acquainted with the devices, as well as advertising campaigns conducted by the defendants in newspapers, journals, and in magazines which promoted the sales of books, periodicals, booklets, journals, bulletins, and other publications of the defendants. This advertising announced the existence, availability, and prices of defendants' publications on the discovery and medical use of Orgone Energy by employing the *Orgone Energy Accumulator*. Announcements appeared on the removal covers of defendants' booklets, pamphlets, and journals. Defendants' publications were exhibited at booksellers and library association conventions and conferences, and were listed in book reference sources. Also, the defendants had made use of a mailing list of approximately 7,500 names and had printed 10,000 copies of a catalog describing the contents of each of their books and periodicals, and had mailed out approximately 7,000 copies of this catalog.

CHARGE: 501 (c)—the strength of the devices differed from, and their quality fell below, that which they purported and were represented to possess in that they were not capable of collecting from the atmosphere and accumulating in said devices the alleged Orgone Energy.

502 (a)—the labeling accompanying the devices, when shipped and while held for sale, was false and misleading as follows:

(1) The mimeographed sheet entitled "How To Use The Orgone Accumulator * * * Please Read Carefully" represented and suggested that the devices be kept at least three rooms away from an operating X-ray machine; that the devices should not be used in proximity to operating X-ray equipment; and that experimentation should not be conducted with radioactive materials in combination with the alleged Orgone Energy, as "it is dangerous to life," which representations and suggestions were false and misleading since they conveyed the impression and belief that the alleged Orgone Energy was a powerful form of energy, particularly when in contact with emanations from radioactive material and roentgen rays, whereas the alleged Orgone Energy was not a powerful form of energy, was nonexistent, and was not "dangerous to life";

(2) Some of the accompanying labeling contained a photograph with a caption conveying the false and misleading impression that the photograph was an actual photograph of the alleged Orgone Energy;

(3) Some of the accompanying labeling contained photographs with captions conveying the false and misleading impression that the photographs were ones showing excited orgone energy fields;

(4) The labeling of the devices, namely, the above-mentioned accompanying labeling, contained false and misleading representations and suggestions that the devices were outstanding therapeutic agents; that they were preventive of, and beneficial for use in, all diseases and disease conditions, and effective in particular in the cure, mitigation, treatment, and prevention of cancer, anemia, pernicious anemia, headaches, cancer

tumor of breasts, influenza, acute and chronic colds, grippe, hay fever, asthma, rheumatism, arthritis, old resilient ulcers, varicose ulcers, duodenal ulcers, chronic illnesses, bruises, cuts, lesions, abrasions, wounds, healing of wounds, burns, bedsores, sinusitis, purulent frontal sinusitis, migraine, neuritis, vascular hypertension, cardiovascular hypertension, high blood pressure, low blood pressure, decompensated heart disease, brain tumors, arteriosclerosis, arteriosclerotic heart disease, apoplectic attacks, skin inflammation, conjunctivitis, sterilization of wounds, immobilization of vaginal bacteria, chronic fatigue, undernourishment, diabetes, angina pectoris, constipation, Basedow's disease, abscesses, chronic diarrhea, chronic bronchitis, gastric ulcer, putrefaction of the intestines, inflammation of the eyeball, hemorrhage of the throat, paradentosis, lichenoid eczema, osteoporosis, thrombophlebitis, compound fracture, Buerger's disease, ichthyosis, epilepsy, multiple sclerosis, chorea, cancer pains, raising hemoglobin, elimination of cancer tumors, tumors easily destroyed, lung cancer, inoperable cancer of esophagus, prevention of metastasis, leukemia, fistula, *Trichomonas vaginalis*, cutaneous abscesses, underweight, pregnancy, tumors, infection, pneumonia, rheumatic fever, hypertension, cut finger, tissue degeneration, blood degeneration, "myodegeneratio cordis," prostatitis, myocardial infarction, intestinal trouble, mediastinal malignancy, and diabetic neuritis; counteracts nuclear radiation, chills, and low resistance; pneumonia preventive; prevents burn blisters; and for shock, epidemics, blood, and tissues.

DISPOSITION: A "Response" was submitted by Defendant Wilhelm Reich, on 2–25–54, in which he denied the jurisdiction of the court to deal with and inquire into the realm of basic research and "Basic Natural Law."

On 3–19–54, all of the defendants having failed to answer Requests for Admissions, and having failed to appear or answer the Complaint for Injunction, the court entered a decree of permanent injunction against the defendants by default, restraining them from introducing into interstate commerce any *Orgone Energy Accumulator* devices adulterated or misbranded as charged above; or doing any act with respect to the devices, while held for sale after shipment in interstate commerce, which would result in the devices becoming adulterated or misbranded in any respect. The decree further provided:

"(1) That all orgone energy accumulator devices, and their labeling, which were shipped in interstate commerce and which (a) are on a rental basis, or (b) otherwise owned or controlled by any one of the defendants, or by the defendants, be recalled by the defendants to their place of business at Rangeley, Maine; and

"(2) That the devices referred to in (1) immediately above, and their parts, be destroyed by the defendants or, they may be dismantled and the materials from which they were made salvaged after dismantling; and

"(3) That the labeling referred to in paragraph (1), just above, except those items for which a specific purchase price was paid by their owners, be destroyed by the defendants; and

"(4) That all parts or portions of orgone accumulator devices shipped in interstate commerce and returned to Rangeley, Maine, or elsewhere, and awaiting repair or re-shipment be destroyed by the defendants, or, they may be dismantled and the materials from which they were made salvaged after dismantling; and

