

**8830. Misbranding of macaroni. U. S. v. 19 Cases of Macaroni. Default decree of condemnation. Product ordered delivered to a public institution.**  
(F. D. C. No. 15824. Sample No. 24223-H.)

**LIBEL FILED:** On or about April 3, 1945, Eastern District of Texas.

**ALLEGED SHIPMENT:** On or about February 19, 1945, by the Shreveport Macaroni Manufacturing Co., Shreveport, La.

**PRODUCT:** 19 cases, each containing 48 6-ounce packages, of macaroni at Texarkana, Tex.

**LABEL, IN PART:** "Two Stars Brand \* \* \* Macaroni."

**NATURE OF CHARGE:** Misbranding, Section 403 (e) (2), the product was a food in package form, and it failed to bear a label containing an accurate statement of the quantity of the contents, since the packages contained less than the declared weight.

**DISPOSITION:** May 11, 1945. No claimant having appeared, judgment of condemnation was entered and the product was ordered delivered to a public institution.

#### MISCELLANEOUS CEREAL PRODUCTS \*

**8831. Action to enjoin and restrain the interstate shipment of popped popcorn. U. S. v. Howard Davis (Better Taste Popcorn Co.). Tried to the court. Injunction granted.** (Inj. No. 108.)

**COMPLAINT FILED:** On or about October 3, 1945, Southern District of Indiana, against Howard Davis, doing business as the Better Taste Popcorn Co., at Anderson, Ind. The complaint charged that for a long time past the defendant had been and was still manufacturing, selling, and shipping in interstate commerce substantial amounts of popped popcorn which was prepared with and contained artificially colored nonnutritive mineral oil, and which was adulterated and misbranded.

**NATURE OF CHARGE:** Adulteration, Section 402 (a) (1), the popcorn bore and contained 26 to 47 percent of added mineral oil, a deleterious substance which might have rendered it injurious to health; Section 402 (b) (1), a valuable constituent, edible oil, had been in whole or in part omitted from the article; Section 402 (b) (2), popcorn containing artificially colored nonnutritive mineral oil had been substituted in whole or in part for popcorn containing edible oil; Section 402 (b) (3), inferiority had been concealed by the addition of artificially colored nonnutritive mineral oil; and, Section 402 (b) (4), artificially colored nonnutritive mineral oil had been added to the article, or mixed or packed with it, so as to reduce its quality or strength and make it appear better or of greater value than it was.

Misbranding, Section 403 (a), the labeling of the article was false and misleading since the name "Popcorn" and the words "Ingredients: Edible Oil," borne on the label, represented that the article contained edible oil.

**PRAYER OF COMPLAINT:** That the defendant be restrained and enjoined during the pendency of the action, and permanently, from (1) shipping in interstate commerce articles of food made and prepared from popped popcorn and containing as an ingredient mineral oil or other inedible oil; and (2) from shipping in interstate commerce any such article of food the labeling of which represented the same to be popcorn and which represented that it contained edible oil as an ingredient.

**DISPOSITION:** On November 1, 1945, a request for a temporary restraining order having been previously denied, the case came on for trial before the court on the issue of granting a permanent injunction, and at the conclusion of the trial, which occurred on the same day, the case was taken under advisement by the court. On December 26, 1945, after consideration of the evidence and the briefs and arguments of counsel, the court handed down the following findings of fact and conclusions of law:

#### SPECIAL FINDINGS OF FACT

**BALTZELL, District Judge:** "Pursuant to Rule 52 of the Rules of Civil Procedure, the Court now states its Special Findings of Fact (hereby adopting the Stipulation of Facts of the parties as such Special Findings of Fact), as follows, to wit:

#### 1.

"That the defendant, Howard Davis, is a sole trader, doing business under the firm name and style of Better Taste Popcorn Company and that his prin-

\* See also Nos. 8818, 8953.

cipal place of business is in Anderson, Indiana, within the jurisdiction of this Court.

2.

"That the said defendant has for some time past been and now is engaged in the business of producing, manufacturing, packing, packaging, selling, and distributing in interstate commerce popped popcorn.

3.

