

CONCLUSIONS OF LAW

"1. This Court has jurisdiction over the subject matter in this case and over the parties thereto.

"2. The Complaint is dismissed as to CHESTER WALKER COLGROVE.

"3. This Court is not bound by the findings of fact in the case of *United States v. 9 Bottles . . . 'Colusa Natural Oil' et al.*, 78 F Supp. 721 (N. D. Iowa, 1947) since that case is pending on appeal and the findings of fact therein are not now final.

"4. Colusa Natural Oil and Colusa Natural Oil in Capsules are drugs within the meaning of 21 U. S. C. 321 (g) (2).

"5. The articles, Colusa Natural Oil and Colusa Natural Oil in Capsules, are misbranded within the meaning of 21 U. S. C. 352 (a).

"6. Plaintiff's prayer for an injunction should be granted permanently restraining defendant, COLUSA REMEDY COMPANY, INC., from introducing or causing to be introduced into interstate commerce, and from delivering or causing to be delivered for introduction into interstate commerce, in violation of 21 U. S. C. 331 (a), any Colusa Natural Oil or Colusa Natural Oil in Capsules which is misbranded within the meaning of 21 U. S. C. 352 (a), and in particular which contains any labeling representing or suggesting that these products, used separately or together, are or might be beneficial or efficacious in the treatment, mitigation, or cure of psoriasis, eczema, poison ivy, poison oak, leg ulcers, athlete's foot, acne, itch, or open sores.

"7. Plaintiff is entitled to all costs properly taxable against the defendant, COLUSA REMEDY COMPANY, INC."

Pursuant to the above-mentioned findings of fact and conclusions of law, the court, on 6-8-49, entered a decree permanently enjoining the Colusa Remedy Co., its officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with all or anyone or more of them from introducing into interstate commerce *Colusa Natural Oil*, *Colusa Natural Oil Capsules*, or any like products which are misbranded under 502 (a), and in particular which contain any labeling representing that the articles used separately or together are or might be beneficial or efficacious in the treatment, mitigation, or cure of psoriasis, eczema, poison ivy, poison oak, leg ulcers, athlete's foot, acne, itch, or open sores.

A motion for a new trial was filed by the Colusa Remedy Co., and on 9-19-49, was denied. A notice of appeal was filed by the company on 11-15-49, but no steps were taken thereafter to perfect the appeal. A stipulation subsequently was entered into between the parties agreeing to the dismissal of the appeal, and was approved by the court on 10-9-50.

4676. **Lymphex and Tracel.** (F. D. C. No. 35184. S. Nos. 38-376 L, 51-057/8 L, 56-602/3 L.)

INFORMATION FILED: 10-21-53, Dist. N. J., against H. Hall Marshall, t/a Consultants' Laboratories, Millington, N. J.

SHIPPED: Between 7-18-52 and 3-12-53, from New Jersey to New York, Maryland, and Tennessee.

LABEL IN PART: (Can) "Lymphex Myroxylon Bark Extract Osmotic Baths. * * * Active Ingredients Lymphex Osmotic Baths contain a new extract of the myroxylon tree from one particular tropical environment. This extract also contains eucalyptol, nerolidol and cinnamein (used as extractors) and is combined with laurel sodium sulfonate (foaming and wetting agent) and sodium carbonate (water softener)"; (btl.) "Tracel Trace Element Mineral Concentrate Each Two Teaspoons Contain The Following Amounts: Cobalt

.15 mgs., Magnesium 2 mgs., Fluorine .1 mgs., Sodium 2.5 mgs., Copper 1 mg., Iodine .15 mgs., Nickel .015 mgs., Sulphur .25 mgs., Manganese 1.5 mgs., Chlorine .014 gms., Potassium .15 mgs., Zinc 1.5 mgs."

ACCOMPANYING LABELING: (Lymphex) Booklet entitled "Myroxylon Bark Extract New Type Osmotic Bath Therapy for Arthritis and Chronic Sinus Trouble" and various letters addressed by the defendant; (Tracel) leaflets entitled "National Disaster by Mineral Starvation" and "The Normal Diet Cannot Be Depended Upon for Adequate Vitamins-Minerals-Trace Elements."

CHARGE: *Lymphex*. 502 (a)—the labeling of the article when shipped contained false and misleading representations that the article consisted essentially of an extract of myroxylon tree bark and that the article was an adequate and effective treatment for deep-seated infections, arthritis, sinusitis, bursitis, rheumatic fever, inflammatory rheumatism, sciatica, and many infections including those of a virus nature.

Tracel. 502 (a)—the accompanying labeling of the article when shipped contained false and misleading representations that the article would be effective in the treatment of allergies and asthma; that it would be effective in the prevention of diabetes; that all of the minerals contained in the article were trace elements and are required in human nutrition; that a normal diet would not supply adequate vitamins, minerals, and trace elements; and that the human system cannot make use of vitamins without minerals.

PLEA: Not guilty.

DISPOSITION: On 5-11-54, the case came on for trial before a jury, and, at its conclusion, the jury returned a verdict of guilty. On 5-28-54, the court fined the defendant \$500 on count 4 of the information relating to the Tennessee shipment of *Lymphex*, suspended the imposition of sentence on the other counts, and placed the defendant on probation for 1 year.

4677. Vitalitone device. (F. D. C. No. 37096. S. Nos. 80-428 L, 81-078 L.)

QUANTITY: 2 devices at San Francisco, Calif.

SHIPPED: 2-17-54 and 3-15-54, from Salt Lake City, Utah, by Park Mfg. Co.

LABEL IN PART: (Device) "Vitalitone Model B."

ACCOMPANYING LABELING: Booklets entitled "Vitalitone Application Placements For Various Conditions" and copies of a body chart showing points of application of the device to the body.

RESULTS OF INVESTIGATION: The *Vitalitone device* was a device for applying electric currents to the body.

LIBELED: 9-15-54, N. Dist. Calif.

CHARGE: 502 (a)—the labeling accompanying the article when shipped contained false and misleading representations that the article would provide an adequate and effective treatment for rheumatism, arthritis, "Charley horse," liver ailments, kidney ailments, paralysis, prolapsed colon, conditions affecting the female organs, angina pectoris, nervous indigestion, high blood pressure, low blood pressure, constipation, asthma, fallen arches, sinus conditions, hay fever, double chin, bags under the eyes, and for rejuvenating the busts.

DISPOSITION: 12-22-54. Consent—claimed by Walter F. Gertz, San Francisco, Calif., and relabeled.

4678. Voluptae device. (F. D. C. No. 36877. S. No. 58-204 L.)

QUANTITY: 51 assembled units and component parts for assembling 925 units at Chicago, Ill.