"(5) That all copies of the following items of written, printed, or graphic matter, and their covers, if any, which items have constituted labeling of the article of device, and which contain statements and representations pertaining to the existence of orgone energy, its collection by, and accumulation in,

orgone energy accumulators, and the use of such alleged orgone energy by employing said accumulators, in the cure, mitigation, treatment, and prevention of disease, symptoms, and conditions:

The Discovery of the Orgone by Wilhelm Reich
Vol. I—The Function of the Orgasm
Vol. II—The Cancer Biopathy
The Sexual Revolution by Wilhelm Reich
Ether, God and Devil by Wilhelm Reich
Cosmic Superimposition by Wilhelm Reich
Listen, Little Man by Wilhelm Reich
The Mass Psychology of Fascism by Wilhelm Reich
Character Analysis by Wilhelm Reich
The Murder of Christ by Wilhelm Reich
People in Trouble by Wilhelm Reich

shall be withheld by the defendants and not again employed as labeling; in the event, however, such statements and representations, and any other allied material, are deleted, such publications may be used by the defendants; and

"(6) That all written, printed, and graphic matter containing instructions for the use of any orgone energy accumulator device, instructions for the assembly thereof, all printed, and other announcements and order blanks for the items listed in the paragraph immediately above, all documents, bulletins, pamphlets, journals, and booklets entitled in part, as follows: CATALOGUE SHEET, PHYSICIAN'S REPORT, APPLICATION FOR THE USE OF THE ORGONE ENERGY ACCUMULATOR, ADDITIONAL INFORMATION REGARDING SOFT ORGONE IRRADIATION, ORGONE ENERGY ACCUMULATOR ITS SCIENTIFIC AND MEDICAL USE, ORGONE ENERGY BULLETIN, ORGONE ENERGY EMERGENCY BULLETIN, INTERNATIONAL JOURNAL OF SEX-ECONOMY AND ORGONE RESEARCH, INTERNATIONALE ZEITSCHRIFT FUR ORGONOMIE, EMOTIONAL PLAGUE VERSUS ORGONE BIOPHYSICS, ANNALS OF THE ORGONE INSTITUTE, and ORANUR EXPERIMENT, but not limited to those enumerated, shall be destroyed; and

"(7) That the directives and provisions contained in paragraphs (1) to (6) inclusive, above, shall be performed under the supervision of employees of the Food and Drug Administration, authorized representatives of the Secretary of Health, Education, and Welfare; and

"(8) That for the purposes of supervision and securing compliance with this decree the defendants shall permit said employees of the Food and Drug Administration, at reasonable times, to have access to and to copy from, all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of said defendants, including all affiliated persons, corporations, associations, and organizations, at Rangeley, Maine, or elsewhere, relating to any matters contained in this decree. Any such authorized representative of the Secretary shall be permitted to interview officers or employees of any defendant, or any affiliate, regarding any such matters subject to the reasonable convenience of any of said officers or employees of said defendants, or affiliates, but without restraint or interference from any one of said defendants; and

"(9) That the defendants refrain from, either directly or indirectly, in violation of said Act, disseminating information pertaining to the assembly, construction, or composition of orgone energy accumulator devices to be employed for therapeutic or prophylactic uses by man or for other animals."

Subsequently, on 5–5–54, a petition for leave to intervene in the above injunction case was filed in the United States District Court for the District of Maine on behalf of 15 physicians from New York, New Jersey, and Pennsylvania, who employed Orgonomy in their practices.

The petition prayed that the above default decree be vacated and that the applicants be granted leave to serve and file answers to the complaint. The application was based upon the contention that the applicants were and might be

bound by the decree; that the named defendants in the complaint inadequately represented applicants' interest; that the applicants were so situated that property under the control of the court might be disposed of and applicants would be adversely affected thereby; and, that the rights of the applicants rested upon claims or defenses which were identical in questions of law and fact with those in the main action.

The application was denied by the court on 11–17–54, with the following opinion (17 F. R. D. 96):

CLIFFORD, *District Judge:* "This action comes before this Court upon an application for intervention, filed on May 5, 1954, by Elsworth F. Baker, K. M. Bremer, Philip Gold, Sidney Handelman, Morton Herskowitz, Charles I. Oller, Chester M. Raphael, Michael Silvert, Victor A. Sobey, William F. Thorburn, Oscar Tropp, Simeon J. Tropp, Eileen Walkenstein, James A. Willie and Albert I. Duvall, hereinafter referred to as the applicants. They seek to intervene in the above-entitled action, in which the defendants defaulted and a decree of injunction was entered on March 19, 1954.

"A brief history of that case, hereinafter referred as the original proceeding, is essential to an understanding of this application. On February 10, 1954, a complaint for injunction was filed by the United States of America against the named defendants under section 302 (a) of the Federal Food, Drug, and Cosmetic Act (21 U. S. C. 332 (a)) to restrain violations of section 301 (a) and (k) (21 U. S. C. 331 (a) and (k)) of said Act.

"The defendant, the Wilhelm Reich Foundation, was a Maine corporation having its principal place of business at Rangeley, Maine. Defendant, Wilhelm Reich, was an individual residing in Rangeley and was the moving spirit in the above Foundation and its activities; Ilse Ollendorff, otherwise known as Mrs. Wilhelm Reich, also resided at Rangeley and was actively engaged in the conduct of the Foundation, and other affiliated activities of Wilhelm Reich.