"That the said defendant has for a long time past been and still is introducing and delivering for introduction into interstate commerce, from Anderson, Indiana, to points in other States, substantial amounts of said popped popcorn prepared with and containing artificially colored mineral oil.

4.

"That the total weights of shipments made by the defendant of the said popped popcorn in interstate commerce, for the period from and including the month of January 1943, to and including the month of September 1945, are as follows:

[Table setting out the shipments for the 3 years by months, showing a total of 614,192 pounds shipped in 1943, 653,078 pounds shipped in 1944, and 908,820.7 pounds shipped in 1945.]

5.

"That in the period from January 25, 1943, to July 25, 1945, the said defendant purchased twenty-one (21) carloads of Merusol White Mineral Oil, totaling 101,956 gallons, or 752,437 pounds, at an average price of 7¼ cents per pound (freight charges not included), from the Standard Oil Company (Indiana), Indianapolis, Indiana, for use and all of which was used in the preparation of said popped popcorn.

6.

"That the general specifications for Merusol White Mineral Oil are as set forth in statement from the manufacturers of that product, Standard Oil Company (Indiana). This statement bearing the signature of F. L. Cochran, General Manager, Standard Oil Company (Indiana), Indianapolis, Indiana, identified as Exhibit 'A', is attached hereto and is made a part hereof.

7.

"That on April 3, 1945, pursuant to the filing of a libel in the United States District Court for the Northern District of Illinois, 381 cartons, each containing sixty (60) ¾-ounce packages of the hereinbefore-mentioned popped popcorn labeled in part, 'Popcorn xx Ingredients Popcorn Edible Oil, Salt, U. S. Certified Color,' shipped by the said defendant from Anderson, Indiana, to Chicago, Illinois, were seized by the United States Marshal for the Northern District of Illinois, in the possession of the consignee, Walgreen Company, Chicago, Illinois, under the provisions of Section 334 (a) Title 21 U. S. C. A.

"7 (a) That the libel filed in the United States District Court for the Northern District of Illinois, contains allegations that the said popped popcorn was adulterated within the meaning of Section 342 (b) (1), (2), (3), and (4) Title 21, U. S. C. A.

"7 (b) That on April 24, 1945, the defendant, accompanied and represented by counsel, appeared at the Cincinnati, Ohio, office of the Food and Drug Administration, Federal Security Agency, in response to 'Notice of Hearing' issued to the said defendant in connection with the shipment of the said popped popcorn made by him from Anderson, Indiana, to Walgreen Company, Chicago, Illinois.

"7 (c) That the 'Notice of Hearing' issued to the said defendant, by direction of the Administrator of the Federal Security Agency, in accordance with the provisions of Section 335, Title 21, U. S. C. A., advised the said defendant that investigation by the Food and Drug Administration disclosed a violation of the Federal Food, Drug and Cosmetic Act, as set forth in 'charge sheet' attached to the 'Notice of Hearing', with respect to the shipment made by him from Anderson, Indiana, to Walgreen Company, Chicago, Illinois.

"7 (d) That the said defendant and his attorney, at said hearing, were advised by the hearing officer, Carl B. Stone, Acting Chief, Cincinnati Station, Food and Drug Administration, Federal Security Agency, that the use of artificially colored mineral oil in popcorn was considered to be a violation of the Federal Food, Drug and Cosmetic Act.

"7 (e) That on or about May 1, 1945, and pursuant to the provisions of Section 334 (b) Title 21, U. S. C. A., Howard Davis, doing business as Better Taste Popcorn Company, Anderson, Indiana, filed claim and answer, denying the allegations in the said libel action instituted in the United States District Court for the Northern District of Illinois.

"7 (f) That the libel filed in the United States District Court for the Northern District of Illinois was subsequently amended to include a charge under Section 342 (a) Title 21, U. S. C. A.

"7 (g) That the said libel action instituted in the United States District Court for the Northern District of Illinois, is still pending and as of this date has not been set down for trial.

