

"The Court must keep in mind the history of this litigation, and the hearing that this Court has conducted in this case, as well as in the case that preceded it and that involved the same issues. This case cannot be continued indefinitely on the docket of the Court, and should be disposed of. The record shows substantial violation of the law, as complained of by the plaintiff, up to and including the final hearing, and it appears to be but proper that the injunction be made permanent so that the Government be relieved of the necessity of pursuing affirmative action in seeking compliance with the law, and of conducting police duties, in order to be assured that the defendants are producing and introducing into interstate commerce food that complies with the law. The burden now should be assumed by the defendants to keep their plant within the law.

"Injunction may, therefore, issue as prayed for.

"The plaintiff may prepare and file findings of fact and conclusions of law, drawn in accordance with this memorandum, within five (5) days, and the defendants may file any exceptions or suggested additions thereto within three (3) days thereafter."

On December 30, 1946, the court entered its findings of facts and conclusions of law and, in accordance therewith, entered a decree providing for the dismissal of the action against Eilene Finnell, on the ground that she had had no active part in the management, control, or operation of the business, and ordering that the other defendants be permanently enjoined from commission of the acts complained of. On October 5, 1948, the defendants moved the court to vacate and set aside the injunction. On November 29, 1948, the court overruled the motion.

**14766. Adulteration of candy and cookies. U. S. v. Capitol Candy Co., Inc., and Charles E. Maley. Pleas of nolo contendere. Corporation fined \$200; Charles E. Maley fined \$50. (F. D. C. No. 26353. Sample Nos. 1118-K, 1522-K, 1523-K, 1526-K, 1706-K to 1708-K, incl., 23639-K, 23904-K to 23906-K, incl., 45850-K, 45851-K.)**

**INFORMATION FILED:** April 22, 1949, Southern District of Mississippi, against Capitol Candy Co., Inc., Jackson, Miss., and Charles E. Maley, secretary-treasurer.

**ALLEGED SHIPMENT:** Between the approximate dates of September 7 and November 2, 1948, from the State of Mississippi into the States of Tennessee, Georgia, Alabama, and Florida.

**LABEL, IN PART:** (Portions) "Leader Brand [or "Capitol"] Vanilla Wafers" or "Capitol Stick \* \* \* Capitol Candy Co."

**NATURE OF CHARGE:** Adulteration, Section 402 (a) (3), the products consisted in part of filthy substances by reason of the presence of insects, insect heads, insect fragments, insect larvae, and rodent hair fragments; and, Section 402 (a) (4), they had been prepared and packed under insanitary conditions whereby they may have become contaminated with filth.

**DISPOSITION:** May 6, 1949. Pleas of nolo contendere having been entered, the corporation was fined \$200 and Charles E. Maley \$50.

**14767. Adulteration of chocolate rabbits. U. S. v. 55 Boxes, etc. (and 1 other seizure action). (F. D. C. Nos. 26606, 26656. Sample Nos. 40245-K, 56250-K.)**

**LIBELS FILED:** February 15 and March 15, 1949, Districts of Maryland and New Jersey.

**ALLEGED SHIPMENT:** On or about January 7 and February 28, 1949, by Chocolate Creations, Inc., from New York, N. Y.

**PRODUCT:** 55 boxes each containing 1 12-ounce chocolate rabbit and 210 boxes each containing 1 7-ounce chocolate rabbit at Baltimore, Md., and 24 dozen boxes each containing 1 11-ounce chocolate rabbit and 66 dozen boxes each containing 1 7-ounce chocolate rabbit at Newark, N. J.

**LABEL, IN PART:** "Milk Chocolate," "Milk Chocolate Rabbit," and "Colonial House Homestyle Candies."

**NATURE OF CHARGE:** Adulteration, Section 402 (a) (3), the product consisted in whole or in part of a filthy substance by reason of the presence of insect fragments and rodent hair fragments; and, Section 402 (a) (4), it had been prepared under insanitary conditions whereby it may have become contaminated with filth.

**DISPOSITION:** March 21 and May 2, 1949. Default decrees of condemnation and destruction.

**14768. Adulteration of candy. U. S. v. 15 Boxes \* \* \* (and 2 other seizure actions).** (F. D. C. Nos. 26626, 26664, 26665. Sample Nos. 7916-K, 40425-K, 46997-K.)

**LIBELS FILED:** February 28, 1949, District of Maryland and Western District of Pennsylvania.

**ALLEGED SHIPMENT:** On or about January 25 and 27, 1949, by Crown Candy Co., Inc., from Springfield, Mass.

**PRODUCT:** Candy. 15 boxes at Baltimore, Md., 6 boxes at Pittsburgh, Pa., and 31 boxes at Vandergrift, Pa. Each box contained 24 1¼-ounce packages.

**LABEL, IN PART:** (Package) "Elizabeth Ann Chocolate Cordial Cherries."

**NATURE OF CHARGE:** Adulteration, Section 402(a) (3), the product consisted in whole or in part of a filthy substance by reason of the presence of rodent hair fragments; and, Section 402(a) (4), it had been prepared under insanitary conditions whereby it may have become contaminated with filth.

**DISPOSITION:** March 31 and April 4, 1949. Default decrees of condemnation and destruction.

**14769. Misbranding of candy. U. S. v. 274 Boxes \* \* \*. Decree of condemnation.** (F. D. C. No. 16709. Sample No. 7116-H.)

**LIBEL FILED:** July 23, 1945, District of New Jersey.

**ALLEGED SHIPMENT:** On or about June 20 and 27, 1945, by the Life Savers Corp., from Port Chester, N. Y.

**PRODUCT:** 274 boxes, each containing 20 packages, of candy at Newark, N. J.

**LABEL, IN PART:** (Roll) "Wild Cherry Life Savers."

**NATURE OF CHARGE:** Misbranding, Sections 403(a) and 403(f), the charges appear in the court's findings of fact.

**DISPOSITION:** On June 15, 1949, following a pretrial conference, the court made the following findings of fact:

**LEDERLE, District Judge:** "This is a proceeding for the seizure and condemnation of a food (candy) brought by the Government under the Food, Drug and Cosmetic Act of 1938. The libel of information herein was filed on July 23, 1945, alleging that the seized goods, approximately 274 boxes of a candy called Life Savers (Wild Cherry flavor), were misbranded under 21 U. S. C. 343(a) 'in that the label designation "Wild Cherry" is false and misleading as applied to a product which is artificially flavored and colored,' and within the meaning of 21 U. S. C. 343(f) 'in that the information required by and under authority of the Federal Food, Drug and Cosmetic Act to appear on the