

DISPOSITION: The defendant filed a motion to dismiss this action and also the action against the Berko Malted Milk Co., Inc., reported in the following notice of judgment, No. 13485, on the grounds (1) that the informations did not state facts sufficient to constitute an offense against the United States and (2) that prosecution was prohibited by Section 703 of the law (21 U. S. C. A. 373). The defendant alleged that the issues involved in both informations were identical, except that the Berko Malted Milk Co., Inc., was the manufacturer of the product and the Beacon Packing Corp. was the distributor. The defendant argued in support of its motion that all evidence obtained against the defendant was procured as a result of inspection and examination of the corporation's books and papers by inspectors of the Federal Security Administrator, and that the inspectors made copies of such records "showing the movement in interstate commerce" of the product.

On November 13, 1946, the court denied the defendant's motion to dismiss, and ruled as follows:

The Beacon Packing Corporation is not a carrier; it is not a person "receiving food, drugs * * * in interstate commerce" or a holder thereof, within the purview of the statute (21 U. S. C. A. 373), if the latter is presently understood.

Such carrier, or good faith purchaser, or consignee of the manufacturer, could not be the object of a prosecution for violation of the law by suffering the use of its own records against it. That is all.

The Beacon Packing Corporation is not shown to be entitled to the immunity which might attach to it, if it were such a purchaser or consignee.

The information is sufficient in form. Motion denied.

On May 22, 1947, a plea of guilty having been entered on behalf of the defendant, the court imposed a fine of \$150 on each of the 2 counts of the information.

13485. Adulteration and misbranding of Berko Vigortone. U. S. v. Berko Malted Milk Co., Inc. Plea of guilty. Fine, \$200. (F. D. C. No. 12583. Sample No. 76307-F.)

INFORMATION FILED: February 26, 1945, against Berko Malted Milk Co., Inc., of Brooklyn, N. Y.

ALLEGED SHIPMENT: On or about December 29, 1943, from the State of New York into the State of New Jersey.

LABEL, IN PART: "Berko Vigortone Vitamins Chocolate Flavored Vitamins * * * B₂G Each ounce contains approximately the following active ingredients: Vitamin A 1000 U. S. P. Units Vitamin B₁ 250 International Units Vitamin B₂ 200 Gamma Units Vitamin D 400 U. S. P. Units."

NATURE OF CHARGE: Adulteration, Section 402 (b) (1), valuable constituents of the article, calcium, phosphorus, and iron, had been in whole or in part omitted therefrom. Each ounce of the article was represented to contain 0.294 gram of calcium, 0.182 gram of phosphorus, and 0.016 gram of iron, but in fact contained not more than 0.091 gram of calcium, not more than 0.125 gram of phosphorus, and not more than 0.0014 gram of iron.

Misbranding, Section 403 (a), the name "Vigortone" was misleading, since it created the impression that the product possessed peculiar tonic and invigorating properties, whereas it did not. The labeling was further misleading, since the statements Vitamins "B₂G and Vitamin B₂" on the label created the impression that the article contained an amount of vitamin B₂(G) which would contribute in an important respect to the requirements of the body for that vitamin. The product contained a negligible and unimportant amount of vitamin B₂(G), which fact is material in the light of the statements borne on the jar label wherein these statements "Each Ounce Contains approximately the following ingredients: * * * Calcium 0.294 grams, Phosphorus 0.182 grams, Iron 0.016 grams" were false and misleading, since the article contained smaller amounts of calcium, phosphorus, and iron than so represented.

Section 403 (j), the article purported to be, and was represented, for special dietary uses by man by reason of its vitamin properties with respect to vitamins A, B₁, B₂, and D, and its mineral properties with respect to calcium, phosphorus, and iron; and its label failed to bear such information concerning its vitamin and mineral properties as has been determined to be, and by regulations prescribed as, necessary in order fully to inform purchasers as to its value for such uses. The label also failed to bear a statement of the proportion of the minimum daily requirements for vitamins A, B₁, B₂, and D, and the

minerals, calcium, phosphorus, and iron, which would be supplied by the article when consumed in a specified quantity during a period of 1 day.

