

13.

"That the container used for the commodity sought to be condemned is commonly and universally recognized as containing enough formula and ingredients to make a standard and publicly recognized recipe producing one pint of pudding; that such fact is known to the buying public generally, and there is no relationship between the size of the container used and factors and reasons causing the public to purchase the commodity involved.

14.

"That, while said commodity fills only approximately about 55% of the exterior container without allowance for space required by the inner removable package, the container used is sanitary, convenient to the user, and of a type reasonably necessary in packaging, handling and utilizing the product sought to be condemned; that the type of inner packaging used in packaging the commodity involved requires the use of an outer container larger than the inner package; that said container is not so filled as to be misleading within the meaning of subdivision (d), Section 343, 21 U. S. C., or otherwise, and said container and commodity does not otherwise violate said Federal Food, Drug and Cosmetic Act of June 25, 1938.

CONCLUSIONS OF LAW

1.

"That 21 U. S. C. 343 (d) applies only to a container so made, formed or filled as to be misleading in fact.

2.

"That since the proof shows said container is not so made, formed or filled as to be misleading, the Libel and Amended Libel should be dismissed, the Motion and Amended Motion should be quashed, and the Clerk of the United States District Court for the District of New Jersey should be directed to refund to claimant the cost deposit made by claimant in lieu of a stipulation for costs in the sum of \$250.00 and on deposit with said Clerk, and the United States Marshal for the District of New Jersey should be directed to release and deliver said 738 cases, more or less, of said article labeled 'Jiffy-Lou Vanilla Flavor Pudding' and that judgment should enter accordingly.

"Settled and approved this 8th day of February, 1946."

13495. Adulteration and misbranding of ice cream powder. U. S. v. 154 Cartons
* * *. (F. D. C. No. 24907. Sample No. 18964-K.)

LABEL FILED: June 23, 1948, Eastern District of Kentucky.

ALLEGED SHIPMENT: On or about May 12, 1948, by the Roosa & Ratliff Co., from Cincinnati, Ohio.

PRODUCT: 154 cartons, each containing 12 3-ounce boxes, of ice cream powder at Frankfort, Ky. Examination showed that the product consisted essentially of starch, gum, a little sugar, and artificial flavors, to which ingredients cream or milk and sugar must be added to make a finished ice cream.

LABEL, IN PART: "Smooth-O Ice Cream Powder."

NATURE OF CHARGE: Adulteration, Section 402 (b) (1), valuable constituents, cream or milk and sugar, had been in whole or in part omitted from the article.

Misbranding, Section 403 (a), the name "Ice Cream Powder" was false and misleading as applied to the article to which valuable ingredients, cream or milk and sugar, must be added.

DISPOSITION: July 14, 1948. Default decree of condemnation and destruction.

13496. Adulteration of butterscotch topping. U. S. v. 19 Cases * * *. (F. D. C. No. 24971. Sample No. 37080-K.)

LABEL FILED: June 28, 1948, Western District of Washington.

ALLEGED SHIPMENT: On or about November 11, 1946, from Los Angeles, Calif.