

Further misbranding, Section 502 (d), the *Seconal Sodium capsules* and *Amytal tablets* contained chemical derivatives of barbituric acid, which derivatives have been found to be, and by regulations designated as, habit forming, and these drugs failed to bear labels containing the names, and quantities or proportions of such derivatives and in juxtaposition therewith the statement "Warning—May be habit forming."

DISPOSITION: April 14, 1952. A plea of guilty having been entered, the court imposed a fine of \$300, plus costs.

3765. Misbranding of dextro-amphetamine sulfate tablets. U. S. v. Frank A. Ponzo (Ponzo's Drug Store). Plea of nolo contendere. Fine, \$300. (F. D. C. No. 30616. Sample Nos. 21794-L to 21796-L, incl.)

INFORMATION FILED: August 22, 1951, Eastern District of Louisiana, against Frank A. Ponzo, trading as Ponzo's Drug Store, New Orleans, La.

INTERSTATE SHIPMENT: From the State of Pennsylvania into the State of Louisiana of quantities of *dextro-amphetamine sulfate tablets*.

ALLEGED VIOLATION: On or about January 26 and 29, 1951, while the drug was being held for sale after shipment in interstate commerce, the defendant caused quantities of the drug to be repacked and sold without a physician's prescription, which acts resulted in the repackaged drug being misbranded.

NATURE OF CHARGE: Misbranding, Sections 502 (b) (1) and (2), the repackaged tablets failed to bear labels containing the name and address of the manufacturer, packer, or distributor, and statements of the quantity of the contents; and, Section 502 (f) (1), the labeling of the repackaged drugs failed to bear adequate directions for use.

DISPOSITION: April 30, 1952. A plea of nolo contendere having been entered the court imposed a fine of \$300.

3766. Misbranding of pentobarbital sodium capsules. U. S. v. Albert Blank (Eliot Square Pharmacy). Plea of guilty. Defendant fined \$500 and sentenced to prison for 1 year; prison sentence suspended and defendant placed on probation for 2 years. (F. D. C. No. 32703. Sample No. 4857-L.)

INFORMATION FILED: April 3, 1952, District of Massachusetts, against Albert Blank, trading as Eliot Square Pharmacy, Boston, Mass.

ALLEGED VIOLATION: On or about September 18, 1951, while a number of *pentobarbital sodium capsules* were being held for sale at the Eliot Square Pharmacy after shipment in interstate commerce, the defendant caused a number of the capsules to be repacked and dispensed without a physician's prescription, which acts resulted in the repackaged drug being misbranded.

NATURE OF CHARGE: Misbranding, Sections 502 (b) (1) and (2), the repackaged drug failed to bear a label containing the name and place of business of the manufacturer, packer, or distributor, and an accurate statement of the quantity of the contents.

Further misbranding, Section 562 (d), the repackaged drug contained a chemical derivative of barbituric acid, which derivative has been found to be, and by regulations designated as, habit forming; and the repackaged drug failed to bear a label containing the name, and quantity or proportion of

such derivative and in juxtaposition therewith the statement "Warning—May be habit forming."

Further misbranding, Section 502 (f) (1), the labeling of the repackaged drug failed to bear adequate directions for use.

DISPOSITION: April 18, 1952. A plea of guilty having been entered, the court imposed a fine of \$500 and a sentence of one year in prison. The prison sentence was suspended, and the defendant was placed on probation for 2 years.

3767. Misbranding of Alberty products. U. S. v. Various Quantities * * *.
Answer filed by claimant; Government's motion to strike certain portions of claimant's answer granted in part. Judgment for Government. Decree of condemnation. (F. D. C. No. 24186. Sample Nos. 6221-K to 6249-K, incl.)

LIBEL FILED: December 22, 1947, Western District of Pennsylvania.

ALLEGED SHIPMENT: Between the approximate dates of March 26 and November 10, 1947, by Alberty Food Products, from Hollywood, Calif.

PRODUCT: 44 cans of *Instant Alberty Food*, 46 cartons of *Alberty's Food Regular*, 17 bottles of *Alberty's vitamin B complex tablets*, 38 bottles of *Alberty's Vio-Min vitamin-mineral tablets*, 18 bottles of *Alberty Garlic and Vegetable Oil perles*, 36 bottles of *Alberty's Lebara pellets, Homeopathic*, 66 bottles of *Alberty's Lebara No. 2 pellets*, 12 bottles of *Alberty's Oxorin tablets*, 72 cartons of *Pandora tablets*, 72 bottles of *Alberty's Phosphate pellets*, 228 bottles of *Alberty Phloxo B tablets*, 36 bottles of *Recal tablets*, 36 bottles of *Alberty's Riol tablets*, 36 bottles of *Alberty's Sabinol pellets*, 6 cartons of *Alberty's Special Formula tablets*, 24 cartons of *Alberty's Vegetable Compound capsules*, 192 cartons of *Alberty's vitamin A (high potency) shark liver oil*, 60 bottles of *Alberty's vitamin B₁ with other B complex factors*, and 54 cartons of *wheat germ oil perles* at Pittsburgh, Pa.

NATURE OF CHARGE: Misbranding, Section 502 (f) (1), the labeling of the articles failed to bear adequate directions for use in a large number of diseases, symptoms, and conditions for which the articles were prescribed, recommended, and suggested in booklets entitled "Dynamic Digests" and "Health Mysteries," which were disseminated and sponsored by and on behalf of the manufacturer, packer, and distributor of the articles.

Further misbranding (*Alberty's Lebara pellets, Homeopathic, Alberty's Lebara No. 2 pellets, Alberty's Phosphate pellets, and Alberty's Sabinol pellets*), Section 502 (f) (1), the labeling of the articles failed to bear adequate directions for use since the directions for use in the labeling failed to state the diseases, symptoms, or conditions for which the articles were directed to be taken.

DISPOSITION: Upon agreement by the parties, an order was entered on November 4, 1948, directing the removal of the case to the District of Columbia. Thereafter, the Alberty Food Products, claimant, filed an answer denying that the products under seizure were misbranded, and alleging certain defenses as described in the opinion set forth below. A motion to strike such defenses from the answer was filed by the Government, and on March 25, 1949, after consideration of the briefs and arguments of counsel, the court handed down the following opinion: