

Further misbranding (Mil-K-Botl Concentrate), Section 403 (i) (2), the label of the product failed to bear the common or usual name of each ingredient; (Special Acid Solution), Section 403 (i) (1), the label of the product failed to bear a statement of the common or usual name of the food, i. e., citric acid solution; and, Section 403 (e) (2), it failed to bear a statement of the quantity of contents; and (Special Mil-K-Botl Color), Section 403 (i) (1), its label failed to bear its common or usual name, i. e., F. D. C. Yellow #6.

DISPOSITION: December 18, 1943. No claimant having appeared, judgment of condemnation was entered and the products were ordered destroyed.

CEREALS AND CEREAL PRODUCTS

ALIMENTARY PASTES*

8306. Adulteration of macaroni. U. S. v. G. Santoro & Sons, Inc., and Joseph Santoro. Pleas of guilty. Corporation fined \$600; Joseph Santoro fined \$300 and sentenced to 30 days in jail, which sentence was reduced to 7 days. (F. D. C. No. 10628. Sample Nos. 17189-F, 45117-F, 45118-F.)

INFORMATION FILED: May 24, 1944, Eastern District of New York, against G. Santoro & Sons, Inc., a corporation, and Joseph Santoro, treasurer and general manager, Brooklyn, N. Y.

ALLEGED SHIPMENT: On or about January 26, May 24, and June 21, 1943, from the State of New York into the State of New Jersey.

LABEL, IN PART: "Santoro Grade A Macaroni."

VIOLATIONS CHARGED: Adulteration, Section 402 (a) (3), the article consisted in whole or in part of a filthy substance by reason of the presence of insect fragments, rodent hair fragments, storage larvae, larva heads, and fragments resembling fragments of storage beetles and their larvae; and, Section 402 (a) (4), it had been prepared under insanitary conditions whereby it might have become contaminated with filth.

DISPOSITION: November 9, 1944. Pleas of guilty were entered on behalf of both defendants. The corporation was fined \$600, and the individual defendant was fined \$300 and sentenced to serve a jail term of 30 days. On November 15, 1944, on motion of the Government, the jail sentence was reduced by the court to 7 days.

8307. Adulteration of alimentary paste. U. S. v. 108 Cartons of Alimentary Paste. Default decree of condemnation and destruction. (F. D. C. No. 14498. Sample Nos. 74723-F, 74830-F.)

LABEL FILED: On or about November 28, 1944, District of Oregon.

ALLEGED SHIPMENT: On or about October 20 and November 4, 1944, by the Favro Macaroni Manufacturing Co., from Seattle, Wash.

PRODUCT: 108 10-pound or 20-pound cartons of alimentary paste at Portland, Oreg.

VIOLATIONS CHARGED: Adulteration, Section 402 (a) (3), the product consisted in whole or in part of a filthy substance by reason of the presence of rodent hairs and insect fragments; and, Section 402 (a) (4), it had been prepared under insanitary conditions whereby it might have become contaminated with filth.

DISPOSITION: January 8, 1945. No claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

BAKERY PRODUCTS**

8308. Action to enjoin and restrain the interstate shipment of adulterated bakery products. U. S. v. Mose A. Lazere (Sioux City Bakery). Tried to the court. Preliminary injunction granted; consent decree granting permanent injunction. (Inj. No. 73.)

COMPLAINT FILED: September 15, 1944; amended September 19, 1944, Northern District of Iowa, against Mose A. Lazere, trading as the Sioux City Bakery at Sioux City, Iowa.

NATURE OF CHARGE: That, since December 12, 1941, until the time the complaint was filed, the defendant had been preparing and holding under insanitary conditions various bakery products and the raw materials used in their preparation; that the bakery products so prepared and held were adulterated under

*See also No. 8318.

**See also Nos. 8338, 8490, 8491.

Section 402 (a) (3) in that they consisted in whole or in part of filthy substances by reason of the presence of insect and larva parts, and were therefore unfit for food; and, Section 402 (a) (4), in that they had been held under insanitary conditions whereby they might have become contaminated with filth. It was also charged that the products so prepared and baked by the defendant were being offered for interstate shipment at various intervals from Sioux City, Iowa, to Sioux Falls and other cities in South Dakota.

PRAYER OF COMPLAINT: That a preliminary injunction issue restraining the defendant from commission of the acts complained of, and that, after due proceedings, the preliminary injunction be made permanent.

DISPOSITION: September 22, 1944. After a hearing by the court, a decree was entered granting a preliminary injunction, and the court handed down the following opinion, together with findings of fact and conclusions of law consonant with the opinion:

HENRY N. GRAVEN, District Judge: "Application for temporary injunction under Federal Food, Drug, and Cosmetic Act. In this the United States asks for a temporary injunction against the defendant, Mose A. Lazere, under 21 U. S. C. A. Section 332, 21 U. S. C. A. Section 331 (a) and 21 U. S. C. A. Section 342 (a) (3) and (4). Evidence was presented at some length in behalf of both parties.