"The complaint alleged in general that the said defendants were manufacturing and introducing into interstate commerce certain devices referred to by them as orgone energy accumulators, and were representing in their labelling that such devices were therapeutic agents which were beneficial in the cure, mitigation, treatment, and prevention of innumerable diseases and conditions, including such serious and chronic ailments as cancer, anemia, arteriosclerosis, brain tumors, diabetes, gastric ulcers, Buerger's Disease, and leukemia. It was further alleged that such devices were not effective in the treatment of such diseases and conditions and that, therefore, they were misbranded within the meaning of 21 U. S. C. 352 (a); it was also alleged that they were adulterated within the meaning of 21 U. S. C. 351 (c) in that their strength differed from, and their quality fell below, that which they were purported and represented to possess. The complaint prayed that the defendants, their officers, agents, servants, employees, attorneys, all corporations, associations, and organizations, and all persons in active concert or participation with any of them be perpetually enjoined from introducing or delivering for introduction into interstate commerce any such orgone energy accumulator devices and their accessories or any similar article allegedly so misbranded and adulterated. The complaint also prayed that the named defendants be perpetually enjoined from doing or causing any act, oral, written, or otherwise with respect to any kind of orgone energy accumulator device while held for sale after shipment in interstate commerce, which results in said article being misbranded or adulterated within the meaning of the above designated sections of the Act.

"Service of a copy of the complaint and summons were duly made upon each of the three defendants on February 10, 1954. No appearance was entered by any of the defendants, nor was an answer filed by them. However, under date of February 25, 1954, defendant Wilhelm Reich sent to the Presiding Judge of this Court a letter purporting to be a concise statement of his position which was more fully set forth in an enclosed lengthy document entitled by him as the 'Response.' The letter reads as follows:

DEAR JUDGE CLIFFORD:

I am taking the liberty of transmitting to you my "Response" to the complaint filed by the Food and Drug Administration regarding the Orgone Energy Accumulator. My "Response" summarizes my standpoint as a natural scientist who deals with matters of basic natural law. It is not in my hands to judge the legal aspects of the matter.

My factual position in the case as well as in the world of science of today does not permit me to enter the case against the Food and Drug Administration, since such action would, in my mind, imply admission of the authority of this special branch of the Government to pass judgment on primordial, pre-atomic cosmic orgone energy.

I, therefore, rest the case in full confidence in your hands.

Sincerely yours,
/S/ WILHELM REICH, M. D.

"On February 26, 1954, certain requests for admissions were propounded by the United States and served upon each of the named defendants requesting answer thereto within ten days after such service. No appearance, acknowledgment, or answer was made, at any time, by any of the defendants in reply thereto. Twenty-one days later, namely, on March 19, 1954, upon requests by the United States, default of each of the named defendants was duly entered by the Clerk of this Court. On the same date, upon motion for Default Judgment by the Government, a Decree of Injunction against the named defendants was entered, as prayed for, enjoining them and their officers, agents, servants, employees, attorneys, all corporations, associations, and organizations, and all persons in active concert, or participation with any of them from the practices set out in the complaint.

"On March 22, 1954, certified copies of the decree were served on the three named defendants. At the same time, copies were either served upon or mailed to several other persons at Rangeley, Maine, and at nearby Farmington, who were employees or contractors for the defendants in the manufacture and distribution of these devices.

"Copies of the decree were also mailed to each of the applicants. These individuals are duly licensed physicians, nearly all of whom specialize in the practice of psychiatry in the New York City, Philadelphia, and New Jersey area. As it appears from their affidavits, they have no legal relationship with any of the named defendants. Apparently, copies of the decree were mailed to them because of their activity in the field of Orgonomy. They all believe in the existence and validity of the alleged science, employ its principles and use orgone energy accumulators in their professional practices, and many of them had within recent years studied matters relating to Orgonomy under Dr. Reich. It does not appear, however, from their affidavits and answer, nor do they contend, that they were engaged in the manufacture and distribution in interstate commerce of orgone energy accumulators.

"The application for intervention was filed on May 5, 1954, approximately two months after the entry of the default decree, and counsel for the Government and the applicants were heard thereon on the same day.

"On June 7, 1954, the Government filed a statement and certain documents in opposition to this motion to intervene, and served copies by mail upon counsel for the applicants. Among the documents submitted by the Government was a telegram sent by Ilse Ollendorff, clerk of the Wilhelm Reich Foundation, which read as follows:

1954 MAR. 30

PETER MILLS
DISTRICT ATTORNEY,
FEDERAL COURT HOUSE, PORTLAND, ME.

The Wilhelm Reich Foundation is far advanced in preparing full compliance with injunction of March 19, 1954 Stop An exact account of measures taken and still in progress will be sent to your office for your information.

THE WILHELM REICH FOUNDATION,
Ilse Ollendorf, Clerk.

Also, briefs were subsequently submitted for consideration by this Court.

"The right to intervene is governed generally by Rule 24 of the Federal Rules of Civil Procedure, the pertinent portions of which read as follows:

> (a) Intervention of right. Upon timely application anyone shall be permitted to intervene in an action: * * * (2) When the representation of the applicant's interest by existing parties is or may be inadequate and the applicant is or may be bound by a judgment in the action; * * *
>
> (b) Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action: * * * (2) When an applicant's claim or defense and the main action have a question of law or fact in common. * * * In exercising its discretion the court shall consider whether intervention will unduly delay or prejudice the adjudication of the rights of the original parties. * * *

"Principally, the applicants contend that they are members of a class against whom, along with the named defendants, the original proceeding was filed; that they were not given notice of the action by process; that they were not adequately represented by the named defendants in that proceeding; that they are bound by the decree in that it was designed to and actually does interfere with basic functions of their practice of medicine; and that this is a right which they should have had the opportunity to protect in the original proceeding. They conclude, therefore, that having an absolute right to intervene under Rule 24 (a) (2), intervention should be allowed even after a final judgment has been entered because there is no other way in which said right could be protected.

