

29125. Confectionery maize flakes and shelled Spanish peanuts. (F.D.C. No. 48501. S. Nos. 36-838/9 V.)

QUANTITY: 42 50-lb. bags of flakes, and 9 115-lb. bags of peanuts, at Shreveport, La., in possession of Julius Gamm Co., Inc.

SHIPPED: 8-17-62 and 9-26-62, from Kankakee, Ill., and Comanche, Tex.

LIBELED: 12-28-62, W. Dist. La.

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

DISPOSITION: 1-21-63. Consent—claimed by Julius Gamm Co., Inc. Reconditioned; 40 lbs. of flakes and 5 lbs. of peanuts destroyed.

29126. Breeding. (F.D.C. No. 49367. S. Nos. 59-922/24 X.)

QUANTITY: 16 200-lb. drums of special breeder, 6 200-lb. drums of batter mix, and 22 50-lb. drums of cracker meal at Kansas City, Mo.

SHIPPED: Between 5-6-63 and 8-30-63, from Millstadt, Ill.

LIBELED: 9-30-63, W. Dist. Mo.

CHARGE: 402(a)(3)—contained insects while held for sale.

DISPOSITION: 10-15-63. Default—delivered to a charitable institution for use as animal feed.

29127. Malt barley. (F.D.C. No. 49266. S. No. 35-805 X.)

QUANTITY: 35,000 lbs. at Bismarck, N. Dak.

SHIPPED: 6-11-63, from Winona, Minn.

LIBELED: 8-8-63, Dist. N. Dak.

CHARGE: 402(a)(3)—contained live insects and insect larvae while held for sale.

DISPOSITION: 9-11-63. Consent—claimed by Dakota Malting & Brewing Co., Bismarck, N. Dak., for denaturalization and use as cattle feed.

29128. Instant liquid malt. (F.D.C. No. 48720. S. No. 55-099 V.)

QUANTITY: 12 1-qt. btls., and 37 1-gal. btls., at Carroll, Iowa.

SHIPPED: 2-8-63, from McCook, Nebr., by Grain Products Corp.

LABEL IN PART: (Btl.) "Harmon's Instant Liquid Malt * * * Mfg. by Grain Prod. Corp. McCook, Nebr. * * * Ingredients: Water, Corn Syrup, Malt 0.1% Potassium Sorbate As A Chemical Preservative."

RESULTS OF INVESTIGATION: Examination showed article to be a tan-colored liquid with a sweet taste and malt-like odor. Statement of ingredients was printed in type so small as to be blurred and illegible in part.

LIBELED: 3-12-63, N. Dist. Iowa.

CHARGE: 403(f)—when shipped, the information required under 403(i)(2), namely, the ingredients statement, 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.

DISPOSITION: 5-27-63. Default—delivered to a charitable institution.

29129. Unpopped popcorn. (F.D.C. No. 49213. S. No. 1-972 X.)

QUANTITY: 77 50-lb. bags, at Atlanta, Ga.

SHIPPED: 7-11-63, from Tampa, Fla., by Star Terminal & Warehouse.

LABEL IN PART: (Bag) "Topeka, Indiana * * * Kind of Popcorn: Yellow."

LIBELED: 8-5-63, N. Dist. Ga.

CHARGE: 402(a)(3)—contained insects and insect parts when shipped and while held for sale.

DISPOSITION: 9-11-63. Default—ordered destroyed or delivered to a Government institution for use as animal feed.

CONFECTIONERY

29130. Delson thin mints. (F.D.C. No. 42799. S. No. 32-538 P.)

QUANTITY: 174 cases, each containing 24 10-oz. pkgs., at Carlstadt, N.J.

SHIPPED: Between 5-9-58 and 6-13-58, from New York, N.Y., by Delson Candy Co.

LABEL IN PART: (Pkg.) "Delson Thin Mints. Chocolate Covered * * * Delson Candy Co. * * * New York, N.Y."

RESULTS OF INVESTIGATION: Examination showed that the article was disc-shaped chocolate-covered mints packed in a single-layer, long, narrow, rectangular box, divided into 3 parts by means of built-in, hollow, cardboard dividers, with a similar hollow construction at each end which shortened the usable inside space.

LIBELED: 1-26-59, Dist. N.J.

CHARGE: 403(d)—when shipped, the container of the article was so filled as to be misleading, since the use of two hollow dividers between each section of candy and one hollow divider at each end of the container utilized the available space in the container so that the candy occupied only about 45 percent of the volume of a container of this size; such excess packaging material was unnecessary in the packaging of the article, and additional pieces of candy could be packed in the container with no physical difficulty.

DISPOSITION: On 3-5-59, Charles R. Adelson and Richard H. Adelson, general partners, and Jane L. Adelson and Ethel A. Schaper, limited partners, t/a Delson Candy Co., claimed the article and denied that the article was misbranded. On 5-6-59, upon application by the claimant and with the consent of the Government, an order was entered directing the United States marshal to store the article under refrigeration pending a final determination of the case. On 7-13-59, the Government served written interrogatories on the claimant. On 8-12-59, the claimant served written interrogatories on the Government. On 9-11-59, the claimant filed answers to the Government's interrogatories; and thereafter the Government filed answers to the claimant's interrogatories.

The case was tried on 1-6-60 through 1-8-60 before the court. On 2-10-60, the court rendered the following opinion:

WORTENDYKE, *District Judge*: "By its libel of information, the Government prayed seizure and condemnation of an article of food consisting of 174 cases, more or less, each containing 24 ten ounce packages of an article labeled in part 'Delson Thin Mints, Chocolate Covered * * * Delson Candy Company * * * Newark, New York * * *' [New York, New York.] Pursuant to warrant of seizure, 91 cases of the article were attached by the United States Marshal, who duly served upon the person in charge of the place where the goods were stored, a monition addressed to the owner thereof which was thereafter duly published. In due course a notice of claim was filed by