

"As I have said, the prescribed test is generally considered valid within limits of 20 percent, plus or minus, and is so described in the pharmacopoeia. Pituitary extract assayed as not more than 120 percent of standard would accordingly be within allowable limits for extract stated to have a strength of 10 international units. The evidence of both the Government and the defendant in this case, however, as I have indicated, shows beyond doubt that the defendant's product here involved was substantially overstrength and far beyond the limits laid down in the pharmacopoeia. The conclusion is inescapable that the defendant is guilty of violating the Food and Drugs Act.

"In reaching this conclusion I have not overlooked the evidence of assays made by the defendant of samples taken at the time of manufacture from the batch of extract from which the product here in question is said to have been taken. I feel, however, the evidence of identity of the product assayed with that here involved is not sufficiently definite to overcome the direct evidence of the results of the later assays made upon the particular product involved in this prosecution. Nor do I think the evidence excludes the possibility that the product of which the Government complains was in fact surgical pituitary extract of the strength of 20 international units, which the defendant admittedly was manufacturing at about the same time and which may have been labeled '10 International Units' by mistake.

"Upon full consideration of all the evidence, I find the defendant guilty as charged in both counts of the information."

On June 29, 1938, a fine of \$25 was imposed on each of the two counts of the information.

M. L. WILSON, *Acting Secretary of Agriculture.*

**29272. Misbranding of Dexene. U. S. v. Sanovapor Laboratories, Inc., Gordon A. Guthrie, and Ethelbert Kennedy Walker. Plea of guilty by Gordon A. Guthrie. Fine, \$50. Nolle prosequi entered as to remaining defendants. (F. & D. No. 37036. Sample No. 49135-B.)**

The labeling of this product bore a device and representations regarding its curative and therapeutic effects that were false and fraudulent.

On June 18, 1936, the United States attorney for the Southern District of West Virginia, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Sanovapor Laboratories, Inc., Huntington, W. Va., Gordon A. Guthrie, and Ethelbert Kennedy Walker, alleging shipment by said defendants in violation of the Food and Drugs Act as amended, on or about September 6, 1935, from the State of West Virginia into the State of Kansas, of a quantity of Dexene that was misbranded. On July 14, 1937, an amended information was filed. The article was labeled in part: "Dexene \* \* \* Prepared by the Sanovapor Laboratories, Inc. Laboratories Huntington, W. Va. Akron, Ohio."

Analysis of the product showed that it consisted of a yellow aqueous solution containing 0.24 percent of sulphur dioxide.

The amended information alleged that the word "Dexene," borne on the bottles and on the carton, was a device regarding the curative and therapeutic effect of the article in that the word "Dexene" meant to purchasers that it was a remedy for diabetes, the word having attained such meaning through long existing general knowledge, the result of the following facts:

1. An application that the word "Dexene" be designated as a trade mark for a remedy for diabetes was duly filed in the United States Patent Office on April 29, 1931, under serial No. 313976 and said name "Dexene" was registered in accordance therewith on September 1, 1931, as a trade name for "A preparation Used In The Treatment of Diabetes."

2. That subsequent to the registration of the word "Dexene" and on September 1, 1931, the article was marked and branded as was the shipment involved in this case, and there was enclosed in the cartons containing the bottles a circular or booklet describing the product Dexene as a treatment, remedy, and cure for the disease diabetes, which booklet was shipped from time to time in interstate commerce, so that prospective purchasers and the public in general acquired general knowledge that the product Dexene was offered as a treatment, remedy, or cure for diabetes—although said booklet was not contained in the carton in which the article or drugs involved in this case was enclosed—the said booklet containing the following statements as to the curative and therapeutic value of the article: "The medicinal or therapeutic value of Dexene in Diabetes Mellitus will be readily understood by those affected with the disease, and particularly by the profession who will view with interest the

marked improvements as shown in the laboratory tests of both the blood and urine of the cases cited."

