

merit. The use of the word 'NUT' in this description of the candy enclosed in said package gives clear notice to any prospective purchaser that said candy contains nuts. Obviously it cannot be said that any person allergic to nuts of any kind would be led by said description to believe he was buying candy which did not contain nuts of some kind.

"The net weight and ingredient statements are printed on the label in a distinctive silver color that is not employed for any other statements appearing on said package. Both statements are printed in the same size type which the evidence establishes as being easily readable at a distance of approximately 29 inches by the average person. The act prescribes no minimum specific standard as to how prominent such statements should be. It would seem that the requirements of said section 343(f) are met in a particular case if such statements are prominent enough to be seen and understood by the ordinary individual who is interested in discovering and learning the information disclosed thereby, and who makes a minimum examination of the package to determine its net weight and the ingredients of the candy contained in said package.

"In my opinion the Government has failed to establish by a fair preponderance of the evidence that these requirements are not met by the packages involved here. The case of *United States v. 70 Gross Bottles*, 1952, D.C.S.D. Ohio, 3 Kleinfeld & Dunn, The Federal Food, Drug and Cosmetic Act 1951-1952, cited and relied upon by the Government, is clearly distinguishable on its facts. In that case the Court found the product involved to be misbranded because the word 'saccharine' appearing in the ingredient statement on the label 'is so small that one is unable to read it without the aid of a magnifying glass'. In such a situation it was clearly not likely to be read by the ordinary individual under customary conditions of purchase and use.

"For the foregoing reasons I conclude that said candy was not misbranded when introduced into interstate commerce within the meaning of Title 21 U.S.C.A. § 343(a) and § 343(f), that said libel should be dismissed and that said packages should be returned to the claimant, James O. Welch Company.

"An appropriate order will be entered."

Pursuant to the above opinion the court entered an order on 3-30-62, dismissing the libel proceedings.

28230. Cowboy candy bar. (F.D.C. No. 47622. S. No. 10-896 T.)

QUANTITY: 38 cases, each containing 18 boxes of 24 individually wrapped candy bars, at Meadville, Pa.

SHIPPED: 4-13-62, from Elizabeth, N.J., by Euclid Candy Co., subsidiary of Terry Candy Co.

LABEL IN PART: (Candy bar) "Euclids Cowboy Cocoanut Candy Bar Euclid Candy Co., Subsidiary of Terry Candy Co. Elizabeth, N.J. Ingredients * * * Imitation Vanilla Flavor * * * Net Wt. 1¼ Oz."

RESULTS OF INVESTIGATION: Examination showed that the article was short weight. The quantity of contents statement was inconspicuous, being partially obscured, and sometimes totally hidden, between the folds of the wrapper. The quantity of contents statement was printed on the end of the candy bar, in an extremely small, partly blurred type, which was partly illegible.

LIBELED: 6-4-62, W. Dist. Pa.

CHARGE: 403(e)(2)—when shipped, the article failed to bear a label containing an accurate statement of the quantity of contents; and 403(f)—the information required under 403(e)(2), to appear on the label, namely, the quantity of contents statement, was not prominently placed thereon with such conspicuousness (as compared with other words and statements on the label) as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

DISPOSITION: 7-12-62. Default—destruction.

28231. Tootsie Rolls (candy). (F.D.C. No. 47606. S. No. 32-716 T.)

QUANTITY: 52 cartons, each containing 24 1 $\frac{3}{8}$ -oz. individually wrapped candy bars, at Phoenix, Ariz.

SHIPPED: 1-30-62, from Los Angeles, Calif., by Sweets Company of America, Inc.

LABEL IN PART: (Candy wrapper) "Chocolate Tootsie Roll * * * Ingredients: * * * The Sweets Company of America, Inc. Hoboken, N.J."

LIBELED: 5-17-62, Dist. Ariz.

CHARGE: 402(a)(3)—contained rodent hairs when shipped.

DISPOSITION: 7-9-62. Default—destruction.

28232. Licorice candy. (F.D.C. No. 47185. S. No. 13-909 T.)

QUANTITY: 86 cases, 16 pkgs. each, containing 6 individual bars each, at Chicago, Ill.

SHIPPED: Between 11-27-61 and 1-19-62, from St. Louis, Mo., by Switzer's Licorice Co.

LABEL IN PART: (Pkg.) "6 Pack Switzer's Old Fashioned Licorice"; (individual bar) "Calorie Conscious? Switzer's Licorice Switzer's Licorice Company, St. Louis, Mo. * * * Net Wt. 1 $\frac{3}{16}$ Oz."

RESULTS OF INVESTIGATION: The candy bars were packed face up in an open tray type package which was wrapped and sealed in cellophane so that it could not be opened at the time of purchase and the mandatory information which was printed on the back of each candy bar, was not visible because of the cardboard back of the package.

LIBELED: 3-1-62, N. Dist. Ill.

CHARGE: 403(a)—when shipped, the label statement "Calorie Conscious?" was false and misleading in that it suggested and implied that the article was of unusual value for calorie controlled diets because it was low in calories; 403(f)—the place of business of the manufacturer, packer, or distributor, an accurate statement of the quantity of the contents, the common or usual name of each ingredient, and the declaration of preservative, were not prominently placed on the article with such conspicuousness (as compared with other words and statements on the label) as to render such information likely to be read by the ordinary individual under customary conditions of purchase and use.

DISPOSITION: 6-20-62. Consent—claimed by Switzer Licorice Co., and delivered to a charitable institution.

28233. Terry's candy corn. (F.D.C. No. 47584. S. No. 43-955 T.)

QUANTITY: 59 cases, each containing 100 boxes, at Philadelphia, Pa.

SHIPPED: Between 3-27-62 and 4-17-62, from Elizabeth, N.J., by Terry Candy Co.

LABEL IN PART: (Box) "Terry's Candy Corn Net Wt. 1 $\frac{1}{4}$ Oz. * * * Terry Candy Co., Elizabeth, New Jersey."

RESULTS OF INVESTIGATION: The manufacturer's name and address, the statement of ingredients, and declaration of artificial color and flavor were partly illegible due to the blurring of the print.