

**FEDERAL SECURITY AGENCY****FOOD AND DRUG ADMINISTRATION****NOTICES OF JUDGMENT UNDER THE FEDERAL FOOD, DRUG,  
AND COSMETIC ACT**

[Given pursuant to section 705 of the Food, Drug, and Cosmetic Act]

10001-10200

**FOODS**

The cases reported herewith were instituted in the United States district courts by the United States attorneys acting upon reports submitted by direction of the Federal Security Administrator.

MAURICE COLLINS, *Acting Administrator, Federal Security Agency.*

WASHINGTON, D. C., May 29, 1947.

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**BEVERAGES AND BEVERAGE MATERIALS**

10001. **Misbranding of Esterex. U. S. v. 4 Cases of Esterex. Tried to the court. Decree of condemnation. Product ordered released under bond.** (F. D. C. No. 13768. Sample No. 71099-F.)

**LABEL FILED:** September 13, 1944, District of Oregon; amended March 23 and July 2, 1945.

**ALLEGED SHIPMENT:** On or about June 28, 1944, by the C. O. and W. D. Sethness Co., from Chicago, Ill.

**PRODUCT:** 4 cases, each containing 4 1-gallon jugs, of Esterex at Portland, Oreg. Analysis showed that the product was a water solution of monochloroacetic acid and other chlorides, containing about 11 grams of monochloroacetic acid per 100 cc.

**LABEL, IN PART:** "Estrax \* \* \* \* Contains Water and (Salts and Esters of Monochloroacetic Acid)."

**NATURE OF CHARGE:** Misbranding, Section 403 (a), the labeling was misleading in that it failed to reveal the fact that the article contained about 11 grams per 100 cc. of monochloroacetic acid, a poisonous and deleterious substance, which caused the article to be a poisonous and deleterious substance and which rendered it unwholesome and unsuitable for use as a component of food used by man.

**DISPOSITION:** On November 28, 1944, the C. O. and W. D. Sethness Co., claimant, having filed a petition for the removal of the case for trial to another jurisdiction, an order was entered directing the transfer of the case to the Eastern District of Wisconsin. Thereafter, the claimant filed an answer denying the misbranding of the product, and on July 2, 1945, the case came on for trial before the court. After consideration of the testimony of the parties and the arguments of counsel, the court, on September 4, 1945, handed down the following findings of fact and conclusions of law:

F. RYAN DUFFY, *District Judge*;

#### FINDINGS OF FACT

"1. On or about the 28th day of June, 1944 said C. O. & W. D. Sethness Company did ship and consign from Chicago, Illinois to Portland, Oregon said article so seized.

"2. That said article consists of a solution of monochloroacetic acid in water in the proportions of eleven grams of monochloroacetic acid to one hundred cubic centimeters of the article. Monochloroacetic acid is a poisonous and deleterious substance, and the article is a poisonous and deleterious substance.

"3. Said article was sold and shipped by claimant to be used as a component of food.

"4. When introduced into interstate commerce as aforesaid, the labeling of said article represented that it was a non-poisonous and harmless substance and failed to reveal the fact material in the light of such representation that said article is a poisonous and deleterious substance, and that by reason of said omission I find that said labeling was misleading within the meaning of Sec. 343 (a), Title 21, United States Code.

"5. That Esterex, when used in proportions not to exceed 500 parts per million of monochloroacetic acid, does not render foods or beverages injurious, deleterious or unsafe for human consumption.

#### CONCLUSIONS OF LAW

"1. That the said article under seizure is misbranded in violation of Sec. 343 (a), Title 21, United States Code, because its labeling is misleading within the meaning of Sec. 343 (a), and was introduced into interstate commerce in violation of Sec. 331 (a), Title 21, United States Code, and is subject to condemnation, pursuant to Sec. 334 (a), Title 21, United States Code. Let a decree of condemnation be entered accordingly, with costs against the claimant."

On September 4, 1945, judgment of condemnation was entered and the product was ordered released under bond to be brought into compliance with the law, under the supervision of the Federal Security Agency.

**10002. Misbranding of Esterex. U. S. v. 15 Bottles of Esterex (and 8 other seizure actions against Esterex). Default decrees of condemnation and destruction.** (F. D. C. Nos. 15339, 16130, 16158, 16159, 17262, 18014, 18016, 18825, 18953, 19137. Sample Nos. 13462-H, 20134-H, 20198-H, 20199-H, 21957-H, 23833-H, 23877-H, 23887-H, 25090-H, 33161-H.)

**LIBELS FILED:** Between March 5, 1945, and February 21, 1946, Western District of Oklahoma, Eastern, Western, and Northern Districts of Texas, Western District of Tennessee, Northern District of Ohio, and District of Kansas. An amended libel was filed in the Western District of Tennessee on January 28, 1946, to charge the product to be a food instead of a drug as originally charged.

**ALLEGED SHIPMENT:** Between the approximate dates of August 5, 1944, and November 26, 1945, by C. O. and W. D. Sethness Co., from Chicago, Ill.

**PRODUCT:** 108 1-gallon bottles of Esterex at Oklahoma City and Stillwater, Okla.; Temple, Corsicana, and Sherman, Texas; Toledo, Ohio; Memphis, Tenn.; and Winfield, Kans. Analysis disclosed that the product was an aqueous solution containing between 15 grams and 23 grams of monochloroacetic acid per 100 cc.