

CHARGE: 402(a)(3)—contained rodent urine, rodent excreta, and rodent-chewed peanuts; and 402(a)(4)—held under insanitary conditions.

DISPOSITION: 4-21-59 and 4-28-59. Default—destruction.

25986. Unshelled peanuts. (F.D.C. No. 42655. S. No. 24-359 P.)

QUANTITY: 149 100-lb. bags at Los Angeles, Calif.

SHIPPED: 10-23-58, from Suffolk, Va.

LIBELED: 1-15-59, S. Dist. Calif.

CHARGE: 402(a)(3)—contained insects and moldy and rancid nuts while held for sale.

DISPOSITION: 2-12-59. Consent—claimed by Los Angeles Nut House, Los Angeles, Calif. Segregated; 5,200 lbs. destroyed.

25987. Unshelled peanuts. (F.D.C. No. 43383. S. Nos. 64-761/2 P.)

QUANTITY: 5 50-lb. bags and 157 2-lb. bags at El Paso, Tex., in possession of Sunny State Distributing Co.

SHIPPED: 3-4-59 and 3-10-59, from Portales, N. Mex.

LIBELED: 7-6-59, W. Dist. Tex.

CHARGE: 402(a)(3)—contained rodent urine and rodent excreta pellets; and 402(a)(4)—held under insanitary conditions.

DISPOSITION: 8-24-59. Default—delivered to a public institution for use as animal feed.

OILS AND FATS

25988. Table and cooking oils. (F.D.C. No. 43350. S. Nos. 73-485/7 P.)

QUANTITY: 25 cases, 6 cans each, 19 tins, and 44 cans, at Bronx, N.Y.

SHIPPED: 7-6-59 and 7-28-59, from Newark, N.J., by Newark Edible Oil Co., Inc.

LABEL IN PART: "Extra Fine Sassone Brand Contents One Gallon Net * * * 75% * * * Peanut and Corn Oils, 25% * * * Olive Oil," "5 gal. net Sassone * * * Sassone Wholesale Groceries Inc. * * * Blended Oil Composed of 75% corn and/or Peanut Oil—25% Pure Olive Oil," and "One Gallon Pure Olive Oil Superfine."

RESULTS OF INVESTIGATION: Examination showed that the article was short volume.

LIBELED: On or about 9-11-59, S. Dist. N.Y.

CHARGE: 403(e)(2)—when shipped, the article failed to bear a label containing an accurate statement of the quantity of contents.

DISPOSITION: 10-23-59. Default—delivered to a charitable institution.

25989. Olive oil. (F.D.C. No. 42837. S. No. 57-922 P.)

QUANTITY: 9 drums at New York, N.Y.

SHIPPED: 10-16-59, from Italy, by Raffineria Bruzia S.P.A., Gioia Tauro, Reggio Calabria, Italy.

RESULTS OF INVESTIGATION: Examination showed the article to be tea seed oil containing little or no olive oil.

LIBELED: 3-6-59, S. Dist. N.Y.

CHARGE: 402(b)(2)—when shipped, tea seed oil had been substituted in whole or in part for olive oil.

DISPOSITION: 10-28-59. Consent—claimed by Nicholas Lekas Corp., New York, N.Y., and exported to France.

OLEOMARGARINE

25990. Oleomargarine. (F.D.C. No. 37255. S. Nos. 24-164 L, 37-280/2 L, 38-554 L, 49-736 L.)

INDICTMENT RETURNED: 8-2-54, S. Dist. N.Y., against Isidore B. Rutstein and Leo Schuster, Jersey City, N.J.

ALLEGED VIOLATION: The indictment alleged that the defendants and co-conspirators, Sol Abramson and Louis Alpert, since October 1, 1950, and continuously thereafter to the date of the filing of the indictment, did combine, conspire, confederate, and agree together and with each other, and with other unknown persons, to commit an offense against the United States, namely, to sell and offer for sale colored oleomargarine in violation of 407 of the Act, and that it was a part of such conspiracy that the defendants, with intent to defraud and mislead, would sell and offer for sale colored oleomargarine which was not properly labeled.

It was alleged further, in pursuance of the conspiracy and to effect the objects thereof, that the defendants, on 8-15-51, were present at the mixing of colored oleomargarine and butter at 514 Westchester Avenue, Bronx, N.Y., and that, on 9-4-51, co-conspirator, Sol Abramson, made out a check to the order of Temptee Butter Co. in the amount of \$498.89 in payment for cartons.

The indictment alleged further that the defendants, on 9-18-51 and 9-25-51, with intent to defraud and mislead, sold and caused to be sold, a number of cartons of colored oleomargarine which was not labeled as required by 407.

CHARGE: 407(b)(3)—the label of the article failed to bear (A) the word "oleomargarine" or "margarine" in type or lettering at least as large as any other type or lettering on the label, and (B) a full and accurate statement of all the ingredients contained in such oleomargarine or margarine.

PLEA: Guilty—by Schuster; not guilty—by Rutstein.

DISPOSITION: On 4-26-55, Schuster was fined \$300.

On 11-14-57, the defendant, Rutstein, having waived a jury, the case came on to trial before the court. After testimony had been adduced, the defendant, on 11-20-57, made a motion for acquittal. The court heard arguments on the motion and requested the parties to file briefs. Thereafter, on 6-6-58, the court delivered the following opinion (163 F. Supp. 71):

BRYAN, District Judge: "Defendants Rutstein and Schuster were charged in a three count indictment with conspiracy to violate the Oleomargarine Act of 1950, 21 U.S.C. §§ 331(m), 333(b), 347(b), and with two substantive violations of that statute. Defendant Schuster pleaded guilty to the conspiracy count and there was a severance as to him. The case was tried before me without a jury against the remaining defendant Rutstein.

"The Oleomargarine Act of 1950, in so far as relevant here, forbids the sale or offer for sale of colored oleomargarine unless it is packaged and la-