

CHARGE: 402(a)(3)—contained maggot and other insect fragments; and 402(a)(4)—prepared and packed under insanitary conditions.

DISPOSITION: 7-25-62. Default—destruction.

### TOMATOES AND TOMATO PRODUCTS

**28262. Canned tomatoes.** (F.D.C. No. 46850. S. No. 9-976 T.)

QUANTITY: 498 cases, 24 1-lb. 12-oz. cans each, at Albany, N.Y.

SHIPPED: 9-26-61, from Hurlock, Md., by Albert W. Sisk & Sons.

LABEL IN PART: (Can) "Brand De Cecco Selected Italian Style Peeled Tomatoes Net Weight 1 Lb. 12 Oz. Packed by John N. Wright Jr. Hurlock, Md."

LIBELED: 12-14-61, N. Dist. N.Y.

CHARGE: 402(a)(3)—contained *Drosophila* fly eggs and maggots when shipped.

DISPOSITION: 6-12-62. Consent—claimed by John N. Wright, Jr., Inc., Hurlock, Md. Segregated; 50 cases destroyed.

**28263. Canned tomatoes.** (F.D.C. No. 47139. S. Nos. 7-242/3 T.)

QUANTITY: 595 cases, 24 1-lb. cans each, and 148 cases, 24 1-lb. 12-oz. cans each, at Raynham, Mass.

SHIPPED: 12-7-61, from Hickman, Md., by H. H. & B. H. Nuttle Canning Co.

LABEL IN PART: (Can) "Clover Red Ripe Tomatoes \* \* \* Net Weight 1 Lb. [or "1 Lb. 12 Oz."] Packed For R. F. Owens Co. Raynham, Mass."

LIBELED: 2-14-62, Dist. Mass.

CHARGE: 402(a)(3)—contained *Drosophila* fly eggs and maggots when shipped.

DISPOSITION: 4-2-62. Consent—claimed by H. H. & B. H. Nuttle Canning Co. Segregated; 284 cases and 10 cans destroyed.

**28264. Tomato catsup.** (F.D.C. No. 45885. S. No. 69-925 R.)

QUANTITY: 599 cases, containing 24 14-oz. btl., at Philadelphia, Pa.

SHIPPED: 3-30-61, from Bridgeton, N.J., by P. J. Ritter Co.

LABEL IN PART: (Btl.) "Ritter Tomato Catsup Net Contents 14 Oz. Avoir. Sold and Guaranteed by The P. J. Ritter Co., Bridgeton, N.J., U.S.A."

LIBELED: 5-10-61, E. Dist. Pa.

CHARGE: 402(a)(3)—contained decomposed tomato material when shipped.

DISPOSITION: On or about 6-27-61, P. J. Ritter Co., claimant, filed an answer to the libel and thereafter the Government filed a motion to strike certain portions of the claimant's answer. On 4-19-62, the court handed down the following opinion and order:

GRIM, Sr. J.: "This is a proceeding for the seizure of catsup under the Federal Food, Drug, and Cosmetic Act, enacted in 1938, 21 U.S.C. § 301 et seq. The libel avers that the catsup is adulterated within the meaning of section 402(a)(3) of the Act, 21 U.S.C. § 342(a)(3), 'in that it consists wholly or in part of a decomposed substance by reason of the presence therein of decomposed tomato material.' The answer of P. J. Ritter Company avers that it is the owner, manufacturer, and claimant of the catsup, denies that the catsup is adulterated within the meaning of section 402(a)(3), or that it is 'unfit for food, or harmful to health,' and avers that the decomposed tomato material is known as rot, 'which is present in varying degrees in all processed tomato products' and 'represents a breakdown of tomato tissue caused by mold.' The answer then sets up the government's technique for estimating the amount of mold or rot, its tolerances for determining how much rot or mold can be present without rendering the material unfit for food or injurious