

it had been shipped in interstate commerce on or about February 25 and March 12, 1942, by I. L. Palmer from Philadelphia, Pa.; and charging that it was adulterated in that its strength differed from that which it purported and was represented to possess, namely "Antiseptic."

On May 11, 1942, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

**722. Adulteration and misbranding of citrate of magnesia. U. S. v. 36½ Dozen Bottles of Citrate of Magnesia. Default decree of condemnation and destruction. (F. D. C. No. 7189. Sample No. 64840-E.)**

This product contained a smaller amount of magnesium citrate than that specified in the United States Pharmacopoeia and it also contained sulfates in excess of the amount permitted in the pharmacopoeial product.

On April 11, 1942, the United States attorney for the Northern District of Ohio filed a libel against 36½ dozen bottles of citrate of magnesia at Youngstown, Ohio, alleging that the article had been shipped in interstate commerce on or about February 9, 1942, by the William Bettles Co. from Pittsburgh, Pa.; and charging that it was adulterated and misbranded.

The article was alleged to be adulterated in that it purported to be a drug the name of which is recognized in the United States Pharmacopoeia but its strength differed from and its quality fell below the standard set forth therein. It was alleged to be misbranded in that the statement "made of pure citric acid and carbonate of magnesia according to the U. S. Pharmacopoeia" was false and misleading since it was not correct.

On May 11, 1942, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

**723. Adulteration and misbranding of Russian mineral oil. U. S. v. 477 Bottles, 113 Dozen Bottles, 487 Dozen Bottles, and 17 Drums of Russian Mineral Oil. Consent decree of condemnation. Product ordered released under bond to be relabeled. (F. D. C. No. 4817. Sample Nos. 56027-E, 56054-E.)**

This product had been shipped in interstate commerce in drums and had been in part bottled and labeled by the consignee.

On or about May 26, 1941, the United States attorney for the District of Connecticut filed a libel against the above-named product at Bridgeport, Conn., in possession of McKesson & Robbins, Inc., alleging that it had been shipped on or about May 2 and 3, 1940, by Kuhne-Libby Co. from New York, N. Y.; and charging that it was adulterated and misbranded.

The article was alleged to be adulterated in that it purported to be and was represented as a drug the name of which is recognized in the United States Pharmacopoeia, i. e., white mineral oil, but its quality fell below the standard set forth in the pharmacopoeia with respect to viscosity, and the difference in quality from such standard was not plainly stated on the label since the designation appearing on the bottles, "Light Russian Mineral Oil" and that on the drums, "Russian Mineral Oil U. S. P. Light," did not serve to warn the purchaser that it was not white mineral oil as that term is defined in the pharmacopoeia.

It was alleged to be misbranded in that the designation "light" (in comparatively small type) and "Russian Mineral Oil" (in comparatively large type) on the bottle labels, and the designation "Russian Mineral Oil U. S. P. Light" on the drums, were misleading since the term "Russian Mineral Oil" is associated in the minds of purchasers with an oil having a kinematic viscosity which is substantially higher than that of said article.

On April 9, 1942, McKesson & Robbins, Inc., New York, N. Y., claimant, having admitted the allegations of the libel, judgment of condemnation was entered and the product was ordered released under bond to be relabeled under the supervision of the Food and Drug Administration.

**724. Adulteration and misbranding of vitamin tablets. U. S. v. 27,500 Vitamin A and D Tablets. Default decree of condemnation and destruction. (F. D. C. No. 7054. Sample No. 30494-E.)**

This product was represented to contain 625 units of vitamin D per tablet but contained not more than 470 units of vitamin D per tablet.

On March 18, 1942, the United States attorney for the Eastern District of Michigan filed a libel against 27,500 vitamin tablets at Detroit, Mich., alleging that the article had been shipped in interstate commerce on or about January 5, 1942, by Strong, Cobb & Co., Inc., from Cleveland, Ohio; and charging that it was adulterated and misbranded.

The article was alleged to be adulterated in that its strength differed from and its quality fell below that shown on the label, 625 units [of vitamin D] per tablet.

It was alleged to be misbranded in that statements on the label pertaining to vitamin D content, "Active Ingredients Only—Per Tablet Vitamin D (Viosterol) 625 Units Each Tablet Contains The Equivalent of Two Teaspoonfuls Cod Liver Oil Minimum USP Strength in Vitamin Potency," were false when applied to an article that contained not more than 470 U. S. P. units of vitamin D per tablet.

The article was also charged to be adulterated and misbranded in violation of the provisions of the law applicable to food, as reported in F. N. J. No. 3643.

On May 5, 1942, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

### DRUGS ACTIONABLE BECAUSE OF FALSE AND MISLEADING STATEMENTS IN THE LABELING<sup>2</sup>

**725. Action to enjoin and restrain distribution in interstate commerce of Diaplex under false and misleading labeling. U. S. v. Henry Wayne Pierce (Horace Wayne Pierce) and Alice Pierce. Permanent injunction granted. (Inj. No. 18.)**

On October 14, 1941, the United States attorney for the District of Colorado filed a complaint against Henry Wayne Pierce, also known as Horace Wayne Pierce, and Alice Pierce, Larimer, Colo., alleging that the defendants were engaged in the business of selling, distributing, and shipping in interstate commerce, and on numerous occasions had shipped or caused to be shipped to various persons throughout the United States a food, drug, or weed commonly known as Diaplex, which bore certain false and misleading statements in the labeling as quoted hereinafter.

The complaint alleged further that the defendant on divers occasions had been informed that the statements on the labels hereinafter quoted were false and misleading and that said product was misbranded; that the defendants had been warned that further shipments in interstate commerce of Diaplex with false and misleading statements on the labels must cease; that the defendants had continued to ship and cause to be shipped in interstate commerce large quantities of Diaplex with directions and false and misleading statements printed on the labels; that they had announced their present and future intentions to continue making shipments of Diaplex in interstate commerce with the said false and misleading statements in the labeling until restrained and enjoined by law from doing so; and prayed that a temporary injunction issue restraining the defendants and those acting on their behalf from shipping such product or causing it to be shipped in interstate commerce and that the temporary injunction be made permanent on final hearing of the case.

On October 29, 1941, the court orally instructed the defendants that neither they nor their agents were to conduct any further business in the manufacture and interstate shipment of the article, pending the hearing of medical testimony on November 22, 1941.

On October 31, 1941, the defendants filed an answer denying the making of any dogmatic claims of cure for the product and also denying that the labeling was false and misleading. On December 1, 1941, the case having come on for trial and the plaintiffs having appeared by counsel and the defendants appearing for themselves and without counsel, the court made the following findings of fact and conclusions of law:

#### I

**SYMES, D. J.** "That at all times hereinafter mentioned, and for a long time prior thereto, the defendants, Henry Wayne Pierce, also known as Horace Wayne Pierce, and Alice Pierce, were engaged in the business of selling, distributing, and shipping in interstate commerce, a product more commonly known as 'Diaplex' for the treatment and benefit of persons suffering from diabetes.

#### II

"That on or about July 3, 1941, the defendants did ship and cause to be shipped in interstate commerce, namely, from the town of Wellington, Colo., a shipment of a product more commonly known as 'Diaplex' and billed as 'dried

<sup>2</sup> See also Nos. 701-706, 708, 710, 711, 714-717, 720.