## 8.

"That in May, June, and July of 1945 libel actions, under the provisions of Section 334 (a) Title 21, U. S. C. A., were instituted against the hereinbefore-mentioned popped popcorn shipped in interstate commerce by the said defendant from Anderson, Indiana, and labeled in part as indicated in paragraph 7 herein, in United States District Courts in the following jurisdictions:

Southern District of Ohio    Western District of Kentucky    Southern  
District of West Virginia    Middle District of Pennsylvania    Western  
District of Pennsylvania    Western District of Michigan    Nebraska  
Rhode Island    Massachusetts.

"8 (a) That no claims or answers, as is provided for in Section 344 (b) Title 21, U. S. C. A., have been filed by or in behalf of the defendant herein, in any of the above jurisdictions, and Exhibit 'B' attached hereto and made a part hereof, indicates the status of the libel actions as of October 5, 1945, in the jurisdictions involved.

## 9.

"That inspectors of the Food and Drug Administration, Federal Security Agency, if present would under oath testify in this cause that they collected samples of said popped popcorn from interstate shipments involved in libel actions filed in the United States District Courts in the jurisdictions listed in paragraphs 7 and 8 herein. That if said inspectors were present they would testify under oath in this cause that the samples collected by them were turned over to chemists of the Food and Drug Administration, Federal Security Agency; that the chemists of the Food and Drug Administration, Federal Security Agency if present in court would testify under oath that said inspectors delivered to them said samples which they analyzed and that said samples were found to contain the quantity of mineral oil as indicated in the attached tabulation Exhibit 'C', and that following the filing of the complaint in this cause on September 11, 1945, and up to and including October 6, 1945, they analyzed twenty-one (21) samples delivered to them by said inspectors and that each sample was from a separate shipment made by the defendant in interstate commerce, and that the tabulation appended hereto identified as Exhibit 'D', shows the amount of mineral oil found on analysis by said chemists of the Food and Drug Administration, Federal Security Agency, and that said inspectors would testify that the twenty-one (21) samples were collected as aforesaid and turned over to said chemists.

## 10.

"That labels employed by the said defendant on all interstate shipments of popped popcorn up to and including August 15, 1945, have borne the following statement: 'Popcorn xx ingredients: Popcorn, Edible Oil, Salt, U. S. Certified Color.'

"That labels employed by the said defendant on all interstate shipments of said popped popcorn since August 15, 1945, up to and including the 1st day of September, 1945, have borne the following statement: 'Popcorn xx Ingredients: Popcorn, Mineral Oil, Salt, U. S. Certified Color.'

"That labels employed by said defendant on all interstate shipments of said popped popcorn since the 1st day of September 1945, have borne the following statement: 'Ingredients: Popcorn, Mineral Oil (Non-Nutritive), Salt, U. S. Certified Color.'

"In addition to the above and foregoing Stipulation of Facts, the Court further finds the facts to be:

## FINDING A

"That during the period from January 1943, to and including November 1, 1945, the date of the trial in this cause, the defendant introduced and delivered

into interstate commerce from Anderson, Indiana, to points in other States, shipments of popped popcorn which was prepared with and contained mineral oil; that the mineral oil so used met with the requirements of the United States Pharmacopoeia for white mineral oil; that such mineral oil is a drug and not a food; that it cannot be digested and absorbed by the body and is therefore nonnutritive and nonedible. That mineral oil, taken orally, passes through the gastro-intestinal tract and is ejected through the alimentary tract without being absorbed by the body.

#### FINDING B

"That as shown in Exhibits C and D, which are hereinbefore referred to in the Stipulation of Facts, the amount of mineral oil in the different packages of popcorn varies; that in many instances the amount of mineral oil was in excess of one tablespoonful per package. That one of the effects of eating popcorn impregnated with a tablespoonful of mineral oil would be a laxative action; that the repeated eating of such popcorn would accustom the digestive system and the digestive canal to the laxative action of the mineral oil, with the result that if the individual stopped eating such popcorn it would take considerable time for the intestinal tract to resume its normal physiology in which time the individual would suffer from constipation.