"The defendant for some years has been the owner and operator of a wholesale bakery business carried on at 815 West 7th Street, Sioux City, Iowa. The great bulk of his trade is in the State of Iowa. However, he for some years past and at the present time ships about five per cent of his production in interstate commerce. The interstate commerce shipments are made to patrons residing in South Dakota.

"The defendant for sometime has been the subject of concern to the inspectors under the Federal Food, Drug, and Cosmetic Act. On May 15th and 16th 1944, Ralph L. Spink, one of those inspectors, inspected the premises. The building in which the defendant's operations are carried on is a one-story building. It includes among other rooms, a storage room where flour, sugar and salt are stored, and working rooms where the bakery products are prepared. In the storage room that inspector found a large number of sacks of flour which had been gnawed into by rodents, and a large number which had been contaminated by urine and excreta from the rodents. On a number of sacks of flour were found rodent excreta pellets numbering from one to fifty. A number of sugar sacks had been gnawed into by the rodents, and in one sack of sugar was found a mouse nest with several baby mice in it. In an elevator used to convey flour several live weevils were found. Cockroaches were found in a can of glucose, and around fifty cockroaches were found in the working room in an unused cooler. In the working room rodent excreta was also in evidence. Cans of fruit and other containers were standing in the work room with covers off and cockroaches were crawling into them. Silver fish bugs were found crawling around the work room. There was a strong odor of sewage in the basement. The general appearance of the work room was unclean. Inspector Spink talked the matter over with the defendant at the time and urged improvement in conditions and made some suggestions. On July 31st 1944, the premises were again inspected by Inspector Spink accompanied by Inspector Hubbell. While improvement had been made in some of the conditions, yet a new undesirable condition manifested itself in regard to flies. The abandoned cooling system which had contained so many cockroaches had been removed. Part of the walls had been painted. Cockroaches were still running around and bugs were crawling on the floor. Cans containing ingredients were standing open. The presence of rodents in the store room was still indicated. Live worms were found crawling in a recent shipment of flour. The fly situation was serious. In the portion where rolls were made each tray had from two to ten flies on it, and one tray had twenty-five flies on it. In other places flies were congregated in numbers running into the hundreds. There were no fly-traps or fly paper for the lessening of the fly population. It appears that immediately across the alley from the premises is an abandoned barn which is a breeding place for rodents, and the defendant has and will always have trouble with rodents as long as the barn is allowed to remain there. The defendant has been attempting to get the City of Sioux City to have the barn removed or destroyed. While some steps have been taken by the City towards that end, the barn is still there.

It also appears that the defendant has been greatly handicapped in keeping the premises clean because of shortage of help due to war conditions. The Federal Food, Drug, and Cosmetic enforcement agency caused loaves of defendant's bread which had been shipped to South Dakota, to be analyzed. An analysis of two different purchases of defendant's bread made in two different places in South Dakota showed the presence of rodent hairs and insect fragments.

"The defendant's contentions in the main are (1) that none of the matters found in the bread are injurious to the health, and that the conditions referred to under which his bakery goods are being produced, are not injurious to health; (2) that he is doing the best he can under the conditions and circumstances.

"In 21 U. S. C. A. Section 331 (a) it is provided:

The following acts and causing thereof are hereby prohibited:

(a) The introduction or delivery for introduction into interstate commerce of any food, drug, device, or cosmetic that is adulterated or misbranded.

"In 21 U. S. C. A. Section 342 (a) (3) and (4), it is provided:

A food shall be deemed to be adulterated—

(3) if it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for food; or (4) if it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health.

"In 21 U. S. C. A. Section 332, it is provided:

(a) The district courts of the United States * * * shall have jurisdiction, for cause shown, and subject to the provisions of section 381 (relating to notice to opposite party) of Title 28, as amended, to restrain violations of section 331, except paragraphs (e), (f), (h), (i), and (j).

"There were material changes made in the law by the New Federal Food, Drug, and Cosmetic Act of June 25th 1938. The provisions of the new act here noted became effective June 25th 1939, and because of the recent effective date the number of opinions under the new law are not numerous.

"The defendant strongly contends that it is necessary for the Government to show that the bakery products of the defendant were injurious to the health. The defendant offered medical testimony to the effect that because of the high heat under which bread is baked that the presence of parts of rodents and bugs in the bread would not injure the health. Medical testimony was also offered to the effect that for the same reason the production of bakery products under the filthy conditions heretofore described, would not injure the health. There was further medical testimony that people 'could eat nice [mice] and not hurt them,' and that a person could eat mouse excreta without hurt to health.

"It was the rule under the former Federal Food, Drug, and Cosmetic Act that in the case of adulterated food, proof that it was injurious to the health was not essential. *Anderson & Co. v. United States* (9th Cir. 1922), 284 F. 542; *United States v. Two Hundred Cases of Adulterated Tomato Catsup* (D. C. Oregon, 1914), 211 F. 780; *United States v. Two Hundred Cases, more or less of Canned Salmon* (D. C. Texas, 1923) 289 F. 157. Since the new Act is more stringent as to filthy food than the old act, the defendant's contention that the Government must show that the food in question is injurious to the health cannot be sustained. In the recent case of *United States v. Swift & Co.* (D. C. Georgia, 1943), 53 F. Supp. 1018, having to do with the meaning to be given to the word 'filthy' found in 21 U. S. C. A. Sec. 342 (a) (3), on page 1020 of the opinion it is stated:

Congress intended that the word "filthy," as used in the Act, should be construed to have its usual and ordinary meaning, and should not be confined to any scientific or medical definition.

