

**DISPOSITION:** The Carlay Co. appeared as claimant and filed an answer denying the allegations of misbranding. The claimant also filed a motion for removal of the proceeding to another district, which motion was opposed by the Government on the grounds that the law does not authorize removal of an action based upon an alleged misbranding when such misbranding has been the basis of a prior judgment in favor of the Government in criminal, injunction, or libel proceedings, and that judgments had been entered in favor of the Government in several libel proceedings involving labeling which although differing substantially in wording, raised the same issue, namely, whether Ayds candy is effective in causing loss of body weight. After considering the brief of the parties, the court ruled as follows:

HEALY, *District Judge*: "Since the prior proceedings cited by the United States in its brief were not 'based upon the same \* \* \* misbranding' within the meaning of Section 334 of Title 21 of the United States Code, I am of the opinion that this libel comes within the removal provision of that section. The proceedings will be removed to the United States District Court for the Eastern District of Wisconsin."

In accordance with the foregoing opinion, an order was entered on April 28, 1943, for removal of the case for trial to the Eastern District of Wisconsin. Thereafter, the claimant filed a motion in the Eastern District of Wisconsin for removal of the case to the Northern District of Illinois for trial, for the reason that the trial in the Eastern District of Wisconsin would cause undue and unnecessary hardship to the claimant and would cause great inconvenience to the claimant's witnesses. On June 7, 1943, and without objection by the Government's attorney, an order was entered directing the removal of the case to the Northern District of Illinois. A motion to vacate the order of June 7 was subsequently filed in the Eastern District of Wisconsin and was denied on April 24, 1944. On September 18, 1944, pursuant to a motion by the United States Attorney for the Northern District of Illinois, the case was dismissed.

**13493. Adulteration and misbranding of Enricho No. 1 and Enricho No. 2. U. S. v. Dawe's Mfg. Co. Plea of guilty. Fine, \$1,500. (F. D. C. No. 23223. Sample Nos. 19334-H, 51504-H.)**

**INFORMATION FILED:** December 4, 1947, Southern District of Illinois, against the Dawe's Mfg. Co., a corporation, Peoria, Ill.

**ALLEGED SHIPMENT:** On or about March 21 and 27, 1946, from the State of Illinois into the States of Iowa and Minnesota.

**PRODUCT:** Analyses disclosed that the Enricho No. 1 contained per gram 70 U. S. P. units of vitamin D, 50 U. S. P. units of vitamin A, more than 100 micrograms of riboflavin, approximately 86 micrograms of vitamin B<sub>1</sub>, approximately 70 micrograms of ascorbic acid, and 119 micrograms of niacin; and that the Enricho No. 2 contained per gram 200 U. S. P. units of vitamin D, 53 micrograms of riboflavin, 50 micrograms of vitamin B<sub>1</sub>, less than 25 U. S. P. units of vitamin A, and approximately 80 micrograms of ascorbic acid and 75 micrograms of niacin.

**NATURE OF CHARGE:** Enricho No. 1. Adulteration, Section 402 (b) (1), valuable constituents, vitamins A and D and ascorbic acid, had been in part omitted and abstracted from the article. Misbranding, Section 403 (a), the label statements "Vitamin D<sub>3</sub> (Chick) 100 AOAC Units (Per Gram) 45,400 AOAC Units (Per Pound) Vitamin D<sub>2</sub> (4-Legged Animals) 100 USP Units (Per Gram) 45,400 USP Units (Per Pound) Vitamin A 100 USP Units (Per Gram) 45,400 USP Units (Per Pound) \* \* \* Ascorbic Acid 100 Mcgm. (Per Gram) 45,400 Mcgm. (Per Pound)" were false and misleading, since the article contained less than those amounts of vitamin D<sub>3</sub>, vitamin D<sub>2</sub>, vitamin A, and ascorbic acid. Further misbranding, Section 403 (a), certain statements on the label of the article were false and misleading, since they represented and suggested that the article by reason of its vitamin C content would be of value to farm animals; that it would be of aid to poultry and livestock in preventing and recovering from setbacks and sickness due to shortage of vitamins; that the use of the article would insure health of animals; that the article would be efficacious by reason of its vitamin content in the cure, mitigation, treatment, and prevention of infections in poultry and livestock; that the article was necessary to supply the vitamins and minerals which are indispensable for

