

When opened, the chest appeared full of candy. The candy occupied, however, only approximately 31 percent of the capacity of the container. The label failed to bear the name and place of business of the manufacturer, packer, or distributor.

On August 6, 1943, the United States attorney for the District of Oregon filed a libel against 47 cases, each containing 12 cedar chests, of candy at Portland, Oreg., alleging that the article had been shipped in interstate commerce by the Evans Novelty Co. from Chicago, Ill., on or about June 25 and 28, 1943; and charging that it was misbranded. Each chest contained a cellophane-wrapped tray of candy with a sticker label reading: "De Luxe Assortment Ingredients \* \* \* Net Weight 1 Pound."

The article was alleged to be misbranded in that the containers were so filled as to be misleading, since the candy occupied only approximately 31 percent of the capacity of the container, and in that it was food in package form but failed to bear a label containing the name and place of business of the manufacturer, packer, or distributor.

On August 19, 1943, Victor's Novelty Co., Portland, Oreg., claimant, having consented to the entry of a decree, judgment of condemnation was entered and it was ordered that the product be released under bond, conditioned that it be relabeled and repacked in a manner satisfactory to the Food and Drug Administration.

**5444. Misbranding of candy. U. S. v. 6 Cases, 5 Cases, and 32 Cartons of Candy. Consent decree of condemnation. Product ordered released under bond for repacking. (F. D. C. No. 10346. Sample Nos. 12278-F, 12279-F, 43102-F.)**

This candy was contained in cedar chests or boxes, each chest or box containing a cellophane-wrapped tray of candy which was elevated by means of a false bottom. When opened, the chests and boxes appeared to be full of candy. The trays, however, occupied only approximately 31 percent of the capacity of the container. The labels failed to bear the name and place of business of the manufacturer, packer, or distributor.

On August 7, 1943, the United States attorney for the District of Oregon filed a libel against 6 cases, each containing 12 cedar chests, 5 cases, each containing 12 mirror boxes, and 32 cartons, each containing 12 cedar chests, of candy at Portland, Oreg., alleging that the article had been shipped in interstate commerce on or about June 28, 1943, by the Sylvan Company from Chicago, Ill.; and charging that it was misbranded. Each chest or box contained a cellophane-wrapped tray of candy with a sticker label reading: "De Luxe Assortment."

The article was alleged to be misbranded in that its containers were so filled as to be misleading since the candy occupied only approximately 31 percent of the capacity of the boxes, and in that it was food in package form and failed to bear a label containing the name and place of business of the manufacturer, packer, or distributor.

On August 23, 1943, L. J. Korter, Portland, Oreg., claimant, having consented to the entry of a decree, judgment of condemnation was entered and it was ordered that the product be released under bond, conditioned that it be relabeled and repacked under the supervision of the Food and Drug Administration.

**5445. Misbranding of candy. U. S. v. 4 Cases and 11 Cases of Candy. Default decree of condemnation. Product ordered delivered to charitable organizations. (F. D. C. No. 10372. Sample Nos. 14497-F, 14498-F.)**

A portion of this product (4 cases) consisted of a cardboard novelty box in the shape of a bomb and contained from 21 to 25 individually-wrapped candies. The remainder (11 cases) consisted of a cardboard novelty box in the shape of a bombshell and contained from 6 to 10 individually-wrapped candies, which occupied on an average about 60 percent of the container. Each package had an inset in the bottom about one-half inch deep. A portion of the product was found to be short weight. The net weight declaration was inconspicuous on both labels.

On August 7, 1943, the United States attorney for the Southern District of California filed a libel against 4 cases, each containing 60 packages, and 11 cases, each containing 144 packages, of candy at Los Angeles, Calif., alleging that the article had been shipped in interstate commerce on or about February 10 and March 5, 1943, by the Fascination Candy Co. from Chicago, Ill.; and charging that it was misbranded. The article was labeled in part: (Packages) "Via Air Mail to Tokio U. S. A. Aerial Bomb \* \* \* Net Weight 6 Ozs.," or "The Victory Bomb-Shell Junior."

