

or larvae. The crackers in one lot were rancid and unpalatable. One lot was also short weight.

On October 12, 1943, and April 13, 1944, the United States attorney for the Northern District of California filed libels against 47 dozen gift packages and 9 cases, each containing 12 gift packages in the form of checkerboard cartons, at San Francisco, Calif., alleging that the article had been shipped in interstate commerce on or about September 1 and 3, 1943, by Newberg-Wind, Inc., from Babylon, N. Y.; and charging that it was adulterated and misbranded. One portion was labeled in part: (Sticker on package) "Checkers Mal Newburg Co. New York, N. Y.," and the remainder was labeled in part: (Sticker on checkerboard) "Contents: 2 Books 1 Puzzle 1 Writing Kit 1 Pencil 1 Checkers 1 Lb. Candy."

The article was alleged to be adulterated (9 cases) in that it consisted in whole or in part of a filthy substance, and (47 dozen cases) in that it consisted in whole or in part of a filthy and decomposed substance and was otherwise unfit for food.

One lot (47 dozen packages) was alleged to be misbranded in that the statement "Net Weight 1 Lb or Over" was false and misleading as applied to an article which was short weight, and in that it was in package form and its label failed to bear an accurate statement of the quantity of the contents.

On November 9, 1943, and June 2, 1944, no claimant having appeared, judgments of condemnation were entered and the product was ordered destroyed.

5589. Misbranding of gift packages. U. S. v. R. L. Albert & Son, Inc. Plea of not guilty. Tried to a jury. Verdict of guilty. Fine \$1,000 on count 1; sentence suspended on counts 2 to 5, inclusive. (F. D. C. No. 9622. Sample Nos. 19616-F, 20121-F, 31913-F, 32699-F, 36960-F.)

On May 13, 1943, the United States attorney for the Southern District of New York filed an information against R. L. Albert & Son, Inc., New York, N. Y., alleging shipment within the period from on or about October 16, 1942, to January 26, 1943, from the State of New York into the States of Massachusetts, Ohio, and Maryland, of quantities of gift packages that were misbranded.

The product in three of the shipments was labeled in part: "Send-A-Song Gift Pack." It was alleged to be misbranded (1) in that the statement "1 Lb. 9 Oz.," borne on the boxes, was false and misleading since the boxes contained less than the declared amount; (2) in that it was in package form and its label failed to bear an accurate statement of the quantity of the contents, and the variation between the statement of the quantity of the contents displayed on the label and the quantity actually contained in the box was unreasonable; and (3) in that its label failed to bear the place of business of the manufacturer, packer, or distributor. Misbranding was alleged with respect to the following items contained in the package: Argentina Gruyere process cheese, in that the statement "1 Oz.," borne on the package, was false and misleading since the packages contained less than 1 ounce, and in that it was food in package form and its label failed to bear an accurate statement of the quantity of the contents in terms of weight and the variation was unreasonable; peanut butter, in that it was in package form and its label failed to bear an accurate statement of the quantity of the contents, since the label failed to bear any statement of the quantity of the contents; cherry and raspberry jellies, in that they were imitations of other foods and their labels failed to bear, in type of uniform size and prominence, the word "imitation," and, immediately thereafter, the names of the foods imitated, and in that they purported to be and were represented as foods for which a definition and standard of identity has been prescribed by regulations promulgated pursuant to law but failed to conform to such definition and standard of identity, since they had been made from a mixture composed of less than 45 parts by weight of one of the fruit juice ingredients to each 55 parts by weight of one of the optional saccharine ingredients specified in the regulations; apple, raspberry, and lime jellies, in that the statement "2 Oz.," borne on the jars, was false and misleading since the jars contained less than 2 ounces, and in that they were in package form and their labels failed to bear an accurate statement of the quantity of the contents; apple and lime jelly, in that they contained artificial coloring and failed to bear labeling stating that fact; lime jelly only, in that its label did not bear the common or usual name of each ingredient.