#### FINDING C

"That when mineral oil, such as is contained in the defendant's popcorn, is mixed with food and eaten, it absorbs the fat soluble vitamins and their precursors which are in the food with which the oil is mixed; that the oil also absorbs said vitamins and precursors which are present in the digestive tract; that the most soluble precursor is carotene, the precursor of vitamin A; that in the passage of the mineral oil through the digestive tract the carotene present there is absorbed by the oil and ejected with it from the body; that therefore the body is deprived of the carotene in the digestive tract and also of the carotene in the popcorn; that this would not occur if an edible oil was taken into the body since such oil, while also absorbent of carotene, is digestible and the absorbed carotene along with the oil would be digested by the body.

"That the loss of vitamin A for a short period of time would not have any ill effect on the body, but the continued loss of the vitamin A would produce several changes in the body, the principal one of which would be the effect on the vision known as xerophthalmia or night blindness; that there would also be certain resultant changes in the texture of the skin.

"That if taken within an hour or two after eating, continual use of mineral oil will also reduce the amount of vitamin D which has to do with rickets and the amount of vitamin K which has to do with blood clotting.

#### FINDING D

"That mineral oil, such as is contained in the defendant's popcorn, if taken repeatedly would, at its ejection from the body, produce irritation about the rectal opening; that if the individual suffered from hemorrhoids, these would be irritated.

#### FINDING E

"That the popped popcorn which is the product of the defendant contains mineral oil in sufficient quantities to be harmful; that such mineral oil is a deleterious substance which renders the popcorn injurious to health; that the popcorn is therefore adulterated within the meaning of the Food, Drug and Cosmetic Act.

#### CONCLUSIONS OF LAW

"Upon the above and foregoing Special Findings of Fact, the Court now states its Conclusions of Law, as follows:

#### I

"That the law and equities are with the plaintiff; that an injunction should issue permanently enjoining the defendant, his agents, servants, employees, and all persons in active concert or participation with the defendant from introducing and delivering for introduction into interstate commerce articles of food made and prepared from popped popcorn which contains as an ingredient thereof mineral oil or any other nonedible oil.

## II

"That since an injunction is to be issued enjoining the use of mineral oil in the defendant's product, no injunction with reference to the label of the product need be entered.

## III

"That the plaintiff should recover of and from the defendant herein its costs."

On December 26, 1945; an order was entered permanently enjoining the defendant from introducing or delivering for introduction into interstate commerce popped corn adulterated by reason of its bearing or containing mineral oil or any other inedible oil, or adulterated by reason of the substitution of mineral oil or other inedible oil for edible oil. The defendant was also permanently enjoined from introducing or delivering for introduction into interstate commerce articles of food made and prepared from popped popcorn containing as an ingredient mineral oil or any other nonedible oil.

