

**ALLEGED SHIPMENT:** On or about October 20, 1948, by the Sanitary Dairy, from Larimore, N. Dak.

**PRODUCT:** 4 cartons, each containing approximately 64 pounds, of butter at New York, N. Y.

**LABEL, IN PART:** "Butter Distributed by J. R. Kramer New York, N. Y."

**NATURE OF CHARGE:** Adulteration, Section 402 (b) (2), a product containing less than 80 percent by weight of milk fat had been substituted for butter.

**DISPOSITION:** December 1, 1948. J. R. Kramer, Inc., claimant, having admitted the allegations of the libel, judgment of condemnation was entered and the product was released under bond for reworking, under the supervision of the Food and Drug Administration.

**14186. Adulteration of butter. U. S. v. 4 Boxes \* \* \*. (F. D. C. No. 26169. Sample No. 25987-K.)**

**LIBEL FILED:** October 26, 1948, Northern District of Illinois.

**ALLEGED SHIPMENT:** On or about October 13, 1948, by the Fordville Creamery Co., from Fordville, N. Dak.

**PRODUCT:** 4 boxes of butter at Chicago, Ill.

**LABEL, IN PART:** "Butter Keep Cool H. C. Christians Co., 4118 Chicago, Ill. 2."

**NATURE OF CHARGE:** Adulteration, Section 402 (b) (2), a product containing less than 80 percent by weight of milk fat had been substituted for butter.

**DISPOSITION:** November 16, 1948. The H. C. Christians Co., claimant, having consented to the entry of a decree, judgment of condemnation was entered and the product was ordered released under bond to be reworked, under the supervision of the Federal Security Administrator.

**14187. Adulteration of butter. U. S. v. 138 Pounds \* \* \*. (F. D. C. No. 26064. Sample No. 15558-K.)**

**LIBEL FILED:** October 8, 1948, Eastern District of Michigan.

**ALLEGED SHIPMENT:** On or about August 24, 1948, by the Fisher Dairy & Cheese Co., Wapakoneta, Ohio.

**PRODUCT:** 138 pounds of butter at Detroit, Mich.

**LABEL, IN PART:** "Fischer's Select Butter."

**NATURE OF CHARGE:** Adulteration, Section 402 (b) (2), a product containing less than 80 percent by weight of milk fat had been substituted for butter.

**DISPOSITION:** November 12, 1948. Default decree of condemnation. The product was ordered delivered to a Federal institution.

**14188. Misbranding of butter. U. S. v. 60 Cases \* \* \*. (F. D. C. No. 26682. Sample No. 40573-K.)**

**LIBEL FILED:** On or about December 27, 1948, District of Oregon.

**ALLEGED SHIPMENT:** On or about November 27, 1948, by the Gem Creamery, from Emmett, Idaho.

**PRODUCT:** 60 cases, each containing 36 prints, of butter at Roseburg, Oreg.

**LABEL, IN PART:** "Umpqua Brand Butter Manufactured by Umpqua Dairy Products Co., Roseburg, Ore. Weight One Pound."

**NATURE OF CHARGE:** Misbranding, Section 403 (e) (2), the package containing the article did not bear an accurate statement of the quantity of the contents. (The article was short-weight.)

DISPOSITION: January 6, 1949. The Gem Creamery, claimant, having consented to the entry of a decree, judgment of condemnation was entered and the product was ordered released under bond to be brought into compliance with the law, under the supervision of the Federal Security Agency.

14189. Alleged misbranding of butter. U. S. v. 104 Cases \* \* \*. Tried to the court. Judgment for claimant; libel dismissed. (F. D. C. No. 25262. Sample Nos. 31437-K, 31438-K.)

LIBEL FILED: August 11, 1948, Southern District of California.

ALLEGED SHIPMENT: On or about July 19, 1948, by the Trinidad Creamery Co., from Trinidad, Colo.

PRODUCT: 104 cases, each containing 30 1-pound packages, of butter at Los Angeles, Calif.

LABEL, IN PART: "Colorado Gold Brand Creamery Butter First Quality."

NATURE OF CHARGE: Misbranding, Section 403 (a), the label statement "First Quality" was false and misleading as applied to the article, which was of lower quality.

DISPOSITION: The Trinidad Creamery Co. appeared as claimant and filed an answer, denying that the product was misbranded. The case came on for trial before the court on October 19, 1948, and at the conclusion of the trial on October 20, 1948, the case was taken under advisement by the court for consideration of the evidence and briefs of counsel. On January 5, 1949, the court handed down the following opinion:

HALL, *District Judge*: "In spite of the extended argument of the government, the long and short of the government's position is that they are attempting to libel the product involved on the basis of regulations concerning flavor. Although the regulations themselves appear of doubtful validity as an unlawful delegation of power, it is unnecessary to go into that proposition or consider it, as no amount of argument can overcome the plain provision of the Act of Congress, which by a specific Section (21 U. S. C. 321 (a) ) [sic.] defines butter and prescribes that 'it shall contain not less than eighty per cent (80%) by way of milk fat,' and which must be read as an intention of Congress to be the only standard of quality with relation to butter, in view of the specific prohibition in Sec. 341 of Title 21, that 'no definition and standard of identity, and no standard of quality shall be established for butter \* \* \*.' Certainly an effort to establish a standard of flavor depending upon the taste of the butter inspector at a given moment is an effort to establish not only a standard of quality, but also a 'standard of identity.'

"Moreover, from hearing the witnesses testify, and seeing the butter itself, or samples thereof, the evidence is wholly unsatisfactory to sustain the contention of the government that it does not meet the standards prescribed with relation to flavor, taste, and smell, even if such regulations should ultimately be held valid."

On January 25, 1949, the court entered its findings of fact, conclusions of law, and judgment that the article was not in violation of the Act and ordered that the product be released to the claimant.