The article was alleged to be misbranded in that the statement of quantity of contents required by law to appear on the label was not prominently placed

thereon with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) as to render it likely to be read by the ordinary individual under customary conditions of purchase and use, and in that its label failed to bear the common or usual name of the food, candy. A portion of the article (4 cases) was alleged to be misbranded further in that the statement "Net Weight 6 Ozs." was false and misleading as applied to a product that was short weight; and in that its container was so made as to be misleading since it had an inset about one-half inch deep in the bottom of the package; and in that it was in package form and failed to bear a label containing an accurate statement of the quantity of the contents. The remainder of the article (11 cases) was alleged to be misbranded in that its container was so made and filled as to be misleading since it had an inset about one-half inch deep in the bottom of the package and the wrapped candy occupied only about 60 percent of the capacity of the container.

On September 3, 1943, no claimant having appeared, judgment of condemnation was entered and the product was ordered delivered to charitable organizations.

**5446. Misbranding of candy and toy packages. U. S. v. 35 Cartons of Candy and Toy Packages (and 2 other seizure actions against candy and toy packages). Decrees ordering destruction of portion of product and delivery of remainder to charitable institutions. (F. D. C. Nos. 10143, 10144, 10281. Sample Nos. 37338-F, 43419-F, 46334-F to 46337-F, incl.)**

Some of the packages were filled with 4 paper-wrapped candy kisses and a prize which, together, occupied, in certain packages, about 20 percent of the volume and, in other packages, about one-half of the volume. The remainder contained from 1 to 9 very small pieces of candy and a prize which, together, occupied less than 10 percent of the volume of the packages.

On or about June 24 and July 20, 1943, the United States attorneys for the District of Maryland and the Western District of Missouri filed libels against the following quantities of candy and toy packages: 35 cartons, each containing 100 packages, at Kansas City, Mo., and 28 cartons and 74 cartons, each containing 100 packages, and 58, 88, and 58 cartons, each containing 80 packages, at Baltimore, Md.; alleging that the articles had been shipped on or about May 24 and June 3 and 17, 1943, from Brooklyn, N. Y., by the Novel Package Corporation; and charging that they were misbranded. The articles were labeled in part: (Packages) "Candy & Toy General Douglas MacArthur Packed For and Distributed By Pioneer Specialty Co. Brooklyn, N. Y. [or "U. S. War Planes \* \* \* Keep 'em Flying,"]," "U. S. Navy Warships \* \* \* Packed and Distributed By Novel Package Corp.," or "Remember Pearl Harbor Candy & Toy \* \* \* Packed and Distributed by Candyland Company Brooklyn, N. Y."

The articles were alleged to be misbranded in that their containers were so filled as to be misleading. A portion was alleged to be misbranded further in that it was in package form and failed to bear a label containing an accurate statement of the quantity of the contents.

On October 21, 1943, no claimant having appeared for the lot at Kansas City, a decree was entered ordering it to be destroyed. On November 15, 1943, no claimant having appeared for the lots at Baltimore, judgments of condemnation were entered and they were ordered delivered to a charitable institution.

**5447. Misbranding of candy-filled glass toys. U. S. v. 9 Dozen Candy-Filled Glass Toys, et al. Default decree of condemnation. Products ordered distributed to a welfare organization. (F. D. C. No. 10126. Sample No. 34104-F.)**

These products were short weight.

On June 21, 1943, the United States attorney for the Western District of New York filed a libel against the following candy-filled glass toys at Buffalo, N. Y.: 9 dozen automobiles, 12 dozen battleships,  $8\frac{1}{4}$  dozen busses, and  $1\frac{1}{12}$  dozen telephones, alleging that the articles had been shipped in interstate commerce on or about March 12 and May 20, 1943, by Victory Glass, Inc., Toy Division, from Jeanette, Pa.; and charging that they were misbranded. The articles were labeled in part: "Miniature Streamline Auto [or "Battleship" or "Motorbus"] \* \* \* Contents  $\frac{1}{2}$  Ounce or More," or "Miniature Dial Telephone \* \* \* Contents  $\frac{3}{4}$  Ounce or More."

They were alleged to be misbranded in that the statements "Contents  $\frac{1}{2}$  Ounce or More" (auto, battleship, motorbus) and "Contents  $\frac{3}{4}$  Ounce or More" (telephone) were false and misleading as applied to articles that were short weight;