

CEREALS AND CEREAL PRODUCTS**BAKERY PRODUCTS****25451. Buttermilk bread and buttermilk enriched bread.**

(Inj. No. 318.)

COMPLAINT FOR INJUNCTION FILED: 9-25-57, Dist. Columbia, against Continental Baking Co., a corporation, Washington, D.C.

CHARGE: The complaint alleged that the defendant was engaged in the baking business and was operating baking plants throughout the United States, including plants in Washington, D.C.; that defendant had been and was engaged at Washington, D.C., in the business of manufacturing, preparing, packing, selling, and distributing in interstate commerce, an article designated by the names "Buttermilk Bread" and "Buttermilk Enriched Bread," and that the article when introduced into interstate commerce, was misbranded as follows:

403 (g) (1)—the article was and purported to be enriched bread, a food for which a definition and standard of identity had been prescribed by regulations and the article failed to conform to such definition and standard in that it contained nitrated flour which is not permitted as an ingredient of enriched bread;

403 (g) (2)—the labels of the article failed to bear the name of the food specified in the definition and standard, namely, enriched bread, but was designated by the names "Buttermilk Bread" and "Buttermilk Enriched Bread".

It was alleged further that the use of the names "Buttermilk Bread" and "Buttermilk Enriched Bread" resulted in the consumer believing that, by the consumption of those breads, he was obtaining significant advantages over what would be obtained from the use of other breads that conformed to the standards; that although buttermilk was an ingredient permitted to be used in bread and enriched bread for which standards had been adopted, the practice of the defendant in emphasizing the name of the buttermilk ingredient led consumers to believe that the buttermilk imparted a distinct advantage to its bread over all other standardized bread or enriched bread; that this approach tended to destroy the confidence of the consumer in our basic foods, because it tended to nullify the purposes for which the bread standards were promulgated, namely, to promote honesty and fair dealings in the interest of the consumers; and that the promotional scheme employed by the defendant worked a disadvantage to competitors who adhered to the law and standards and refrained from the use of such promotional practices.

DISPOSITION: On 9-25-57, the court issued a temporary restraining order enjoining the defendant from producing or causing to be produced for introduction into interstate commerce, the article of food designated by the names "Buttermilk Bread" described as enriched, and "Buttermilk Enriched Bread," which purported to be and was represented as enriched bread and (1) which contained nitrated flour or (2) which bore a label designating the article by the name "Buttermilk Bread" described as enriched or "Buttermilk Enriched Bread"; and providing that nothing should prevent the designation of the article as "Bread" or "Enriched Bread" followed by a qualifying statement "made with buttermilk" where such legend was factual and was not misleading.

Thereafter a hearing was held on the Government's motion for preliminary injunction, and, on 10-3-57, the court filed its findings of fact and conclusions of law and entered an order enjoining the defendant from the acts complained of pending the final determination of the case.

Subsequently, on 6-24-58, the defendant having consented, and without trial or the adjudication of any issue of fact or law and without the final judgment constituting evidence or admission by the defendant in respect of any such issue, the court entered a decree of permanent injunction enjoining the defendant from producing or causing to be produced for introduction or delivery for introduction into interstate commerce, any article which purports and is represented to be enriched bread, and which (1) contains nitrated flour or (2) which is designated by the names "Buttermilk Bread" or "Buttermilk Enriched Bread" unless and until the definition and standard of identity for enriched bread permits the use of nitrated flour or the use of the names "Buttermilk Bread" or "Buttermilk Enriched Bread."

25452. Ryola Crisp rye. (F.D.C. No. 42616. S. No. 27-322 P.)

QUANTITY: 41 cases, 12 pkgs. each, at Superior, Wis.

SHIPPED: 11-4-58, from Minneapolis, Minn., by Ryola Co.

LABEL IN PART: (Pkg.) "Ryola Scandinavian Style Crisp Rye * * * Net Weight 11 Ounces."

LIBELED: 12-3-58, W. Dist. Wis.

CHARGE: 402(a)(3)—contained insects, insect fragments, and rodent hair fragments; and 402(a)(4)—prepared and packed under insanitary conditions.

DISPOSITION: 1-6-59. Default—destruction.

CORNMEAL

25453. Cornmeal. (F.D.C. No. 42874. S. Nos. 49-361/2 P.)

QUANTITY: 8 bales, 10 5-lb. bags each, and 8 bales, 5 10-lb. bags each, at Wenatchee, Wash.

SHIPPED: 10-1-58, from Lodi, Calif.

LIBELED: 3-9-59, E. Dist. Wash.

CHARGE: 402(a)(3)—contained insects while held for sale.

DISPOSITION: 5-5-59. Default—destruction.

25454. Cornmeal and flour. (F.D.C. No. 42629. S. Nos. 38-635/6 P.)

QUANTITY: 63 25-lb. bags of cornmeal and 50 25-lb. bags of flour at Prescott, Ark., in possession of Logan Grocer Co.

SHIPPED: 10-8-58 and 10-21-58, from Yukon, Okla.

LIBELED: 12-4-58, W. Dist. Ark.

CHARGE: 402(a)(3)—contained rodent urine and rodent excreta; and 402(a)(4)—held under insanitary conditions.

DISPOSITION: 1-22-59. Default—delivered to a public institution for use as animal feed.

FLOUR*

25455. Flour. (F.D.C. No. 42808. S. No. 35-437 P.)

QUANTITY: 500 bags at Norristown, Pa.

SHIPPED: 12-24-58, from Alton, Ill.

RESULTS OF INVESTIGATION: Examination showed that the freight car in which the article was shipped was infested with rodents.

*See also No. 25454.