

Further misbranding, Section 502 (e) (1), the *Linol* was not designated solely by a name recognized in an official compendium, and its label failed to bear its common or usual name, linseed oil.

DISPOSITION: A plea of not guilty having been entered, the case came on for trial before a jury, at the conclusion of which trial, on December 5, 1944, the jury returned a verdict of guilty. On December 29, 1944, the court denied the defendant's motion for a new trial and sentenced him to one year's imprisonment on each of the 21 counts of the information, with the sentence on counts 1, 2, and 3 to run consecutively, the sentence on the remainder of the counts to run concurrently with that on count 3, and the sentence on count 1 to run concurrently with the 1 year sentence imposed in the case reported in notices of judgment on drugs and devices, No. 1560.

2332. Alleged misbranding of Body Cell Salts. U. S. v. Kirkpatrick Laboratories, Inc., and Dr. George Kirkpatrick. Pleas of not guilty. Tried to the jury. Counts 1 and 3 dismissed. Verdict of guilty against the corporation on count 4. Disagreement on verdict with respect to both defendants on count 2 and with respect to individual on count 4. Motion of defendants for acquittal granted. (F. D. C. No. 15502. Sample No. 60500-F.)

INFORMATION FILED: May 24, 1945, District of Oregon, against Kirkpatrick Laboratories, Inc., Portland, Oreg., and Dr. George Kirkpatrick.

ALLEGED SHIPMENT: On or about April 28, 1944, from the State of Oregon into the State of California.

PRODUCT: Analysis of a sample of the article showed that *Solution A* consisted essentially of water, small proportions of compounds of calcium, iron, and sodium, chloride and sulfate, and traces of compounds of aluminum, magnesium, and silicon. Phosphorus was not present. *Solution B* consisted essentially of water, small proportions of compounds of calcium, sodium, and potassium, iodide and chloride, and traces of silicon and sulfate.

LABEL, IN PART: "8 Fluid Oz. Body Cell Salts * * * (Solution 'A') [or (Solution 'B')] Kirkpatrick Laboratories, Inc., 603 Panama Bldg. Portland Oregon." A circular entitled "Method of Administering Body Cell Salts" accompanied the product.

NATURE OF CHARGE: Misbranding, Section 502 (a), the name on the label and in the circular, "Body Cell Salts," was false and misleading, in that it represented and suggested that the drugs contained mineral ingredients in the proper proportions to build up and maintain the cells of the body, whereas the drugs would not be effective for such purpose. Certain statements on the labels and in the circular represented and suggested that *Solution "A"* contained salts which would aid in preserving physiological alkalinity, in promoting metabolism, in stimulating nutrition, and in maintaining normal body function, and that when used in conjunction with another drug known as *Solution "C,"* it would assist in supplying the deficiency existing when a bronchial condition was present; that *Solution "B"* contained salts which would aid in supplying a deficiency of the elements necessary to restore normal functions of the body; and that *Solution "A"* and *Solution "B"* when used in conjunction with each other, would assist in supplying the deficiency existing when a chronic or subacute condition other than a bronchial condition was present. It was alleged that the drugs would not be effective for the purposes claimed.

Further misbranding, Section 502 (a), the statements on the labels, (*Solution "A"*) "Contains the following ingredients: Aluminum, Carbonate, Chlorine, Calcium * * * Magnesium, Natrium, Phosphate, Sulphur, Silica" and (*Solution "B"*) "Contains the following ingredients: Carbonate, Calcium, Chlorine * * * Natrium, Potassium, Sulphur, Silica," were false and misleading, in that the statements represented and suggested that the articles contained the ingredients listed in therapeutically important amounts, whereas the *Solution "A"* contained no phosphate, and the articles contained therapeutically inconsequential amounts of the other stated ingredients.

The products were alleged also to be misbranded under the provisions of the law applicable to foods, as reported in notices of judgment on foods.

