

29877. Misbranding of olive oil. U. S. v. 28 Cans of Alleged Olive Oil (and 2 other seizure actions). Default decrees of condemnation and destruction. (F. & D. Nos. 32599, 32600, 32601. Sample Nos. 69722-A, 69723-A, 69724-A.)

This product was labeled to convey the impression that it was Italian olive oil, but consisted of domestic peanut oil.

On April 26, 1934, the United States attorney for the District of New Jersey, acting upon a report by the Secretary of Agriculture, filed in the district court libels praying seizure and condemnation of 145 cans of oil at Newark, N. J., and 26 cans of oil at Jersey City, N. J.; alleging that the article had been shipped in interstate commerce on or about March 24 and 26, 1934, by Planters Edible Oil Co. from Brooklyn, N. Y.; and charging misbranding in violation of the Food and Drugs Act.

The article was alleged to be misbranded in that the statements and designs appearing on the label of the product, namely, "Ali D'Italia Olio Vegetale Sopraffino Garantito Purissimo per Cucina e Tavola," and picture of airplanes in the Italian flying armada of Balbo, a map showing the route of this expedition, and the Italian colors—red, white, and green—in bars in a band around the bottom of the can, were misleading and tended to deceive and mislead the purchaser since they created the impression that the article was Italian olive oil, whereas it consisted exclusively of peanut oil of domestic origin; and in that it purported to be a foreign product when not so.

On October 29, 1934, the Planters Edible Oil Co. filed an answer denying the misbranding charge. On December 15, 1938, the cases having been set for trial and no person having appeared or interposed at that time, judgments of condemnation were entered and the product was ordered destroyed.

HARRY L. BROWN, *Acting Secretary of Agriculture.*

29878. Misbranding of butter. U. S. v. Armour & Co. Plea of guilty. Fine, \$300. (F. & D. No. 39775. Sample Nos. 20231-C to 20234-C, inclusive.)

This product was represented to have been made in the United States, whereas it was a foreign product made in Siberia, Union of Soviet Socialist Republics.

On May 27, 1938, a special assistant to the Attorney General, acting upon a report by the Secretary of Agriculture, filed in the district court for the Southern District of New York an information against Armour & Co., a corporation having a place of business in New York, N. Y., alleging shipment by said company within the period from on or about February 17 to on or about March 1, 1937, from the State of New York into the State of Massachusetts of quantities of butter that was misbranded in violation of the Food and Drugs Act. It was labeled in part: (Wrapper) "Creamery Butter Made From Pasteurized Cream Made in U. S. A."

The article was alleged to be misbranded in that the statement "Made in U. S. A.," borne on the wrappers, was false and misleading, and was borne on said wrappers so as to deceive and mislead the purchaser in that the said statement represented that the article was made in the United States of America; whereas it was not made in United States, but in Siberia, Union of Soviet Socialist Republics. It was alleged to be misbranded further in that it was falsely branded as to the country in which it was manufactured and produced.

On August 26, 1938, a plea of guilty was entered on behalf of the defendant and the court imposed a fine of \$300.

HARRY L. BROWN, *Acting Secretary of Agriculture.*

29879. Adulteration and misbranding of grated cheese. U. S. v. 31 Dozen Cans of Grated Cheese. Default decree of condemnation and destruction. (F. & D. No. 38530. Sample No. 17264-C.)

This product contained added dried skim milk and a portion also contained added starch. It was short of the declared weight.

On November 12, 1936, the United States attorney for the Middle District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 31 dozen cans of grated cheese at Wilkes-Barre, Pa.; alleging that the article had been shipped in interstate commerce on or about September 26, 1936, by Italian Cheese Co., Inc., from Brooklyn, N. Y.; and charging adulteration and misbranding in violation of the Food and Drugs Act as amended. The article was labeled in part: "Icco Brand Grated Cheese Icco is a blend of Italian Parmesan and other part skim cheese * * * Net Weight 1½ Oz."