One shipment was labeled "Library of Games." It was alleged to be misbranded in that the statement "2 Lb. 4 Oz.," borne on the package, was false and misleading and in that it failed to bear an accurate statement of the quantity of the contents. One item in the package, black cherry jam, was labeled "2 Ozs. Net," but weighed less than 2 ounces net and was also deficient in fruit juice. It was alleged to be misbranded because of short weight and failure

to conform with the regulations in the same respect as the cherry jelly and raspberry jelly referred to above. One item in the package, peanut butter, was alleged to be misbranded because of failure of the label to bear any statement of the quantity of the contents.

One shipment was labeled "Net 1 Lb. 10 Oz.," together with a statement of the ingredients on the outside of the package. It was alleged to be misbranded because the statement "1 Lb. 10 Oz." was false and misleading, and because of failure to bear an accurate statement of the quantity of the contents. Two items in the box, grape flavor apple jelly, and Damson plum jelly, did not conform to the definition and standard for jellies, and were alleged to be misbranded in the same respect as the substandard jellies previously referred to. The Damson plum jelly was alleged to be misbranded further in that its label bore no statement of the quantity of the contents. The grape flavor apple jelly and a product labeled "Altray Mar-Zee-Pon" were alleged to be misbranded further in that the statements "2 Oz." with respect to the former, and "6 $\frac{3}{4}$ ounces," with respect to the latter, were false and misleading since the jar and box contained less than these amounts; also because of failure of the labels to bear an accurate statement of the quantity of the contents.

On August 26, 1943, the defendant having entered a plea of not guilty, the case came on for trial before the court and a jury. Evidence was introduced on behalf of the Government and the defendant; the trial concluded on August 28, 1943, and the jury returned a verdict of guilty on the following charges: Count 1, net weight of boxes, the labeling on the peanut butter and charge regarding quality of cherry jelly; count 2, net weight of the boxes, weight of the black cherry jam, quality of the black cherry jam and labeling of the peanut butter; count 3, net weight of the boxes, weight of the apple jelly, raspberry jelly and lime jelly, and quality of the apple jelly, raspberry jelly and lime jelly; count 4, net weight of the boxes, weight of the raspberry and lime jelly, quality of the raspberry and lime jelly; count 5, weight of the grape flavor apply jelly and Damson jelly, also quality of the same jellies. The defendant was fined \$1,000 on count 1, and sentence was suspended on the remaining counts.

5590. Misbranding of gift packages. U. S. v. U. S. Candy & Food Corporation. Plea of guilty. Fine of \$750 to cover counts 1, 2, and 6 of the information; imposition of sentence suspended on remaining counts 3, 4 and 5. (F. D. C. No. 8833. Sample Nos. 31756-F, 31858-F, 31909-F, 31910-F, 41601-F, 41603-F, 41606-F.)

These products were short of the declared weight.

On May 13, 1943, the United States attorney for the Southern District of New York filed an information against the U. S. Candy & Food Corporation, New York, N. Y., alleging shipments within the period from on or about October 24, to November 17, 1942, from the State of New York into the State of Ohio of quantities of gift packages which were misbranded. The article was labeled in part: "Victory Snack-Pack A Treat From Home * * * Net Weight 3 $\frac{3}{4}$ Lbs. [or "Net Weight 2 Lbs.]."

The article was alleged to be misbranded in that the statements "3 $\frac{3}{4}$ Lbs.," and "Net Weight 2 Lbs.," borne on the label, were false and misleading since the boxes labeled "Net Weight 3 $\frac{3}{4}$ Lbs." contained substantially less than 3 $\frac{3}{4}$ pounds, and the boxes labeled "Net Weight 2 Lbs." contained substantially less than 2 pounds net weight. The article was alleged to be misbranded further in that it was in package form and its label failed to bear an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count, and the variation between the statement of quantity borne on the label and the quantity actually contained in the box was unreasonable. One shipment was alleged to be misbranded further in that its container was so made, formed, and filled as to be misleading since underneath one of the items, a box of Crunch-ettes, was a large empty space in which food could have been packed, and the contents of the package had been packed with excessive packing medium, excessive paper cups and cardboard dividers, and by reason of the empty space and excessive packing medium the package contained a substantially smaller quantity of food than its outward appearance would indicate was contained therein.

On November 23, 1943, a plea of guilty having been entered on behalf of the defendant, the court imposed a fine of \$750 which covered counts 1, 2, and 6 of the information and suspended imposition of sentence on the remaining 3 counts.