**8832. Adulteration and misbranding of popped popcorn. U. S. v. 145 Cartons of Popcorn (and 131 other seizure actions against popcorn). Default decrees of condemnation. One lot of the product ordered delivered for use as hog feed; remainder ordered destroyed.** (F. D. C. Nos. 15998, 15999, 16714, 16715, 16717, 16849, 16870, 16872, 16873, 16894, 16963 to 16965, incl., 16968, 16969, 17213, 17214, 17454, 17485, 17683, 17766 to 17769, incl., 17948 to 17951, incl., 17953 to 17955, incl., 17960, 17961, 17979 to 17982, incl., 18032, 18038 to 18041, incl., 18048, 18058, 18067, 18133, 18135, 18142 to 18144, incl., 18179 to 18183, incl., 18193 to 18198, incl., 18203, 18225, 18233 to 18236, incl., 18239, 18242 to 18246, incl., 18378-A, 18379-A, 18393 to 18395, incl., 18397, 18401, 18403 to 18410, incl., 18412, 18415, 18419 to 18421, incl., 18423 to 18425, incl., 18429, 18431, 18461, 18468, 18469, 18513, 18533, 18539, 18545, 18546, 18559, 18580, 18612 to 18615, incl., 18677, 18681, 18683, 18702, 18740, 18741, 18788 to 18790, incl., 18941 to 18943, incl., 18954, 18959 to 18963, incl., 18997, 19056, 19097, 19239. Sample Nos. 869-H, 870-H, 1060-H, 1108-H to 1110-H, incl., 2690-H to 2692-H, incl., 3924-H, 3925-H, 3927-H, 3928-H, 4591-H to 4593-H, incl., 4595-H, 4646-H, 4866-H, 4867-H, 4869-H to 4871-H, incl., 4873-H to 4886-H, incl., 4895-H, 5005-H, 5006-H, 5026-H, 5031-H, 5034-H, 5037-H, 5203-H to 5208-H, incl., 5506-H, 6944-H to 6946-H, incl., 6949-H, 6950-H, 6960-H, 7313-H, 7317-H, 7318-H, 7394-H, 7743-H, 7923-H to 7929-H, incl., 8079-H, 8143-H, 8144-H, 8225-H, 8271-H, 8272-H, 9266-H, 9267-H, 9276-H, 9649-H, 9783-H, 9784-H, 9789-H, 9790-H, 9808-H to 9811-H, incl., 10328-H, 10367-H, 10375-H, 10624-H to 10627-H, incl., 10642-H, 10652-H, 10653-H, 10666-H, 10670-H, 10690-H, 10944-H to 10950-H, incl., 10956-H, 10965-H, 10989-H, 11073-H to 11075-H, incl., 11275-H, 11600-H, 11668-H, 11726-H, 11866-H, 11868-H, 12061-H, 12062-H, 12091-H, 12209-H, 12211-H, 12238-H, 12240-H, 12300-H, 12329-H, 12354-H, 12431-H to 12433-H, incl., 12484-H, 12833-H, 13070-H, 13071-H, 13171-H to 13173-H, incl., 13493-H, 13496-H, 13498-H, 13769-H, 14046-H, 14217-H, 14426-H, 14571-H, 14827-H, 14828-H, 14830-H, 14853-H, 17642-H, 33102-H, 33104-H, 38202-H, 38206-H, 38919-H to 38923-H, incl., 52517-H, 60019-H.)

**LIBELS FILED:** Between May 3, 1945, and February 25, 1946, Northern and Southern Districts of Ohio; Eastern, Middle, and Western Districts of Pennsylvania; Northern, Southern, and Western Districts of New York; Eastern and Western Districts of Michigan; Eastern and Western Districts of Kentucky; District of Massachusetts; District of Rhode Island; Southern District of West Virginia; District of Vermont; District of Maine; District of Connecticut; District of New Hampshire; District of New Jersey; Western District of North Carolina; and Western District of South Carolina.

**ALLEGED SHIPMENT:** Between the approximate dates of April 9 and November 28, 1945, by the Better Taste Popcorn Co., from Anderson and Middletown, Ind.

**PRODUCT:** 11,415 cartons and 3,456 dozen bags of popcorn. Some of the cartons contained 24 bags of popcorn, while other cartons contained 30 bags, 36 bags, 42 bags, 48 bags, 60 bags, or 72 bags of popcorn. The bags contained  $\frac{3}{4}$  ounce, 2 ounces, or  $3\frac{1}{4}$  ounces of popcorn. The product was located at Dayton, Hamilton, Columbus, Cincinnati, Mansfield, Youngstown, and Amelia, Ohio; Worcester, Somerville, Boston, Fall River, and Lawrence, Mass.; Providence, R. I.; Burlington, Vt.; Charleston, W. Va.; Pittsburgh, Ind.; Johnstown, Grove City, McKeesport, Altoona, Erie, New Castle, Williamsport, Scranton, Bradford, Towanda, Philadelphia, Souderton, Osceola Mills, Lehigh, West Brownsville, Catasauqua, Norristown, Bethlehem, and Lancaster, Pa.; Flint, Grand Rapids, Saginaw, Kalamazoo, and Muskegon, Mich.; Buffalo, Elmira, Jamestown, Auburn, Gloversville, Oneonta, Binghamton, Rome, Watertown, Ogdensburg, Newburg, Hornell, and Albany, N. Y.; Russellville, Lexington, and Pikeville, Ky.; Bangor and Presque Isle, Maine; Waterbury, New Haven, and Bridgeport, Conn.; Franklin and Manchester, N. H.; Trenton, Newark, Bridgeton, South