DISPOSITION: May 22, 1947. A plea of guilty having been entered, the court imposed a fine of \$200.

13486. Misbranding of Key-Mins citrate and phosphate crystals. U. S. v. Edward T. Keenan (Keenan Laboratories). Plea of nolo contendere. Fine, \$100.
(F. D. C. No. 21446. Sample No. 7603-H.)

INFORMATION FILED: May 28, 1947, Southern District of Florida, against Edward T. Keenan, trading as Keenan Laboratories, Frostproof, Fla.

ALLEGED SHIPMENT: On or about July 2, 1945, from the State of Florida into the State of New York.

NATURE OF CHARGE: Misbranding, Section 403 (a), certain statements in the labeling of the article were false and misleading.

The article was alleged also to be misbranded under the provisions of the law applicable to drugs, as reported in notices of judgment on drugs and devices, No. 2335, in which are quoted excerpts from the labels, indicating the composition of the product and the nature of the false and misleading statements.

DISPOSITION: December 31, 1947. A plea of nolo contendere having been entered, the court imposed a fine of \$100.

13487. Misbranding of Mylo. U. S. v. 17 Dozen Bottles * * *. (F. D. C. No. 22996. Sample No. 39531-H.)

LABEL FILED: April 25, 1947, Eastern District of Wisconsin.

ALLEGED SHIPMENT: On or about August 19, 1946, by International Laboratories, from Chicago, Ill.

PRODUCT: 17 dozen bottles of Mylo at Milwaukee, Wis.

LABEL, IN PART: "240 cc. Mylo * * * Calcium 750 milligrams Phosphorus 750 milligrams Iron 10 milligrams Vitamin A 4,000 U. S. P. Units Vitamin D 400 U. S. P. Units B₁ (Thiamin Hydrochloride) 333 U. S. P. Units B₂ (Riboflavin) 2 milligrams."

NATURE OF CHARGE: Misbranding, Section 403 (a), the following statements in the labeling were misleading: (Bottle label) "A supplement for use when reducing * * * A preparation containing diastase, which aids in the enzymatic action of foods plus the full daily requirements of vitamins and minerals * * * devised to provide a low calorie preparation, but right in factors necessary to insure the adequacy of the reducing diet" and (leaflet attached to bottle) "Grow Slim and Trim with Mylo * * * Calcium is the muscle mineral. Iron is the blood mineral. Phosphorus helps build the nerve tissue, bones and teeth." These statements represented and suggested that the product would be effective to cause loss of body weight, to supply all nutritional factors that may be deficient in a reducing diet, to aid digestion of food through enzymatic action, and to build muscle, blood, teeth, and nerves. The product would not be effective for such purposes.

DISPOSITION: December 12, 1947. The sole intervener having consented to the entry of a decree, judgment of condemnation was entered and the product was ordered destroyed.

13488. Misbranding of Veta-Roni. U. S. v. 68 Cartons * * *. (F. D. C. No. 20232. Sample No. 63255-H.)

LABEL FILED: June 21, 1946, Southern District of New York.

ALLEGED SHIPMENT: On or about April 8, 1946, by the Prince Macaroni Mfg. Co., from Lowell, Mass.

PRODUCT: 68 cartons, each containing 12 1-pound packages, of Veta-Roni at New York, N. Y. Examination of the product showed that it contained approximately 13 percent protein and 55 percent starch.

LABEL, IN PART: "Prince Veta-Roni Health Food."

NATURE OF CHARGE: Misbranding, Section 403 (a), the following statements on the label were false and misleading: "Health Food * * * You get much less starch in Veta-Roni than in most similar wheat products. The lower starch content makes Veta-Roni the ideal food for those who want to