

LIBELED: On or about 9-14-62, Dist. Kans.

CHARGE: 403(a)(3)—contained insects, insect larvae, and cast skins while held for sale.

DISPOSITION: 3-25-63. Default—delivered to a public institution for use as animal feed.

CHOCOLATE, CONFECTIONERY AND RELATED PRODUCTS

CHOCOLATE PRODUCTS

28921. Chocolate and cocoa products. (Inj. No. 375.)

COMPLAINT FOR INJUNCTION FILED: 2-12-60, W. Dist. Wash., against Washington Chocolate Co., a corporation, Seattle, Wash.

CHARGE: The complaint alleged that the defendant operated a plant at Seattle, Wash., for the preparation, packing, holding, and distribution of various types of chocolate and cocoa products, including dark chocolate (chocolate liquor), milk chocolate, chocolate coatings, cocoa butter, and candy; that the defendant shipped such foods which were adulterated within the meaning of 402(a)(3) and 402(a)(4); that such foods consisted in part of a filthy substance by reason of the contamination of such foods with rodent and insect filth; and that such foods were prepared, packed, and held under insanitary conditions whereby they may have become contaminated with filth thereby rendering such foods adulterated.

The complaint alleged further that the insanitary conditions at the defendant's plant resulted from and consisted of insect larvae on three walls of the cocoa bean room; rodent excreta pellets on a lot of cocoa bean shells stored along the north wall of the cocoa bean room; insects flying near a lot of bags of dried milk solids stacked against the cooler in the north wing of the first floor; insects on a tier of the bags containing the milk solids in the north wing of the first floor; flies in the "hot room" flying near open pans of chocolate; the use of leftover candy and other scrap material containing insect webbing, in the preparation of new batches of finished candy; the use of chocolate sweepings as an ingredient in new batches of candy; rodent excreta pellets in the cloth tubes of the cocoa and sugar mills on the second floor; rodent excreta pellets on the floor of the north wing of the second floor; two mice and approximately 300 mouse excreta pellets found beneath a tier of bags of cocoa powder along the north wall of the second floor; rodent excreta pellets on cloth covers of carts containing chocolate nibs; a beetle-infested cart containing empty burlap bags on the west end of the north wing of the second floor; rodent excreta pellets in the bottom of the aforementioned cart; the placing of cocoa butter onto a tray containing rodent excreta pellets; an unscreened door to the restroom which was left open; debris stacked around the outside of the building which provided a harborage for rodents; piles of old machinery, cartons, barrels, and other materials on the second floor of the south wing which provided a harborage for rodents and made cleaning difficult; employees in the plant who did not wear head coverings; and the presence of numerous openings in the plant that permitted rodent and insect entry.

The complaint alleged further that the defendant was aware that its activities were in violation of the law; that since 1942 several inspections had been made of defendant's plant by inspectors of the Food and Drug Administration; that inspections of defendant's plant at Seattle, Wash., were made by in-

spectors of the Food and Drug Administration during October 1959, December 1959, and on 1-13-60, at which times the insanitary conditions in the plant were called to the defendant's attention; that a Libel of Information (*United States v. 30 160-lb. bags * * * and 246 140-lb. bags of Cocoa Beans, Admiralty No. 16563*), was filed 11-12-59, in the United States District Court for the Western District of Washington praying that articles of cocoa beans be seized and condemned by reason of adulteration; that this action was terminated by a Consent Decree of Condemnation; and that despite the warnings conveyed to the defendant by the inspections, the defendant failed to correct the insanitary conditions at its plant and continued to ship into interstate commerce, food which was adulterated as specified above.

DISPOSITION: On 2-15-60, the court entered an order requiring the defendants to show cause why a preliminary injunction against the defendant should not be granted pending the final determination of the action. On 2-18-60, the defendant having consented, the court entered a decree of permanent injunction enjoining the defendant from directly or indirectly introducing or causing to be introduced and delivering or causing to be delivered for introduction into interstate commerce, foods such as chocolate and cocoa products, including dark chocolate (chocolate liquor), milk chocolate, chocolate coatings, cocoa butter, and candy, which were adulterated within the meaning of 402(a) (3) in that it consisted in part of a filthy substance, and within the meaning of 402(a) (4) in that they have been prepared, packed, and held under insanitary conditions whereby they may have become contaminated with filth.