"Independently of Rule 24 (a) (2), they contend that their claims and defenses involved questions of law and fact identical with those of the original proceeding and, therefore, permission to intervene should be granted them under Rule 24 (b) (2).

"Although the right to intervene under Rule 24 (a) (2) must be predicated upon the two factors referred to therein, the crucial prerequisite seems to be whether or not the applicant may be 'bound' by the judgment in the action. *4 Moore's Fed. Practice*, 2d Ed., Par. 24.08; see note, *63 Yale Law Journal* 408. It is generally held that an applicant may be 'bound' within the meaning of Rule 24 (a) (2) only when he may be subject to *res judicata*. *Stuphen Estates* v. *United States*, 324 U. S. 19; *Innis, Speiden & Co.* v. *Food Machinery Corp.*, 2 F. R. D. 261; *Owen* v. *Paramount Productions*, 41 F. Supp. 557; cf. *Cameron* v. *President and Fellows of Harvard College*, 157 F. 2d 993. The rationale is that the protection afforded by intervention of right is not essential to one who will have another legal remedy available after judgment. Note, *63 Yale Law Journal*, supra, 411. And, as a general rule, no person or those in privity with him is bound by an *in personam* judgment arising from an action in which he was neither served with process nor given an opportunity to litigate his claims or defenses. *Pennoyer* v. *Neff*, 95 U. S. 714; *Hansberry* v. *Lee*, 311 U. S. 32. The effect of a judgment in a class action, however, is a recognized exception to this latter rule. *Hansberry* v. *Lee*, supra; *U. S.* v. *American Optical Co.*, 97 F. Supp. 66; *Restatement of the Law, Judgments*, Sec. 86. But it is only in a so-called true class action that the judgment is conclusive upon the absent members. *System Federal No. 94* v. *Reed*, 180 F. 2d 991; *Waybright* v. *Columbian Mutual Life Ins. Co.*, 122 F. 2d 245. A judgment in a 'hybrid' action is conclusive upon absent members only as to their rights in the res; in a 'spurious' class action, only on the parties before the court. See *46 Columbia L. Rev.* 818, 824.

"It is apparent that the applicants have assumed that the original proceeding was a true class action, the judgment in which would be binding upon them even though they were not designated parties to it. Concerning what was involved in the original proceeding, this is the only basis upon which they could possibly hope to succeed in their attempt to intervene as a matter of right. Indeed, there is authority that Rule 24 (a) (2) is limited in its application to technical representative actions, such as the true and hybrid class suits provided for in Rule 23 (a). *U. S.* v. *Columbia Gas & Electric Corp.*, 27 F. Supp. 116; *4 Moore's Federal Practice*, 2d Ed. Par. 24.08; see also Note, *63 Yale Law Journal*, supra, n. 16.

"The applicants, however, have in the opinion of this Court misconceived the basis and nature of the original proceeding and are clearly unwarranted

in their contentions with regard to intervention as a matter of right under Rule 24 (a) (2). The original proceeding was an *in personam* action brought solely against three specifically designated persons for the purpose of enjoining them from manufacturing and distributing in interstate commerce orgone energy accumulators which were adulterated and misbranded within the meaning of the Food and Drug Act. The very purpose of the Act is to keep interstate commerce free from deleterious, adulterated and misbranded articles of specified types to the end that the public health and safety might be advanced. *United States* v. *Walsh*, 331 U. S. 432. And the prohibition of the stated activity of the named defendants was the sole object which the Government sought to accomplish by its action.

"Since the applicants were not engaged in the manufacture and distribution in interstate commerce of orgone energy accumulators, nor were they in any respect legally associated with the named defendants, the named defendants were properly the only parties before this Court in the original proceeding. Especially is this so when the applicants themselves frankly state in their briefs that the only purpose for their application for intervention is to establish the existence and validity of Orgonomy, a matter which was collateral to the main issue in the original proceeding. Accordingly, persons who are not parties to an injunction, nor in privity with them, and whose rights have not been adjudicated therein are not bound by a decree and cannot be held liable for acts done contrary thereto even though the decree assumes to bind them. *Swetland* v. *Curry*, 188 F. 2d 841; *Kean* v. *Hurley*, 179 F. 2d 888; *Chase National Bank* v. *City of Norwalk*, 291 U. S. 431; *Alemite Mfg. Corp.* v. *Staff*, 42 F. 2d 832; *Scott* v. *Donald*, 165 U. S. 107.

