

**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

label, namely, the name and place of business of the manufacturer, packer, or distributor; an accurate statement of the quantity of the contents; and the common or usual name of each ingredient, is not prominently placed on the label with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) as to render such information likely to be read by the ordinary individual under customary conditions of purchase and use, since the required statements are printed in such small type and on such a background as to be practically invisible.'

"When seized, the goods were in the possession of a distributor in Newark, New Jersey. They were manufactured and sold and shipped in interstate commerce to the distributor by Life Savers Corporation, a Delaware corporation having its principal place of business in Port Chester, New York. A default was entered before Life Savers Corporation had actual notice of the proceedings. Upon receiving such notice from the United States attorney, Life Savers Corporation filed its petition by which it sought to be relieved of the default and to be permitted to file an answer to the libel and enter its claim to the seized goods. Upon the consent of the Government an order was made on April 29, 1946 vacating the default. Thereafter Life Savers Corporation duly filed its claim, answer to the libel and gave the required security for costs.

"Claimant's answer denied that the seized goods were misbranded and subject to seizure and condemnation under 21 U. S. C. 334. Further answering the libel, claimant alleged that it had been forced by shortages of materials due to the war to abandon temporarily the use of gold lettering on its labels, and to use lettering which was less conspicuous but which, nevertheless, was the best it could do under the circumstances.

"Upon the joining of issue this cause was placed on the trial calendar and in due course was set for a pre-trial conference, which was had before Judge Smith on January 7, 1947. It appearing that an understanding might be reached between the parties, Judge Smith adjourned the trial to see if a satisfactory compromise might not be reached. The negotiations of the parties having failed to lead to a disposition of the case, it has come before me for trial.

"This proceeding does not concern either the prewar label or that now in use by claimant.

"It appears from statements made by counsel for claimant at this pre-trial hearing that for many years, the claimant has manufactured its Life Saver candies in a number of different flavors. Sales and distribution have been national in scope, and its products are widely known to the public. In 1934, it added to its line of goods the candy which has been seized. Its flavor, which is artificial, is called 'Wild Cherry.' So far as appears, no candy is sold commercially which is made with a natural 'Wild Cherry' flavoring. There are many candies currently on the market which are flavored with an artificial flavoring similar in character to that used by claimant. In the eleven years, from 1934 through 1944, claimant sold approximately 121,000,000 packages of its 'Wild Cherry' candy, but it was not until the early part of 1944 that claimant began use of the questioned label. In the early part of 1944, claimant was forced to adopt a substitute for its regular label by war shortages and Government controls concerning paper and printing materials. Thus claimant adopted its 'war label' which is on the goods seized by the Government in this proceeding. This label is not as legible as that which has followed it in use. The value of the goods seized by the Government in these proceedings is insignificant. Although claimant has denied in its answer that the seized goods are misbranded, it appears from all of the circumstances that for all practical purposes the issues raised by the pleadings are moot. Claimant's chief concern is to avoid the hardships of a prolonged trial, and by way of compromise, and without prejudice, it is willing to terminate this proceeding by permitting the seized goods to be condemned without further proceedings. The use of claimant's 'war labels' had been discontinued by the time this proceeding was first set for trial and their use has not since been resumed. The label now in use resembles in general appearance the claimant's pre-war label, save that information as to the artificial character of the flavoring appears on it in three places, and with greater prominence.

"The claimant's 'war label', used on the seized goods and alleged by the libel to constitute misbranding as aforesaid, are all that are now before the Court. The facts found and the decree which may be entered herein are limited in

application to those labels, without prejudice to the rights of the claimant in the label presently used by it for Life Savers having an artificial wild cherry flavor. Furthermore, this proceeding is, of course, without prejudice to the right of the Government to challenge, should it see fit to do so, in a separate, new proceeding, the labels presently used by claimant to determine whether or not such new labels are in full compliance with the requirements of the statute. Upon the stipulation of counsel for claimant made without prejudice and by way of compromise only for the purpose of disposing of this proceeding, claimant concedes and upon its concessions I find the seized goods to be misbranded in the respects alleged in the libel."

On the same date, the court entered a decree condemning the product and ordering its delivery to charitable organizations.

## DAIRY PRODUCTS

### CHEESE

14770. Action to enjoin and restrain the interstate shipment of cheese. U. S. v. John J. Alder (Minnesota Cave Cheese Co.). Temporary injunction granted. Injunction proceedings subsequently dismissed. (Inj. 171.)

COMPLAINT FILED: August 2, 1947, District of Minnesota, against John J. Alder, doing business as the Minnesota Cave Cheese Co., Carver, Minn.

NATURE OF CHARGE: That at the time of the filing of the complaint, the defendant was, and for several years had been, introducing and delivering for introduction into interstate commerce, cheese which was adulterated as follows: Section 402 (a) (3), the cheese consisted in part of filthy substances; and, Section 402 (a) (4), it had been prepared under insanitary conditions whereby it may have become contaminated with filth.

The complaint alleged further that the insanitary conditions in the defendant's factory where the cheese had been, and was being, prepared arose out of the presence of insects, rodents, rodent excreta, and other filthy and unwholesome substances in and around places in the factory where the cheese had been, and was being, prepared and stored, and in and around raw materials and equipment used for preparing the cheese; that the insanitary conditions arose also out of the use of filthy milk in manufacturing the cheese; and that the defendant continued to ship in interstate commerce adulterated cheese and would continue to ship such cheese in interstate commerce unless enjoined from so doing.

PRAYER OF COMPLAINT: That the defendant be perpetually enjoined from commission of the acts complained of; and that a preliminary injunction be granted during the pendency of the action.

DISPOSITION: On October 10, 1947, the defendant having consented to the entry of a temporary injunction on the condition that it be without prejudice to the defendant's claim with respect to a permanent injunction, an order was entered temporarily enjoining the defendant from introducing or delivering for introduction into interstate commerce, cheese which was adulterated, as alleged in the complaint. On April 29, 1949, the defendant having, in the meantime, sold his business and being no longer engaged in the manufacture of cheese products, an order was entered for the dismissal of the injunction proceedings.