

12870. Misbranding of candy. U. S. v. 138 Boxes * * *. (F. D. C. No. 23943.
Sample Nos. 26835-K to 26839-K, incl.)

LABEL FILED: October 30, 1947, Western District of Tennessee.

ALLEGED SHIPMENT: On or about October 7, 1947, by the Hy-Lan Candy Co., Inc., from Atlanta, Ga.

PRODUCT: 138 boxes each containing 36 assorted candy bars at Memphis, Tenn.

LABEL, IN PART: "Cream Bar Net Wt. 1½ Ozs.," "Peanut Honey Average Weight 2 Ozs.," "Peanut Bar Average Weight 2 Ozs.," "Coconut Bar Net Wt. 1½ Ozs.," or "Sugar Stick Net Wt. 1 Oz."

NATURE OF CHARGE: Misbranding, Section 402 (e) (2), (all candy bars except Sugar Stick) the products failed to bear labels containing an accurate statement of the quantity of the contents. (The candy bars were short-weight, with the exception of the Sugar Stick.)

DISPOSITION: February 11, 1948. Default decree of condemnation. The product was ordered delivered to charitable institutions.

12871. Misbranding of caramels. U. S. v. 35 Cases * * *. (F. D. C. No. 24441.
Sample No. 12135-K.)

LABEL FILED: February 13, 1947, Southern District of Ohio.

ALLEGED SHIPMENT: On or about February 3, 1948, by the Benson Manufacturing Co., from Philadelphia, Pa.

PRODUCT: 35 cases, each containing 140 packages, of caramels at Cincinnati, Ohio. Examination showed that each package contained five caramels, whereas seven could easily have been placed in each package. In addition, the product was found to be short-weight.

LABEL, IN PART: "ABC Deluxe Quality Caramels Net Wt. 1½ Ozs."

NATURE OF CHARGE: Misbranding, Section 403 (d), the container of the article was so filled as to be misleading, since at least two additional caramels could easily have been placed in each package; and, Section 403 (e) (2), the article failed to bear a label containing an accurate statement of the quantity of the contents.

DISPOSITION: April 9, 1948. Default decree of condemnation. The product was ordered delivered to charitable institutions.

DAIRY PRODUCTS

BUTTER

The following cases report actions involving butter that consisted in whole or in part of filthy or decomposed substances, Nos. 12872 to 12875; that was below the legal standard for milk fat content, Nos. 12876 to 12883; and that was short of the declared weight, No. 12884.

12872. Action to enjoin and restrain the interstate shipment of butter, cheese, and cheese products. U. S. v. Hygrade Food Products Corporation and Edward Berens. Complaint for permanent injunction dismissed. (Inj. No. 115.)

COMPLAINT FILED: October 24, 1945, Northern District of Iowa, against the Hygrade Food Products Corporation, New York, N. Y., and Edward Berens of Cedar Rapids, Iowa, district manager of the corporation's branch plants, at Tipton, Olin, Plainfield, Toledo, and Clarksville, Iowa.

The complaint alleged that since on or about April 1943, the defendant had been manufacturing butter, cheese, and cheese products under grossly insanitary conditions at the above-mentioned plants, where the products became contaminated with filth whereby they may have been rendered injurious to health; that the products so manufactured contained manure, insect legs, fly fragments, house flies, larvae, rodent hairs, weevils, mites, spiders, cockroaches, mosquitoes, sand, dirt, rust, wood, metal, plant fragments, cow hairs, and other filthy and deleterious substances unfit for food; and that the milk used in the manufacture of the products at the Olin, Plainfield, and Toledo, Iowa, plants was not pasteurized before such manufacture.

The complaint alleged further that the defendants had been shipping, and were continuing to ship, in interstate commerce, butter, cheese, and cheese

products which were adulterated within the meaning of Section 402 (a) (3) and (4).

PRAYER OF COMPLAINT: That an injunction issue enjoining and restraining the defendants from commission of the acts complained of.

DISPOSITION: On November 20, 1945, the defendants filed a motion to strike and for a more specific statement, and on December 3, 1945, the court overruled the motion, with the exception of that part of the motion to strike relating to the allegation in the complaint charging the use of unpasteurized milk at the Olin, Plainfield, and Toledo plants, which allegation was stricken. In response to a further motion for a more specific statement as to the nature of the insanitary conditions charged, an amendment to the complaint was filed on February 28, 1946, setting forth specifically the alleged insanitary conditions and methods of operation.

Pursuant to stipulation of the parties, a preliminary injunction was granted on September 28, 1946, enjoining the interstate shipment of dairy products manufactured at the Tipton and Olin plants and continuing the application for injunction as to the other plants until final hearing in the matter. On November 15, 1946, the preliminary injunction was modified to permit shipment for export in compliance with Section 801 (d) of the law. On December 16, 1946, the court entered an order dissolving the preliminary injunction and continuing the case for trial on the basis of the Government's consent thereto and the stipulation that the milk supply then being used by the defendants was in substantial compliance with the law, and that the Government had no serious objections to the sanitary conditions existing at that time in the plants involved.

On April 21, 1947, investigation having shown that sanitary conditions had greatly improved, and that the defendants' plants were operating in compliance with the law, the Government filed a motion for dismissal upon payment of costs by the defendants. On the same date, costs having been paid, the case was ordered dismissed.

12873. Adulteration of butter, cream, and skim milk curd. U. S. v. John H. Costello (Mendota Creamery), and Theodore C. Lang. Pleas of nolo contendere. John H. Costello fined \$500 and costs; Theodore C. Lang fined \$200 and costs. (F. D. C. No. 22027. Sample Nos. 40380-H to 40382-H, incl.)

INFORMATION FILED: May 1, 1947, Northern District of Illinois, against John H. Costello, trading as Mendota Creamery, Mendota, Ill., and Theodore C. Lang, manager.

ALLEGED SHIPMENT: On or about August 14, 1946, from the State of Illinois into the State of Missouri.

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the products consisted in part of filthy substances and, Section 402 (a) (4), they had been prepared and packed under insanitary conditions whereby they may have become contaminated with filth.

DISPOSITION: November 5, 1947. Pleas of nolo contendere having been entered, John H. Costello was fined \$500 and costs, and Theodore C. Lang was fined \$200 and costs.

12874. Adulteration of butter. U. S. v. 21 Cartons (1,344 pounds) * * *. (F. D. C. No. 24206. Sample Nos. 52241-H, 64756-H.)

LIBEL FILED: December 12, 1946, District of New Jersey.

ALLEGED SHIPMENT: On or about November 26, 1946, by the Parsons Creamery & Locker Co., Woonsocket, S. Dak.

PRODUCT: 21 cartons, each containing approximately 64 pounds, of butter at Bayonne, N. J.

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the product consisted in whole or in part of a filthy, putrid, or decomposed substance. (Examination showed that the product contained rodent hair fragments, insect fragments, and human hair.)

DISPOSITION: February 24, 1947. Default decree of forfeiture. The product was ordered denatured and sold for fat salvage purposes.