It was alleged to be adulterated in that a substance which contained added skim milk solids and a portion of which also contained added starch had been mixed and packed with it so as to reduce or lower its quality or strength and had substituted wholly or in part for grated cheese, which it purported to be.

It was alleged to be misbranded in that the statements, (can) "Grated Cheese * * * Net Weight 1½ Oz." and (carton) "Italian Grated Cheese," were false and misleading and tended to deceive and mislead the purchaser when applied to an article that was short weight, that contained dried skim milk, and a portion of which contained added starch. It was alleged to be misbranded further in that it was offered for sale under the distinctive name of another article, grated cheese, and in that it was food in package form and the quantity of the contents was not plainly and conspicuously marked on the outside of the package, since the quantity stated was not correct.

On December 10, 1938, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

HARRY L. BROWN, *Acting Secretary of Agriculture.*

29880. Alleged misbranding of salad oil. U. S. v. 374% Cases of Salad Oil (and 2 other seizure actions against the same product). Tried to the court. Judgment for claimant. Libels ordered dismissed. (F. & D. Nos. 33033, 34203, 34204. Sample Nos. 70411-A, 17081-B to 17084-B, inclusive.)

On July 2 and October 29, 1934, the United States attorney for the District of New Jersey, acting upon reports by the Secretary of Agriculture, filed in the district court libels praying seizure and condemnation of 374 $\frac{5}{8}$ % cases, each containing 6 gallon cans of oil at Newark, N. J., 484 gallon cans and 22 half-gallon cans of oil at Plainfield, N. J., and 322 gallon cans and 130 half-gallon cans of oil at Elizabeth, N. J.; alleging that the article had been shipped in interstate commerce within the period from on or about May 22, 1934, to on or about September 12, 1934, by Van Camp Oil Products Co. from Louisville, Ky., to Newark, N. J., and that portions had been reshipped subsequently to Plainfield and Elizabeth, N. J.; and charging that the article was misbranded in violation of the Food and Drugs Act.

The libels alleged that the article was misbranded in that the brand name "Contadina" (Italian for woman farmer), the words "Oil Superior Quality," the design of a woman in foreign garb presumably gathering olives from a tree, and the statement "Olio per tavola o cucina" appearing on the label, were misleading and tended to deceive and mislead the purchaser in that they created the impression that the article was imported olive oil; whereas it consisted of domestic cottonseed oil. It was alleged to be misbranded further in that it purported to be a foreign product when not so.

The Van Camp Oil Products Co. and Durkee Famous Foods, Inc., intervening as manufacturers, and the consignees, intervening as owners and claimants, filed answers denying the misbranding charges and subsequently filed exceptions to the libels. On November 30, 1938, the Government having filed exceptions to the claimants' answers, the cases came on for hearing on the pleadings and proofs, and the following findings of fact and conclusions of law in favor of the respective claimants were made:

FAKE, *District Judge.* "It is conceded that the cans or containers marked Exhibits G-1, G-2, and G-3 are all used in the vending of cottonseed oil and not in the vending of olive oil.

"An examination of Exhibit G-1 discloses the following language on the front of the tin: 'Contadina Brand Oil Superior Quality Pure Vegetable Oil One Gallon'; and the like appears on the back of the can. On one side of the can the following words appear: 'Oil For Salads, Mayonnaise And Cooking.' On the other side, the following words appear: 'Olio per Tavola o Cucina,' which interpreted is 'Oil for table and cooking.' On the bottom of one of the sides appears: 'Van Camp Oil Products Co., Louisville, Kentucky.'

"Exhibits G-2 contains on the front and back thereof the same words and picture as that shown on Exhibit G-1, except that at the bottom of the front and back of the tin the following words appear: 'Pure Refined Winter Pressed Cottonseed Oil.' The wording on the sides of this tin or container is the same as that shown on Exhibit G-1.

"Exhibit G-3 is not involved in the seizure but is introduced in evidence for the purpose of showing that the respondent has changed its label. I do not believe it is material to the issue now before me, and that exhibit will therefore be stricken out." (Exhibit G-3 stricken out.)