3. That the article when shipped and delivered for shipment was offered as a cure, remedy, or treatment for diabetes, both independently and further in conjunction with the diet recommended on the label of the bottle and the carton, which said diet is commonly known to the layman as being restricted to and prescribed exclusively in the treatment of diabetes.

That the article was misbranded in that the statements, designs, and devices aforesaid falsely and fraudulently represented the curative and therapeutic effectiveness of the article as a treatment, remedy, or cure for diabetes.

On October 19, 1937, a nolle prosequi was entered with respect to the Sano-vapor Laboratories, Inc., and Ethelbert Kennedy Walker. On November 1, 1937, a plea of guilty was entered by defendant Gordon A. Guthrie, and the court imposed a fine of \$50.

M. L. WILSON, *Acting Secretary of Agriculture.*

**29273. Misbranding of Mentholated La Paris Kerchiefs. U. S. v. 58 Dozen Packages of Mentholated La Paris Kerchiefs (and 2 other seizure actions against the same product.)** (F. & D. Nos. 41861, 41945, 42278. Sample Nos. 2878-D, 3031-D, 8442-D.)

The labeling of this product bore false and fraudulent curative and therapeutic claims.

On March 7, March 11, and April 28, 1938, the United States attorneys for the Northern District of Illinois and the Northern District of California, acting upon reports by the Secretary of Agriculture, filed in their respective district courts libels praying seizure and condemnation of 58 dozen packages of Mentholated La Paris Kerchiefs at Chicago, Ill.; and 107½ dozen packages of the same product at San Francisco, Calif. The libel filed in the Northern District of California on March 11, 1938, was amended subsequently. The libels alleged that the article had been shipped in interstate commerce in part by the Sterilek Co., Inc., from New Hartford, N. Y.; in part by the East West Shippers, from New Hartford, N. Y., and in part by the East West Shippers from New York, N. Y., between the dates of January 11 and March 16, 1938; and charged that it was misbranded in violation of the Food and Drugs Act as amended.

A sample of the article upon analysis was found to consist essentially of tissue paper impregnated with volatile oils, including menthol and oil of eucalyptus.

The article was alleged to be misbranded in that the following statements appearing in the labeling regarding its curative or therapeutic effects were false and fraudulent: "For \* \* \* hay fever. Rose fever. Sinus. Soothes nasal irritation or \* \* \* inflamed \* \* \* skin. \* \* \* Use as protection when in crowds \* \* \* they are so soothing to inflamed skin \* \* \* especially recommended for use in case of:—Rose Fever. Hay Fever."

On May 24, May 25, and June 27, 1938, no claimant having appeared, judgments of condemnation were entered and the product was ordered destroyed.

M. L. WILSON, *Acting Secretary of Agriculture.*

**29274. Adulteration and misbranding of sandalwood oil. U. S. v. 9 Boxes of Sandalwood Oil, et al. Default decrees of condemnation and destruction.** (F. & D. Nos. 42240, 42381. Sample Nos. 12452-D, 12453-D, 13165-D.)

This product failed to comply with the requirements of the United States Pharmacopoeia for sandalwood oil.

On April 27 and June 14, 1938, the United States attorney for the District of Connecticut, acting upon reports by the Secretary of Agriculture, filed in the district court libels praying seizure and condemnation of 25 boxes of sandalwood oil capsules at Hartford, Conn.; alleging that the article had been shipped in interstate commerce in part on or about April 22, 1937, and in part on or about April 8, 1938, from New York, N. Y., by Jamco Co.; and charging adulteration and misbranding in violation of the Food and Drugs Act.

The article was alleged to be adulterated in that it was sold under a name recognized in the United States Pharmacopoeia, namely, sandalwood oil, and differed from the standard of strength, quality, and purity as determined by the test laid down in said pharmacopoeia and its own standard of strength, quality, and purity was not stated on the label.

One lot was alleged to be misbranded in that the statement on the label, "Sandalwood Oil U. S. P., Pure East India," was false and misleading since it represented that the article was sandalwood oil which complied with the requirements of the United States Pharmacopoeia; whereas it was not sandal-