

SHIPPED: 10-31-56, from Hungary.

LIBELED: 11-30-56, S. Dist. N. Y.

CHARGE: 402 (a) (3)—contained insects while held for sale.

DISPOSITION: 1-2-57. Consent—claimed by Levy & Levis Co., Inc., New York, N. Y. Segregated; 30 lbs. destroyed.

OILS AND FATS

23985. Table and cooking oil. (F. D. C. No. 39577. S. No. 56-077M.)

QUANTITY: 19 cases, 6 1-gal. tins each, at Milwaukee, Wis.

SHIPPED: 6-19-56, from Chicago, Ill., by V. Formusa Co.

LABEL IN PART: (Tin) "Marconi Brand * * * Contains Refined Cottonseed Oil Pure Olive Oil Peanut Oil * * * Marconi Oil 100% Inspection Guaranteed."

RESULTS OF INVESTIGATION: Examination showed the article was a mixture of cottonseed oil and peanut oil, with little or no olive oil.

LIBELED: 9-20-56, E. Dist. Wis.

CHARGE: 402 (b) (1)—a valuable constituent, olive oil, had been in part omitted from the article when shipped; 402 (b) (2)—cottonseed oil and peanut oil, with little or no olive oil, had been substituted in part for a blend of cottonseed oil, peanut oil and olive oil; and 403 (a)—the label statement "Contains Refined Cottonseed Oil Pure Olive Oil Peanut Oil" was false and misleading.

DISPOSITION: 11-21-56. Consent—claimed by V. Formusa Co. Repacked and relabeled for use in the manufacturing or packing of products other than blended oil.

23986. Table and cooking oil (2 seizure actions). (F. D. C. Nos. 39765, 39766. S. Nos. 25-965 M, 25-974 M.)

QUANTITY: 15 cases, 6 1-gal. cans each, and 20 1-gal. cans at Des Moines, Iowa.

SHIPPED: 2-20-56 and 9-28-56, from Chicago, Ill., by Western Food Corp.

LABEL IN PART: (Can) "Liguria Superfine * * * Refined Vegetable Salad Oils and Pure Imported Olive Oil."

LIBELED: 11-16-56, S. Dist. Iowa.

CHARGE: 402 (b) (1)—a valuable constituent, olive oil, had been in whole or in part omitted from the article when shipped; and 403 (a)—the label statement "Vegetable Salad Oils and Pure Imported Olive Oil" was false and misleading as applied to the article, which contained vegetable oil with little or no olive oil.

DISPOSITION: 1-7-57. Default—delivered to a charitable institution for its use, and not for sale.

POULTRY

23987. Dressed eviscerated poultry. (Inj. No. 295.)

COMPLAINT FOR INJUNCTION FILED: 11-18-55, N. Dist. Ga., against Tugalo Poultry Co., Inc., Toccoa, Ga., Theodore A. Crenshaw, president and Ray Sims, plant superintendent.

CHARGE: The complaint alleged that the defendants were engaged in preparing and distributing dressed eviscerated poultry, and that they had been, and were causing to be, introduced and delivered for introduction into interstate commerce such poultry which was adulterated under 402 (a) (3) by reason of the presence of fecal and crop material and under 402 (a) (4) by reason of the preparation, packing and holding of the poultry under insanitary conditions.

The complaint alleged further that the insanitary conditions resulted from, and consisted of, the method of making the abdominal cut which severs several loops of the intestines causing fecal material to be spread over the inside of the body cavity; the commingling of birds and giblets with cut and broken intestines while passing over the drawing conveyor; the failure to wash fecal material off the drawing conveyor belt; the presence of hundreds of flies throughout the entire plant alighting on the equipment, on poultry in all phases of its preparation, and on the finished product; the presence of dead flies in the chill vats of the finished birds; the absence of screening on a number of windows permitting flies to have free access to any part of the plant; ill-fitting doors on unscreened restrooms which permitted flies to enter toilets and return to other parts of the plant; the use of filthy water in the drag washer; the stacking of boxes of finished birds directly onto the wet floor in the packing area and in the cold storage room; and, general carelessness on the part of the defendants and their employees.

The complaint alleged also that the defendants were well aware that their activities were violative of the law, that inspections had been made of the defendants' plant on 6-17-55, 8-9-55, and 9-30-55, at which time the defendants were informed of the insanitary conditions in their plant, that a notice of hearing pursuant to Section 305 was issued to the defendants on 8-25-55, and that despite such warnings, the defendants failed to correct the insanitary conditions in the plant and continued to introduce adulterated poultry into interstate commerce, as indicated above.

