

United States Department of Agriculture

FOOD AND DRUG ADMINISTRATION

NOTICES OF JUDGMENT UNDER THE FOOD AND DRUGS ACT

[Given pursuant to section 4 of the Food and Drugs Act]

22576-22650

[Approved by the Acting Secretary of Agriculture, Washington, D. C., January 26, 1935]

22576. Misbranding of Vapex. U. S. v. 10 Dozen Packages, et al., of Vapex. Decrees of condemnation and destruction. (F. & D. nos. 24849, 29620, 29725, 29726, 29734, 29735, 29737, 29738, 29739. I. S. no. 015879. S. no. 3187, Sample nos. 21148-A, 23880-A, 27593-A, 28984-A, 32751-A, 32752-A, 32753-A, 33474-A, 33475-A.)

These cases involved several shipments of Vapex, a drug preparation. One lot, the earliest shipment, bore no declaration of the alcohol content. Later shipments bore no declaration of alcohol on the carton and only an inconspicuous statement on the reverse of the bottle label. The labels of these later shipments were further objectionable since they contained false and misleading claims as to its effectiveness as a bactericide and as to the place of manufacture.

On June 18, 1930, the United States attorney for the Southern District of Iowa, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 10 dozen packages of Vapex at Des Moines, Iowa. Between the dates of December 12, 1932, and January 10, 1933, libels were filed in various United States district courts against 45 dozen bottles of the product at St. Louis, Mo., 195 dozen bottles at Pittsburgh, Pa., 100 gross bottles at San Francisco, Calif., 11 dozen bottles at Kansas City, Mo., 7 gross bottles at Philadelphia, Pa., and 11 dozen bottles at Trenton, N. J. The libels charged that the article had been shipped in interstate commerce by E. Fougera, & Co., Inc., from New York, N. Y.; that the product located at Des Moines, Iowa, had been shipped on or about May 9, 1930 and the remaining lots between the dates of October 15 and December 14, 1932; and that the article was misbranded in violation of the Food and Drugs Act.

Analysis of a sample of the article by this Department showed that it consisted of an alcoholic solution of oil of lavender, oil of eucalyptus, and menthol containing 63.5 percent by volume of ethyl alcohol. Samples from other shipments were found upon analysis to consist essentially of volatile oils, such as menthol and lavender oil, alcohol (approximately 66 percent by volume), and water.

The libel filed in the Southern District of Iowa charged that the article was misbranded in that it contained alcohol and the quantity or proportion of the said alcohol was not stated on the label. The remaining libels charged that the article was misbranded in that the statements in the circular, "Vapex is produced in England by Thos. Kerfoot & Co., Ltd. * * * Laboratory Tests have proved that the Vapex vapor kills the pathogenic bacteria present in the breathing passages", and on the carton, "Vapex is a product of Thos. Kerfoot & Co., Ltd., Bardsley, England", were false and misleading; and for the further reason that the package failed to bear a statement of the quantity or proportion of alcohol contained in the article, since the carton bore no declaration whatever of alcohol and the bottle label carried only an inconspicuous declaration of alcohol on the reverse side of the bottle.

E. Fougere & Co., Inc., appeared as claimant in the case instituted in the Southern District of Iowa and Donalds, Ltd., Inc., intervened in the cases instituted in the Eastern District of Missouri, the Western District of Pennsylvania, Northern District of California, and Eastern District of Pennsylvania. On August 15, September 14, November 28, and December 6, 1933, these cases having been called and the claimants having failed to appear and defend, judgments of condemnation and forfeiture were entered, and it was ordered by the court that the product be destroyed. On August 16 and September 25, 1933, no claimant having appeared in the cases instituted in the District of New Jersey and the Western District of Missouri, judgments of condemnation and destruction were entered.

M. L. WILSON, *Acting Secretary of Agriculture.*

22577. Adulteration and misbranding of No. 1 Pyroligneous Compound and misbranding of No. 2 Pyroligneous Compound and Healing Ointment. U. S. v. 101½ Dozen Bottles of No. 1 Pyroligneous Compound, et al. Consent decree of condemnation, forfeiture, and destruction. (F. & D. nos. 26796, 26797, 26798. I. S. nos. 25192, 25193, 25194. S. no. 4930.)

Examination of the drug preparations covered by this case showed that they contained no ingredients capable of producing certain curative and therapeutic effects claimed in the labeling. Bacteriological examination of the No. 1 Pyroligneous Compound showed that it was not a germicide.

On July 27, 1931, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 101½ dozen bottles of No. 1 Pyroligneous Compound, 51 dozen boxes of No. 2 Pyroligneous Compound, and 36 dozen boxes of Healing Ointment at Chicago, Ill., alleging that the article had been shipped in interstate commerce on or about June 23 and November 10, 1930, by Lester Tilton operating as Tilton Laboratories, from Clinton, Iowa, and charging adulteration and misbranding in violation of the Food and Drugs Act as amended.

Analyses of samples of the articles by this Department showed that the No. 1 Pyroligneous Compound consisted essentially of small proportions of ammonium carbonate, ammonium hydroxide and pyridine, and about 98 percent of water; that the No. 2 Pyroligneous Compound consisted essentially of small proportions of ammonium hydroxide and pyridine, a trace of a phenolic substance and about 98 percent of water; and that the Healing Ointment consisted essentially of small proportions of volatile oils such as camphor, peppermint oil, and turpentine oil, incorporated in an ointment base. Bacteriological examination of the No. 1 Pyroligneous Compound showed that it was not germicidal.

It was alleged in the libel that the No. 1 Pyroligneous Compound was adulterated in that its strength fell below the professed standard or quality under which it was sold, namely, "Germicide, Disinfectant."

Misbranding of the No. 1 Pyroligneous Compound was alleged for the reason that the statements on the bottle label, "Its Uses—As a Germicide Disinfectant * * * Use this where you would use Iodine or Carbolic Acid in any case", were false and misleading. Misbranding was alleged with respect to all products for the reason that the following statements regarding the curative and therapeutic effects of the articles were false and fraudulent: (No. 1 Pyroligneous Compound, bottle) "Its uses—As a * * * Haemostat * * * For ulcers of stomach or food tract mix * * * For Sore Mouth, Pyorrhea, Tonsils and Sore Throat use as above and swallow slowly. For Piles or Female Trouble * * * Research (Cancer) Treatment"; (No. 2 Pyroligneous Compound, bottle) "Its uses—For Goitre moisten swollen glands thoroughly three times a day and let dry. For Swollen Glands and Varicose Veins moisten twice a day * * * Research (Cancer) Treatment"; (Healing Ointment, can) "Healing Ointment * * * Use over * * * Boils, Carbuncles, Abscesses, Infections, Sore Throat, Tonsillitis, Sore Lungs or Pus Condition of Pleura or Appendicitis and Varicose Ulcer. Cover well all swollen or inflamed parts, changing every 12 hours until healed or soreness has disappeared."

On May 28, 1934, attorney for the claimants having appeared and informed the court that the case would not be contested, and having consented to the destruction of the products, judgment of condemnation and forfeiture was entered, and it was ordered by the court that they be destroyed by the United States marshal.

M. L. WILSON, *Acting Secretary of Agriculture.*