DISPOSITION: Pleas of not guilty having been entered on behalf of the defendants, the case came on for trial before a jury on or about March 24, 1947. During the trial, the court dismissed counts 1 and 3 of the information, ruling that the products were not foods. Motions for a judgment of acquittal were made by

the defendants at the conclusion of the Government's case and, again, at the conclusion of the defendant's case. These motions were argued and were denied by the court. The case was submitted to a jury and a verdict of guilty was returned against the company on count 4, but the jury was unable to agree on a verdict on count 2 with respect to either defendant, or on a verdict on count 4 with respect to Dr. Kirkpatrick.

On March 31, 1947, the defendants again filed a motion for acquittal on counts 2 and 4 on the grounds, among others, that the defendants had requested to be furnished with a part of the official sample; that the Government had refused the request for the reason that the owner of the solutions had declined to give the Government more than 2 ounces of each of the products; and that all had been consumed by the Government in its tests. The defendants, in their motion, argued that the law requires that the Government take twice the amount required for its tests; that there remained in the possession of the person from whom the samples were collected at least 6 ounces of each drug; that the Government had the power to seize the drugs if necessary; and that failure to furnish a part of the official samples had prejudiced the defendants in their defense. On the same date, the court granted the motion of acquittal on counts 2 and 4, holding both defendants not guilty on those counts.

2333. Misbranding of Biosol and Urosol. U. S. v. Warren S. Piper (Merit Remedy Co.). Plea of guilty. Fine, \$300. (F. D. C. No. 23218. Sample Nos. 15126-H, 53317-H, 67118-H.)

INFORMATION FILED: September 22, 1947, Southern District of Ohio, against Warren S. Piper, trading as the Merit Remedy Co., Dayton, Ohio.

ALLEGED SHIPMENT: On or about May 17 and 20 and July 11, 1946, from the State of Ohio into the States of Illinois, Kansas, and Indiana.

PRODUCT: Examination disclosed that the *Biosol* consisted essentially of water, alcohol, esters, bile salts, soap, phenolphthalein, and aromatics; and that the *Urosol* consisted essentially of water, alcohol, strontium bromide, potassium acetate, sodium benzoate, sugar, aromatics, and plant extractives, including a small amount of unidentified alkaloids.

NATURE OF CHARGE: *Biosol*. Misbranding, Section 502 (a), certain statements on the label of the article were false and misleading, since they represented and suggested that the article would be efficacious in the treatment of liver and gall disorders and conditions resulting from liver and gall disorders, whereas the article would not be efficacious for such purposes. Further misbranding, Section 502 (a), certain statements in the labeling of a portion of the article, i. e., a leaflet entitled "Instructions for Taking Biosol," which was shipped with the article, a letter dated July 11, 1946, a leaflet entitled "Diet Suggestions," and circulars entitled "Biosol A Remedy of Merit," "The Sick Gall Bladder," and "Urosol A Remedy of Merit," which were sent to the consignee on or about July 12, 1946, were false and misleading, since the article would not be effective for the purposes, and would not fulfill the promises of benefit, suggested and implied by the statements. The statements represented and suggested that the article was a solvent of the bile; that it would be efficacious in correcting ailments caused by liver and gall disorders; that it would be efficacious in the cure, mitigation, and treatment of gallstone disease, stomach and bowel ailment, gas and colic pains, disturbances incidental to liver and gall irregularities, liver and gall troubles, infected catarrhal gall bladder and ducts, thickened and stagnant bile, and kidney trouble; that use of the article would make an operation unnecessary; that the article would remove the cause of gall trouble; that it would be efficacious in the cure, mitigation, and treatment of inflammation of the gall bladder and ducts, pus in the gall bladder, distress and pain in pit of stomach, chronic dyspepsia, indigestion, sour stomach, heartburn, a feeling like a weight or heavy load in the stomach, a feeling like a heavy band around the waist, pain in right side or between or under shoulder blades, shifting or shooting pains around the waistline, burning sensation in right side just below the ribs, sick headache, colic, constipation, diarrhea, blues, piles, yellow, sallow, blotched, itchy skin, gas in stomach and bowels, loss of memory, lack of energy and vitality, gloomy depressed feeling, irritability, constant desire to sigh, poor circulation, cold hands and feet, gas pains under heart, dizzy spells, jaundice, vertigo, dull, heavy feeling in head, bad dreams and nightmare, nausea and vomiting of bile, a constant metallic or bitter taste in mouth, blood poison caused