"It would also seem plain that the term 'insanitary conditions' used in 21 U. S. C. A. Sec. 342 (a) (4), should also be construed to have its usual and ordinary meaning.

"It is the holding of the Court that the bakery products in question did consist of a 'filthy' substance under 21 U. S. C. A. 342 (a) (3), and were prepared under 'insanitary conditions' under 21 U. S. C. A. 342 (a) (4).

"It is the claim of the defendant that he should not be enjoined from shipping his bakery products in interstate commerce because he is doing the best he can in view of the difficulty of securing help and in view of the difficulties caused by the abandoned barn in the matter of the rodent problem. While the situation in which the defendant finds himself can be sympathetically understood, yet it would not be good law or good sense to permit a person to put filthy food substances into interstate commerce, or to permit a person to

prepare food for such purpose under insanitary conditions. The Federal Food, Drug, and Cosmetic Act does not provide that parties shall avoid doing such things if it is possible, it provides that it shall not be done at all. A party who cannot prepare proper food products under sanitary conditions must cease putting such products into interstate commerce. It is obvious that in the instant case the defendant cannot comply with the Federal Food, Drug and Cosmetic Act without a drastic rehabilitation of his premises, and that until such drastic rehabilitation is made that he should be enjoined from shipping or offering to ship in interstate commerce bakery products prepared on the premises in question."

On May 21, 1945, the defendant having consented, the preliminary injunction was made permanent. The court retained jurisdiction for the purpose of modifying or dissolving the decree, but ordered that no application for modification or dissolution be made prior to January 1, 1946.

S309. Adulteration of bakery products. U. S. v. Harvey R. Jones (New York Bakery). Plea of nolo contendere. Fine, \$270. (F. D. C. No. 14297. Sample Nos. 85707-F, 85709-F, 85713-F, 85715-F, 85719-F.)

INFORMATION FILED: March 16, 1945, District of Colorado, against Harvey R. Jones, doing business as the New York Bakery, Durango, Colo.

ALLEGED SHIPMENT: On or about August 12 and 14, 1944, from the State of Colorado into the State of New Mexico.

LABEL, IN PART: "Enriched Dutch Maid Bread," "Maple Bar," "Chocolate Malted Milk Cake," or "Cup Cakes."

VIOLATIONS CHARGED: Adulteration, Section 402 (a) (3), the articles consisted in whole or in part of filthy substances by reason of the presence of insect parts and fragments, larvae, rodent hairs, whole beetles, hairs resembling rodent hairs, and a hair resembling a cat hair; and, Section 402 (a) (4), they had been prepared and packed under insanitary conditions whereby they might have become contaminated with filth.

DISPOSITION: July 23, 1945. The defendant having entered a plea of nolo contendere, the court imposed a fine of \$250 on count 1, and \$5 on each of the other 4 counts, a total fine of \$270.

S310. Adulteration of fruit cake. U. S. v. 124 Fruit Cakes and 420 Boxes of Fruit Cake. Default decrees of condemnation and destruction. (F. D. C. Nos. 14864, 14903. Sample Nos. 79877-F, 83049-F.)

LIBELS FILED: On or about December 26, 1944, and January 5, 1945, District of Connecticut and Eastern District of Virginia.

ALLEGED SHIPMENT: On or about October 16 and November 10, 1944, by the Affiliated Bakers (Spilkes Bakery), from Brooklyn, N. Y.

PRODUCT: 124 1-pound fruit cakes at Waterbury, Conn., and 420 boxes, each containing 1 2-pound fruit cake, at Richmond, Va.

LABEL, IN PART: (Cakes) "Fruit Cake," or (boxes) "Golden Harvest Fruit Cake."

VIOLATIONS CHARGED: Adulteration, Section 402 (a) (3), the product consisted in whole or in part of a filthy substance by reason of the presence of larvae, insect fragments, and rodent hair fragments; and, Section 402 (a) (4), it had been prepared under insanitary conditions whereby it might have become contaminated with filth.

DISPOSITION: February 6 and 16, 1945. No claimant having appeared, judgments of condemnation were entered and the product was ordered destroyed.

S311. Misbranding of bread. U. S. v. Fluhrer Bakeries. Plea of guilty. Fine, \$75. (F. D. C. No. 14311. Sample Nos. 71059-F, 71060-F, 71204-F.)

INFORMATION FILED: April 20, 1945, District of Oregon, against Fluhrer Bakeries, a partnership, Medford, Oreg.

ALLEGED SHIPMENT: Between the approximate dates of March 13 and June 13, 1944, from the State of Oregon into the State of California.

LABEL, IN PART: "Large White 1½ Lb. Sliced Loaf Fluhrer's White Enriched Sliced."

VIOLATION CHARGED: Misbranding, Section 403 (e) (2), the product failed to bear a label containing an accurate statement of the quantity of the contents