

**CHARGE:** 403(a)—when shipped, the name "Cherry Apple Juice Drink" and the label vignette depicting fresh cherries and apples, were false and misleading as applied to a product whose ingredients were declared on its label to consist of water, sugar, apple juice concentrate, cherry, apple, and other natural flavors, citric acid, ascorbic acid, and U.S. certified color.

**DISPOSITION:** 6-21-63. Default—delivered to a Government institution.

**29005. Chocolate-flavored beverages.** (F.D.C. No. 47869. S. No. 35-317 R.)

**INFORMATION FILED:** 11-5-62, E. Dist. N.Y., against Diamond Club Beverages Corp., t/a Threemor Sales Co., Brooklyn, N.Y., and Louis Zivin, president.

**SHIPPED:** 11-16-60, from Brooklyn, N.Y., to New Brunswick, N.J.

**LABEL IN PART:** (Btl.) "THREEMOR \* \* \* The Chocolate Cow."

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

**PLEA:** Guilty.

**DISPOSITION:** 6-27-63. Corporation—\$500 fine; Zivin—\$100 fine.

**29006. Various bottled beverages.** (F.D.C. No. 48525. S. Nos. 22-533 T, 22-536 T, 66-272/75 T, 76-609/10 T, 76-615/16 T.)

**INFORMATION FILED:** 5-2-63, Dist. Utah, against Seven-Up Bottling Co. of Cedar City, a corporation, Cedar City, Utah, and Henry W. Randall, president, and Clarence C. Randall, secretary.

**SHIPPED:** Between 3-17-62 and 7-15-62, from Cedar City, Utah, to Page, Ariz.

**LABEL IN PART:** (Btl.) "SEVEN-UP Contains \* \* \* 12 FL. Ozs. [or "7 FL. Ozs."] SEVEN-UP BOTTLING CO. CEDAR CITY, UTAH"; "ROYAL CROWN RC COLA ROYAL CROWN BOTTLING CO., CEDAR CITY, UTAH"; and "ORANGE BOTT. BY SEVEN-UP BOTT. CO., CEDAR CITY, UTAH."

**CHARGE:** 402(a)(3)—contained clumps of mold, dirt, and other foreign substances; and 402(a)(4)—prepared and packed under insanitary conditions.

**PLEA:** Guilty.

**DISPOSITION:** 6-10-63. Corporation—\$3,200 fine, of which \$2,700 was suspended; Henry W. Randall—\$2,000 fine, of which \$1,800 was suspended; Clarence C. Randall—\$1,000 fine, of which \$900 was suspended; and, in addition, each defendant placed on probation for 2 years.

## CEREALS AND CEREAL PRODUCTS

### BAKERY PRODUCTS

**29007. Frozen cakes.** (Inj. No. 420.)

**COMPLAINT FOR INJUNCTION FILED:** 10-5-61, N. Dist. Ga., against Southern Bakeries Co., a corporation, Atlanta, Ga., Ogden A. Guilfuss, president of the corporation, and Charles R. Loyd, manager of the corporation's plant on Highland Ave., N.E., Atlanta, Ga.

**CHARGE:** The complaint alleged that the defendants were engaged at the corporation's Highland Avenue plant in the business of preparing, packing, and storing for shipment in interstate commerce, and causing to be introduced and delivered for introduction into interstate commerce, frozen cakes which were adulterated as follows: 402(a)(3)—the articles contained moth larvae, insect fragments, and rodent hairs; and 402(a)(4)—the articles had been prepared, packed, and held under insanitary conditions.

The complaint alleged further that the insanitary conditions at the above-mentioned plant resulted from and consisted of the presence of live adult insects and larvae in the cake flour handling equipment including the elevator boot of the cake dump hopper, the cake flour sifter, siftings from the sifter, and the spout from the sifter which leads directly to the weighing hopper over the dough mixer, the practice of employees shaking the bags of flour over the cake flour hopper without first brushing off the outsides of the bags, the presence in samples of flour collected from the cake flour handling equipment of adult and larval Tribolium and cigarette beetles, and larval cast skins from Tribolium beetles, live adult insects and larvae in various parts of the bread flour handling equipment including the top of the bulk flour storage bins, the auger which carries flour from the bulk bins to the sifter, the siftings from the sifter and a bucket placed under the overflow pipe extending from the scale hopper, the presence in samples of flour collected from the bread flour handling equipment of sawtooth grain beetles, Tribolium beetles, cigarette beetles, and larval cast skins from Tribolium beetles, the presence of dead roaches and mouse excreta pellets in the raw materials storage room near a number of 100-lb. bags of cake flour, and the presence of numerous houseflies in the cake department, broken and ill-fitting windows and screens in the plant, and outside doors standing open all day thereby permitting the entry of flies and other pests into the plant.