"The fact that the applicants may subject themselves to contempt proceedings if they act in concert with the named defendants in violating the terms of the decree does not alter the basic nature of the original proceeding. The provision relating to 'officers, agents, servants, employees, etc. . . .' was inserted merely to make the decree effective as against the named defendants, adopting to a great extent the language of Rule 65(d) of the Federal Rules of Civil Procedure. Such clauses are a standard provision in injunction decrees and do not impose any liability which would not exist without them. *Alemite Mfg. Corp.* v. *Staff*, supra; *Regal Knitwear Co.* v. *Board*, 324 U. S. 9; *Chase National Bank* v. *City of Norwalk*, 291 U. S. 431; *United States* v. *American Optical Co.*, 97 F. Supp. 66. As stated in *Regal Knitwear Co.* v. *Board*, Supra, 14:

> This [Rule 65 (d)] is derived from the common-law doctrine that a decree of injunction not only binds the parties defendant but also those identified with them in interest, in "privity" with them, represented by them or subject to their control. In essence it is that defendants may not nullify a decree by carrying out prohibited acts through aiders and abettors, *although they were not parties to the original proceeding.* [Emphasis supplied.]

"Service of copies of the decree upon the applicants, therefore, was in conformance with Rule 65 (d), putting them on notice that they, like any other person with notice of the decree, are subject to contempt proceedings should they enable the named defendants to circumvent its terms by performing proscribed activities through them. Nevertheless, since they were not parties to the original proceeding, their activity in the field of Orgonomy remains unrestricted even with regard to matters barred by the decree, so long as they act independently of the named defendants. Undoubtedly, however, the applicants will, as a practical matter, be adversely affected by the decree, but that is of no legal consequence, insofar as intervention of right is concerned. *Stuphen Estates* v. *United States*, 324 U. S. 19; *Durkin* v. *Pet Milk Co.*, 14 F. R. D., 374, 378, where the court stated that the 'movants may be indirectly affected by a judgment . . . but they will not be "bound" by the judgment in the sense contemplated by the Rule.' See also *Brotherhood of Locomotive Engineers* v. *Chicago*, M. St. P. & P. R. R., 34 F. Supp. 594, 596; *Kind* v. *Markham*, 7 F. R. D. 265. Therefore, under all the facts and circumstances of this case, this Court is of the opinion that the applicants do not have an absolute right to intervene under Rule 24 (a) (2) because the default decree is not and cannot be *res judicata* as to them.

"Furthermore, under both Rule 24 (a) (2) and Rule 24 (b) (2) an application for intervention must be timely made. What constitutes timeliness is entrusted to the discretion of the Court. Permissive intervention under Rule 24 (b) (2) is very largely a matter of trial convenience and should be made at an early stage of the main proceedings to be of any measurable value. Intervention under Rule 24 (a) (2), however, involves something more than trial convenience and might well be allowed at a stage in the proceedings when permissive intervention would be denied. *Cameron* v. *President and Fellows of Harvard College*, 157 F. 2d 993. Although the determination of timeliness involves a consideration of a number of factors and the time element alone is not controlling, a strong showing must be made by the applicants in order to be allowed to intervene after the entry of a final judgement. See *4 Moore's Federal Practice* 2d Ed. Par. 24.13.

"The only factor stressed by the applicants in this regard is that they have no other way in which their rights could be protected, citing *Pellegrino* v. *Nesbit*, 203 F. 2d 463; *Wolpe* v. *Peretsky*, 144 F. 2d 505; *United States Casualty Co.* v. *Taylor*, 64 F. 2d 521; *Western Union Telegraph Co.* v. *IBEW, Local Union No. 134, et al*, 133 F. 2d 955. The premise upon which the applicants base their contention is erroneous. As this Court has already determined, the applicants are not 'bound' by the original proceeding and, therefore, their rights with regard to Orgonomy have never been adjudicated. Consequently, the applicants' contention in this respect is without merit and the cases cited by them are, therefore, inapplicable.

"Moreover, considering that the application for intervention was filed some two months after the entry of the default decree and one of the named defendants has indicated to the United States Attorney for the District of Maine that they have substantially complied with its terms, and under all of the other facts and circumstances of this case, this Court, in the exercise of its discretion, is of the opinion that the application for intervention was not timely made under the provisions of either Rule 24 (a) (2) or 24 (b) (2).

"It is therefore ORDERED, ADJUDGED, and DECREED that the application for intervention filed by the applicants on May 5, 1954, be and hereby is DENIED."

Applicants moved for a stay of execution of the decree of injunction pending appeal to the United States Court of Appeals for the First Circuit. This motion was granted by the district court on 1–18–55, as applying to the destruction of books and apparatus on 1–18–55, and was denied as to the rest of the terms of the decree.

Applicants thereafter appealed the denial of the application to intervene; and, on 5–11–55, the United States Court of Appeals for the First Circuit affirmed the decision of the district court (221 F. 2d 957).

Applicants thereafter filed motions for a stay of enforcement of the decree of injunction in the United States District Court for the District of Maine, in the United States Court of Appeals for the First Circuit, and in the United States Supreme Court, pending a petition for a writ of certiorari. All of these motions were subsequently denied.

On 10–10–55, the United States Supreme Court denied applicants' petition for a writ of certiorari.

5392. Orgone Energy Accumulators. (Inj. No. 261.)

INFORMATION FILED: On 7–15–55, in the District of Maine, the United States attorney instituted criminal contempt proceedings by filing an information and an application for an order to show cause why Wilhelm Reich Foundation, a Maine corporation, Rangeley, Maine, Wilhelm Reich, an individual, Rangeley, Maine, and Michael Silvert, an individual, New York, N. Y., should not be punished for criminal contempt of the permanent injunction which had been entered against Wilhelm Reich Foundation, Wilhelm Reich, and Ilse Ollen-

dorff, on 3–19–54, as reported in the foregoing notice of judgment on drugs and devices, No. 5391.

An amendment to the information was filed on 9–23–55.

