

should be brought and if claimed improper use of the tapes is then attempted, motion to discover or suppress the tapes may be appropriate. *On Lee v. United States*, 343 U.S. 747, 756 (1952). The courts are reluctant to decide important constitutional questions at a stage of proceedings when the necessity of their resolution has not been established. *Poe v. Ullman*, 367 U.S. 497 (1961). Declaratory and injunctive relief were properly denied.

"Nor do we reach the merits of the claim to possession of the tapes, upon whatever theory plaintiff may contend for such a right, for this is plainly an action against the sovereign, to which it has not consented. The tapes were recorded and retained by agents of the Secretary of Health, Education and Welfare in carrying out inspections authorized by the statute and pursuant to department policy. This is not an action to recover damages from defendants personally because of their personal actions. It seeks in this phase recovery of specific government property so that while nominally against the individuals it is in substance against the government over which the court, in the absence of consent, has no jurisdiction. *Larson v. Domestic & Foreign Corp.*, 337 U.S. 682, 688 (1949). *Dugan v. Rank*,—U.S.—April 15, 1963, 31 LW 4347.

"The judgment dismissing the complaint is affirmed."

A petition for certiorari was subsequently filed in the Supreme Court and on 10-28-63, such petition was denied (375 U.S. 896).

30586. Childrens' vitamin tablets. (F.D.C. No. 51244. S. No. 43-543 B.)

QUANTITY: 4,827 100-tablet btls., at East Woodstock, Conn.

SHIPPED: 3-13-64, from Philadelphia, Pa.

RESULTS OF INVESTIGATION: Analysis showed that the article contained less than 50 percent of the declared amount of vitamin A, less than 72 percent of the declared amount of vitamin B₁, and less than 40 percent of the declared amount of vitamin B₁₂.

LIBELED: On or about 4-22-65, Dist. Conn.

CHARGE: 402(b)(1)—while held for sale, the valuable constituents, vitamin A, vitamin B₁, and vitamin B₁₂, had been in part omitted or abstracted from the article; and 403(a)—the label statement "Each tablet contains: Vitamin A Acetate 2500 USP Units * * * Vitamin B₁ (Thiamine) 1 mg. Vitamin B₁₂ USP 3 mcg. * * *" was false and misleading.

DISPOSITION: 7-6-65. Default—destruction.

30587. Dietary wafers. (F.D.C. No. 51476. S. No. 78-772 B.)

QUANTITY: 29 cases, of 12 36-wafer boxes each, at Knoxville, Tenn., in possession of the White Stores, Inc.

SHIPPED: Between 2-25-65 and 5-27-65, from Atlanta, Ga.

LIBELED: 8-13-65, E. Dist. Tenn.

CHARGE: 402(a)(3)—contained insects; and 402(a)(4)—held under insanitary conditions.

DISPOSITION: 9-24-65. Default—destruction.

30588. Multiple vitamin capsules. (F.D.C. No. 51122. S. Nos. 43-868 B, 43-883 B.)

QUANTITY: 26 ctns., each containing 36 100-tablet btls., at Hartford, Conn., and 256 100-capsule btls., and 43 250-capsule btls., at Berlin, Conn.

SHIPPED: On an unknown date in 1963, from outside the State of Connecticut.

RESULTS OF INVESTIGATION: Analysis showed that the article contained less than 75 percent of the declared amount of vitamin B₁₂.

LIBELED: 3-25-65, Dist. Conn.; libel amended 7-9-65.

CHARGE: 402(b)(1)—while held for sale, the valuable constituent, vitamin B₁₂, had been in part omitted or abstracted from the article; and 403(a)—the label statements "Each capsule contains * * * Vitamin B₁₂ (Activity) 2.0 mcg." and "The need in human nutrition has not been established," as applied to calcium pantothenate, were false and misleading.

DISPOSITION: 7-12-65. Consent—destruction.

30589. Vitamin and mineral tablets. (F.D.C. No. 51118. S. Nos. 56-564/67 B.)
QUANTITY: 234 30-tablet btl., and 284 100-tablet btl., at Richmond, Va., in possession of Elars Products, Inc.

SHIPPED: 11-9-62 and 1-23-64, from New York, N.Y.

LABEL IN PART: (Btl.) "Elgyn Vitamins With Minerals 10 Vitamins—11 Minerals * * * for the prevention of multiple vitamin and certain mineral deficiencies Dose: * * * One Elcap daily * * * Dist. by Elars Prod. Inc. Richmond, Va. * * * Each Elcap With Minerals contains * * * folic acid 0.25 mg. * * * Cobalt 0.1 mg. * * * molybdenum 0.2 mg."

RESULTS OF INVESTIGATION: The article was repacked by the dealer from bulk lots shipped as described above.

LIBELED: 3-11-65, E. Dist. Va.

CHARGE: 402(a)(2)(C)—while held for sale, the article contained folic acid, cobalt, and molybdenum, food additives which were unsafe within the meaning of 409, since they, and their use and intended use were not in conformity with a regulation or exemption; 403(a)—the listing and references on the label of cobalt, molybdenum, magnesium, and potassium, represented, suggested, and implied that the nutritional value of the article was enhanced by the presence therein of these ingredients; which representations, suggestions, and implications were false and misleading, since the nutritional value of the article was not enhanced by the inclusion of these ingredients; and 403(a)—the label statement "need in human nutrition not established" as applied to calcium pantothenate, copper, magnesium, manganese, potassium, and zinc, was false and misleading, since the need in human nutrition for these ingredients has been established.

DISPOSITION: 4-12-65. Default—destruction.

30590. Vitamin and mineral tablets. (F.D.C. No. 51489. S. Nos. 55-190 B, 55-199 B.)

QUANTITY: 12 ctns., each containing 12 btl., plus 45 btl. of 100 tablets each, and 1 drum, containing approximately 4,800 tablets, at Silver Spring, Md.

SHIPPED: 8-21-59, from Philadelphia, Pa.

LIBELED: On or about 6-16-65, Dist. Md.

CHARGE: 402(a)(2)(C)—while held for sale, the articles contained folic acid, a food additive, which is unsafe within the meaning of 409, since it and its use and intended use were not in conformity with a regulation or exemption.

DISPOSITION: 7-14-65. Default—destruction.

30591. Dietary food supplements. (F.D.C. No. 51004. S. Nos. 17-585 A, 17-587/8 A.)

QUANTITY: 19 ctns., each containing 24 1,092-tablet pkgs., 1 case containing 8 1-lb. boxes, and 1 case containing 4 3-lb. boxes, at Essex, Conn.

SHIPPED: Between 11-1-61 and 11-30-61, from Beverly Hills, Calif.