The complaint alleged also that the defendants had stored at a commercial cold storage firm in Atlanta, Ga., assorted frozen cakes produced at the defendants' Highland Avenue plant and consisting of 78,060/12-oz. packages labeled in part "Southern-Banana Nut Cake," 25,424/17-oz. packages labeled in part "Southern Cocomanut Cake," 20,652/12-oz. packages labeled in part "Southern Caramel Cake," and 17,360/18-oz. packages labeled in part "Southern Chocolate Cake"; that such frozen cakes constituted a menace to interstate commerce because they were adulterated in the manner hereinbefore described; that defendants had been previously warned by plant inspections and a notice of hearing of the insanitary conditions in their plant; and that despite such warnings, the defendants continued to cause introduction and delivery for introduction into interstate commerce of adulterated foods.

**DISPOSITION:** On 10-5-61, a temporary restraining order was entered enjoining the defendants against the actions complained of. On 10-12-61, with the parties agreeing, the court entered a preliminary injunction enjoining the defendants from directly or indirectly doing the following acts:

(a) introducing or causing to be introduced and delivering or causing to be delivered for introduction into interstate commerce, foods consisting of cakes and other bakery products which contain moth larvae, insect fragments, rodent hairs, or other filth, or which have been prepared, packed, and held under insanitary conditions whereby they may have become contaminated with filth;

(b) introducing or causing to be introduced and delivering or causing to be delivered for introduction into interstate commerce, the frozen cakes now stored to the account of Southern Bakeries Co., at Commercial Cold Storage, Inc., 3485 Empire Boulevard, S.W., Atlanta, Ga., which cakes were produced at the defendants' plant at 375 Highland Avenue, N.E., Atlanta, Ga., between 8-10-61 and 8-25-61, and consist of the following:

78,060/12-oz. packages, more or less, of an article labeled in part:

"Southern-Banana Nut Cake Ready to Serve No Baking \* \* \* Frozen Foods Division of Southern Bakeries, General Offices, Atlanta, Georgia."  
(Packed under Codes "H 10," "H 11," "H 23," "H 24," and "H 25".);

25,424/17-oz. packages, more or less, of an article labeled in part:

"Southern Coconut Cake Ready to Serve No Baking \* \* \* Frozen Foods Division of Southern Bakeries, General Offices, Atlanta, Georgia." (Packed under Codes "H 15," "H 16," and "H 17".);

20,652/12-oz. packages, more or less, of an article labeled in part:

"Southern Caramel Cake Ready to Serve No baking \* \* \* Frozen Foods Division of Southern Bakeries, General Offices, Atlanta, Georgia." (Packed under Codes "H 22," and "H 23".); and

17,360/18-oz. packages, more or less, of an article labeled in part:

"Southern Chocolate Cake Ready to Serve No baking \* \* \* Frozen Foods Division of Southern Bakeries, General Offices, Atlanta, Georgia." (Packed under Codes "H 17" and "H 18".);

(c) causing any food after its shipment in interstate commerce to be held or processed at defendants' plant at 375 Highland Avenue, N.E., Atlanta, Ga., under insanitary conditions whereby such food may become contaminated with filth; and

(d) introducing or causing to be introduced and delivering or causing to be delivered for introduction into interstate commerce, foods consisting of cakes and other bakery products prepared, packed, and held at defendants' plant at 375 Highland Avenue, N.E., Atlanta, Ga., unless and until:

(i) the plant is thoroughly cleaned and rendered suitable for use in connection with the preparation, packing, and holding of foods for human consumption, to wit, unless and until all rodent and insect filth is removed from said plant, and the equipment used in the preparation, packing, and storing of said foods is cleaned and made suitable for use in the preparation, packing, and storage of foods for human consumption; all rodent and insect infestation in said plant is eliminated; the means of ingress and egress by rodents and insects are eliminated, and any similar insanitary conditions which may result in the contamination of foods for human consumption while prepared, packed, and held in said plant are eliminated;

(ii) all of the foods on hand at said plant at the time said plant is cleaned, and rendered suitable for the preparation, packing, and storage of food for human consumption are destroyed, denatured for use as animal feed, or cleaned, segregated, or otherwise reconditioned under the supervision of a duly authorized representative of the Food and Drug Administration, Department of Health, Education, and Welfare, and all expenses of such supervision are paid by the defendants at the rate of \$6 per hour or part thereof per representative for the supervision, \$7 per hour or part thereof per person for laboratory and analytical work, and \$12 per day per person for subsistence expenses; and

(iii) an inspection is made of said plant by a duly authorized representative of the Food and Drug Administration, Department of Health, Education, and Welfare, all expenses of such inspection are paid by the defendants at the rates described in subparagraph (ii) above, and a report made to the court which shows that the above-described or any similar insanitary conditions no longer exist, and that the foods for human consumption described in subparagraph (ii) above have been destroyed, denatured, or brought into compliance with the law, as provided in said subparagraph (ii).

29008. Fruitcake. (F.D.C. No. 48636. S. No. 41-577 V.)

QUANTITY: 17 cases, each containing 12 2-lb. cans, at Bronx, N.Y.