DISPOSITION: On 12-12-55, with the consent of the defendants, the court entered a temporary injunction enjoining the defendants against causing to be introduced and delivered for introduction into interstate commerce, dressed, drawn or cut-up poultry or any other such article.

(a) which was contaminated with fecal matter, crop material or like filthy substance,

(b) which had been prepared, packed or held in a plant in which fecal matter, crop material, miscellaneous dirt or debris were present on the floors and walls, or which was allowed to accumulate on the floors, or in and around the equipment used in the production of such food,

(c) which was produced in a plant infested with flies or other insects,

(d) which was prepared by the cutting of the abdominal cavity of birds in such manner that material from the intestines and crop became smeared on the food, or was prepared in an improper manner allowing the retention of the windpipe, lungs, gizzard material, reproductive organs or offal which might contaminate the food,

(e) which was produced in a plant without adequate screens, or with broken window panes,

(f) which was produced in a plant which failed to provide adequate toilet facilities for employees, and supervision to insure the use of such facilities by such employees,

(g) which was produced in a plant permitting waste paper, intestines, and offal to collect in, under, or around said plant,

(h) which was produced in a plant which failed to provide for sanitary handling of livers, hearts, giblets and gizzards,

(i) which was produced in a plant permitting the use of filthy water in washing the birds in various phases of their preparation, and

(j) which was produced in a plant which permitted the use of improper equipment, unfit ice, careless handling of the food, or which allowed diseased employees with cuts on fingers, or other injuries, to work around the premises.

Following the entry of the temporary injunction, an inspection of the defendants' plant by the Food and Drug Administration disclosed that it was operating in compliance with the law and as a result thereof, an order for the dismissal of the action was entered on 6-25-56.

23988. Chicken food products. (F. D. C. No. 35114. S. Nos. 19-672 L, 19-674 L, 34-585/6 L, 54-375 L, 54-377 L.)

INFORMATION FILED: 7-10-53, against Badger Fruit & Extract Co., a corporation, Kenosha, Wis., and Lee R. Schwartz, president.

SHIPPED: Between 6-7-52 and 12-3-52, from Wisconsin to Minnesota, Illinois, and Indiana.

LABEL IN PART: (Can) "Cloverblossom Net Weight 3 Lbs. 4 Oz. Chicken Fricassee Without Giblets" "Net Weight 1 Lb. Cloverblossom Spaghetti & Chicken," "Net Weight 3 Lbs. 4 Ozs. Cloverblossom Chicken Fricassee In Butter Gravy," "Net Weight 3 Lbs. 4 Ozs. Cloverblossom Spaghetti & Chicken Livers," "Net Weight 3 Lbs. 4 Ozs. Cloverblossom Condensed - Clear Chicken Broth", and "Net Weight 1 Lb. Cloverblossom Rendered Chicken Fat."

CHARGE: 403 (e) (2)—when shipped, the articles failed to bear labels containing accurate statements of the quantity of contents, since the articles contained less than their declared weights.

DISPOSITION: On 9-25-53, the defendants filed a motion for dismissal of the information; and on 12-11-53, the court after considering the briefs and arguments of counsel handed down the following opinion:

TEHAN, District Judge: "Defendants have been charged in six counts of an information with violation of 21 U. S. C. A. Sections 331 and 333. Count I in substance charges defendants with having introduced into interstate commerce on or about December 3, 1952, a number of cases containing a number of cans containing 'Chicken Fricassee Without Giblets' which cans were misbranded within the meaning of 21 U. S. C. A. Section 343 (e) (2), in that the labels on the cans bore the statement 'Net Weight 3 lbs. 4 Oz.', which statement was inaccurate since said cans contained less than 3 pounds 4 ounces net weight of said food. The other five counts are similar and vary only as to the dates of the alleged violations, the types of food, and the quantity or weight indicated on the labels. Each count charges that a number of cases containing a number of cans containing a particular food, were introduced into interstate commerce on or about a certain date, and that the label on the cans was inaccurate in that the cans contained less than the weight indicated on the labels.

"Defendants have now moved to dismiss the action on the ground that 21 U. S. C. A. Section 343 (e) (2) is vague and indefinite and does not meet the requirements of the Sixth Amendment that a defendant be informed of the nature and cause of the accusation made against him. The provision complained of reads as follows:

Sec. 343. Misbranded food

A food shall be deemed to be misbranded—

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