The decree further enjoined the defendant from directly or indirectly introducing or causing to be introduced and delivering or causing to be delivered for introduction into interstate commerce, foods for human consumption, such as chocolate and cocoa products, including dark chocolate (chocolate liquor), milk chocolate, chocolate coatings, cocoa butter, and candy, and any similar articles of food, prepared, packed and held at defendant's plant at 528 Pontius Avenue North, Seattle, Wash., unless and until:

(a) the plant was thoroughly cleaned and rendered suitable for use in connection with the preparation, packing, and holding of food for human consumption, such as chocolate and cocoa products, including dark chocolate (chocolate liquor), milk chocolate, chocolate coatings, cocoa butter, and candy, and any similar article of food, unless and until all rodent and insect filth was removed from the plant and the equipment used in the preparation, packing and storing of foods was cleaned; all rodent and insect filth in and about the plant was eliminated; the means of ingress and egress by rodents and insects were closed and any similar insanitary conditions which may result in the contamination of foods for human consumption while prepared, packed, or held at the plant were eliminated;

(b) all of the foods on hand at the plant at the time the plant was cleaned, renovated, and rendered suitable for the preparation, packing and storage of food for human consumption were destroyed, denatured for use as animal feed or cleaned or otherwise segregated, reconditioned, processed or disposed of under the supervision of a duly authorized representative of the Food and Drug Administration, Department of Health, Education, and Welfare;

(c) an inspection was made of the plant by a duly authorized representative of the Food and Drug Administration, Department of Health, Education, and Welfare, and a report filed with the court by him showing that the above-described, or any similar, insanitary conditions no longer existed.

The decree of permanent injunction also noted that the defendant had appeared and had filed affidavits from which it appeared that it voluntarily, on 1-29-60, prior to the filing of this action, closed its plant, suspended all manufacturing therein and suspended all sales and shipments, and that all manufacturing and sales and shipments since then were voluntarily suspended, and it further appeared that defendant had, during the voluntary closure of its plant, exercised great effort to remove all objectionable matter from and objectionable conditions in the plant, and that the plant might then be ready for resumption of manufacturing subject to an official inspection which had tentatively been arranged for on the day following the entry of this order, and that it further appeared that the defendant had voluntarily undertaken an analysis of all codes of foodstuffs manufactured by it and then in its stock, and had to date submitted four reports on such analysis of a number of such codes, and that it had been tentatively arranged that the defendant was to be advised promptly as to which codes so analyzed were thereby ready to be released for shipment into trade channels.

Thereafter, Food and Drug Administration inspectors inspected the defendant's plant and witnessed the destruction of 40,271 lbs. of chocolate and cocoa products. On 8-4-61, the defendant filed a motion to dissolve the injunction. On 4-10-62, by consent of all parties, and the defendant having fully and completely complied with the requirements of the Food and Drug Administration in removing all objectionable matter from, and all objectionable conditions in, the defendant's plant, the permanent injunction was dissolved and dismissed.

CONFECTIONERY*

28922. Candy. (Inj. No. 349.)

COMPLAINT FOR INJUNCTION FILED: 12-22-58, N. Dist. Ga., against Beckham Candy Co., a corporation, Atlanta, Ga., and Louis S. Horowitz, president and treasurer.

CHARGE: The complaint alleged that the defendants engaged at Atlanta, Ga., in the business of preparing, packing, and distributing various types of candy, such as hard candy, suckers, beads, and apple pops, that they were shipping in interstate commerce, candy which was adulterated within the meaning of 402(a)(1), 402(a)(3) and 402(a)(4); and that the candy consisted in part of a deleterious substance which might render it injurious to health by reason of the presence of glass fragments and metal fragments, that the candy was unfit for food by reason of the presence of glass fragments and metal fragments and that the candy was prepared and packed under insanitary conditions whereby it might have become contaminated with filth or whereby it might have been rendered injurious to health.

The complaint alleged further that the violative conditions in the defendants' plant at Atlanta, Ga., where the candy was prepared and packed, resulted from and consisted of a plant maintained in a generally cluttered, crowded and messy condition; the presence of pools of water, discarded sucker sticks, broken pieces of glass, broken bits of candy, empty soft drink bottles and other miscellaneous debris on the floor; the presence of uncovered containers of starch and coloring, open sugar bags, lunch bags and empty soft drink bottles on the tables in the manufacturing area; unused equipment left in a messy condition and containing pieces and lumps of candy, bottles,

*See also No. 28993.