CHARGE: The information alleged that, since the entry of the decree, Wilhelm Reich Foundation and Wilhelm Reich had failed, as directed and ordered in the decree of injunction: (1) to recall to Rangeley, Maine, all *Orgone Energy Accumulator* devices and their labeling which were shipped in interstate commerce either on a rental basis or otherwise owned or controlled by the defendants and to dismantle for salvage or destroy those devices and their parts and to destroy the labeling; (2) to dismantle for salvage or destroy all *Orgone Energy Accumulator* devices, accessories, components, and parts that had been shipped in interstate commerce and that had been returned to Rangeley, Maine, where they were awaiting repair, reshipment, or other disposition; (3) to withhold and not again employ as labeling items of written, printed, and graphic matter and their covers, if any, which had constituted labeling of the devices and which contained statements and representations pertaining to the existence of Orgone energy, its collection by, and accumulation in, the device, and the use of the alleged energy by employing the device in the cure, mitigation, treatment, and prevention of disease, symptoms, and conditions as enumerated specifically in the decree; (4) to destroy all written, printed, and graphic matter containing instructions for the use or assembly of the device, all announcements and order blanks for the items in (3) above, and all documents, bulletins, phamplets, journals, and booklets, as specifically enumerated in the decree; and (5) to permit employees of the Food and Drug Administration, at reasonable times, to have access to, and copy from, all books, ledgers, accounts, correspondence, memoranda, and other records and documents in their possession and control relating to matters contained in the injunction decree.

The information alleged further that the following telegram was sent to the United States Attorney for the District of Maine on 3–30–54: "The Wilhelm Reich Foundation is far advanced in preparing full compliance with injunction of March 19, 1954 Stop An exact account of measures taken and still in progress will be sent to your office for your information"; that despite the telegram and in defiance of the injunction, Wilhelm Reich had refused to comply with its terms at any time, and on 12–30–54, in Tucson, Ariz., and on 6–6–55, at Rangeley, Maine, had refused to talk to, be interviewed by, and furnish information to, inspectors of the Food and Drug Administration; and that Wilhelm Reich Foundation had refused also at all times to comply with the terms of the injunction.

It was alleged also that Michael Silvert had been served with a copy of the injunction on 4–1–54, and was one of the applicants for intervention in the above-mentioned notice of judgment on drugs and devices, No. 5391; and that within four days after the order of the court denying the stay of execution of the decree of injunction, he shipped from Rangeley, Maine, to New York, N. Y., a number of the devices, accessories, components, and parts, along with various items of written, printed, and graphic matter which constituted labeling.

It was alleged further that Michael Silvert, in concert with Wilhelm Reich and Wilhelm Reich Foundation: (1) continued to carry on the business transactions and affairs of Wilhelm Reich and Wilhelm Reich Foundation; (2) continued to offer for sale and sell various items of written, printed, and graphic

matter which fell within the proscriptions of the decree; (3) collected rentals for the devices and ordered the return of the devices to New York, N. Y.; and (4) refused to furnish, upon reasonable requests, to inspectors of the Food and Drug Administration, information, access to, and permission to, copy from, the books, ledgers, accounts, correspondence, and memoranda of Wilhelm Reich and Wilhelm Reich Foundation.

DISPOSITION: An order to show cause was entered on 7–15–55; and, on 7–26–55, the defendants pleaded not guilty. The Government, on 9–23–55, made a motion to amend the information, which was granted by the court on 10–11–55. On 10–18–55, the defendants pleaded not guilty to the information as amended.

The case came on for trial before a jury on 5–3–56. Wilhelm Reich and Michael Silvert refused to appear; and the court issued bench warrants to have them brought into court, after which the trial continued. The trial was concluded on 5–7–56, with a return by the jury of a verdict of guilty against the defendants for criminal contempt of the injunction. The court, on the same day, fined Wilhelm Reich $500 and Michael Silvert $300 for contempt of court arising out of their refusal to appear for trial, and postponed sentence until 5–25–56, for violation of injunction. On that day, the court sentenced Wilhelm Reich to 2 years in jail, Michael Silvert to 1 year and 1 day in jail, and fined Wilhelm Reich Foundation $10,000.

The defendants appealed to the United States Court of Appeals for the First Circuit on 6–4–56; and, on 12–11–56, this court affirmed the judgment of the district court with the following opinion (239 F. 2d. 134):

WOODBURY, *Circuit Judge:* "The United States, on February 10, 1954, filed a complaint under § 302 (a) of the Federal Food, Drug, and Cosmetic Act, 52 Stat. 1043, 21 U. S. C. § 332 (a), in the United States District Court for the District of Maine asking for an injunction restraining the Wilhelm Reich Foundation, a Maine corporation, and Wilhelm Reich and Ilse Ollendorff, individuals residing in Rangeley, Maine, from violating § 301 (a) and (k) of the above Act by either introducing, or causing the introduction into interstate commerce, or, while being held for sale after shipment in interstate commerce doing anything resulting in the misbranding of, certain devices known as 'orgone energy accumulators,'* which it was alleged were adulterated within the meaning of § 501 (c) of the Act and misbranded within the meaning of § 502 (a) thereof. Service of the complaint and summons was duly made on the defendants on the same day that the complaint was filed.

"The defendants entered no appearances and filed no answers. Indeed, in a letter to the judge of the court below dated February 25, 1954, the defendant, Dr. Wilhelm Reich, indicated unmistakably that he, at least, had no intention of filing either an appearance or an answer. Dr. Reich wrote to the court in part:

> My factual position in the case as well as the world of science of today does not permit me to enter the case against the Food and Drug Administration, since such action would, in my mind, imply admission of the authority of this special branch of the government to pass judgment on primordial preatomic cosmic orgone energy.