poultry and livestock; that growth, feathering, appetite, blood, digestion, and utilization of feed of poultry, and growth, bones, coat, production and reproduction, blood, appetite, and digestion of 4-legged animals are frequently affected by the vitamin and mineral intake; that it would be efficacious in the prevention in poultry of low disease resistance, rickets, and paralysis; that it would be efficacious in the prevention in 4-legged animals of low disease resistance, rickets, diarrhea, anemia, night blindness, nutritional scours, and paralysis; that it was an extra rich food; that it would be efficacious in the treatment of weak, run-down, and convalescent birds and animals, backward flocks, sickly animals, and females during pregnancy and nursing; that it was rich in the complete vitamin B complex; and that poultry and livestock had a need for a supplement rich in the complete vitamin B complex. The article would not be of value to farm animals by reason of its vitamin C content, in that farm animals have no need for vitamin C; the article would not insure the health of animals; the article was not necessary to supply the vitamins and minerals indispensable for poultry and livestock, in that many poultry and livestock rations adequately supply the vitamins and minerals needed; growth, feathering, appetite, blood, digestion, and utilization of feed of poultry, and growth, bones, coat, production and reproduction, blood, appetite, and digestion of 4-legged animals are seldom affected by the vitamin and mineral intake, but are often affected by factors other than vitamin and mineral intake; it was not an extra rich food; it was not rich in the complete vitamin B complex; poultry and livestock have no need for a supplement rich in the complete vitamin B complex; and the article would not be efficacious in the treatment and prevention of the above-mentioned disease conditions.

Enricho No. 2. Adulteration, Section 402 (b) (1), a valuable constituent, vitamin A, had been in part omitted and abstracted from the article. Misbranding, Section 403 (a), certain statements on the label of the article were false and misleading, since they represented and suggested that the article contained 50 U. S. P. units of vitamin A per gram and 22,700 U. S. P. units of vitamin A per pound; that it would be of value for use by poultry by reason of its content of 11 vitamins and 5 trace minerals, including niacin, vitamin B<sub>1</sub>, choline, pyridoxine, vitamin K, vitamin E, vitamin C, iron, copper, and sulfur; that it by reason of its vitamin C content would be of value to farm animals; that it would be of aid to poultry and livestock in preventing and recovering from setbacks and sickness due to shortage of vitamins; that the use of the article would insure the health of animals; that the article would be efficacious by reason of its vitamin content in the cure, mitigation, treatment, and prevention of infections of poultry and livestock; that the article was necessary to supply the vitamins and minerals which are indispensable for poultry and livestock; that in the case of poultry, egg production, hatchability, feathering, appetite, assimilation of food, shells of eggs, lower resistance to disease, blood, and the thyroid are frequently affected by the vitamin and mineral intake; that the article was rich in the complete vitamin B complex; and that poultry and livestock have a need for a supplement rich in the complete vitamin B complex. The article contained less vitamin A than represented; it would not be of value for use by poultry by reason of its content of 11 vitamins and 5 trace minerals, as mentioned above; it would not be of value to farm animals by reason of its vitamin C content, in that farm animals have no need for vitamin C; the article was not necessary to supply the vitamins and minerals which are indispensable for poultry and livestock, in that many poultry and livestock rations adequately supply the vitamins and minerals needed; in the case of poultry, egg production, hatchability, feathering, appetite, assimilation of feed, shells of eggs, low resistance to disease, blood, and thyroid are seldom affected by vitamin and mineral intake but are often affected by factors other than vitamin and mineral intake; the article was not rich in the complete vitamin B complex; poultry and livestock have no need for a supplement rich in the complete vitamin B complex; and the article was not efficacious for the purposes represented.

The articles were 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. 2443.

DISPOSITION: January 5, 1948. A plea of guilty having been entered, the court imposed a fine of \$1,500.