"On the day after this letter was written requests for admissions were propounded by the United States and served on each of the defendants. These requests were ignored, and on March 19, 1954, upon request of the United States, the default of each defendant was entered by the clerk of the court below. On the same day the United States moved for default judgment, its motion was granted, and the court immediately entered a decree of injunction as prayed for in the complaint. By the terms of this injunction the

*In their commonest form these are box-like structures in which the patient sits for treatment. It is asserted by the Government that these devices were being falsely held out to the public at large by the defendants as at least beneficial in the treatment of a great number of human ills ranging from cancer to the common cold.

named defendants, and 'each and all of their officers, agents, servants, employees, . . . and all persons in active concert or participation with them or any of them' were 'perpetually enjoined and restrained' from indulging in the practices set out in detail in the complaint. Furthermore all orgone energy accumulators out on a rental basis or otherwise owned or controlled by the defendants were ordered recalled to the defendants' place of business in Rangeley, Maine, and there either destroyed or dismantled for salvage under the supervision of employees of the Food and Drug Administration, and in addition all printed labels and order blanks for orgone energy accumulators, and certain listed descriptive literature pertaining thereto, were ordered destroyed.

"Certified copies of the decree of injunction were served on the named defendants on March 22, 1954, and at the same time copies were either served or mailed to several other persons in the Rangeley area who were either employees of or contractors for the defendants in the manufacture and distribution of the devices. At the same time copies of the decree were also mailed to a number of duly licensed physicians in the New York, New Jersey, and Philadelphia area, most of whom specialized in psychiatry, who were known to have used orgone energy accumulators in the treatment of their patients. Included in this group was the appellant herein, Dr. Michael Silvert.

"On March 30, 1954, the defendant Ilse Ollendorff as clerk of the corporate defendant sent a telegram to the United States Attorney for the District of Maine stating:

> The Wilhelm Reich Foundation is far advanced in preparing full compliance with injunction of March 19, 1954 Stop An exact account of measures taken and still in progress will be sent to your office for your information.

"No further account of measures taken to comply with the injunction was ever sent to the District Attorney, nor does it appear that in fact any such measures ever were undertaken.

"Next, on May 5, 1954, the doctors in the New York-Philadelphia area referred to above, including as we have already noted the appellant Dr. Michael Silvert, applied to the court below for leave to intervene. Their application was denied on November 17, 1954, in accordance with an opinion of the court below of that date reported in 17 F. R. D. 96 (1954). This court affirmed on that opinion *sub nom Baker* v. *United States*, 221 F. 2d 957 (1955).

"We turn now to the case before us which was initiated by the United States Attorney for the District of Maine on July 15, 1955, when, acting under § 302 (b) of the Act, he filed in the court below an information charging the Wilhelm Reich Foundation, Dr. Wilhelm Reich and Dr. Michael Silvert with failing and refusing to obey the injunction of March 19, 1954, and asking for an order to show cause why they should not be adjudged in criminal contempt for their misbehavior. The defendants appeared and filed motions to dismiss, which were denied; the United States moved to amend, its motion was allowed, and the defendants again moved to dismiss and their motions were again denied. They also filed several other motions, all of which were denied, and do not require description or discussion. It will suffice to say that the defendants were given full opportunity for hearing on every occasion.

"Eventually, on May 3, 1956, the defendants, in accordance with their request, were put to trial by jury on their pleas of not guilty. They were found guilty by the jury and thereafter sentenced by the court, the corporation to a fine and the individuals to terms of imprisonment. These appeals are from the respective judgments of sentence.

"The defendants did not contend below and do not urge here that the injunction of March 19, 1954, had in fact been obeyed. On the contrary, they admitted at the trial that no attempt had been made to comply with its terms. Their contention is that the court below had no jurisdiction to issue the injunction. The individual appellants say that they, both individually and acting through the corporate defendant, of which Dr. Reich was the moving and guiding spirit, were engaged in basic scientific research which no agency of the Government had jurisdiction to interfere with or

control, and that furthermore and more specifically, the court below had no jurisdiction to issue the injunction for the reason that it had been procured by fraud and deception practiced upon the court by officers and agents of the Food and Drug Administration. In addition Dr. Silvert contends that he is not bound by the injunction because he was not a defendant in the original suit in which it was issued and had not been served with process therein.

"None of these contentions have any merit.

"We turn first to Dr. Silvert's separate contention. It has been settled law for a long time that one who knowingly aids, abets, assists, or acts in active concert with, a person who has been enjoined in violating an injunction subjects himself to civil as well as criminal proceedings for contempt even though he was not named or served with process in the suit in which the injunction was issued or even served with a copy of the injunction. *In Re Lennon*, 166 U. S. 548, 554 (1897); *Alemite Mfg. Corp.* v. *Staff*, 42 F. 2d 832 (C. A. 2, 1930) and cases cited. See also Rule 65 (d) F. R. Civ. P. The question then is whether Dr. Silvert had actual knowledge of the injunction of March 19, 1954, issued against the Wilhelm Reich Foundation, and Dr. Wilhelm Reich and Ilse Ollendorff personally. There can be no doubt that he did. He was mailed a copy of that injunction when it was issued, he admitted at the trial that he read the injunction when he received it, and moreover he was one of those who moved to intervene in the suit in which it was issued. Thus it is abundantly clear that he knew of its existence and knew its terms.

"The appellants' first jurisdictional contention does not deserve much comment or discussion. Its refutation is obvious from its mere statement. Of course the United States Government has power to forbid and power to take appropriate steps to prevent the transportation in interstate commerce of devices of alleged therapeutic value if they are adulterated or misbranded.

"The appellants' second jurisdictional contention deserves only slightly more extended consideration. There can be no doubt whatever that Congress in § 302 (a) of the Federal Food, Drug, and Cosmetic Act gave the District Court jurisdiction over the subject matter of the original suit. Nor can there be any doubt that the District Court obtained personal jurisdiction over the defendants in that suit by legal service of process upon them in Maine. This jurisdiction, once obtained, certainly would not be terminated by any fraud practiced upon the court by the successful litigant. On the contrary, the Court's jurisdiction would necessarily have to continue in order to permit the court to entertain an application by the victims of a successful litigant's fraud to vacate the injunction through the remedies and procedures for relief outlined in detail in *Hazel-Atlas Glass Co.* v. *Hartford-Empire Co.*, 322 U. S. 238 (1944).

"And the remedies and procedures available to a defrauded litigant certainly do not include refusal to obey an injunction. It is too well settled to require a lengthy citation of cases that an injunction, temporary or permanent, must be obeyed as long as it is in force and effect. *Howat* v. *Kansas*, 258 U. S. 181 (1922); *United States* v. *United Mine Workers of America*, 330 U. S. 258, 289, et seq. (1947) and cases cited. Nor is this rule a mere technical quirk of procedure, for as the Supreme Court pointed out in *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418, 450 (1911):

> If a party can make himself a judge of the validity of orders which have been issued, and by his own act of disobedience set them aside, then are the courts impotent, and what the Constitution now fittingly calls the "judicial power of the United States" would be a mere mockery.

See also the remarks made by Mr. Justice Frankfurter at the bottom of page 311 and the top of page 312 of his concurring opinion in the *United Mine Workers case, supra.*

"It follows that the court below did not err in refusing to permit the defendants at their trial for contempt to show in their defense that officers and agents of the Food and Drug Administration had procured the injunction of March 19, 1954, by fraud perpetrated upon the court.

"Although the court's refusal to permit the defendants to show fraud in procuring the injunction is the only error asserted by them to have occurred

at their trial, we have nevertheless, because the defendants were not represented by counsel in the court below and only partially on appeal, examined the record with particular care. We find ample evidence that Dr. Reich and the Wilhelm Reich Foundation deliberately refused to obey the injunction and that Dr. Silvert aided and abetted them in flouting it. Nor do we find any erroneous rulings of law. Indeed, it is evident from the record that throughout the trial the presiding judge solicitously protected the appellants' rights and gave them full opportunity to present every defense available to them under the law.

"Judgment will be entered affirming the judgments of the District Court."

The United States court of appeals, on 12–18–56, after a motion by the defendants, ordered a stay of mandate pending an application to the Supreme Court of the United States for a writ of certiorari. On 1–10–57, defendants filed a petition for a writ of certiorari in the Supreme Court of the United States, which petition was denied on 2–25–57.

Defendants filed in the district court, on 2–27–57, motions to strike the sentences imposed against them for violation of the injunction. These motions were denied on 3–11–57. Thereupon, Wilhelm Reich and Michael Silvert filed motions for reduction or suspension of the sentences of imprisonment, and these motions were denied on or about 4–30–57.

5393. Rubber prophylactics (2 seizure actions). (F. D. C. Nos. 40319, 40327. S. Nos. 60–173/4 M, 72–817 M, 72–820 M.)

QUANTITY: 127 gross at Chicago, Ill.

SHIPPED: Between 2–28–57 and 5–16–57, from Atlanta, Ga., by W. H. Reed & Co., Inc.

RESULTS OF INVESTIGATION: Examination showed that from 3.5 percent to 13 percent of the article was defective in that it contained holes.

LIBELED: 6–10–57 and 6–13–57, N. Dist. Ill.

CHARGE: 501 (c)—the quality of the article, when shipped, fell below that which it purported to possess; and 502 (a)—the label statement "Prophylactics" was false and misleading as applied to a product containing holes.

DISPOSITION: 7–9–57. Default—destruction.

5394. Rubber prophylactics. (F. D. C. No. 40213. S. No. 72–800 M.)

QUANTITY: 34 gross ctns., each ctn. containing 12 boxes, each box containing 4 tins, and each tin containing 3 *rubber prophylactics*, at Chicago, Ill.

SHIPPED: 2–27–57, from Atlanta, Ga., by W. H. Reed & Co., Inc.

LABEL IN PART: (Tin) "This package contains three Golden Pheasant Prophylactics Insist on the genuine (Made in W. Germany) Golden Pheasant."

RESULTS OF INVESTIGATION: Examination showed that 5.4 percent of the article was defective in that it contained holes.

LIBELED: 5–17–57, N. Dist. Ill.

CHARGE: 501 (c)—the quality of the article, when shipped, fell below that which it purported and was represented to possess; and 502 (a)—the label statement "Prophylactics" was false and misleading as applied to a product which contained holes.

DISPOSITION: 6–19–57. Default—destruction.

5395. Rubber prophylactics. (F. D. C. No. 40307. S. No. 57–627 M.)

QUANTITY: 32 gross at Tampa, Fla.

SHIPPED: 2–19–57, from Atlanta, Ga., by W. H. Reed & Co., Inc.